

## State Board of Equalization

# SALES OF CIGARETTES AND TOBACCO PRODUCTS IN CALIFORNIA – A GUIDE FOR WHOLESALERS AND DISTRIBUTORS

### THE LAW

The California Cigarette and Tobacco Products Licensing Act requires all sellers of cigarettes and tobacco products to be licensed with the State Board of Equalization (BOE):

- Retailers
- Wholesalers
- Distributors
- Importers
- Manufacturers

### ELECTRONIC SMOKING DEVICES

- As of January 1, 2017, electronic smoking devices such as e-cigarettes are defined as “tobacco products” for purposes of the state tobacco license requirement.

### STATE LICENSE

- Apply for a license online at [www.boe.ca.gov/electsrv/ereg](http://www.boe.ca.gov/electsrv/ereg)
- Pay all applicable license fees
- Must have and display license before you can sell.
- Applications may take 7-10 days to process.
- Upon approval of your application, a BOE email is sent to you with your license and other important information.
- There may be local tobacco requirements/fees separate from the BOE license

### Which license do you need?

- Retailer license (LRQ):
  - Allows you to sell only to legal-aged consumers.
  - Annual fee of \$265 per location.
  - Valid for 12 months; renewed annually; renewal reminder sent 60 days in advance
- Wholesaler license (LWQ):
  - Allows you to obtain and sell tax-paid tobacco products to retailers and other wholesalers.
  - Annual fee of \$1,200 per location.
  - Valid for a calendar year (Jan – Dec); renewal reminder emailed in October.
- Distributor license (LDQ):
  - Allows you to sell tax-paid tobacco products to retailers, wholesalers, and other distributors.
  - Annual fee of \$1,200 per location.
  - Valid for a calendar year (Jan – Dec); renewal reminder emailed in October.
  - Security deposit required.

#### License:

- License Type - Retailer
  - On or before June 8, 2016 - \$100 per location
  - On or after June 9, 2016 - \$265 per location
- License Type: Wholesaler/Distributor
  - On or before June 8, 2016 - \$1,000 per location

- On or after June 9, 2016 - \$1,200 per location

Renewal:

- License Type - Retailer
  - On or before December 31, 2016 – No renewal fee
  - On or after January 1, 2017 - \$265 per location
- License Type: Wholesaler/Distributor
  - On or before December 31, 2016 - \$1,000 per location
  - On or after January 1, 2017 - \$1,200 per location

## **RETAILER**

A tobacco Retailer is a person who sells cigarettes or other tobacco products (OTP) directly to the public from a retail location.

A retailer is not allowed to sell cigarettes or other tobacco products (OTP) to other retailers, wholesalers or distributors.

### **Retailer's License**

- A separate license is required for each location.
- New locations must be added to your seller's permit (SR) before a cigarette and tobacco product license (LRQ) can be activated for that location.
- A license is not assignable or transferable.
- A BOE tobacco license is separate from a local city or county tobacco license that may also be required.
- A Retailer can purchase tax-paid cigarette and OTP inventory only from a BOE-licensed Distributor or Wholesaler. A Retailer cannot purchase cigarettes or OTP from other Retailers or unlicensed person.
  - *Example: A mini-mart cannot purchase cigarettes or OTP from the retail grocery store down the street.*
  - *Exception: Retailers may purchase e-cigarettes or other electronic smoking/vaping devices and their components, parts, or accessories from sellers without a tobacco license as excise tax does not apply to such items.*
- "Tax-paid" means that the California excise taxes have been paid on the cigarettes and OTP.
  - *Cigarettes – .0435 cents per cigarette / 87 cents per pack of 20 cigarettes.*
  - *OTP – 27.3% excise tax rate for July 1, 2016 through June 30, 2017.*

## **Wholesaler**

- A tobacco Wholesaler is anyone who sells for resale cigarettes or OTP and is not a Distributor by definition.
- A Wholesaler resells tax-stamped cigarettes and tax-paid OTP.
- "Stamped" cigarette packs have a valid California tax stamp applied, which represents 87 cents in excise taxes.
- A Wholesaler cannot be in possession of untaxed cigarettes or OTP and cannot purchase their products directly from an importer or manufacturer.

### **Wholesaler's License/Permits**

As a Wholesaler you must obtain the following BOE permit/license before you can make any cigarette or OTP sales:

- *SR – Seller's permit*
- *LWQ – Cigarette & Tobacco Products Licensing Act of 2003—Wholesaler's License*

When you register for a Wholesaler cigarette and tobacco license with the BOE, we will also assign you one or both of the following accounts, depending on the type of products you sell:

- *CW – Cigarette Wholesaler permit*
- *TW – Tobacco Wholesaler permit*

#### CW Permit –

- Wholesaler permit required if selling cigarettes.
- Requires you to report your beginning inventory of stamped cigarettes, the amount purchased, and the amount sold.
- The amounts are reported by carton and filed monthly.
- These are informational reports only.

#### TW Permit –

- Wholesaler permit required if making sales of OTP.
- No reporting requirements.

#### LWQ License –

- Separate license for each location; \$1,200 per location.
  - License not required for a storage location where no sales or shipments are being made; this type of location is registered with the BOE as a sub-location and no fee is charged.
- Valid for a calendar year and is not transferrable.
- A BOE tobacco license is separate from a local city or county tobacco license that may also be required
- A Wholesaler's license will not be issued if the location is not registered with an active seller's permit (SR).
- If you also want to make retail sales of cigarettes and OTP, you must obtain a Retailer's license in addition to your Wholesaler's license.

#### **Distributor**

- A cigarette and tobacco Distributor is anyone who sells or possesses for distribution cigarettes or OTP.
- A Distributor may possess untaxed cigarettes and OTP. Products may be purchased directly from an importer or manufacturer.
- A cigarette Distributor may purchase unstamped cigarettes, affix them with California cigarette tax stamps, and resell the stamped product to California distributors, wholesalers and retailers.
- A tobacco Distributor may purchase untaxed OTP, pay the excise tax, and resell the tax-paid OTP. Note: although now defined as tobacco products, electronic smoking devices such as e-cigarettes do not require payment of excise taxes.

#### **Distributor's License/Permits**

As a Distributor you must obtain the following BOE permits/license before you can make any cigarette or OTP sales:

- *SR – Seller's permit*
- *LDQ – Cigarette & Tobacco Products Licensing Act of 2003—Distributor's License*

When you register for a Distributor cigarette and tobacco license with the BOE, we will also assign you one or both of the following accounts, depending on the type of product you sell:

- *CR – Cigarette Distributor permit*

- *CP – Tobacco Distributor permit*

#### CR Permit –

- Distributor permit required if selling cigarettes.
- Permit required to purchase California cigarette tax stamps.
- Requires you to report your monthly levels of stamped and unstamped cigarettes:
  - beginning inventory,
  - amount purchased during the month, and
  - the end-of-month inventory.
- Amounts are reported in “sticks.”
- These are informational reports only, due on or before the 25th day of the following month.

#### CP Permit –

- Distributor permit required if selling OTP.
- Requires you to report wholesale cost of all OTP:
  - distributed,
  - any exemptions (primarily interstate or foreign commerce sales), and
  - the total amount of tax due.
- Tax is due on or before the 25th day of the following month in which the OTP is purchased or when distributed (as selected by licensee during registration).

#### LDQ License –

- Separate license for each location.
- \$1,200 per location.
  - License not required for a storage location where no sales or shipments are being made; this type of location is registered with the BOE as a sub-location and no fee is charged.
- Valid for a calendar year and is not transferrable.
- A BOE tobacco license is separate from a local city or county tobacco license that may also be required.
- A Distributor’s license will not be issued if the location is not registered with an active seller’s permit (SR).
- If you also want to sell cigarettes or OTP at retail and/or wholesale, you must obtain a Retailer’s license in addition to your Distributor’s license.

## **INSPECTIONS**

- The BOE conducts inspections of all businesses selling cigarettes and other tobacco products. Inspections are conducted by the BOE Investigations Division.
- Wholesaler inspections are not scheduled but are conducted during regular business hours.
- Distributors will typically receive contact from the BOE before an inspection.
- We will:
  - Identify ourselves with BOE ID
  - Explain our inspection process
  - Ask the person in charge for their identification and relationship to the business (i.e., owner, employee)

We will also:

- Request permission to conduct the inspection, review your invoices, and for access to any secured cigarette/tobacco storage areas.
- Check that you have the appropriate licenses and permits, and properly displayed if required.
  - SR, LWQ, CW, TW, LDQ, CR, CP
  - Other business licenses that may be required.
- Verify that our information for your business is current.

And verify that...

- The STAKE Act sign is posted. If not visible or worn, we will provide a new sign.
- All California tax-stamped cigarettes are affixed with valid stamps.
- All cigarettes comply with the California Cigarette Fire Safety and Firefighter Protection Act (FSC).

Note: As of 9/22/09 flavored cigarettes, except Menthol, were banned from sale in the U.S. and are subject to seizure.

## **California Tobacco Directory**

Wholesalers and Distributors may only

- sell
- offer for sale, or
- possess for sale in California

cigarette brands and roll-your-own tobacco products listed in the Attorney General's California Tobacco Directory. (<http://ag.ca.gov/tobacco/directory.htm>)

Note: California Distributors may possess unlisted cigarette brands or roll-your-own tobacco products only if sales and delivery of these brands are out of state.

## **When a brand is pending removal from the CA Tobacco Directory for cause,**

- The Attorney General's (AG's) office will notify the manufacturer, and all distributors and wholesalers of its pending action.
- For 40 days from notice of pending removal, a licensed Distributor may purchase, stamp or sell the affected product, and a licensed Wholesaler may purchase or sell the product.
- Prior to a sale of the affected product, and no later than 7 days after receiving the AG's notice, a Distributor or Wholesaler must notify each of its existing customers of the pending removal of the product from the Directory.
- No later than 7 days from AG's issuance of the Notice of Removal, the Distributor/Wholesaler must provide a copy of this notice to its existing customers.

[Retailers have 60 days after the **date of removal** to possess, transport, and sell the tax-paid product.]

## INVOICES

- Distributors and Wholesalers are required to maintain the last 12 months of purchase and sales invoices on the business premises, and a total of 4 years *on or off* premises.  
Note: Invoice requirements do not apply to electronic smoking/vaping devices such as e-cigarettes, their components, parts, or accessories.
- Failure to have 12 months of cigarette and OTP invoices on the premises may result in a citation.
- Invoices are used to:
  - reconcile inventory and verify excise taxes were paid on all OTP,
  - reconcile a Distributor's untaxed cigarettes and OTP to returns filed with the BOE, and
  - ensure they contain all the required information.

### A valid sales/purchase invoice must be legible and contain the following:

- The seller's name, address, telephone number, license number, and amount of excise taxes due or paid.  
Distributors may use the statement: *"All California cigarette and tobacco product taxes are included in the total amount of this invoice."*
- Itemized list of cigarettes and OTP sold and date of the sale.
- The purchaser's name, address, and license number.

### (figure of invalid invoice) Reasons this invoice is not valid:

- Missing Distributor's or Wholesaler's information that sold the cigarettes and/or OTP.
- Missing the buyer's address and license number.
- The amount of excise tax paid is not shown on the invoice.
- Not legible.

### Multiple business locations...

A licensed Distributor or Wholesaler with multiple business locations is allowed to transfer cigarettes or OTP **only** when the legal owner (as registered with the BOE) of the licensed location transferring the product is the same as the legal owner of the licensed location receiving the product.

For example:

Distributor Transferring Product	Distributor Receiving Product	Is It Allowed?
John Smith – sole proprietor	John Smith – sole proprietor	Yes
John Smith – sole proprietor	John Smith – corporate officer	No
John Smith – sole proprietor	John Smith – partner	No

The guidelines below should be followed when a Distributor or Wholesaler with multiple licensed locations transfers product between locations.

Prepare the transfer log at the time of transfer. Transfer logs created or provided after an inspection will not be accepted. A copy of the transfer log and related invoices should be kept at both locations and include:

- Your location and license information for which the original purchase was made
- Your location and license information where the product was transferred.
- Your supplier's name, license number, and date of original purchase
- Detailed description and quantity of product transferred (i.e., brand, type of package, flavor, style, etc.)

### Sample Log

Wholesaler Transferring Product	Wholesaler Receiving Product	Date of Transfer	Items Transferred	Original Purchase From
TBA Wholesale 123 A Street Anywhere, CA LWQ 09-111111	TBA Wholesale 456 B Street Anywhere, CA LWQ 09-222222	April 2, 2015	<ul style="list-style-type: none"> <li>■ 500 Packs Marlboro Cigarettes, 100s</li> <li>■ 50 Boxes Romeo y Juliet Cigars (25 ea)</li> </ul>	LD Tobacco Distributors LDQ 09-555555 February 14, 2015
TBA Wholesale 123 A Street Anywhere, CA LWQ 09-111111	TBA Wholesale 456 B Street Anywhere, CA LWQ 09-222222	January 31, 2015	<ul style="list-style-type: none"> <li>■ 7 Rolls Grizzly Long Cut, Mint (5 ea)</li> <li>■ 2 Packs Black &amp; Mild Cigars, Wine Flavor (5 ea)</li> <li>■ 3 packs Black &amp; Mild Cigars, Wine Flavor, Wood Tip (5 ea)</li> </ul>	LD Tobacco Distributors LDQ 09-555555 December 27, 2014

## **SEIZURES**

The BOE may seize cigarettes or OTP for many reasons, including:

- Cigarettes with counterfeit stamps, unstamped cigarettes (wholesalers), out-of-state stamped cigarettes, reused stamps, or counterfeit cigarettes
- Cigarettes “Not for Sale in U.S.”
- Cigarettes not listed in the Attorney General’s CA Tobacco Directory (distributors making out-of-state sales allowed)
- Untaxed Tobacco
  - Products purchased from an unlicensed supplier
  - Products not supported by valid purchase invoices

Products will also be seized if:

- Cigarettes or OTP are sold or gifted while a cigarette and tobacco license is suspended or revoked.
- There is continued “unlicensed” sales of cigarettes or OTP.

Note: Products legally seized for continued sales or gifting during a period of suspension or revocation are forfeited to the state and may not be petitioned for their return.

### **What happens if products are subject to seizure?**

- We will take a physical inventory of the items to be seized and list all the products on a Receipt for Property Seized.
- This Receipt shows:
  - Date and time of seizure
  - Name and signature of the BOE inspector seizing the product
  - Name of the owner of items seized (i.e., sole proprietor, LLC, corporation, etc.) and business address where the seizure occurred

The Receipt also includes:

- Name of the person in control of the property (may be owner or employee), their address, and signature.  
Note: Signing the Receipt does not waive your petition rights; it only confirms that what is listed on the seizure form is accurate.
- Details of items seized; this will include a description of the product, quantities of each, and the reason for its seizure.
- A copy of the Receipt will be provided at the time of the seizure.

### **Notice of Seizure and Forfeiture**

When we seize cigarette or tobacco products, the BOE is required to notify business owners in writing:

- That their product was seized
- What was seized
- When it occurred
- Their right to petition

This information is mailed to the business owner(s) with the *Notice of Seizure and Forfeiture*.

## Public Notice

The BOE is also required to publicly notice the seizure of cigarettes or tobacco products when:

- The seizure is 61 or more cartons of cigarettes,
- The wholesale cost of tobacco products seized is equivalent to 61 cartons or more of cigarettes, or
- The combined value of cigarettes and tobacco products seized is equivalent to 61 cartons or more of cigarettes.

BOE Notice of Seizure Website:

**[www.boe.ca.gov/news/seizurecigtoboprod.htm](http://www.boe.ca.gov/news/seizurecigtoboprod.htm)**

To request the return of property seized, a *Verified Petition for Release or Recovery of Property* must be filed in writing within **20 days** from the date of the Notice of Seizure and Forfeiture.

Note: The BOE cannot return seized cigarettes or tobacco products unless they were erroneously or illegally seized.

### What happens to seized product?

- Products seized are stored in a secured area as evidence.
- When the petition process is complete and no further action is necessary, the evidence custodian will destroy forfeited products.
- The time between seizure and destruction of property seized will vary depending on the circumstances of the seizure and/or length of the petition process.

## **CITATIONS**

- A citation, civil or criminal, is a notice of a violation of the law.
- The BOE issues citations for violations of the:
  - Cigarette and Tobacco Products Licensing Act
  - California Cigarette and Tobacco Tax Laws
- We may issue you a citation if violations of these laws are found during our inspection.

### **How can citations be avoided?**

- Sell only cigarettes and roll-your-own tobacco products that are listed on the California Tobacco Directory.
- Make sure your cigarette/tobacco license is displayed.
- Keep 12 months of valid purchase invoices on the premises. Tobacco invoices should reflect that excise taxes were paid.
- Buy only from licensed wholesalers, distributors, importers, manufacturers.

(To verify a valid distributor or wholesaler license, check the BOE website:  
[www.boe.ca.gov/sptaxprog/cig\\_n\\_tob\\_prod\\_lic.htm](http://www.boe.ca.gov/sptaxprog/cig_n_tob_prod_lic.htm).)

### **What happens when a citation is issued?**

- We will fully explain why the citation is being issued and the specific section(s) of law violated.
- Civil citations are handled by the BOE Special Taxes and Fees Division.
- Criminal citations are processed through the Courts.
- We will explain the citation process to you, including your right to appeal.

### **Penalties and Fines . . .**

Depending on the violations cited, penalties may include but are not limited to:

- A Warning Notice
- Suspension or revocation of license
- Fines up to \$50,000 (not to exceed max allowed by statute)
- Imprisonment not to exceed 1 year
- Both fines and imprisonment

The level of penalty imposed as a result of a civil or criminal citation will depend on type of violation and frequency of offense.

In the case of criminal citations:

- The BOE may assess additional civil penalties in addition to penalties imposed by the Court.
- These additional penalties may include suspension or revocation of the cigarette and tobacco license and possible fines.
- Civil fines assessed by the BOE will be reduced by any court fines imposed.

## APPEALS

- Should you receive a citation, you have the right to appeal it. A notice will be mailed to you by the Special Taxes & Fees Division explaining the appeals process.
  - Civil citations may be appealed to the BOE.
  - Criminal citations are processed and adjudicated by the Courts. If the BOE imposes additional civil penalties subsequent to the Court's decision, you may also appeal these penalties to the BOE.
- A written request to appeal must be received within 10 days from the date on the Notice.
- If the request is not received timely, the appeal may not be granted and the violation will remain on your record.
- There are two levels of appeals.
- The first level is a conference conducted by a hearing officer of the Special Taxes & Fees Division.
- A representative from the Investigations Division also participates in this conference.
- All appeals conferences are conducted by telephone.

A Notice of Decision is mailed by the Special Taxes & Fees Division within 90 days after the first-level appeals conference.

- If you disagree with the outcome of the first-level decision, you may appeal the decision within 10 days from the date on the Notice, requesting a second-level appeals conference.
- The second-level conference is conducted by the Appeals Division of the BOE.
- The Appeals Division will issue a *Notice of Decision* of the second-level appeals conference.
- The decision of this appeals conference is final unless the outcome is a revocation of your license or a fine of more than \$2,500.
- Revocations and fines over \$2,500 may be appealed for a hearing before the BOE's elected Board Members.
- The Board Hearing is the final step of the appeal process within the BOE.

## SUSPENDED / REVOKED LICENSE

### **Suspension**

The BOE may suspend your cigarette and tobacco product license for violations of the cigarette and tobacco tax laws.

- Suspensions may be issued for varying violations and range in the number of days.
- The BOE website lists businesses with suspended licenses.

*[www.boe.ca.gov/sptaxprog/pdf/cigtoblic\\_suspen.pdf](http://www.boe.ca.gov/sptaxprog/pdf/cigtoblic_suspen.pdf)*

### **Revocations**

The BOE may revoke your cigarette and tobacco product license for:

- Selling cigarettes or tobacco products during a suspension period
- Revocation of your seller's permit
- A cigarette/tobacco-related felony conviction

A revocation:

- Is location specific
- Requires the revocation notice to be posted during the first 30 days of the revocation
- Does not allow you to reapply for new license for a minimum of 6 months; at discretion of BOE, a new license may be issued

### **Current law:**

- prohibits displaying for sale, gifting or selling during suspension or revocation,
- requires posting of the Suspension or Revocation Notice during the entire period indicated by the BOE
  - Suspension posting depends on violation(s)
  - Revocation posting is 30 days
  - Notices provided by the BOE
- requires posting of the Notice at each entrance and by each register or point of sale (Notice can be reproduced),
- imposes a penalty for the continued display for sale of cigarettes or tobacco during a period of suspension or revocation (\$1,000 for each offense).

## FOR MORE INFORMATION

The following tobacco related publications are available on the BOE website... [www.boe.ca.gov](http://www.boe.ca.gov)

- BOE-438, Can Retailers Purchase Cigarette and Tobacco Products over the Internet or from an Unlicensed Supplier?
- Pub 78, Sales of Cigarettes and Tobacco Products in California
- Pub 93, Cigarette and Tobacco Product Taxes
- Pub 152, Cigarette and Tobacco Product Inspections
- Pub 161, Criminal Citations Include a Civil Administrative Process
- Pub 403, New California Counterfeit-Resistant Cigarette Tax Stamp
- Pub 407, Master Settlement Agreement
- Pub 429, Flavored Cigarettes Banned in the United States

*Note:* Some publications are available in multiple languages.

<http://www.boe.ca.gov/languages/publications.htm>

### **E-mail Notices . . .**

To get the latest information on changes in law or other updates related to the sales of cigarette and tobacco products, use the BOE website (shown below) to register for E-mail notices.

Once registered, you will automatically get important notices from the BOE whenever cigarette and tobacco product tax law changes occur.

<http://www.boe.ca.gov/sptaxprog/etfd/index.htm>

### **Contact information**

#### **For information regarding licenses, civil citations, petitions, or appeals:**

Special Taxes & Fees Division, MIC:88  
State Board of Equalization  
PO Box 942879  
Sacramento, CA 94279-0088  
Phone: 1-800-400-7115  
Fax: 1-916-323-9297

#### **For information regarding inspections, seizures, or criminal citations:**

Investigations Division, MIC:42  
State Board of Equalization  
PO Box 942879  
Sacramento, CA 94279-0042  
Phone: 1-916-324-0105  
Fax: 1-916-324-1578

### **Questions?**

Email your questions to the BOE ([EAD-.AB71OnlineQs@boe.ca.gov](mailto:EAD-.AB71OnlineQs@boe.ca.gov))