

Amend Sections 30438 and 30449 of the Cigarette and Tobacco Products Tax Law to allow any person owning or claiming any interest in cigarettes, as specified, to file a petition with the Board requesting the release or recovery of the cigarettes.

Source: Honorable Claude Parrish

Under existing law, the cigarette tax is paid through the use of stamps or meter impressions. An appropriate stamp is affixed to, or an appropriate meter impression is made on, each package of cigarettes prior to the distribution of the cigarettes. Cigarettes not contained in packages to which a California cigarette tax stamp or meter impression is affixed can be seized by the Board if those cigarettes are offered for sale, possessed, kept, stored or owned with the intent to sell the cigarettes without payment of the cigarette tax. Cigarettes not contained in packages to which are affixed a California cigarette tax stamp or meter impression are as follows:

- A packages of cigarettes with no tax stamp or meter impression;
- A package of cigarettes with a counterfeit tax stamp or meter impression affixed; or
- A package of cigarettes with another state's tax stamp or meter impression affixed.

Upon the administrative seizure and forfeiture of cigarettes, the Board is required to give notice to all persons known by the Board to have any right, title or interest in the property. In addition, notice of seizure and forfeiture must be given by one publication in a newspaper, as specified, if the seizure involves 61 cartons of 200 or more cigarettes.

Any person owning or claiming any interest in the cigarettes may file a verified petition with the Board stating his or her interest in the property and requesting the release or recovery of the property on the grounds that property was erroneously or illegally seized. The petition must be filed within 20 days from the date of the personal service upon him or her or the date of the mailing of the notice. Any person not serviced personally or by mail, however, must file the petition within 20 day from the date of publication of the notice. The failure of any such person to file a timely verified petition constitutes a bar to his or her right to any interest in the property, unless otherwise provided.

Petitions for release or recovery of seized cigarettes generally appear before the Board by the next scheduled Board Meeting if the 20-day petition period has elapsed. At that point the Board determines whether the cigarettes were erroneously or illegally seized. If the Board finds that the cigarettes were erroneously or illegally seized, it is required under current law to order the release of the property. However, if the Board denies the petition for the release

or recovery of the property, notice of the denial is mailed (within five days) to the petitioner. The seized cigarettes, which are considered unsalable, are then destroyed by the Board unless the petitioner files an action against the Board in the Superior Court of the County of Sacramento for the release or recovery of the property on the grounds that the property was erroneously or illegally seized. If the petitioner files an action against the Board and the court determines that the seizure of the property was in accordance with law, it would enter an appropriate order for the disposition of the property. In such a case, the Board would request that the cigarettes be destroyed.

The Board hears several cases a year for the release or recovery of seized cigarettes involving persons who innocently purchase cigarettes affixed with counterfeit tax stamps. In many cases, the petitioner is willing to pay the tax due in exchange for the cigarettes. However, current law does not allow for the release of seized cigarettes unless the seizure itself was erroneous or illegal. If the Board determines that the seizure of the cigarettes was proper, the petition is denied and the cigarettes destroyed. Depending on the number of cigarette packages seized, this could be financially devastating for a business owner.

This proposal would allow any person owning or claiming any interest in the seized cigarettes to file a petition with the Board stating his or her interest in the cigarettes and request for the release of the property upon all of the following:

- Payment of an amount equal to the amount of tax owed on the property,
- A penalty of 35 percent of the amount of tax owed, and
- Payment of the costs of manufacturing, purchasing and applying valid cigarette tax stamps, which would include all costs incurred by the Board to witness or otherwise verify the application of the valid cigarette tax stamps.

The cigarettes would not be returned to the custody of the petitioner unless valid cigarette tax stamps have been applied to the property.

Section 30438 of the Revenue and Taxation Code is amended to read:

30438. (a) Any person owning or claiming any interest in the property may file a verified petition with the board stating the person's his interest in the property within the time periods set forth in subdivision (c).

(b) The verified petition shall contain either or both of the following:

(1) A request for ~~and requesting~~ the release or recovery of the property on the ground that the property was erroneously or illegally seized.

(2) A request for the return of the property upon payment of an amount equal to the amount of tax owing on the property, plus a penalty of 35% of the amount of

tax owing plus costs of manufacturing, purchasing and applying valid cigarette tax stamps, which costs shall include, but not be limited to, any and all costs incurred by the board to witness or otherwise verify the application of the valid cigarette tax stamps, as determined by the board.

(c) Any person served personally or by mail under Section 30437 shall file the petition within 20 days from the date of the personal service upon the person ~~him~~ or the date of the mailing of the notice to the person ~~him~~. Any person not served personally or by mail under that section shall file the petition within 20 days from the date of publication of the notice. The failure of any such person to file a timely verified petition shall constitute a bar to the person's ~~his~~ right to any interest in the property, except insofar as the rights of any such person may be established in an action filed by the board under this chapter.

Section 30449 of the Revenue and Taxation Code is amended to read:

30449. (a) Any property, except money, forfeited to the state under this chapter shall be sold by the board at public auction. Notice of such sale shall be given by posting a written notice of the time and place of sale in three public places in the county where the property is to be sold for not less than five days nor more than ten days before the sale. If the board is unable to sell any property forfeited to the state under this part or, if the board determines that the property is unsalable it may destroy such property. A record shall be kept of all property destroyed pursuant to this section showing the nature of the property, the quantity, the reason for, and the manner of destruction. The proceeds of the sale and any money forfeited to the state shall be deposited in the State Treasury to the credit of the General Fund.

(b) If the board grants the request for the return of the property pursuant to section 30438(b)(2), it shall order the return of the property upon receipt of the payment of all amounts required; provided, however, that the property shall not be returned to the custody of the petitioner unless and until valid cigarette tax stamps have been applied to the property. Notice of the determination to return the property shall be mailed to the petitioner within five days of the date of the order. If the board denies the request for the return of the property, notice of the denial shall be mailed to the petitioner within five days of the denial.