

**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Introduced:	02/18/05	Bill No:	AB 892
Tax:	Cigarette and Tobacco Products Licensing Act	Author:	Cogdill
Related Bills:	AB 1749 (Assembly Governmental Organization Committee)		

BILL SUMMARY

This bill would revise the information each distributor and wholesaler are required to include on each invoice for the sale of cigarettes and tobacco products to include the date such products were sold. This bill would also clarify that such invoices also include either the amount of excise taxes due to the Board or the statement "All California cigarette and tobacco product taxes are included in the total amount of this invoice."

ANALYSIS**Current Law**

Under current law, Section 22978.4 of the Business and Professions Code requires each distributor and each wholesaler to include specified information on each invoice for the sale of cigarettes or tobacco products. This information includes, in part, the name, address, and telephone number of the distributor or wholesaler and the statement "All California cigarette and tobacco product taxes are included in the total amount of this invoice." Failure to comply with the invoicing requirements is a misdemeanor and punishable by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment.

Proposed Law

This bill would amend Section 22978.4 to require that each distributor and each wholesaler include the date the cigarettes or tobacco products are sold on each invoice for the sale of cigarettes or tobacco products. The bill would also allow such invoices to include either the amount of excise taxes due to the Board or the statement "All California cigarette and tobacco product taxes are included in the total amount of this invoice."

The provisions of this bill would become effective January 1, 2006.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the California Distributors Association and is intended to provide Board investigators with an additional tool to verify tax paid product on a retailer's shelf and to allow distributors and wholesalers the option of including the actual amount of excise tax due to the Board for the purpose of showing that tax was paid on such products.
2. **Why is the date of sale important?** Under existing law, the wholesaler and distributor invoicing provisions do not require distributors and wholesalers to include the date the cigarettes or tobacco products were sold on invoices for the sale of such products. This would be an important tool to allow Board investigators to match cigarettes and tobacco products on a retailer's shelf to distributor or wholesaler invoices for the purpose of verifying tax paid product.

For example, an unscrupulous retailer could provide an undated purchase invoice that is several months old to a Board investigator as proof of payment of the tax on cigarettes purchased untaxed from another source. Since the purchase invoice does not contain a date, it would be difficult for an investigator to prove that the invoice is not for the cigarettes or tobacco products on the retailer's shelf. The date would provide Board investigators enough information to know if a purchase invoice is too old to represent the cigarettes or tobacco products on a retailer's shelf since such products have a limited shelf life.

3. **Existing requirement is a burden on some distributors and wholesalers.** A number of distributors and wholesalers programmed software to show the actual amount of excise tax paid on cigarette and tobacco products for the purpose of showing that tax was paid on such products. This was consistent with the invoicing requirements for cigarettes or tobacco products sold prior to September 27, 2004, when AB 3092 (Ch. 822) amended Section 22978.4 to instead only require the statement "All California cigarette and tobacco product taxes are included in the total amount of this invoice." This change was intended to address an industry concern that it would be impossible to program software to print the exact amount of excise tax paid for tobacco products that were purchased from multiple sources. However, it has become a burden for those distributors and wholesalers that programmed software to comply with the law as it read prior to September 27, 2004.

For purposes of complying with the invoicing requirements, a distributor or wholesaler should have the option between printing the amount of excise taxes due to the Board or the specified statement required under existing law. Either option would allow for criminal prosecution for intent to evade the tax if shown on a distributor or wholesaler invoice and when such excise tax has not been paid to the state.

3. **Related legislation.** These provisions are identical to AB 1749 (Assembly Governmental Organization Committee), which is a Board-sponsored proposal.

COST ESTIMATE

Enactment of this measure would not have any impact on the Board's administrative costs.

REVENUE ESTIMATE

This provision would not affect the state's revenues.

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