



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE DIANE L. HARKEY, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: JUNE 14, 2016, TIME: 9:00 A.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No. 1:****Title: Proposed Cigarette and Tobacco Products Tax Regulation 4001, *Retail Stock*****Issue:**

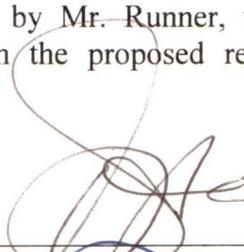
Whether the Board should approve proposed Regulation 4001, *Retail Stock*, to provide a definition for "retail stock."

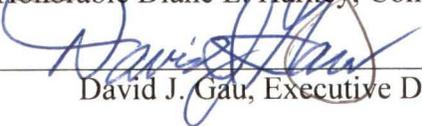
Committee Discussion:

Staff introduced the proposed Regulation 4001 which defines and clarifies retail stock, as it relates to the cigarette and tobacco products tax. Mr. Randall Cheek representing Service Employee's International Union and Mr. James Dumler representing McClellan Davis spoke in support of proposed Regulation 4001.

Committee Action:

Upon motion by Mr. Horton, seconded by Mr. Runner, without objection, the Committee approved and authorized for publication the proposed regulations. A copy of proposed Regulation 4001 is attached.



Honorable Diane L. Harkey, Committee Chair

David J. Gau, Executive Director

BOARD APPROVED

at the June 14, 2016 Board Meeting

Joann Richmond, Chief
Board Proceedings Division

Regulation 4001. Retail Stock.

(a) “Retail stock” means and includes:

(1) All cigarettes and tobacco products intended and available for sale to consumers by a person who holds a retailer license; and

(2) All cigarettes and tobacco products displayed for sale to consumers by a person who concurrently holds a distributor license and a retailer license at the same location. Cigarettes and tobacco products that are stored in the area where retail sales are made are deemed to be retail stock. Cigarettes and tobacco products that are securely stored away from the area where retail sales are made, are not considered retail stock. Examples of separated and segregated from retail stock include, but are not limited to, the following secured areas:

- store room or closet,
- back office,
- inside a locked cabinet, safe or other similar storage container, or
- behind a locked wire-cage door or similar encumbrance.

Untaxed cigarettes and tobacco products must be in the original manufacturer packaging, with an unbroken seal, and they must be secured, segregated, and separated from inventory accessible by consumers. Untaxed tobacco products must be segregated and secured separately from tax-paid tobacco away from the retail area.

(A) Walk-in humidors. Tobacco products inside a walk-in humidor displayed for sale to consumers are retail stock. Tobacco products inside a walk-in humidor in the original manufacturer packaging with an unbroken seal, secured, segregated and separated from retail stock, and not displayed for sale to consumers, are non-retail stock. Examples of separated and segregated from retail stock include, but are not limited to, the following:

- inside a locked cabinet, safe or other similar secured storage container, or
- behind a locked wire-cage door or similar encumbrance.

(b) A person who is both a licensed retailer and a licensed distributor, but who only makes retail sales to consumers and does not make any sales for resale to other licensees, holds all inventory intended for sale in retail stock.

(c) Presumption of Distribution

(1) All cigarettes and tobacco products placed in retail stock have been distributed. Tax is due upon distribution.

(2) Unless the contrary is established, it shall be presumed that all cigarettes and tobacco products no longer in a distributor’s possession, including when they have been lost through an unexplainable disappearance, have been distributed. The presumption may be rebutted by a preponderance of the evidence demonstrating that an explainable disappearance, such as theft, has occurred.

Examples of evidence that may overcome the presumption include, but are not limited to, the following:

- (A) Police reports (Required and must have been filed timely)
- (B) Insurance claims
- (C) Insurance reimbursements
- (D) Video surveillance
- (E) Photographs
- (F) Detailed tobacco inventory reports
- (G) Cigarette and tobacco purchase invoices (Required)
- (H) Proof of prosecution related to charges of theft of cigarettes or tobacco products

Note: Authority: Sections 30008, 30109, Revenue and Taxation Code.