



STATE BOARD OF EQUALIZATION

PROPERTY AND SPECIAL TAXES DEPARTMENT
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Third District, Rolling Hills Estates

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Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Executive Director

June 15, 2012

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the June 26, 2012, Business Taxes Committee meeting. This meeting will address proposed Regulation 4801, *Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person* amendments to Regulation 4601, *Service of Notice of Violation or Warning Notice* and amendments to Regulations 4603, 4604, and 4605 involving penalties for licensed or unlicensed retailers, wholesalers, distributors, manufacturers and importers.

Action 1 on the Agenda concerns the agreed upon amendments to Regulation 4601 that expand the service requirements to include **any** notices required under the Cigarette and Tobacco Products Licensing Act (Act) and its Regulations.

Action 2 on the Agenda concerns proposed Regulation 4801 which formalizes the Board's current policy and documentation requirements on transfers of cigarettes and tobacco products between retail stores owned by the same person.

Action 3 on the Agenda concerns proposed amendments to Regulations 4603, 4604 and 4605 which provide Board staff additional flexibility in setting suspension periods for violations of the Act under appeal when mitigating circumstances are present.

Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in these issues. Thank you for the input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m. on June 26, 2012**, in Room 121 at the address shown above.

Sincerely,

David J. Gau, Deputy Director
Property and Special Taxes Department

DJG:pb

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC 71)
Senator George Runner (Ret.), Member, Second District (MIC 78)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Ms. Regina Evans, Board Member's Office, Fourth District
Mr. Robert Thomas, Board Member's Office, Fourth District
Mr. Joel Angeles, Board Member's Office, Third District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Tim Treichelt, Board Member's Office, Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Ms. Yvette Stowers, Board Member's Office, First District
Mr. Andrew Jacobson, Board Member's Office, First District
Mr. James Kuhl, Board Member's Office, Second District
Mr. Lee Williams, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Kristine Cazadd
Mr. Randy Ferris
Ms. Christine Bisauta
Mr. Steven Smith
Mr. Bradley Heller
Ms. Lynn Bartolo
Mr. Lou Feletto
Mr. Randy Silva
Ms. Debbie Kalfsbeek
Ms. Kirsten Stark
Ms. Leila Hellmuth
Mr. Phillip Bishop
Mr. Barry Ivy

AGENDA — June 26, 2012 Business Taxes Committee Meeting
Proposed Regulation 4801 and Amendments to Cigarette and Tobacco Products Licensing Act Regulations
4601, 4603, 4604 and 4605

Action Item	Staff and Industry’s Proposed Regulatory Language
<p>Action 1 — Agreed Upon Items Regulation 4601</p>	<p>Regulation 4601, Service of a Notice of Violation or Warning Notice <u>Any notice issued under the Cigarette and Tobacco Products Licensing Act, may be served personally or by mail in the manner prescribed for service of a notice of determination under Revenue and Taxation Code Section 30206 of the Cigarette and Tobacco Products Tax Law. The Notice of Violation or Warning Notice shall be placed in a sealed envelope, with postage paid, addressed to the licensee or unlicensed person at his or her last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, a mailbox, sub post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a Notice of Violation may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure.</u></p>

AGENDA — June 26, 2012 Business Taxes Committee Meeting
Proposed Regulation 4801 and Amendments to Cigarette and Tobacco Products Licensing Act Regulations
4601, 4603, 4604 and 4605

Action Item	Regulatory Language Proposed by Staff	Recommendation by SEIU Local 1000 and California Distributor's Association
<p>Action 2 - Proposed Regulation 4801</p>	<p><u>Transfers of Cigarettes and Tobacco Products Between Retail Stores Owned by the Same Person.</u></p> <p><u>(a) GENERAL. Every retailer of cigarettes and tobacco products is required to maintain purchase invoices for all cigarettes and tobacco products purchased and make those invoices available for inspection by the board or a law enforcement agency. A licensed retailer owning multiple locations who wishes to transfer cigarettes and tobacco products between its licensed locations shall prepare a transfer log or document at the time of transfer and maintain the records for four years from the date of transfer. A copy of the transfer log or document, accompanied by a copy of the original purchase invoice(s) documenting the purchase of each item transferred, must be kept at both the transferring and receiving locations involved in the transfer for at least one year after the transfer. Copies of original purchase invoices may be maintained at the receiving location on alternative storage media as prescribed in Regulation 4901 (h). The taxpayer must provide facilities and equipment for reading, locating, and reproducing any invoices maintained on alternative storage media.</u></p> <p><u>(b) SPECIFIC APPLICATION. The transfer log or document shall show the following:</u></p> <p style="padding-left: 40px;">(1) <u>The transferring retail location, license information, supplier's name, invoice number, and the date the bulk cigarettes and</u></p>	<p>Do not adopt the proposed Regulation and consider prohibiting such transfers between retail stores regardless of ownership. Regulatory language was not provided by the interested parties nor prepared for consideration by staff.</p>

AGENDA — June 26, 2012 Business Taxes Committee Meeting
Proposed Regulation 4801 and Amendments to Cigarette and Tobacco Products Licensing Act Regulations
4601, 4603, 4604 and 4605

Action Item	Regulatory Language Proposed by Staff	Recommendation by SEIU Local 1000 and California Distributor’s Association
<p>Action 2 cont.</p>	<p><u>tobacco products purchase was made;</u></p> <p>(2) <u>The receiving retail location(s), license information, and date the cigarettes and tobacco products were transferred; and,</u></p> <p>(3) <u>A legible itemized listing of cigarettes and tobacco products transferred including packaging (e.g., 20 5-packs; 60-ct boxes), flavor and/or style, and quantity transferred.</u></p> <p><u>(c) The transfer of cigarettes and tobacco products shall only be allowed when the legal entity licensed as the retailer for the retail location transferring the cigarettes and tobacco products is the same legal entity that is licensed as the retailer at the retail location receiving the cigarettes and tobacco products. As an example, a transfer between a location licensed as a sole proprietorship and a location licensed as a partnership where the sole proprietor is one of the partners would not qualify under this section since the same legal entity does not own both locations.</u></p> <p><u>(d) Records of the transfer shall be made available to the board or its authorized representative for examination upon request. Failure to provide such documentation when requested can result in the seizure of the cigarettes or tobacco products that are claimed to be transferred and the issuance of a citation. Transfer logs or documents created or provided after a seizure and/or citation are not acceptable and cannot be used for the return of seized product or dismissal of a violation.</u></p>	

AGENDA — June 26, 2012 Business Taxes Committee Meeting
Proposed Regulation 4801 and Amendments to Cigarette and Tobacco Products Licensing Act Regulations
4601, 4603, 4604 and 4605

Action Item	Regulatory Language Proposed by Staff	Alternate Regulatory Language
<p>Action 3 - Regulation 4603 (f)</p>	<p>(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, <u>5 days</u>, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section <u>22974.3 subdivision (a)(2) or subdivision (a)(4), 22974.4, 22978.6, or—22980.3, subdivision (a)(2) or subdivision (d).</u></p>	<p>(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be <u>within a range of 0 days, 10 days, or to 20 days.</u> The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section <u>22974.3 subdivision (a)(2) or subdivision (a)(4), 22974.4, 22978.6, or—22980.3, subdivision (a)(2) or subdivision (d).</u></p>
<p>Regulation 4604 (f)</p>	<p>(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, <u>5 days</u>, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section <u>22974.4, 22978.2, subdivision (a)(2) or subdivision (a)(4), 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).</u></p>	<p>(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be <u>within a range of 0 days, 10 days, or to 20 days.</u> The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section <u>22974.4, 22978.2, subdivision (a)(2) or subdivision (a)(4), 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).</u></p>

AGENDA — June 26, 2012 Business Taxes Committee Meeting
Proposed Regulation 4801 and Amendments to Cigarette and Tobacco Products Licensing Act Regulations
4601, 4603, 4604 and 4605

Action Item	Regulatory Language Proposed by Staff	Alternate Regulatory Language
<p>Action 3 cont. Regulation 4605 (e)</p>	<p>(e) Notwithstanding subdivisions (b) through (d) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, <u>5 days</u>, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.4, 22978.6, or 22980.3, subdivision (a)(2) <u>or subdivision (d)</u>.</p>	<p>(e) Notwithstanding subdivisions (b) through (d) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be <u>within a range of</u> 0 days, 10 days or <u>to</u> 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.4, 22978.6, or 22980.3, subdivision (a)(2) <u>or subdivision (d)</u>.</p>

Issue Paper Number 12-007



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Proposed Regulation 4801 and Amendments to Cigarette and Tobacco Products Licensing Act Regulations 4601, 4603, 4604 and 4605

I. Issues

Should the Board of Equalization (Board) authorize publication of a new regulation to provide guidelines on the documentation and retention requirements for transfers of cigarettes and tobacco products between retail stores owned by the same legal entity?

In addition, should the Board amend existing regulations to clarify the service requirements when a notice is issued?

Finally, should Board staff be allowed greater flexibility in setting or reducing suspension periods?

II. Alternative 1 - Staff Recommendation

Item 1 - Proposed Regulation 4801 *Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person*

Staff recommends the adoption of proposed Regulation 4801 regarding transfers of cigarettes and tobacco products between retail stores owned by the same legal entity. Adopting the proposed regulation provides Board staff and licensed retailers who own multiple locations with regulatory guidance for satisfying the documentation and invoice requirements required by statute in order to establish the tax-paid status of the product being transferred. See Exhibit 2 for staff's proposed Regulation.

Item 2 - Regulation 4601 *Service of a Notice of Violation or Warning Notice*

Staff recommends amending Regulation 4601 so that the service requirements which presently apply to a Notice of Violation or Warning Notice will apply to any notice issued under the Cigarette and Tobacco Products Licensing Act (Act) and its Regulations. To satisfy the service for all notices, staff proposes amending Regulation 4601 to require that any notice issued under the Act be served in a manner prescribed for the service of a notice of determination, instead of limiting the requirement to the two aforementioned notices. See Exhibit 3 for staff's recommended amendments to Regulation 4601.

Item 3 - Regulation 4603 *Penalties for Licensed or Unlicensed Retailers; Regulation 4604 Penalties for Licensed or Unlicensed Wholesalers and Distributors; and Regulation 4605 Penalties for Licensed or Unlicensed Manufacturers and Importers*

Staff recommends amendments to Regulations 4603, 4604, and 4605 to also allow for a suspension period of five (5) days. The current Regulations allow staff to set or reduce a suspension period to zero (0) days, ten (10) days or twenty (20) days with a maximum suspension period of thirty (30) days. Proposed amendments also include adding references to the Business and Profession Code (B P Code) sections involving violations that mandate the revocation of a license and deletion of references to those B&P Code sections that refer to violations which do not apply to the specific licensee, i.e., retailer, wholesaler, distributor, manufacturer or importer. See Exhibits 4, 5, and 6 for staff's recommended amendments to Regulations 4603, 4604, and 4605.

III. Other Alternative(s) Considered

Item 1 - Proposed Regulation 4801 *Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person*

Consider adopting a Regulation prohibiting the transfer of any cigarettes or tobacco products between retail locations owned by the same legal entity, thereby creating a "bright line" prohibiting transfers as recommended by some Interested Parties.

Item 2 - Regulation 4601 *Service of a Notice of Violation or Warning Notice*

None considered.

Item 3 - Regulation 4603 *Penalties for Licensed or Unlicensed Retailers; Regulation 4604 Penalties for Licensed or Unlicensed Wholesalers and Distributors; and Regulation 4605 Penalties for Licensed or Unlicensed Manufacturers and Importers*

Consider adopting staff's original draft recommendation that the regulations be amended to allow staff to set the suspension period between a range of zero (0) days to twenty (20) days or reduce a thirty (30) day suspension to a period within that range thereby providing the greatest degree of flexibility.

IV. Background

On October 12, 2003, the State of California enacted the Cigarette and Tobacco Products Licensing Act (Assembly Bill 71, Horton [Chapter 890, Statutes 2003]) which established a statewide licensing program under Division 8.6 (commencing with Section 22970) of the B & P Code. The Act imposes licensing requirements on all retailers, wholesalers, and distributors of cigarettes and tobacco products and all manufacturers and importers of cigarettes. Assembly Bill 1749 (Chapter 501, Statutes 2006) added the same licensing requirements to manufacturers and importers of tobacco products. These licensing requirements are in addition to other permits and licenses that may be required depending on a person's business operations. The Act intended to address the problem of untaxed distributions and illegal sales of cigarettes and tobacco products in California and includes provisions for new recordkeeping requirements, identifies violations that may result in license suspensions or revocations including the imposition of civil and criminal penalties, and authorizes Board staff to inspect and seize any untaxed cigarettes or tobacco products. Inspections are performed by the Board's Investigations Division (ID) staff and, based upon the findings during the course of their inspections, may result in the issuance of citations and penalties for violations.

The Act authorizes the Board to administer and enforce the provisions of the Act and to prescribe, adopt, and enforce rules and regulations relating to its administration and enforcement. Since the inception of the Act, the Board has prescribed and adopted regulations to clarify the provisions with the intent to uniformly administer and enforce the provisions of the Act, and to provide guidance and clarity of the Act's provisions to licensed and unlicensed cigarette and tobacco product retailers, wholesalers, distributors, manufacturers, and importers. At the October 1, 2006, Business Taxes Committee meeting, the Board adopted staff's proposed Regulations 4500 and 4501, *Definitions and Citations*; 4502 through 4509, *Licenses – Issuance, Transfer and Denial*; 4600 through 4602, *Notices of Violation or Warning Notices*; 4603 through 4608, *Penalties and Fines*; 4609 and 4700 through 4702, *Appeal Procedures*; and 4703, *Seizure and Forfeiture*. These Regulations were adopted December 12, 2006, and following approval by the State of California's Office of Administrative Law were effective on April 21, 2007. With the exception of an amendment to Regulation 4703, *Seizure and Forfeiture*, to provide for certain exemptions and instances when a licensed distributor may be in possession of un-stamped cigarettes, the Act's Regulations have not been amended or updated.

Proposed Regulation 4801 *Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person*

Based on recent citations and related appeals proceedings involving the seizure of cigarettes and tobacco products due to a retailer's failure to maintain documentation supporting an assertion that tax-paid product was transferred from one licensed retail location to another licensed retail location owned by the same legal entity, the Special Taxes and Fees Division was asked to develop a new regulation to formalize the Board's existing policies regarding documentation requirements for the transfer of cigarettes and tobacco products between licensed retail locations owned by the same legal entity. Transfers of cigarettes and tobacco products between licensed retail locations owned by the same legal entity excludes sales transactions of cigarettes and tobacco products between licensed retail locations which is expressly prohibited by Revenue and Taxation Code section 30478.

In April 2011, Board staff provided guidance to licensees and staff on its current transfer policies through an update to Publication 78, *Sales of Cigarettes and Tobacco Products in California*, and a letter sent to 1,790 legal entities owning multiple cigarette and tobacco products licensed retail locations. Both the letter and Publication 78 provided that:

“Generally, the transfer of cigarettes and tobacco products are not permitted. However, if you own more than one store and licenses are held by the same legal entity, you may be allowed to transfer cigarettes and tobacco products between stores belonging to the same legal entity. When transferring cigarettes and tobacco products, legible transfer records and copies of the original purchase invoice must be kept at each location involved in the transfer. Such transfer records which must be prepared at the time of transfer, must include the address of each store, the purchase invoice date, the purchase invoice number, the supplier’s name on the invoice, including type of packaging, flavor and or style, and the amounts of items transferred. Failure to provide such documentation when requested can result in the seizure of the claimed transferred product.”

The above guidance represents the basis for the proposed Regulation.

Regulation 4601 *Service of a Notice of Violation or Warning Notice*

Regulation 4601, *Service of a Notice of Violation or Warning Notice*, adopted December 12, 2006, provides guidance to staff and licensees in regard to the service of the Notice of Violation and Warning Notice. Regulation 4601 was adopted in conjunction with Regulation 4600, *Issuance and Contents of a Notice of Violation or Warning Notice*, and instructs staff and licensees that the mailing of the Notice of Violation or Warning Notice to the cited person’s last known address as it appears in the records of the Board will complete delivery of said notice. In lieu of mailing, the notice may be served by personal delivery to the person to be served and shall be deemed complete at the time of such delivery. Since adoption, staff has identified other notices utilized in the administration of the Act and its Regulations that require service. Amendments to Regulation 4601 to provide a uniform service mechanism for all notices required under the Act and its Regulations are recommended for clarity and ease of administration.

Regulation 4603, *Penalties for Licensed or Unlicensed Retailers*; Regulation 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*; and Regulation 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*

Regulation 4603, *Penalties for Licensed or Unlicensed Retailers*; Regulation 4604, *Penalties for Licensed or Unlicensed Wholesalers and Distributors*; and Regulation 4605, *Penalties for Licensed or Unlicensed Manufacturers and Importers*, adopted December 12, 2006, provides staff with guidance regarding the assessment of penalties for a first offense of a violation and for subsequent violations of the Act by a licensed or unlicensed retailer, wholesaler, distributor, manufacturer or importer which would result in the issuance of a Warning Notice, suspension or revocation. Each regulation contains a subdivision that provides that a reduction in the length of a suspension period may be warranted if mitigating circumstances are present as set forth in Regulation 4606. Mitigating circumstances can be determined upon appeal at the Special Tax and Fees Division (which includes the former Excise Taxes Division) or Appeals Division level.

Any violation of the Act may result in either a criminal or civil citation. The Act authorizes the Board to impose civil penalties (suspensions or revocations of a license and/or fines) for violations of the Act. With few exceptions the civil penalties provided in the Act are not mandatory and therefore, the Board has discretion in determining the civil penalties to be imposed. Prior to adoption of these Regulations staff had limited direction in imposing civil penalties of a discretionary nature, making administration of the Act difficult. Staff seeks additional flexibility in setting a suspension period when mitigating circumstances are present to more effectively administer the Act.

V. Discussion

Interested Parties meetings were held on March 6, 2012, and May 4, 2012, to discuss proposed Regulation 4801 and amendments to existing Regulations 4601, 4603, 4604 and 4605 of the Act. Following the March 6, 2012 Interested Parties meeting, Ms. Yvonne Walker, President of SEIU Local 1000 representing the Business Taxes Specialists and Business Taxes Compliance Specialists in the Investigation Division, submitted a letter (Exhibit 11) expressing their concerns with the proposed regulation and amendments to Regulations 4603, 4604 and 4605 that will be discussed below. After the May 4, 2012, Interested Parties meeting, Mr. Scott Louie of Chevron, submitted an email response (Exhibit 12) in support of proposed Regulation 4801 and identified various scenarios that occur on a regular basis that would be adversely affected if a decision was made to prohibit such transfers. Although these were the only two written submittals received, other Interested Parties at both meetings expressed their support or their opposition for the proposed regulation and amendments. Their views and concerns are discussed below.

Proposed Regulation 4801 Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person

Mr. Steven Alari, representing SEIU, and Mr. Dennis Loper, representing the California Distributors Association, expressed concerns at the meeting on March 6, 2012, that the Act does not provide for such transfers and that each retail location should purchase cigarettes and tobacco products directly from licensed distributors and wholesalers for delivery and sale by that location, thus creating a “bright line” for staff to follow during an inspection of the retail premise. One of the concerns was that adoption of the regulation would create a loophole by allowing retailers to “blend” untaxed tobacco products with products that are tax paid.

Although the Act does not specifically provide for transfers of cigarette and tobacco products between retail locations owned by the same person, the Act does not preclude such transfers either. Mr. Alari acknowledged at the May 4, 2012, Interested Parties meeting that there are no provisions in the Act that specifically preclude transfers. The Act requires that a retailer of cigarettes or tobacco products obtain a retailer’s license for each retail location in which cigarettes or tobacco products are sold, maintain purchase invoices that meet the requirements set forth in section 22978.4 of the B P Code for all cigarettes or tobacco products the retailer purchased for a period of four years and that these records be maintained at the retail location for at least one year after purchase. Section 22978.4 also prescribes form and content requirements for invoices issued by distributors and wholesalers. Besides requiring distributor and wholesaler information, each invoice must contain the name, address and license number of the customer, an itemized listing of cigarette and tobacco products sold, date of sale, and the amount of excise taxes due to the Board by the distributor or a statement that reads: “All California cigarette and tobacco product taxes are included.”

A retail location is defined under section 22971 (q) of the Act as any building from which cigarettes or tobacco products are sold at retail, or a vending machine. “Sale” is defined in Section 30006 of the Revenue and Taxation Code as any transfer of title or possession for consideration, exchange or barter, in any manner or by any means whatever. As a result, the Act does not require a retailer to maintain a license at a warehouse or storage location from which retail sales are not made. The Act also does not require that a distributor or wholesaler deliver only to the address of the licensed retail location. Section 22978.4 (a)(4) requires that a distributor or wholesaler include on any invoice the name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold. It does not require that the product be delivered to the address where the retail license is held. There would appear to be good reasons for not requiring such a limitation, as had such a requirement been included in the Act, traditional cash and carry purchases would be prohibited, and vending machine operators would only be able to take delivery at the location of a licensed vending

machine, which is generally located at another person's business. One could therefore make an argument that without such delivery limitations the Act contemplates transfers of cigarettes and tobacco products between retail or storage locations owned by the same legal entity so long as the invoice retention requirements are satisfied at each retail location.

Mr. Scott Louie, on behalf of Chevron, submitted an email response in support of proposed Regulation 4801, and identified a number of scenarios where transfers of cigarettes and tobacco products make prudent business sense, and occur on a regular basis. If retailers were unable to transfer product, business would be negatively impacted. Scenarios identified include delivery delays necessitating transfers from another store to avoid lost sales; supplier is out of stock and again product would need to be transferred from another store; ordering errors resulting in one location being overstocked requiring transfers to another store; sales increase due to an unanticipated event that would deplete one location's stock; and, store closures, abandonments or divestments requiring the transfer of unsold inventory.

Mr. Ron Michelson, owner of two Briar Patch stores, and Ms. Paula Treat, representing the International Premium Cigar and Pipe Retailers, expressed support for proposed Regulation 4801 and saw it as necessary for doing business in a competitive environment. Mr. Michelson's concern was with the difficulty in maintaining the transfer log when it is difficult to identify the invoice associated with the product being transferred and when product transferred is once again transferred. Also he felt that the Regulation included some redundancy with respect to the transfer log or document requirements, such as requiring license information along with location information to be included in the log, in addition to a copy of the invoice which already contains the same information. However, Mr. Michelson acknowledged at the May 4, 2012, Interested Parties meeting that although the documentary requirements of the Regulation place a burden on small businesses, not being able to transfer product between his business locations would be much more problematic.

Staff from our Investigation's Division (ID), in an attempt to address some of these concerns, without weakening or creating a loophole in the proposed Regulation's provisions, prepared an example of an acceptable transfer log (Exhibit 7) that may be used along with a copy of an invoice that would satisfy the documentary requirements of the proposed Regulation. The transfer log prepared by ID included only two transfers and has been expanded to include additional transfer examples to multiple locations and transfers returning product back to the original transferring location. If proposed Regulation 4801 is adopted, the sample transfer log will be made available on the Board's website and in future mailings and publications provided to licensed retailers. In addition, staff recommends proposed Regulation 4801 allow copies of invoices at the receiving location to be maintained on alternative storage media as specified in Regulation 4901 (h), Title 18 of the California Code of Regulations, and require that facilities and equipment to view the storage media be made available at the receiving location. The use of alternative storage media for documenting the original purchase invoice is common practice at many of the national chains that sell cigarettes and tobacco products. Staff believes including this provision is appropriate for consistent application of the documentation requirements currently utilized throughout the industry and allowed by Regulation 4901 as an acceptable means for satisfying the records requirement.

To acknowledge the practice of transfers of cigarettes and tobacco products within this industry, the Board has adopted procedures allowing for the transfers of cigarettes and tobacco products between retail locations owned by the same person. These procedures acknowledge the blending concern and are designed to address them through requirements that copies of invoices be maintained at both locations and a transfer log or document be available detailing the amount of product, description of product, and license information of the transferring and receiving locations. Proposed Regulation 4801 is consistent with current Board policies and procedures and is intended to provide for consistent

enforcement of the documentary requirement provisions. The proposed Regulation will also provide retailers with the documentation and recordkeeping requirements for these types of transfers so as to avoid seizures of the transferred products, along with avoiding citations and fines that may be assessed against the retailer for improper documentation of these transfers.

In regard to blending, unfortunately due to the fungible nature of certain types of tobacco products, one invoice for tax paid product could be used in an attempt to satisfy the invoicing requirements of purchases for tobacco products that were not tax paid. These attempts to evade tax have occurred historically and continue today within this particular industry, primarily with tobacco products because such products are not stamped. As an example, if at the location there is never more inventory than there is tax paid invoice support and the dates of that inventory reconcile with that of the supporting invoices, one would come to the conclusion, without other evidence, that the product on the shelf was tax paid and purchased from a licensed wholesaler or distributor. However, untaxed purchases of the same product from an unlicensed person could be comingled with the tax paid inventory without raising suspicion so long as the shelf stock never exceeds the amount of inventory supported by tax paid invoices.

Regulation 4601 Service of a Notice of Violation or Warning Notice

Regulation 4601, adopted December 12, 2006, provides guidance to staff and licensees in regard to the service of the Notice of Violation and Warning Notices. Regulation 4601 was adopted in conjunction with Regulation 4600 *Issuance and Contents of a Notice of Violation or Warning Notice*. Prior to the Interested Parties Meeting of March 6, 2012, staff identified two additional notices -- Notice of Conference and Notice of Decision -- that staff serve as directed by the Act and its Regulations. Staff's initial recommendation was to amend the regulation in order to include similar regulatory guidance for serving a Notice of Suspension and Notice of Revocation. In order to provide staff with uniform guidance and licensees with consistent methods for service of **any and all** notices required under the Act and its Regulations, staff recommends that Regulation 4601 be renamed to *Service of a Notice* and amend to provide that service be the same as that of the service of a Notice of Determination pursuant to Revenue and Taxation Code Section 30206 of the Cigarette and Tobacco Products Tax Law. Referring to Notice of Determination provisions, which is currently included in Regulation 4601, is common practice for stipulating service requirements for "notices" throughout the Revenue and Taxation Code.

Regulation 4603 Penalties for Licensed or Unlicensed Retailers; Regulation 4604 Penalties for Licensed or Unlicensed Wholesalers and Distributors; and Regulation 4605 Penalties for Licensed or Unlicensed Manufacturers and Importers

The Act allows the Board, in addition to any applicable fines or penalties for a violation of the licensing provisions, upon the first finding of a violation by a licensee, to suspend a license for **up to** 30 days, pursuant to Section 22980.3(a)(1). Upon the effective date of the suspension, the licensee shall immediately cease the sale of cigarettes and/or tobacco products until completion of the suspension period. Licensees are typically notified of the suspension period by mail at least three weeks prior to the beginning of the suspension period. This Notice of Suspension includes detailed instructions for complying with the terms of the suspension and includes additional copies of the suspension notice for posting pursuant to Section 22980.5. Once a Notice of Suspension is mailed, staff follows up the notification by telephone to make sure the mailer has been received.

In April 2006, Regulations 4603, 4604, and 4605 were adopted to provide guidance regarding the assessment of penalties for a first offense of a violation and for subsequent violations of the Act by a licensed or unlicensed retailer, wholesaler, distributor, manufacturer or importer which would result in the issuance of a Warning Notice, suspension or revocation. Each regulation provides that a reduction

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in the length of a suspension period may be warranted if mitigating circumstances are present as set forth in Regulation 4606. Mitigating circumstances can be determined upon appeal at the Special Tax and Fees Division (which includes the former Excise Taxes Division) or Appeals Division level.

Pursuant to Regulation 4606, factors including, but not limited to, the following may be considered for purposes of determining whether mitigating circumstances exist to warrant a reduction in the length of a suspension period:

- (a) How recently the licensee purchased the business or began operations and acquired inventory of cigarettes and/or tobacco products.
- (b) The amount of cigarettes without stamps and with counterfeit tax stamps in relation to the size of the licensee's overall inventory.
- (c) The size of the licensee's cigarette and/or tobacco product business.
- (d) The retail value of any cigarettes or tobacco products seized.
- (e) An absence of prior seizures.

If a suspension period is reduced due to mitigating circumstances, current regulations only allow the reduction of a suspension period to be set at: 0 days, 10 days or 20 days.

Concerns were expressed at the Interested Parties meeting on March 6, 2012, by Mr. Dennis Loper, representing the California Distributor's Association, and Mr. Steven Alari of SEIU, who were opposed to additional flexibility in setting the period of suspension within a range of 1 to 20 days. An argument was made that the minimum number of days of suspension should remain at 10 as it is a deterrent and allows ID staff sufficient time to inspect 100 percent of those serving a suspension period. ID currently inspects 100 percent of the retail locations at some point during their suspension period. In addition, any shorter period could put the wholesalers and distributors in jeopardy of violating the law by selling to someone during a short suspension period. Presumably certain wholesalers or distributors would not have the ability to cease selling cigarettes or tobacco products to retailers serving a short suspension period. It was further noted that Board costs could increase if a shorter suspension period were allowed due to the increased number of suspensions (Note: the increased number of suspensions cited is based on an estimated number of accounts that would serve a reduced suspension instead of having their suspension reduced to 0 days). Mr. Loper suggested that they would possibly support reducing the suspension period if mitigating circumstances are delineated and dollar values of cigarettes or tobacco products are assigned to days.

In the second discussion paper, discussed at the May 4, 2012 Interested Parties meeting, staff recommended alternate language eliminating the range of days, and agreed to propose 5 day suspension period in addition to the current 10, 20 or 30 day suspension periods. It was believed, that a 5 day suspension period would strike an appropriate balance and satisfy the concerns expressed by Mr. Alari and Mr. Loper and still provide staff with the flexibility in administering the Act. Although Mr. Loper was not in attendance, Mr. Alari was, and appeared to be satisfied with the 5 day period as it provided ID with the time necessary to perform an inspection.

Wholesalers and distributors currently receive email notice from the Board at least two weeks prior to the suspension period when any licensee is suspended for 10, 20 or 30 days. Email notices are also sent out listing the names and effective dates of licenses to be revoked. Staff believes that the current recommendation to amend the Regulations to allow for a minimum of 5 days for a suspension period should not further jeopardize a wholesaler or distributor's ability to cease selling during a period of suspension.

During the period of March 2009 through October 2011 (32 months), 546 appeals were heard by staff at the first level appeal of a violation of the Act that could result in up to a 30 day suspension. Based on these appeals, staff reduced the suspension period in 240 instances to zero days based on mitigating circumstances and in two instances recommended no penalty. The remaining 304 appeals resulted in a 10 day, 20 day or 30 day suspension. Staff believes that had a 5 day suspension period been available, that many of these appeal cases, where staff reduced the suspension period to 0 days, may have resulted in a 5 day suspension. First level appeals staff in Special Taxes and Fees believe a 10 day suspension in many instances is too harsh based on the value of cigarette and tobacco products seized or the materiality of the seizure in terms of the taxpayer's business operations and given the circumstances in these cases are more likely to impose a 0 day suspension. Staff holding the appeals conferences believe a 5 day suspension may be more fitting of the violation in many of these instances. A 5 day suspension from selling cigarette and tobacco products is still a strong deterrent for any retailer who is in the business of selling these products. Staff has also confirmed that a 5 day suspension period provides adequate time needed by ID to visit the location and confirm compliance with the suspension. In addition, the added workload of potentially 3 to 4 additional inspections a month would be absorbable based on current staffing.

Staff believes setting suspension periods by further delineating or attempting to establish specific criteria for identifying when mitigating circumstances are present would set too rigid of a guideline. The circumstances pertaining to each appeal are so varied that efforts to describe and allocate them across a 0 to 10 day range of suspension periods would be difficult at best especially in terms of crafting distinguishing and compelling differentiations for suspension periods that may be only one day longer than another. Staff was seeking additional discretion for the first and second level hearing officers when setting periods of suspension, specifically between the 0 day to 10 day range, not more rigidity when administering the Act.

Although it is now staff's recommendation to amend the Regulations by adding a 5 day suspension period for the reasons cited above, for the Board's consideration, the original proposal for a 0 day to 20 day range remains as an alternative for consideration (Exhibits 8, 9, and 10). As initially proposed this alternative provides the hearing officers with the greatest degree of flexibility when setting a suspension period, but would create challenges for ID to schedule inspections where the suspension period is only 1 to 3 days and could lead to some locations not being inspected during their suspension period.

Both staff's recommendation and the alternative language include adding references to the B&P Code sections involving violations that mandate the revocation of a license and deletion of references to those B P Code sections that refer to violations which do not apply to the specific licensee, i.e., retailer, wholesaler, distributor, manufacturer or importer.

VI. Alternative 1 - Staff Recommendation

Item 1 – Adopt Proposed Regulation 4801 *Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the same Person*

A. Description of Alternative 1

Regulation 4801 as proposed by staff formalizes the Board's current policy of allowing transfers of cigarettes and tobacco products between retail stores owned by the same legal entity. It requires that every retailer of cigarettes and tobacco products maintain purchase invoices for all cigarettes and tobacco products purchased and to make those invoices available for inspection by the Board or

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law enforcement. Licensed retailers owning more than one location may transfer product between locations so long as the retailer prepares a transfer log or other document at the time of transfer and maintains a copy of the transfer log at both the transferring and receiving location along with copies of applicable invoices. These records must be maintained for a period of four years with copies of the log and invoices maintained at each location involved in the transfer for a period of one year. Copies of invoices may be maintained on alternative storage media pursuant to Regulation 4901 *Records*. Facilities and equipment must be provided for reading, locating and reproducing any invoices maintained on alternative storage media.

The transfer log or document shall show the following:

- (1) The transferring retail location, license information, supplier's name, invoice number, and date the bulk cigarettes and tobacco products was made;
- (2) The receiving retail location(s), license information, and date the cigarettes and tobacco products were transferred; and
- (3) An itemized listing of cigarettes and tobacco products transferred.

B. Pros of Alternative 1

- Consistent with the Board's current policy on transfers.
- Provides regulatory support and guidance to taxpayers and staff.
- Adopts into regulation the retail industry's current business practices regarding transfers between retail stores owned by the same legal entity.

C. Cons of Alternative 1

- Requires a degree of additional verification during an inspection.
- Requires a taxpayer to prepare and maintain an additional document or log to satisfy the records requirement in section 22974 of the B P Code.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require adoption of proposed Regulation 4801.

E. Operational Impact of Alternative 1

Minor. Although the regulation adopts current policy, staff intends to add the sample transfer log to the Board's website and in appropriate publications for the tobacco industry.

F. Administrative Impact of Alternative 1**1. Cost Impact**

Absorbable.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

None, adopts current policy.

H. Critical Time Frames of Alternative 1

None.

Item 2 – Adopt staff’s proposed amendments to Regulation 4601 *Service of a Notice of Violation or Warning Notice*

A. Description of Alternative 1

Proposed amendments to Regulation 4601 provide staff with a consistent method for service for all notices required under the Act and its regulations. Issuance of notices shall be served personally or by mail in the manner prescribed for the service of a notice of determination under Revenue and Taxation Code section 30206, which stipulates that a notice shall be placed in a sealed envelope, with postage paid, addressed to the licensee or unlicensed person at his or her last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, a mailbox, sub post office, substation, mail chute or other facility regularly maintained or provided by the United States postal Service, without extension of time for any reason.

B. Pros of Alternative 1

- Provides Board staff administering the Act with regulatory support for the service of any notice under the Act.
- Incorporates the Board’s standard service requirements for the serving of any notice under the Act.
- Is consistent with the serving of most notices issued under the R T Code.
- Referencing the Service of a Notice of Determination under the R T Code provides efficient administration should changes be required to standard service requirements.

C. Cons of Alternative 1

None.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff’s recommendation does require adoption of proposed amendments to Regulation 4601.

E. Operational Impact of Alternative 1

None, incorporates the Board’s current service requirements.

F. Administrative Impact of Alternative 1

3. Cost Impact

None

4. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

None, incorporates the Board's current service requirements.

H. Critical Time Frames of Alternative 1

None.

Item 3 - Regulation 4603 Penalties for Licensed or Unlicensed Retailers; Regulation 4604 Penalties for Licensed or Unlicensed Wholesalers and Distributors; and Regulation 4605 Penalties for Licensed or Unlicensed Manufacturers and Importers

A. Description of Alternative 1

The proposed amendments to Regulations 4603, 4604 and 4605 provide staff with an option of imposing a 5 day suspension period in addition to being able to impose a 0 day, 10 day or 20 day suspension period when mitigating circumstances are present. In addition, each regulation is amended to include statutory citations resulting in mandatory revocations. In particular a mandatory revocation for a second violation for possession of untaxed cigarettes or tobacco products applies only to retailers, wholesalers and distributors, and a mandatory revocation for continued sales or gifting of cigarettes or tobacco products during a period of suspension applies to retailers, wholesalers, distributors, manufacturers and importers. Amendments also delete certain statutory sections that do not apply to the pertinent license.

B. Pros of Alternative 1

- Provides staff with an added option of a 5 day suspension when the level of violation does not warrant a 10 day suspension.
- Provides staff with requested flexibility in administering the Act.
- Allows sufficient time for ID to re-inspect the retail store during a period of suspension.
- A 5 day suspension period is still punitive and an adequate deterrent.
- Properly identifies violations mandating revocations.

C. Cons of Alternative 1

- May result in an increase in the number of inspections.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff's recommendation does require adoption of proposed amendments to Regulations 4603, 4604, and 4605.

E. Operational Impact of Alternative 1

May result in additional inspections.

F. Administrative Impact of Alternative 1**5. Cost Impact**

None, potential increase to the number of inspections is absorbable.

6. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

Taxpayers who violate the Act may receive a 5 day suspension period in addition to the current 0 day, 10 day and 20 day suspension periods when mitigating circumstances are present.

H. Critical Time Frames of Alternative 1

None.

VII. Other Alternatives**Item 1 - Proposed Regulation 4801 *Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person*****A. Description of Alternative**

Consider prohibiting transfers of cigarettes and tobacco products between retail stores regardless of ownership.

B. Pros of Alternative

- Limits the invoice documentation required on site to only those invoices referencing the licensed retail location.
- Prohibition creates a “bright line” on transfers for retailers and Board staff to follow.

C. Cons of Alternative

- Eliminates a retailer’s ability to transfer product to their own stores regardless of the business situation. For instance, transferring product from a closed store to one that is still in business; one store has over bought a product that can be sold at another location; supplier is out of a product that is available at another taxpayer owned location, or delays in delivering a product to one retail store whereas the product is available at another taxpayer owned location.
- Prohibition may prevent taxpayers with multiple locations from taking advantage of quantity discounts.

D. Statutory or Regulatory Change for Alternative

No statutory change required. However, since the Act does not specifically prohibit the transfer of cigarettes and tobacco products between retail stores owned by the same legal entity, a regulation prohibiting transfers should be considered.

E. Operational Impact of Alternative

Prohibiting transfers would require the Board to rescind the letter mailed April 2011 to retailers owning multiple locations that addressed the current policy allowing transfers. Revise Publication 78 *Sales of Cigarettes and Tobacco Products in California*, and advise of the policy change in other outreach materials to the industry.

F. Administrative Impact of Alternative**1. Cost Impact**

Additional mailing costs unknown.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact of Alternative

A prohibition of the common practice of transferring cigarettes or tobacco products between at taxpayer's own stores could have a major impact on those retailers operating multiple licensed locations.

H. Critical Time Frames of Alternative

None.

Item 2 - Proposed amendments to Regulation 4601 *Service of a Notice of Violation or Warning Notice*

A. Description of Alternative

None considered.

B. Pros of Alternative

None.

C. Cons of Alternative

None.

D. Statutory or Regulatory Change for Alternative

None.

E. Operational Impact of Alternative

None.

F. Administrative Impact of Alternative

1. Cost Impact

None.

2. Revenue Impact

None.

G. Taxpayer/Customer Impact of Alternative

None.

H. Critical Time Frames of Alternative

None.

Item 3 - Regulation 4603 *Penalties for Licensed or Unlicensed Retailers*; Regulation 4604 *Penalties for Licensed or Unlicensed Wholesalers and Distributors*; and Regulation 4605 *Penalties for Licensed or Unlicensed Manufacturers and Importers*

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A. Description of Alternative

Adopt staff's original draft amendments to Regulations 4603, 4604 and 4605 which provided staff with a *range of 0 days to 20 days* for setting a suspension period when mitigating circumstances are present. Adopt all other amendments recommended by staff adding the statutory citations mandating a revocation and delete those that do not apply to the individual licensee..

B. Pros of Alternative

- Provides staff with the greatest degree of flexibility in setting a suspension period when mitigating circumstances are present.
- May result in staff issuing one or two day suspension periods in lieu of 0 days.

C. Cons of Alternative

- For short suspension periods, may prevent ID from inspecting the retail store during the period of suspension.
- For short suspension periods, may not allow sufficient time for wholesalers and distributors to prevent sales of cigarettes and tobacco products to the licensee during a period of suspension.

D. Statutory or Regulatory Change for Alternative

No statutory change required. However, does require adopting the alternative amendments to Regulations 4603, 4604, and 4605.

E. Operational Impact of Alternative

May result in additional inspections.

F. Administrative Impact of Alternative

1. Cost Impact

Additional inspections are absorbable. .

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative

Taxpayers may receive a one or two day suspension period in lieu of a zero day suspension period when mitigating circumstances are present.

H. Critical Time Frames of Alternative

None.

Preparer/Reviewer Information

Prepared by: Policy and Compliance Division, Property and Special Taxes Department

Current as of: June 6, 2012



Proposed Regulation 4801 and Amendments to Cigarette and Tobacco Products Licensing Act Regulations 4601, 4603, 4604 and 4605

I. Issues

Should the Board of Equalization (Board) authorize publication of a new regulation to provide guidelines on the documentation and retention requirements for transfers of cigarettes and tobacco products between retail stores owned by the same legal entity?

In addition, should the Board amend existing regulations to clarify the service requirements when a notice is issued?

Finally, should Board staff be allowed greater flexibility in setting or reducing suspension periods?

II. Alternative 1 - Staff Recommendation

Item 1 - Proposed Regulation 4801 Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person

Staff recommends the adoption of proposed Regulation 4801 regarding transfers of cigarettes and tobacco products between retail stores owned by the same legal entity. Adopting the proposed regulation provides Board staff and licensed retailers who own multiple locations with regulatory guidance for satisfying the documentation and invoice requirements required by statute in order to establish the tax-paid status of the products being transferred. See Exhibit 2 for staff's proposed Regulation.

Item 2 - Regulation 4601 Service of a Notice of Violation or Warning Notice

Staff recommends amending Regulation 4601 so that the service requirements which presently apply to a Notice of Violation or Warning Notice will apply to any notice issued under the Cigarette and Tobacco Products Licensing Act (Act) and its Regulations. To satisfy the service for all notices, staff proposes amending Regulation 4601 to require that any notice issued under the Act be served in a manner prescribed for the service of a notice of determination, instead of limiting the requirement to the two aforementioned notices. See Exhibit 3 for staff's recommended amendments to Regulation 4601.

Item 3 - Regulation 4603 Penalties for Licensed or Unlicensed Retailers; Regulation 4604 Penalties for Licensed or Unlicensed Wholesalers and Distributors; and Regulation 4605 Penalties for Licensed or Unlicensed Manufacturers and Importers

Staff recommends amendments to Regulations 4603, 4604, and 4605 to also allow for a suspension period of five (5) days. The current Regulations allow staff to set or reduce a suspension period to zero (0) days, ten (10) days or twenty (20) days with a maximum suspension period of thirty (30) days. Proposed amendments also include adding references to the Business and Profession Code (B P Code) sections involving violations that mandate the revocation of a license and deletion of references to those B P Code sections that refer to violations which do not apply to the specific licensee, i.e., retailer, wholesaler, distributor, manufacturer or importer. See Exhibits 4, 5, and 6 for staff's recommended amendments to Regulations 4603, 4604, and 4605.

III. Other Alternative(s) Considered

Item 1 - Proposed Regulation 4801 Transfers of Cigarettes and Tobacco Products between Retail Stores Owned by the Same Person

Consider adopting a Regulation prohibiting the transfer of any cigarettes or tobacco products between retail locations owned by the same legal entity, thereby creating a "bright line" prohibiting transfers, as recommended by some interested parties.

Item 2 - Regulation 4601 Service of a Notice of Violation or Warning Notice

None considered.

Item 3 - Regulation 4603 Penalties for Licensed or Unlicensed Retailers; Regulation 4604 Penalties for Licensed or Unlicensed Wholesalers and Distributors; and Regulation 4605 Penalties for Licensed or Unlicensed Manufacturers and Importers

Consider adopting staff's original draft recommendation that the regulations be amended to allow staff to set the suspension period between a range of zero (0) days to twenty (20) days or reduce a thirty (30) day suspension to a period within that range, thereby providing the greatest degree of flexibility.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

Item 1: There is nothing in Item 1 of the staff recommendation that would impact revenue. Regulation 4801 as proposed by staff formalizes the Board's current policy of allowing transfers of cigarettes and tobacco products between retail stores owned by the same legal entity. It requires that every retailer of cigarettes and tobacco products maintain purchase invoices for all cigarettes and tobacco products purchased and to

make those invoices available for inspection by the Board or law enforcement. Licensed retailers owning more than one location may transfer product between their licensed locations so long as the retailer prepares a transfer log or other document at the time of transfer and maintain a copy of the transfer log at both the transferring and receiving location along with copies of applicable invoices. These records must be maintained for a period of four years with copies of the log and invoices maintained at each location involved in the transfer for a period of one year. Copies of invoices may be maintained on alternative storage media pursuant to Regulation 4901 *Records*. Facilities and equipment must be provided for reading, locating and reproducing any invoices maintained on alternative storage media.

Item 2: There is nothing in Item 2 of the staff recommendation that would impact revenue. The proposed amendments to Regulation 4601 provide staff with the method for service for all notices required under the Act and its regulations. Issuance of notices shall be served personally or by mail in the manner prescribed for the service of a notice of determination under Revenue and Taxation Code section 30206 of the Cigarette and Tobacco Products Tax Law. This section stipulates that a notice shall be placed in a sealed envelope, with postage paid, addressed to the licensee or unlicensed person at his or her last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, a mailbox, sub post office, substation, mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason.

Item 3: There is nothing in Item 3 of the staff recommendation that would impact revenue. Staff's proposed amendments to Regulations 4603, 4604 and 4605, provide staff with an option of imposing a 5 day suspension period in addition to being able to impose a 0 day, 10 day or 20 day suspension period when mitigating circumstances are present. In addition, each regulation is amended to include statutory citations resulting in mandatory revocations, i.e., upon second violation for possession of untaxed cigarettes or tobacco products, which only applies to retailers, wholesalers and distributors, and continued sales or gifting of cigarettes or tobacco products during a period of suspension, which applies to retailers, wholesalers, distributors, manufacturers and importers. Amendments also delete certain statutory sections that do not apply to the pertinent license.

Other Alternative(s) Considered

Item 1: There is nothing in Item 1 of the other alternative(s) considered that would impact revenue. This alternative would consider prohibiting transfers of cigarettes and tobacco products between retail stores regardless of ownership.

Item 2: There is nothing in Item 2 of the other alternative(s) considered that would impact revenue. There were none considered.

Item 3: There is nothing in Item 3 of the other alternative(s) that would impact revenue. This alternative recommends adopting staff's original draft amendments to Regulations 4603, 4604 and 4605 which provided staff with a range of 0 days to 20

days for setting a suspension period when mitigating circumstances are present. All other recommended amendments adding the statutory citations mandating a revocation and deleting those that do not apply to the individual licensee remain the same.

Revenue Summary

Alternative 1:

Item 1 – This alternative does not have a revenue impact.

Item 2 – This alternative does not have a revenue impact.

Item 3 – This alternative does not have a revenue impact.

Other alternatives considered:

Item 1 – This alternative does not have a revenue impact.

Item 2 – This alternative does not have a revenue impact.

Item 3 – This alternative does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Acting Chief, Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Ms. Lynn Bartolo, Chief, Special Taxes, Policy and Compliance Division, Property and Special Taxes Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at 916-445-0840.

June 1, 2012

DRAFT – Proposed Regulation 4801

Transfers of Cigarettes and Tobacco Products Between Retail Stores Owned by the Same Person.

Reference: Section 22971, 22974, 22974.3, and 22978.4, Business and Professions Code

(a) GENERAL. Every retailer of cigarettes and tobacco products is required to maintain purchase invoices for all cigarettes and tobacco products purchased and make those invoices available for inspection by the Board or a law enforcement agency. A licensed retailer owning multiple locations who wishes to transfer cigarettes and tobacco products between its licensed locations shall prepare a transfer log or document at the time of transfer and maintain the records for four years from the date of transfer. A copy of the transfer log or document, accompanied by a copy of the original purchase invoice(s) documenting the purchase of each item transferred, must be kept at both the transferring and receiving locations involved in the transfer for at least one year after the transfer. Copies of original purchase invoices may be maintained at the receiving location on alternative storage media as prescribed in Regulation 4901 (h). The taxpayer must provide facilities and equipment for reading, locating, and reproducing any invoices maintained on alternative storage media.

(b) SPECIFIC APPLICATION. The transfer log or document shall show the following:

- (1) The transferring retail location, license information, supplier's name, invoice number, and the date the bulk cigarettes and tobacco products purchase was made;
- (2) The receiving retail location(s), license information, and date the cigarettes and tobacco products were transferred; and,
- (3) A legible itemized listing of cigarettes and tobacco products transferred including packaging (e.g., 20 5-packs; 60-ct boxes), flavor and/or style, and quantity transferred.

(c) The transfer of cigarettes and tobacco products shall only be allowed when the legal entity licensed as the retailer for the retail location transferring the cigarettes and tobacco products is the same legal entity that is licensed as the retailer at the retail location receiving the cigarettes and tobacco products. As an example, a transfer between a location licensed as a sole proprietorship and a location licensed as a partnership where the sole proprietor is one of the partners would not qualify under this section since the same legal entity does not own both locations.

(d) Records of the transfer shall be made available to the Board or its authorized representative for examination upon request. Failure to provide such documentation when requested can result in the seizure of the cigarettes or tobacco products that are claimed to be transferred and the issuance of a citation. Transfer logs or documents created or provided after a seizure and/or citation are not acceptable and cannot be used for the return of seized product or dismissal of a violation.

Proposed Amendments Regulation 4601, Service of a Notice of Violation or Warning Notice

Reference: Sections 22974.7, 22978.7, 22979.7, Business and Professions Code.

Any notice issued under the Cigarette and Tobacco Products Licensing Act may be served personally or by mail in the manner prescribed for service of a notice of determination under Revenue and Taxation Code section 30206 of the Cigarette and Tobacco Products Tax Law. The Notice of Suspension, Notice of Revocation, Notice of Violation or Warning Notice shall be placed in a sealed envelope, with postage paid, addressed to the licensee or unlicensed person at his or her last known address as it appears in the records of the Board. The giving of notice shall be deemed complete at the time of deposit of the notice at a United States Post Office, a mailbox, sub post office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a Notice of Violation may be served personally by delivery to the person to be served and service shall be deemed complete at the time of such delivery. Personal delivery to a corporation may be made by delivery of a notice to any person designated to be served for the corporation with summons and complaint in a civil action, pursuant to the Code of Civil Procedure.

DRAFT

Proposed Amendments Regulation 4603, Penalties for Licensed or Unlicensed Retailers

Reference: Sections 22973, subdivision (a)(5), 22974, 22974.3, 22974.4, 22974.7, 22980.1, subdivisions (c), (d), (e), (g), 22980, subdivision (b), 22980.2, subdivision (a), 22980.3, subdivisions (a)(2), (d), Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a retailer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions shall result in the issuance of a Warning Notice to the licensee or unlicensed person:

- (1) Business and Professions Code section 22974 (retailer's failure to retain purchase invoices).
- (2) Business and Professions Code section 22980.1, subdivision (c), (d) or (e) (purchase from unlicensed person or person with suspended or revoked license).
- (3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subdivision (b)).
- (4) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by an unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions shall result in the issuance of a 20-day suspension:

- (1) Business and Professions Code section 22973, subdivision (a)(5) (retailer's false statement on application).
- (2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above, shall result in both a 30-day suspension or revocation and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22974.3 (possession of unstamped cigarettes or untaxed tobacco products) shall result in the following:

- (1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during that period.
- (2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.
- (3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.
- (4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine shall be determined in accordance with Regulation 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.3 subdivision (a)(2) or subdivision (a)(4), 22974.4, 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).

Proposed Amendments Regulation 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors

Reference: Sections 22974.7, 22977, subdivision (a)(5), 22978.1, 22978.2, 22978-7, 22978.5, subdivision (b), 22978.7, 22979.7, 22980, subdivision (b), 22980.1, subdivisions (b), (c), (d), (e), (f), (g), 22980.2, subdivision (a), and 22980.3, subdivisions (a)(2), (d) Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a wholesaler or distributor has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22978.1 (distributor's or wholesaler's failure to retain purchase invoices).

(2) Business and Professions Code section 22978.4, subdivision (c) (distributor's or wholesaler's failure to comply with invoice requirements).

(3) Business and Professions Code section 22978.5, subdivision (b) (distributor's or wholesaler's failure to retain sales records).

(4) Business and Professions Code section 22980.1, subdivision (b), (c), (d), (e) (sales to or purchases from unlicensed person or person with suspended or revoked license) or (f) (sales of cigarettes or tobacco products to retailer or wholesaler revoked or suspended until debts are clear).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions will result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22977, subdivision (a)(5) (distributor's or wholesaler's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subdivision. (b)).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation, and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22978.2 (possession of counterfeit stamped cigarettes by distributors, unstamped cigarettes by wholesalers or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee or unlicensed person has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during the month.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine will be determined in accordance with section 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section ~~22974.4~~, 22978.2, subdivision (a)(2) or subdivision (a)(4), 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).

DRAFT

Proposed Amendments Regulation 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers

Reference: Sections 22974.7, ~~22978.7~~, ~~22979.4~~, 22979, subdivision (b)(1), ~~22979.4~~, 22979.5, subdivision (b), 22979.6, subdivision (c), 22979.7, 22980.1, subdivisions (a), (e), (f), 22980.2, subdivision (a), ~~22979.6, subdivision (e)~~; 22980.3 subdivision (a)(2), (d), Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a manufacturer or importer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

- (1) Business and Professions Code section 22979.4 (importer's failure to retain purchase invoices on premises).
- (2) Business and Professions Code section 22979, subdivision (b)(1) (participating manufacturer's false statement on certification to the Board).
- (3) Business and Professions Code section 22979.5, subdivision (b) (manufacturer's or importer's failure to retain sales records on premises).
- (4) Business and Professions Code section 22980.1, subdivision (a), (e) or (f) (purchases or sales from or to an unlicensed person or person with suspended or revoked license).
- (5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).
- (6) Business and Professions Code section 22979.6, subdivision (c) (manufacturer's or importer's failure to comply with invoice requirements).

(b) A first offense of a violation of Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. Tax. Code, § 30163, subdivision. (b)) shall result in a 20-day suspension.

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation and a fine.

(d) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(e) Notwithstanding subdivisions (b) through (d) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be 0 days, 5 days, 10 days, or 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section ~~22974.4, 22978.6, or 22980.3~~, subdivision (a)(2) or subdivision (d).

**Sample Transfer Log
 Cigarettes and Tobacco Products**

Store Transferring Product	Store Receiving Product	Date of Transfer	Items Transferred	Original Purchase From
A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	B Street Market 123 B Street Anywhere, CA LRQ 91-1XXXXX	March 2, 2010	50 packs Marlboro cigarettes, 100 5 boxes Romeo y Juliet Cigars (25 ea)	LD Tobacco Distributors LDG 90-2XXXXX February 14, 2010
A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	B Street Market 123 B Street Anywhere, CA LRQ 91-1XXXXX	April 30, 2010	7 rolls Grizzly Long Cut, Mint (5ea) 2 packs Black & Mild cigars, wine flavor (5ea) 3 packs Black & Mild cigars, wine flavor, wood tip (5 ea)	S&W Wholesale SWQ 90-3XXXXX April 27, 2010
A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	D Street Market 123 D Street Anywhere, CA LRQ 91-3XXXXX	June 28, 2010	50 packs Marlboro Cigarettes Red King 12 packs Backwoods Sweet (6ea) 6 rolls Copenhagen Regular (5ea)	Tobacco Road Distributors SWQ 90-4XXXXX June 12, 2010
A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	C Street Market 123 C Street Anywhere, CA LRQ 91 2XXXXX	August 15, 2010	8 packs Swisher Cigarillo wood tip (5ea) 10 boxes Salem Gold 100	S&W Wholesale SWQ 90-3XXXXX July 21, 2010
D Street Market 123 D Street Anywhere, CA LRQ 91-3XXXXX	A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	August 28, 2010	6 packs Backwoods Sweet (6ea)	Tobacco Road Distributors SWQ 90-4XXXXX June 12, 2010
A Street Market 123 A Street Anywhere, CA LRQ 91-0XXXXX	E Street Market 123 E Street Anywhere, CA LRQ 91 4XXXXX	October 3, 2010	20 packs Marlboro Cigarettes Gold 100 2 rolls Skoal Long Cut Mint (5ea) 2 rolls Skoal Bandit Wintrg. (5ea)	LD Tobacco Distributors LDG 90-2XXXXX September 29, 2010

Note: Transfer of cigarettes and tobacco products is allowed only when the legal ownership (as registered with the BOE) of the store transferring the product is the same as the legal ownership of the store receiving the product.

For example:

Store Transferring Product	Store Receiving Product	Is the Transfer 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

Alternate - Amendments Regulation 4603, Penalties for Licensed or Unlicensed Retailers

Reference: Sections 22973, subdivision (a)(5), 22974, 22974.3, 22974.4, 22974.7, 22980.1, subdivisions (c), (d), (e), (g), 22980, subdivision (b), 22980.2, subdivision (a), 22980.3, subdivisions (a)(2)(d), Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a retailer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions shall result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22974 (retailer's failure to retain purchase invoices).

(2) Business and Professions Code section 22980.1, subdivision (c), (d) or (e) (purchase from unlicensed person or person with suspended or revoked license).

(3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subd. (b)).

(4) Business and Professions Code section 22980.2 subdivision (a) (sales of cigarettes or tobacco products by an unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions shall result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22973, subdivision (a)(5) (retailer's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above, shall result in both a 30-day suspension or revocation and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22974.3 (possession of unstamped cigarettes or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during that period.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine shall be determined in accordance with Regulation 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be within a range of 0 days, ~~10 days,~~ or to 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section 22974.3 subdivision (a)(2) or subdivision (a)(4), 22974.4, ~~22978-6,~~ or-22980.3, subdivision (a)(2) or subdivision (d).

Alternate Amendments Regulation 4604, Penalties for Licensed or Unlicensed Wholesalers and Distributors

Reference: Sections 22974.7, 22977, subdivision (a)(5), 22978.1, 22978.2, ~~22978.7~~, 22978.5, subdivision (b), ~~22978.7~~, 22979.7, 22980, subdivision (b), 22980.1, subdivisions (b), (c), (d), (e), (f), (g), 22980.2, subdivision (a), and 22980.3, subdivisions (a)(2), (d) Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a wholesaler or distributor has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22978.1 (distributor's or wholesaler's failure to retain purchase invoices).

(2) Business and Professions Code section 22978.4, subdivision (c) (distributor's or wholesaler's (3) Business and Professions Code section 22978.5, subdivision (b) (distributor's or wholesaler's failure to retain sales records).

(4) Business and Professions Code section 22980.1, subdivision (b), (c), (d), (e) (sales to or purchases from unlicensed person or person with suspended or revoked license) or (f) (sales of cigarettes or tobacco products to retailer or wholesaler revoked or suspended until debts are clear).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(b) A first offense of a violation of any of the following provisions will result in the issuance of a 20-day suspension:

(1) Business and Professions Code section 22977, subdivision (a)(5) (distributor's or wholesaler's false statement on application).

(2) Business and Professions Code section 22980, subdivision (b) (any person's refusal to allow inspection).

(3) Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. & Tax. Code, § 30163, subd. (b)).

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation, and a fine. The fine shall be determined in accordance with Regulation 4607.

(d) A violation of Business and Profession Code section 22978.2 (possession of counterfeit stamped cigarettes by distributors, unstamped cigarettes by wholesalers or untaxed tobacco products) shall result in the following:

(1) Notwithstanding paragraphs (2) and (3) below, a Warning Notice for a first offense when the licensee or unlicensed person has been in business for less than one month and there has been no purchase of new cigarette or tobacco product inventory during the month.

(2) A 10-day suspension for a first offense for a seizure of less than 20 packages of cigarettes, or the equivalent amount of tobacco products based on wholesale cost.

(3) A 20-day suspension for a first offense for a seizure of 20 packages of cigarettes or more, or the equivalent amount of tobacco products based on wholesale cost.

(4) Both a 30-day suspension or revocation and a fine for a second or subsequent offense. The fine will be determined in accordance with section 4607.

(e) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(f) Notwithstanding subdivisions (b) through (e) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be within a range of 0 days, ~~10 days, or~~ to 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section ~~22974.4~~, 22978.2, subdivision (a)(2) or subdivision (a)(4), 22978.6, or 22980.3, subdivision (a)(2) or subdivision (d).

DRAFT

Alternate Amendments Regulation 4605, Penalties for Licensed or Unlicensed Manufacturers and Importers

Reference: Sections 22974.7, ~~22978.7, 22979.4~~, 22979, subdivision (b)(1), ~~22979.4~~, 22979.5, subdivision (b), ~~22979.6, subdivision (c)~~, 22979.7, 22980.1, subdivisions (a), (e), (f), 22980.2, subdivision (a), ~~22979.6, subdivision (e); 22980.3 subdivision (a)(2) (d)~~, Business and Professions Code.

The following penalties shall be assessed in addition to any other civil or criminal penalty provided by law upon a finding that a manufacturer or importer has violated any provision of the Act:

(a) A first offense of a violation of any of the following provisions will result in the issuance of a Warning Notice to the licensee or unlicensed person:

(1) Business and Professions Code section 22979.4 (importer's failure to retain purchase invoices on premises).

(2) Business and Professions Code section 22979, subdivision (b)(1) (participating manufacturer's false statement on certification to the Board).

(3) Business and Professions Code section 22979.5, subdivision (b) (manufacturer's or importer's failure to retain sales records on premises).

(4) Business and Professions Code section 22980.1, subdivision (a), (e) or (f) (purchases or sales from or to an unlicensed person or person with suspended or revoked license).

(5) Business and Professions Code section 22980.2, subdivision (a) (sales of cigarettes or tobacco products by unlicensed person or person with suspended or revoked license).

(6) Business and Professions Code section 22979.6, subdivision (c) (manufacturer's or importer's failure to comply with invoice requirements).

(b) A first offense of a violation of Business and Professions Code section 22980.1, subdivision (g) (purchase of cigarettes to which a stamp may not be affixed in accordance with Rev. Tax. Code, § 30163, subd. (b)) shall result in a 20-day suspension.

(c) A second or subsequent offense for a violation of the provisions listed in subdivision (a) or (b) above shall result in both a 30-day suspension or revocation and a fine.

(d) In cases involving multiple violations, the violation punishable by the most severe penalty will be used for purposes of determining the penalty assessed.

(e) Notwithstanding subdivisions (b) through (d) above, a reduction in the length of a suspension period may be warranted if mitigating circumstances are present, as set forth in Regulation 4606. If any suspension period is reduced, the redetermined period of suspension shall be within a range of 0 days, 10 days or to 20 days. The existence of mitigating circumstances may also warrant reducing a revocation penalty to a 30-day suspension, unless revocation is mandated pursuant to Business and Professions Code section ~~22974.4, 22978.6, or 22980.3~~, subdivision (a)(2) or subdivision (d).

Formal Issue Paper 12-007

Exhibit 11

SEIU Local 1000 Submittal



March 20, 2012

The Honorable Betty Yee
Chair, Business Taxes Committee
Board of Equalization
450 N Street
Sacramento, CA 95814

YVONNE R. WALKER
President

M. CORA OKUMURA
Vice President
and Secretary-Treasurer

TAMEKIA ROBINSON
Vice President
for Organizing/Representation

MARGARITA MALDONADO
Vice President for Bargaining

Re: Cigarette and Tobacco Products Licensing Act

Chairwoman Yee:

SEIU Local 1000, representing the Business Taxes Specialists and Business Taxes Compliance Specialists in the Investigation Division at the Board of Equalization, writes to inform you of our concerns regarding the proposed new regulations and amendments to the Cigarette and Tobacco Products Licensing Act. The new regulations would allow for the transfer of cigarette and tobacco products between retail stores owned by the same legal entity.

Local 1000 believes that each retail location should purchase cigarette and tobacco products directly from licensed distributors and wholesalers only. This would ensure that California excise taxes are paid and that there would be no confusion as to which retailers have paid taxes and which have not. The new regulations would also create a loophole by allowing retailers to "blend" cigarette and tobacco products, essentially mixing products in which taxes were paid, with those in which taxes were not paid. This makes it nearly impossible to ensure that taxes are paid on all cigarette and tobacco products, as required by law.

SERVICE EMPLOYEES
INTERNATIONAL UNION

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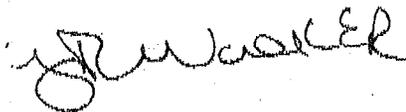
Formal Issue Paper 12-007
SEIU Local 1000 Submittal

The Honorable Betty Yee
Re: Cigarette and Tobacco Products Licensing Act
March 21, 2012
Page 2 of 2

We also oppose the amendment of Regulations 4603, 4604 and 4605, which would shorten the period of suspension for violation of the California Cigarette and Tobacco Products Licensing Act. We believe that there should be a strong deterrent to those whom have been found in violation of this Act and the current regulations which give the Special Taxes and Fees Division the option of a 20-day, 10-day or zero day suspension, appropriate for such violations.

Thank you for your consideration. I look forward to speaking with you soon.

Sincerely,



Yvonne R. Walker
President

cc: Honorable Jerome E. Horton, Fourth District
Honorable Michelle Steel, Third District
Senator George Runner (Ret.), Second District
Honorable John Chiang, State Controller, c/o Ms. Marcy
Jo Mandel

Bishop, Phil

From: Louie, Scott (ScottLouie) [ScottLouie@chevron.com]
Sent: Thursday, May 17, 2012 10:50 AM
To: Bishop, Phil
Cc: Retz, David (dret); Serafino, Brian (Brian.Serafino)
Subject: FW: UPDATE- BOE - Business Taxes Committee Material - Cigarette and Tobacco Products Licensing Act Regulations-June2012

Importance: High

Phil,

Per our conversation on Monday, here is a list of our retail operations concerns with the tobacco distributor's lobby push to not allow store to store transfers by one legal entity: Please let me know if you have any questions, need anything in addition or would like to discuss. Thanks for reaching out and giving us an opportunity to opine on the issue.

Scott Louie
Specialist, State Tax Compliance

Chevron
Finance Shared Services, Excise Tax
2003 Diamond Blvd. Concord, CA 94520
Tel 925 827 6286
Fax 925 827 6902

<mailto:ScottLouie@Chevron.com>

If the BOE prohibits the transfer of tobacco products from one legal entity to another, it will negatively impact our business and could result in lost sales. Having the flexibility to transfer from one store to another allows us to respond to different scenarios that occur on a regular basis.

Some of these scenarios include:

1. Delivery problems associated with transportation delays or problems with Auto Ordering, they will need to transfer product IN from another store to avoid lost sales
2. Supplier is Out Of Stock, site would need to transfer product IN until product is available
3. Ordering error causing site to be over stocked, site would need flexibility to transfer product OUT
4. Sales increase due to an unanticipated event
5. For store Closures, Abandonments or Divestments, tobacco transfers are needed to deplete product that was unable to be sold, otherwise it would need to be written off.

Please advise of next steps and / or outcome. Thanks