State of California

Board of Equalization
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Memorandum

To :

Honorable Carole Migden, Chairwoman
Honorable Claude Parrish, Vice Chairman
Honorable Bill Leonard
Honorable John Chiang
Honorable Steve Westly

Date: November 2, 2004

From : Timothy W. Boyer Timothy W. Boyer
Chief Counsel

Subject: **Civil Fee Schedule Associated with Penalties for Cigarette Law Volations (Item P3; November 4, 2004)**

The attached schedule is the staff proposals for fines associated with Civil Violations of our Cigarette Tax Law (AB71).

If any criminal fines were imposed in addition to the civil fines, we would give credit for the criminal fine against the delineated Civil Penalties. This would promote consistency considering that the 58 County Superior Courts might impose different criminal fines against varying taxpayers despite the fact, that the law violated is the same.

TWB:pl

Fine Schedule for 2nd and Subsequent Citation(s)

Fines are structured to promote fairness and consistency statewide. Staff recommends setting the civil fine for a specific violation incrementally up to the maximum criminal fine set by statute. Staff is also proposing reducing the civil fine by the amount of the criminal fine imposed by the court for the violation. The total combined civil and criminal fine for any violation would not exceed the maximum criminal fine provided by statute.

Example: During the course of a retail inspection, BOE inspectors find untaxed tobacco products. The inspectors write a citation for violation of B&P Code section 22974.3(b).

> A criminal citation is issued, and the court orders a fine of $1,000 for an upheld violation of B&P Code section 22974.3(b). In this example, the Board would not assess a civil fine. ($1,000 - $1,000 = $0)
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> If only a civil citation is issued, the Board would assess a civil fine of $1,000. ($1,000 - $0 = $1,000)

BUSINESS AND PROFESSIONS CODE CIVIL FINE SCHEDULE

		New AB 71 Business & Professions Code Sections						Civil Fines				
.ine	Nature of Offense	Retailers	Distributors	Wholesalers	Manufacturers	Importers	Criminal Fines	1st	2nd	3rd	4th	5th & Subsequent
1	False Statements on application	22973(a)(5)	22977(a)(5)	22977(a)(5)	None	None	<= $1000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000
2	Certification by participating manufacturer	None	None	None	22979(b)(1)	22979(b)(1)	<=$1000	$ 1,000	$ 1,000	$ 1,000	$ 1,000	$ 1,000
3	1 year of purchase invoices on premise	22974	22978.1	22978.1	22979.4	22979.4	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
4	1 year of all sale related records on premise	None	22978.5(b)	22978.5(b)	22979.5(a)	22979.5(a)	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
5	Retention of purchase records (4 years)	22974	22978.5(b)	22978.5(b)	22979.5(a)	22979.5(a)	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
6	Retention of all sale related records (4 years)	None	22978.1	22978.1	22979.4	22979.4	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
7	1st seizure of less than 20 packs of untaxed cigarettes (various types)	22974.3(a)	22978.2(a)	22978.2(a)	None	None	<=$1000	$ 1,000	N/A	N/A	N/A	N/A
8	2nd seizure within 5 years of less than 20 packs of untaxed cigarettes (various)	22974.3(a)	22978.2(a)	22978.2(a)	None	None	>=$2000 <=$5000	$ 2,000	$ 3,000	$ 4,000	$ 5,000	$ 5,000
9	1st seizure of more than 20 packs of untaxed cigarettes (various)	22974.3(a)	22978.2(a)	22978.2(a)	None	None	>=$2000	$ 2,000	N/A	N/A	N/A	N/A
10	2nd seizure within 5 years of more than 20 packs of untaxed cigarettes (various)	22974.3(a)	22978.2(a)	22978.2(a)	None	None	>=$5000 <=$50000	$ 5,000	$ 10,000	$ 15,000	$ 20,000	$ 50,000
11	Sale or possession of untaxed tobacco products for which tax is due.	22974.3(b)	22978.2(b)	22978.2(b)	None	None	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
12	Failure to comply with invoice requirements		22978.4(c)	22978.4(c)	22979.6	22979.6	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
13	Refusal to allow inspection	22980(b)	22980(b)	22980(b)	22980(b)	22980(b)	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
14	Failure to display license	22974.5	None	None	None	None	$500	$ 500	$ 500	$ 500	$ 500	$ 500
15	Sales cigs by a manufacturer to unlicensed retailer, distributor, wholesaler, importer	None	None	None	22980.1(a)	None	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
16	Sales of cigarettes or tobacco to unlicensed, suspended, or revoked person	None	22980.1(b)	22980.1(b)	None	22980.1(b)	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
17	Cigarettes purchased from unlicensed, suspended, or revoked manufacturer	22980.1(c)	22980.1(c)	22980.1(c)	None	22980.1(c)	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
18	Cigarettes or tobacco purchased from unlicensed, suspended, or revoked person	22980.1(d)	22980.1(d)	22980.1(d)	None	22980.1(d)	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
19	Each separate sale is a separate violation	22980.1(e)	22980.1(e)	22980.1(e)	22980.1(e)	22980.1(e)	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
20	Sales of cigarettes or tobacco to retailer or wholesaler that has been revoked or suspended until debts are clear	None	22980.1(f)	22980.1(f)	22980.1(f)	22980.1(f)	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
21	Acquiring cigs in violation or R&T 30163	22980.1(g)	22980.1(g)	22980.1(g)	None	22980.1(g)	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000
22	Unlicensed sales of cigs or tobacco	22980.2(a)	22980.2(a)	22980.2(a)	22980.2(a)	22980.2(a)	<= $5000	$ 1,000	$ 2,000	$ 3,000	$ 4,000	$ 5,000

Legend:
<= Less than or equal to:
>= Greater than or equal to:

November 2, 2004
Source: Investigations Division