

Excise Taxes Newsletter

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All Tax and Fee Programs

1. New Legislation Requires Penalty for Late Filing of Excise Tax and Fee Returns

As of January 1, 2001, a 10 percent penalty may be assessed for the late filing of a return for the following excise tax and fee programs:

- Cigarette and Tobacco Products Tax
- Alcoholic Beverage Tax
- Energy Resources Surcharge
- Emergency Telephone Users Surcharge
- Natural Gas Surcharge
- Integrated Waste Management Fee
- Tire Recycling Fee

The 10 percent late filing penalty is based on the total amount of taxes or fees that are due for the return period.

If you make your payment on time but file a late return, you are still subject to a late filing penalty. If you make a late payment and file a late return, the maximum amount that can be assessed for both penalties is 10 percent (see exceptions below).

Exceptions:

Alcoholic beverage tax. If you file a late return, the minimum penalty due is \$50.00 or 10 percent of the tax, whichever is greater. If no tax is due on the late return filed, a penalty of \$50.00 will be assessed.

Emergency telephone users surcharge. If you file a late return, the minimum penalty due is \$10.00 or 10 percent of the surcharge, whichever is greater. If no surcharge is due on the late return filed, a penalty of \$10.00 will be assessed.

2. What to Do if You Disagree with a Board Billing: The Appeals Process

If you are audited and receive a tax billing (a *Notice of Determination*), you have the right to appeal the Board's determination.

You have 30 days from the date of the notice to file a formal appeal (a *Petition for Redetermination*). The law does not allow you to file an appeal after the 30-day petition period. If you miss the deadline, you must pay the liability in full and file a claim for refund to dispute the amount owed.

Your petition must be made in writing and state why you disagree with the audit and include facts in support of your position. The law requires that you request a "hearing" in your written appeal to be afforded your full appeal rights. Send your petition to:

Excise Taxes Division, Audit Section, MIC: 56
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0038

It is important that you respond timely to all Board

correspondence during your appeal. Failure to respond may result in your appeal being denied.

The formal appeal process will include an independent review of your contentions by headquarters staff, who will evaluate several possible courses of action to resolve the disagreement. For example, your case may be referred back to the auditor, you may be asked to provide additional documentation, or the Board may approve an immediate adjustment.

At any time during the appeal process, up to 30 days prior to a scheduled hearing before Board Members, most excise tax or fee payers may request a settlement of their disputed audit liability. For additional information, contact the

Settlement & Administration Section,
MIC:82
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0082
(916) 324-2836

The next step is an appeals conference with a representative from the Appeals Section. You have the right to have this conference held at a Board office convenient to you. You also have the right to receive prior notice if the conference will be recorded and the right to receive a copy of the recording. If the disagreement remains unresolved, you may request a hearing before the five elected Board Members. Although the majority of appeals are decided within a year, some may take longer. You may call the Customer Service staff toll free at 1-800-400-7115 to ask about the status of your appeal and the interest that has accrued to date.

If the Board denies your appeal, you must pay the liability in full before you may pursue your appeal in the courts. For your reference, the Board publishes two publications that explain the audit and appeals process in more detail: publication 17, *Appeals Procedures*, and publication 76, *Audits*. Both of these publications are available on the Board's Internet website.

Note: Your appeal will not stop the accrual of interest. Therefore, we encourage you to pay the tax portion of the liability as soon as possible to stop the accrual of interest. Any amounts found not due will be refunded with interest when your appeal is concluded.

3. New Publication Explains Offers in Compromise Program

What is an offer in compromise?

An *offer in compromise* (OIC) is a proposal to pay the Board an amount that is less than the full tax or fee liability due on a closed account. If you make an offer and it is accepted, you will no longer be liable for the amount due and you will be relieved of the effects of any related tax liens.

Who can make an offer?

You may make an offer in compromise if you

- Have a tax or fee liability on a closed account,
- Are no longer associated with the business that incurred the liability,
- Do not dispute the amount of tax or fee you owe, and
- Cannot pay the full amount you owe in a reasonable amount of time.

How can I get more information?

Call 1-800-400-7115 to request a copy of publication 56, *Offers in Compromise*. Or download a copy from www.boe.ca.gov.

Tire Recycling Fee

4. Tire Recycling Fee Reporting Period Change

Effective January 1, 2001, the Tire Recycling Fee reporting period on several accounts was changed from quarterly to yearly. The Tire Recycling Fee Law allows the Board, under certain conditions, to require that tire recycling fee returns be filed yearly. A review of accounts indicated that several businesses qualified to file yearly. A letter has been sent to those who have been switched to inform them of the change.

If you have not received your quarterly Tire Recycling Fee Return, your account may be one of the qualified accounts that has been switched to a yearly reporting period. If you prefer to file quarterly instead of annually, you can call and request to be switched back to quarterly reporting.

The annual Tire Recycling Fee Return for 2001 will be mailed out in December 2001, and is due January 15, 2002. Even if you do not receive a

return, you are still responsible for filing your return timely.

If I close out my business, when is my return due?

If you close out your business at any time during the year, the closeout return is due on the 15th day of the month following your closeout month.

Cigarette and Tobacco Products

5. Out of State Distributors Who Attend Trade Shows in California Are Engaged in Business in This State

Recently, the Board had occasion to review the question of whether attendance of a company that is an out-of-state distributor of cigarettes and tobacco products at a California trade show meets the test of being “engaged in business in this State.” The Board concluded that a company that sends a representative to a trade show in California, even if the representative only displays products and hands out catalogs, is at the trade show for the *purpose of selling*, and is therefore engaged in business in the state, as defined in Revenue and Taxation Code section 30108(c).

Unlike the Sales and Use Tax Law, which provides a safe harbor from sales tax for limited activities that occur at trade shows, the Cigarette and Tobacco Products Tax Law does not provide a similar safe harbor from Cigarette and Tobacco Products Tax for sales activities at trade shows.

■ An Out-of-State Distributor Engaged in Business in California Must Obtain a Distributor’s License or Register with the Board

Under the Cigarette and Tobacco Products Tax Law, an out-of-state *distributor* who is engaged in business in California must either obtain a distributor’s license from the Board or register as an unlicensed distributor. *Distributor* includes every person who distributes cigarettes or tobacco products, as well as every person who sells or accepts orders for cigarettes or tobacco products that are to be transported from a point outside the State to a consumer within the State. A distributor includes someone who uses or consumes untaxed cigarettes or tobacco products in this state.

■ An Out-of-State Distributor Engaged in Business in California Must Collect and Report Taxes

An out-of-state distributor engaged in business in this state and who sells to persons in California, other than to licensed distributors, is required to collect the Cigarette and Tobacco Products Tax from California purchasers of its products, and pay the amounts collected to the State (Revenue and Taxation Code section 30108(a)).

The law requires that the out-of-state distributor collect the tax either (1) at the time of the sale, or, since the purchaser in California may not be obligated to pay the tax until it takes possession of the product, (2) at the time the purchaser receives the product. The law further requires that the out-of-state distributor give the purchaser a receipt showing that the tax has been paid.

The taxes required to be collected by the out-of-state distributor and remitted to the Board constitute debts owed by the out-of-state distributor to the state (Revenue and Taxation Code section 30108(d)).

■ Purchasers of Untaxed Cigarettes or Tobacco Products from an Out-of-State Distributor Are Liable for Excise Tax

A purchaser of untaxed cigarettes or tobacco products who is not a licensed distributor, is obligated to pay the tax at the point in time that the cigarettes or tobacco products are “distributed” (Rev. and Tax. Code section 30008(b)). The cigarettes or tobacco products are, by definition, distributed when the person (who now is a distributor by virtue of the person’s distribution of the untaxed cigarettes or tobacco products) uses or consumes the untaxed tobacco products in this state. Thus, if the purchaser does not have a receipt from the out-of-state distributor evidencing the payment of tax, the Board may seek to collect the tax from the purchaser.

6. Current Valid California Tax Stamps for Cigarettes

There have been several questions regarding the current valid California tax stamp for cigarettes.

There are three different tax stamps for different denominations of cigarettes, as described on the following page.

Stamps used for packages of 10 cigarettes

Blue with a black outline and print
Sold in sheets of 100 stamps.

Stamps used for packages of 20 cigarettes

There are two stamps that are currently being sold for packages of 20 cigarettes. Both types of stamps are valid.

Newer stamp

Orange with a blue outline and print
Machine-applied and sold in rolls of 30,000

Older stamp

Green with a blue outline and print
Sold in sheets of 150 stamps
Heat hand-applied

The Bank of America has a large inventory of the heat hand-applied stamps and will continue to sell them until its inventory is depleted.

Stamps used for packages of 25 cigarettes

Gray with a black outline and print
Sold in rolls of 7,200 stamps
Heat-sealing stamp

7. Liability of Individuals for Use Tax Due on Cigarettes and Tobacco Products Purchased from Outside California

Many Californians buy items from out-of-state businesses that do not charge California tax on the sale. If you make such a purchase and then *use, give away, store, or consume* the item in this state, you may owe California use tax.

This is true whether the item is ordered over the Internet, by telephone, or by mail. The use tax rate for a given California location is usually the same as the sales tax rate there.

How can I tell if I owe use tax?

Generally, if sales tax would apply when you buy a particular item in California, use tax applies when you purchase a similar item from a business outside the state.

For example, if you buy cigarettes at a shop near your home in Sacramento, sales tax applies to the transaction and the seller will collect the tax amount that is due. However, if you choose to buy the cigarettes over the Internet from a company in Kentucky, use tax applies. Some out-

of-state businesses will collect and report the California use tax that is due, but most do not. If the seller does not charge California use tax on your purchase, you must pay the amount due.

Am I liable only for use tax?

In addition to the use tax, you may also be responsible for the state excise tax on cigarettes (or tobacco products if you buy tobacco items other than cigarettes).

How do I pay the use and excise tax due?

You can obtain the reporting form you need by calling our Information Center, 1-800-400-7115. Ask for forms BOE-501-UI, *Cigarette and Tobacco Products Use Tax Return* and BOE-501-CI, *Cigarette and Tobacco Products Excise Tax Return*.

► For more information, please contact the Excise Taxes Division, 916-327-4208.

For More Information

Information Center

1-800-400-7115

Telephone devices for the deaf

1-800-735-2929 (TDD)

1-800-735-2922 (voice)

Excise Taxes Division. Write to us at: Excise Taxes Division, MIC:56, State Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0056. Or call us at 916-327-4208. Staff are available from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding State holidays.

Internet. Visit us at www.boe.ca.gov to obtain information on tax rates, publications, legislation, regulations, telephone numbers, education programs, public meetings, and so forth.

Tax Evasion Hotline. To report suspected tax evasion, please call toll-free, **1-888-334-3300**.

Copies of Legislative Bills. Write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. Or visit the following website: www.leginfo.ca.gov. The Bill Room does not provide copies of Board forms or publications.

Taxpayers' Rights Advocate. If you need help with a problem you have been unable to resolve at other levels, please contact the Advocate's office for assistance. Call **1-888-324-2798**.