

Cigarette and Tobacco Products Taxes

Excise taxes are imposed upon the distribution of cigarettes and tobacco products in California. Distributors must be licensed to conduct these transactions and have an account number to remit the excise taxes owed.

Two types of excise taxes are collected on cigarettes and tobacco products distributed in California: 1) the cigarette tax, and 2) the cigarette and tobacco products surtax. Each tax is described below, according to the type of product sold.

Cigarettes

Cigarettes are subject to both the cigarette tax and the cigarette and tobacco products surtax, collectively referred to as taxes. The taxes are assessed on each cigarette distributed in California.

The current tax rate is \$0.0435 cents per cigarette, which is eighty seven cents (\$0.87) per pack of twenty (20) cigarettes. Distributors pay the taxes by purchasing cigarette tax stamps from the State Board of Equalization (BOE). Distributors are required to affix the tax stamp to each package of cigarettes before distribution. Distributors pass the excise taxes on to their customer, and the taxes become part of the retail selling price of the cigarettes.

The cost of the cigarette tax stamp includes both taxes. The current and historical cigarette tax rates are available at www.boe.ca.gov/sptaxprog/tax_rates_stfd.htm.

Distributors receive a purchase discount of 0.85% of the total tax value per purchase order to help offset the cost of affixing cigarette tax stamps.

Products labeled as little or small cigars under federal regulation (27 C.F.R. § 40.214) and the federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1331 et seq.) are considered cigarettes for excise tax purposes and must have the cigarette tax stamp affixed to each package prior to distribution and are reported as cigarettes on the return.

Tobacco products

Tobacco products include, but are not limited to, all forms of cigars (except "little cigars"), smoking tobacco (including shisha), chewing tobacco and snuff, and any other articles or products made of or containing at least 50 percent tobacco. "Tobacco products" do not include cigarettes.

The tax, which is a component of the cigarette and tobacco products surtax, is paid by tobacco products distributors.

The tobacco products tax is imposed upon the first distribution of tobacco products at a rate determined annually by the BOE. The tobacco products tax rate is equivalent to the combined rate of the taxes applied to cigarettes (for details, please refer to "How are the revenues used?"). The rate is applied to the wholesale cost of the tobacco products. "Wholesale cost" means the cost of the tobacco products to the distributor prior to

any discounts or trade allowances. If a manufacturer is also the distributor, the wholesale cost of tobacco includes all manufacturing costs, the cost of raw materials (including waste materials not incorporated into the final product), the cost of labor, any direct and indirect overhead costs, and any federal excise and/or U.S. Customs taxes paid. Wholesale cost does not include domestic freight or transportation charges for shipment of a finished product from the supplier to the distributor. In most cases, the wholesale cost will be the invoiced price of the tobacco products without any allowance for discounts. For additional information on how to calculate or estimate the wholesale cost, please refer to [Regulation 4076, Wholesale Cost of Tobacco Products](#). The current and historical tobacco products tax rates are available at www.boe.ca.gov/sptaxprog/tax_rates_stfd.htm.

Electronic smoking or vaping devices, nicotine products, or any component, part, or accessory of a tobacco product

Currently, any product containing, made, or derived from nicotine that is intended for human consumption; any electronic smoking or vaping devices (for example: electronic cigarettes, vape pens, etc.); or any component, part, or accessory of a tobacco product do not fall under the definition of a cigarette or tobacco product for tax purposes since they do not contain tobacco. Therefore, these products are not subject to California's excise tax. However, retail sellers of these products are required to have a

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Cigarette and Tobacco Products Retailer's License starting January 1, 2017.

How are the revenues used?

Of the total eighty-seven cents (\$0.87) tax per package of twenty cigarettes, ten cents (\$0.10) is deposited into the Cigarette Tax Fund, and two cents (\$0.02) goes into the Breast Cancer Fund.

Twenty-five cents (\$0.25) is deposited into the Cigarette and Tobacco Products Surtax Fund and may only be used for these purposes:

- Tobacco-related health education programs and disease research.
- Medical and hospital care and treatment of patients who cannot afford those services, and for whom payment will not be made by any private coverage or federal program.
- Programs for fire prevention; environmental conservation; protection, restoration, enhancement, and maintenance of fish, waterfowl, and wildlife habitat areas; and enhancement of state and local parks and recreation.

Fifty cents (\$0.50) is deposited into the California Children and Families Trust Fund and is used for programs that encourage proper childhood development, including the development of professional and parental education and training, informed selection of childcare, development and education of childcare providers, and research into the best practices and standards for all programs and services relating to early childhood development.

Who is required to register?

You are required to register if you are a distributor, wholesaler, manufacturer, or importer of cigarettes or tobacco products in California. Definitions of the above terms are provided under the heading "Imposition of the Tax."

Retailers are also required to register. For retail license requirements, see publication 78, *Sales of Cigarettes and Tobacco Products in California—License Requirements for Retailers*, available at www.boe.ca.gov/pdf/pub78.pdf.

Delivery sellers (see "Requirements for Delivery Sellers") are required to register for both a retailer and distributor license.

How do I register?

You can apply online using BOE's online services, available at efile.boe.ca.gov/ereg/index.boe. If you have questions or need help, contact BOE's Customer Service Center at 1-800-400-7115 (TTY:711).

If I am required to register, what are the requirements?

Licensing. You must first apply for a distributor, wholesaler, manufacturer, or importer license and pay the applicable licensing fee. Current licensing fees can be found at www.boe.ca.gov/sptaxprog/tax_rates_stfd.htm. All licenses must be renewed annually. If you are applying for a distributor's license, you must also post a minimum \$1,000 security deposit before the license can be issued. There are no security deposit requirements for wholesalers, manufacturers, or importers. For information on purchasing cigarette tax stamps, please see publication 63, *Cigarette Distributor Licensing and Tax Stamp Guide*, available at www.boe.ca.gov/pdf/pub63.pdf.

Cigarette and Tobacco Products Account. After receiving a license issued under the California Cigarette & Tobacco Products Licensing Act of 2003, a separate account must be established to sell cigarettes and tobacco products in California.

Filing. All licensed distributors, wholesalers, manufacturers, and importers (with the exception of tobacco wholesalers) are required to file tax returns, reports, and/or schedules, which are due on or before the 25th of the month following the reporting period. Tax returns, reports, and schedules must be filed even if no transactions were made during the reporting period. Online filing is available to cigarette distributors and manufacturers. Additional information can be found at www.boe.ca.gov/sptaxprog/cig_efile.htm. All records must be kept and maintained at the taxpayer's licensed premises in California, unless another location has been approved by the BOE.

Imposition of the Tax

Cigarette Distributor. A cigarette distributor is a person who purchases untaxed (unstamped) cigarettes and makes the first distribution of the cigarettes in this state. Distribution includes the sale, use, or consumption of untaxed cigarettes, or the placing of untaxed cigarettes in a vending machine or in retail stock*. A cigarette distributor is required to affix the California cigarette tax stamp to each package of cigarettes prior to distribution to indicate that taxes have been paid.

Tobacco Products Distributor. A tobacco products distributor is a person who makes the first distribution of tobacco products in this state. Distribution includes the sale, use or consumption of untaxed tobacco products, or the placing of untaxed tobacco products in a vending machine or in retail stock*. A tobacco products distributor is

required to calculate the tobacco products tax due based on the wholesale cost of the tobacco products distributed and remit the amounts owed each month on tax return forms provided by the BOE.

Cigarette Wholesaler. A cigarette wholesaler is a person, other than a licensed distributor, who sells taxed (stamped) cigarettes, obtained from a distributor or another wholesaler, for resale. Cigarette wholesalers cannot purchase their products directly from an importer or manufacturer.

Tobacco Products Wholesaler. A tobacco products wholesaler is a person, other than a licensed distributor, who sells tax-paid tobacco products for resale. Tobacco products wholesalers cannot purchase their products directly from an importer or manufacturer.

Manufacturer. A manufacturer is a person who manufactures cigarettes and/or tobacco products sold in this state. There are some reporting requirements imposed on manufacturers and there are additional restrictions which carry potential tax consequences regarding product promotions and samples provided to recipients at no cost, as set forth in [Regulation 4081](#).

Importer. An importer is any purchaser who purchases for resale in the United States, cigarettes and/or tobacco products manufactured outside the United States for the purpose of making a first sale or distribution within the United States.

* Retail stock includes all cigarettes (for cigarette distributors) or tobacco products (for tobacco products distributors) on the premises of a retail site whether on display or not.

Are any transactions not subject to taxes?

Yes. The following sales and distributions of cigarettes and tobacco products are generally not subject to the taxes although these transactions may be subject to reporting requirements. This list is not intended to be all-inclusive.

- Sales of cigarettes or tobacco products by the original importer to a licensed distributor if the cigarettes or tobacco products are manufactured outside the United States (Revenue and Taxation Code. [R&TC] § 30105);
- Sale or gift of federally tax-free cigarettes or tobacco products when the cigarettes or tobacco products are delivered directly from the manufacturer under Internal Revenue bond to a veteran's home of the State of California or a hospital or domiciliary facility of the United States Veterans' Administration for gratuitous issue to veterans receiving hospitalization or domiciliary care. The tax shall not apply to the use or consumption of such cigarettes or tobacco products by the institution or by the veteran patients or domiciliaries. (R&TC § 30105.5);
- Sales of cigarettes or tobacco products by the manufacturer to a licensed distributor. (R&TC § 30103);
- Sales by a distributor to a common carrier engaged in interstate or foreign passenger service. (R&TC § 30104);
- Sales to United States military exchanges, commissaries, ships' stores, or the U.S. Department of Veterans Affairs. (R&TC § 30102);

- Distributions of federally untaxed cigarettes or tobacco products that are under Internal Revenue bond or U.S. Customs control. (R&TC § 30102.5);
- An individual shipment of not more than 400 cigarettes (typically 20 packs or 2 cartons) personally transported into California. (R&TC § 30106);
- Sales and distributions of cigarettes and tobacco products that cannot be taxed by the state under the U.S. Constitution or federal law, or under the California Constitution or state law, such as shipments to purchasers in other states, territories, or foreign countries when the cigarette and tobacco products are not to be returned to California before use.

What if consumers purchase cigarettes or tobacco products from outside of California?

If consumers purchase cigarettes or tobacco products for their own use from outside the state without paying California excise tax, they are required to file a *Cigarette and Tobacco Products Excise Tax Return* and pay the tax directly to the BOE. The return is due at the end of the month following the quarter in which the purchases were made. This includes products purchased through the mail, by telephone, or via the Internet, that are shipped into California. Consumers also owe the taxes if they physically bring more than 400 cigarettes into California. These purchases are also subject to California use taxes. For information regarding California use tax, please visit www.boe.ca.gov/sutax/usetax.htm.

Do distributors need to contact the BOE before destroying cigarettes or tobacco products?

Yes. Contact us before you destroy cigarettes and/or tobacco products. To make arrangements for a BOE employee to be present for the destruction, call 1-916-323-6361 or send an email to: adab@boe.ca.gov. If you do not have an authorized BOE representative witness the destruction of the cigarettes or untaxed tobacco products, you may be liable for any unpaid cigarette and tobacco products taxes. It is presumed that all cigarettes or tobacco products acquired by a distributor are untaxed cigarettes or tobacco products, and that all cigarettes or tobacco products manufactured in this state or transported to this state and no longer in the possession of the distributor have been distributed. (R&TC § 30109)

If you have stamped cigarettes which have become unfit for use or unsalable that needs to be returned to the manufacturer or destroyed, you must request a refund of the tax stamp in writing to: Appeals and Data Analysis Branch, P.O. Box 942879, Sacramento, CA 94279-0033 or fax your request to: 1-916-323-9497. You must file the claim for refund prior to returning the cigarettes to the manufacturer or destroying the stamped cigarettes in order to receive a refund of the taxes paid.

What are the PACT Act requirements?

The Prevent All Cigarette Trafficking (PACT) Act is federal law that amends the Federal Jenkins Act. It revises provisions governing the collection of taxes and trafficking by requiring Internet and other remote sellers of cigarettes and smokeless tobacco products to

comply with the same laws that apply to local cigarette and tobacco products sellers.

Registration

If you operate a business for profit that sells, transfers, ships, advertises, or offers for sale cigarettes or smokeless tobacco products through interstate commerce into California, or into Indian Country located within California's borders, you must register with the BOE.

To register, download the Federal PACT Act form, ATF Form 5070.1, Prevent All Cigarette Trafficking (PACT) Act Registration Form, at www.atf.gov/file/61471/download. Mail the completed form to: Special Taxes and Fees, MIC: 88, State Board of Equalization, P.O. Box 942879, Sacramento, CA 94279-0088.

Monthly Report Filing

You must also file monthly reports, using uniform PACT act forms, with the BOE and the California Office of the Attorney General. To report cigarettes, use form PA-1, State Cigarette PACT Act Report. To report smokeless tobacco products, use form PA-2, State Tobacco PACT Act Report. Copies of the required report forms are available at the Federation of Tax Administrators' website at www.taxadmin.org/tobacco-tax-section. The monthly report forms contain detailed information on each shipment of cigarettes (PA-1) and smokeless tobacco products (PA-2) into California or Indian Country during the previous calendar month. The reports are due before the 10th day of each calendar month. You must file a report for each monthly reporting period regardless of whether you have transactions to report for that month. It is recommended that you submit the required reports electronically to PACT.Act@boe.ca.gov. If you are unable to submit the reports electronically, please mail to

California State Board of Equalization, Special Taxes and Fees, MIC: 88, P.O. Box 942879, Sacramento, CA 94279-0088.

Requirements for delivery sellers (direct sales to consumers)

A "delivery sale" is defined, in part, as any sale of cigarettes or smokeless tobacco (for example, chew or snuff) products sold by an out-of-state vendor to an in-state consumer. If you are a delivery seller, and plan to make delivery sales of cigarettes or smokeless tobacco products in California, you must apply for both a California Cigarette and Tobacco Products Retailer license and a California Cigarette and Tobacco Products Distributor license. A delivery seller must comply with all California laws regarding the sale of cigarettes and smokeless tobacco products into the state as if that seller were located in California.

Additional Resources

Other related publications that may interest you are listed below. Helpful guides, regulations, forms, publications, and other resources are available at www.boe.ca.gov.

Publications

- 63 *Cigarette Distributor Licensing and Tax Stamp Guide*
- 78 *Sales of Cigarettes and Tobacco Products in California – License Requirement for Retailers*
- 152 *Cigarette and Tobacco Products Inspections*
- 204 *Cigarette and Tobacco Products Taxes Newsletter*
- 403 *New California Counterfeit-Resistant Cigarette Tax Stamp*

For More Information

If you have any questions regarding this program, you may contact us by phone, email, or mail.

Customer Service Center

1-800-400-7115

TTY:711

Monday through Friday (except state holidays), 8:00 a.m. to 5:00 p.m. (Pacific time). Select the option for "Special Taxes and Fees."

www.boe.ca.gov/email/

Special Taxes and Fees
State Board of Equalization
PO Box 942879
Sacramento, CA 94279-0088

Taxpayers' Rights Advocate

If you have not been able to resolve a problem through normal channels (for example, by speaking to a supervisor), contact the Taxpayers' Rights Advocate Office for help:

Taxpayers' Rights Advocate Office
State Board of Equalization
P.O. Box 942879 Sacramento, CA
94279-0070

www.boe.ca.gov/info/emailtra.htm

1-888-324-2798 toll-free phone

1-916-323-3319 fax

Note: This publication summarizes the law and applicable regulations in effect when the publication was written. However, changes in the law or in regulations may have occurred since that time. If there is a conflict between the text in this publication and the law, decisions will be based on the law and not on this publication.