



CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

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EDMUND G. BROWN JR.
Governor

MARYBEL BATJER
Secretary, Government Operations Agency

NICOLAS MADUROS
Director

Dear Interested Party:

Enclosed is the Discussion Paper on Regulation 4011, *Distributors Not Engaged in Business in this State*. Staff would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

November 1, 2018
Room 122 at 10:00 a.m.
450 N Street, Sacramento, CA

If you would like to participate by teleconference, call 1-888-822-7517 and enter access code 5038418. You are also welcome to submit your comments to me at the address or fax number in this letterhead or via email at Trista.Gonzalez@cdtfa.ca.gov by November 16, 2018. You should submit written comments including proposed language if you have suggestions you would like considered during this process. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics refer to the CDTFA webpage at (<http://www.cdtfa.ca.gov/taxes-and-fees/business-taxes-committee.htm>) for copies of discussion papers and calendars of current and prior issues.

Thank you for your consideration. Staff looks forward to your comments and suggestions. Should you have any questions, please feel free to contact Business Taxes Committee staff member Paul Camky at 1-916-323-0536, who will be leading the meeting.

Sincerely,

A handwritten signature in blue ink that reads "Trista Gonzalez".

Trista Gonzalez, Chief
Tax Policy Bureau
Business Tax and Fee Division

TG:PC

Enclosures

cc: (all with enclosures)
Mr. Nicolas Maduros (MIC 104)

Ms. Katie Hagen (MIC 104)
Ms. Gayle Miller (MIC 104)
Mr. Tad Egawa (MIC 83)
Ms. Susanne Buehler (MIC 43)
Ms. Michele Pielsticker (MIC 105)
Mr. Jason Mallet (MIC 25)
Mr. Wayne Mashihara (MIC 47)
Mr. Todd Gilman (MIC 70)
Mr. Randy Silva (MIC 100)
Mr. James Dahlen (MIC 57)
Ms. Debra Kalfsbeek (MIC 62)
Mr. Kevin Hanks (MIC 49)
Mr. Robert Tucker (MIC 82)
Mr. Jeff Vest (MIC 85)
Mr. Bradley Heller (MIC 82)
Mr. David Levine (MIC 85)
Ms. Dana Brown (MIC 85)
Ms. Casey Tichy (MIC 85)
Mr. Stephen Smith (MIC 82)
Ms. Lisa Sherrod (MIC31)
Ms. Sandy Barrow (MIC 31)
Ms. Kirsten Stark (MIC 50)
Ms. Lynn Whitaker (MIC 50)
Mr. Joe Fitz (MIC 67)
Mr. Marc Alviso (MIC 104)
Ms. Claudette Yang (MIC 104)
Ms. Karina Magana (MIC 47)
Mr. Bradley Miller (MIC 92)
Mr. Alfred Buck (MIC 70)
Mr. Robert Zivkovich (MIC 31)
Mr. Robert Prasad (MIC 50)
Mr. Paul Camky (MIC 50)

INITIAL DISCUSSION PAPER

Amendment to Regulation 4011, *Distributors Not Engaged in Business in This State*

Issue

Whether the California Department of Tax and Fee Administration (CDTFA) should approve the proposed revisions to Regulation 4011, *Distributors Not Engaged in Business in this State*, to interpret and clarify the application of the tobacco products tax when an out-of-state licensed tobacco products distributor sells tobacco products to a purchaser in this state.

Background

The CDTFA is responsible for administering and enforcing the Cigarette and Tobacco Products Tax Law (CTPTL) and the California Cigarette and Tobacco Products Licensing Act of 2017.

The tobacco products excise tax is paid by a tobacco products distributor upon the distribution of Other Tobacco Products (OTP) in California. A tobacco products distributor is required to calculate the tobacco products excise taxes due by applying the tobacco products tax rate to the “wholesale cost” of OTP distributed in California and report and remit the amounts owed each period to the CDTFA (chapter 4 of the CTPTL). Revenue and Taxation Code (RTC) section 30017 defines “wholesale cost” as “the cost of tobacco products to the distributor prior to any discounts or trade allowances.” Pursuant to RTC sections 30123, 30126, 30131.2, and 30131.5, the CDTFA is required to annually calculate one combined tax rate on OTP, which is equivalent to the combined rate of taxes imposed on cigarettes. The OTP tax rate is calculated based on the wholesale premium brand cigarette price as of March 1 each year, as published by the Tobacco Merchants Association, to be effective during the next fiscal year (July 1 through June 30).

In May 2016, Regulation 4076, *Wholesale Cost of Tobacco Products*, was adopted to clarify the meaning of “wholesale cost.” Regulation 4076 defines “wholesale cost” as the cost of OTP to the distributor prior to any discounts or trade allowances. Regulation 4076 currently provides that if a manufacturer is also the distributor, the wholesale cost of OTP includes all manufacturing costs, the cost of raw materials (including waste materials not incorporated in to the finished 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. In most cases, the wholesale cost will be the invoiced price of OTP charged to a distributor without any allowance for discounts.

On November 8, 2016, California voters passed Proposition 56, *California Healthcare, Research and Prevention Tobacco Tax Act of 2016*, which went into effect on April 1, 2017. By doing so, the California electorate approved, among other things, increasing the cigarette tax from \$0.87 to \$2.87 per pack of twenty cigarettes. Because the OTP tax rate is equivalent to the wholesale premium brand cigarette price as of March 1 each year, as published by the Tobacco Merchants Association, the increase in the cigarette tax resulted in a corresponding increase in the OTP tax rate (from 27.30% of the wholesale cost in fiscal year 2016-17 to 65.08% in fiscal year 2017-18).

The increase in the OTP tax rate has magnified longstanding confusion about the proper application of the tobacco products tax when an out-of-state licensed distributor sells tobacco products to an in-state purchaser. At the center of this confusion is a misunderstanding by some as to which person is the actual taxpayer in these transactions. As explained in the following

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sections, this affects the base on which the tax is computed. When an in-state retailer or wholesaler purchases tobacco products from an out-of-state seller, the Cigarette and Tobacco Products Tax Law requires that seller to be a licensed distributor, and the out-of-state distributor is required to collect the tobacco products tax from the in-state retailer or wholesaler¹. The tax in these transactions is actually imposed on, and paid by, the in-state purchaser, but collected and remitted by the out-of-state distributor.

Discussion – Distributor

A “distributor” is defined² as a person who distributes cigarettes or tobacco products as well as every person who sells or accepts orders for cigarettes or tobacco products which are to be transported from a point outside of California to a consumer within California. Every out-of-state distributor selling or accepting orders for tobacco products is required to collect the tobacco products excise tax from the purchaser, except when an out-of-state distributor makes sales to other licensed distributors. The tobacco products excise tax is calculated based on the distributor’s wholesale cost. In addition to licensing in-state distributors, RTC 30140.1 allows the Department to adopt rules and regulations providing for the issuance of a license to a person distributing cigarettes or tobacco products who is not engaged in business in this state³. Any person who chooses to apply for this license and subsequently receives one is required to collect the tax in the same manner as a licensee engaged in business in this state.

Discussion – Distribution

“Distribution” is the sale, use, or consumption of untaxed cigarettes or tobacco products, as well as the placing of untaxed cigarettes or tobacco products in a vending machine or resale stock for the purpose of selling them, in this state⁴. “Use or consumption” of cigarettes or tobacco products is defined⁵ as the exercise of any right or power over those products, incident to the ownership thereof, other than a licensed distributor keeping them for the purpose of selling them. Only licensed distributors or manufacturers may have untaxed cigarettes or tobacco products in their possession. Any cigarettes or tobacco products in this state that are not in the possession of a licensed distributor or manufacturer are presumed to have been distributed⁶.

A distributor is required to obtain a distributor license at each place of business where it engages in selling or distributing cigarettes or tobacco products.⁷ While the Sales and Use Tax Law⁸ contains provisions regarding how the place of sale of tangible personal property may be

¹ RTC 30108

² RTC 30011

³ RTC 30108

⁴ RTC 30008

⁵ RTC 30009

⁶ RTC 30109

⁷ RTC 30140; BPC 22977

⁸ RTC 6010.5 & 7263

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different depending on where and how title transfers from the seller to the buyer, the CTPTL contains no such provisions. Consequently, a licensed distributor is regarded as having sold or distributed its product at the location where they are licensed to do so, regardless of shipment terms or who transports the cigarettes or tobacco products, because if the sale were deemed to have occurred at a different location it would be an unlicensed activity. Thus, an out-of-state licensed distributor's sales are not distributions as defined in RTC 30008 because the sales occur outside this state, at the location where the distributor is licensed to make sales. Under these circumstances the licensed out-of-state distributor has a legal obligation to collect the excise tax from an in-state customer when the in-state customer is not a licensed distributor.⁹ The actual distribution does not occur until a California customer exercises their right of ownership over the products once it has been delivered into California.¹⁰ The in-state purchaser who makes the distribution pays the tax to the out-of-state licensed distributor, who in turn collects the tax and reports it to CDTFA.

Discussion – Wholesale Cost

RTC subsections 30123(b) and 30131.2(b) impose a tax upon distributors for the distribution of tobacco products, and the tax is based on the wholesale cost of the products to the distributor. The wholesale cost is determined pursuant to Regulation 4076. Regulation 4076, subdivisions (b)(1)&(2), provide that the wholesale cost of tobacco products is determined to be either the amount paid for the tobacco product in an arm's-length transaction (including federal excise tax, but excluding transportation charges, discounts or trade allowances) or, where a distributor is also a manufacturer or importer, the cost of producing that product. Regulation 4076 subdivision (c) contains information on alternative methods for estimating or calculating the wholesale cost, such as using publicly or commercially available price lists or industry data from the specific time period that provides reasonable evidence of typical tobacco products costs.

As previously discussed, although a person located out-of-state who elects to register for an out-of-state distributor's license is required to collect the tax, the distribution of the product does not take place until their in-state customer exercises their right of ownership over the product, thus making the in-state customer the distributor. This means that the excise tax should be calculated based on the in-state customer's wholesale cost because the in-state customer makes the distribution and is thus the person upon whom the tax is imposed. That is, the excise tax is properly measured by the amount the in-state customer paid to the out-of-state distributor, rather than the cost of the tobacco product to the out-of-state distributor, which is how the tax is currently being calculated by some out-of-state distributors.

To clarify this issue, staff proposes to add subdivision (a) to Regulation 4011 to explain that when out-of-state California-licensed distributors sell to anyone in California, other than a licensed distributor, the wholesale cost used to calculate the tobacco products tax owed by the out-of-state California licensed distributor is the in-state purchaser's purchase price. Additionally, staff proposes reiterating that out-of-state California distributors have a collection

⁹ RTC 30108

¹⁰ RTC 30008(b)

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obligation when selling to anyone in California other than a licensed distributor. When the in-state purchaser is a licensed distributor, the purchaser is required to report the tax directly to CDTFA.

Staff also proposes adding subdivision (b) to clarify that the wholesale cost as described in subdivision (a) is applicable even if the out-of-state California licensed distributor is also a manufacturer pursuant to Chapter 4, Division 8.5 of the Cigarette and Tobacco Products Licensing Act Law. Finally, staff proposes adding subdivision (c) to clarify what information is required when filing a report with the Department as well as what information the out-of-state California licensed distributor is required to include on their invoice to their California customer (see Exhibit 1).

Staff proposes that these clarifications be applied on a prospective basis. As a result, the effective date in Exhibit 1 contains a placeholder date as of when the proposed clarifications would become effective. Once staff receives an expected approval date from the Office of Administrative Law (OAL), the date will be incorporated in to the proposed regulation.

Discussion – Additional Changes

In addition to the proposed amendments to Regulation 4011, staff proposes amending the following regulations: Regulation 4022 – *Inventories of Cigarettes*, Regulation 4027 – *Manufacturer’s Monthly Reports*, Regulation 4034 – *Report of Shipments to Customers*, Regulation 4061 – *Unused Stamps and Unused Meter Settings*, Regulation 4063.5 – *Exported Tax-Paid Tobacco Products*, Regulation 4065 – *Unsalable Cigarettes*, Regulation 4066 – *Stolen Indicia*, and Regulation 4091 – *Payment by Consumer* (see Exhibit 2).

These revisions will correct outdated information and make these regulations consistent with current reporting practices. Staff also proposes deleting the outdated form references as well as replacing references to the Board of Equalization.

Additionally, the proposed addition of subdivision (b) to Regulation 4063.5 allows for wholesalers and retailers who purchase excise tax-paid products from an out-of-state licensed distributor, who then ship those products to a point outside this state in a qualified manner, to claim a refund of the excise tax they paid to the out-of-state licensed distributor.

Summary

Staff proposes an amendment to Regulation 4011, *Distributors Not Engaged in Business in This State*, as provided in Exhibit 1, to clarify the wholesale cost of tobacco products for out-of-state licensed tobacco products distributors. Once the amendments are formally adopted by the Department and sent to OAL for approval, staff will update the appropriate forms and publications.

Staff also proposes the amendments to Regulation 4022 – *Inventories of Cigarettes*, Regulation 4027 – *Manufacturer’s Monthly Reports*, Regulation 4034 – *Report of Shipments to Customers*, Regulation 4061 – *Unused Stamps and Unused Meter Settings*, Regulation 4063.5 – *Exported Tax-Paid Tobacco Products*, Regulation 4065 – *Unsalable Cigarettes*, Regulation 4066 – *Stolen*

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Indicia, and Regulation 4091 – *Payment by Consumer* as provided in Exhibit 2 to make these regulations consistent with current practices.

Staff welcomes any comments, suggestions, or other input on this issue. Staff invites interested parties to participate in the November 1, 2018 interested parties meeting. The deadline to provide written responses regarding this discussion paper is November 16, 2018.

Prepared by the Tax Policy Bureau, Business Tax and Fee Division

Current as of 10/17/2018

Regulation 4011. Distributors Not Engaged in Business in this State.

Reference: Sections 30108 and 30140.1, Revenue and Taxation Code

Persons who are not engaged in business in this state may apply for a distributor's license. These licensees are required to collect the tax, give receipts for the collected tax, and pay the tax to the Department in the same manner as out-of-state licensees engaged in business in this state.

(a) An out-of-state California-licensed tobacco products distributor selling tobacco products delivered from outside California to a customer located in California is required to collect the tobacco products excise tax owed from the California customer when the customer is other than a licensed distributor. The tobacco products excise tax owed is based on the wholesale cost to the California customer. The wholesale cost to the California customer is the price charged by the out-of-state California licensed distributor to the California customer, should be calculated as set forth in regulation 4076. The California customer is the distributor for purposes of applying the provisions of regulation 4076.

(b) An out-of-state California licensed tobacco products distributor who is also a manufacturer pursuant to Chapter 4, Division 8.5 of the Cigarette and Tobacco Products Licensing Act Law shall determine the tobacco products excise tax owed from the California customer in the same manner described in subdivision (a) of this regulation.

(c) The out-of-state California licensed distributor is required to file a monthly return with the Department reporting the following:

- (1) The distributor's name and account number;
- (2) The due date of the return;
- (3) The wholesale cost of all distributed tobacco products;
- (4) All exempt distributions of tobacco products (i.e. Interstate or foreign commerce, interstate or foreign passenger common carriers, all other exemp distributions, or credit on returned tobacco products reported for a prior reporting period);
- (5) The total taxable distributions of tobacco products in California;
- (6) The total excise tax due on cost of tobacco products;
- (7) The total excise tax due for all tobacco products;
- (8) Remitting payment of taxes, including any applicable interest or penalty;

(d) An out-of-state California-licensed distributor is required to provide the California customer with an invoice that includes the information required by Business and Professions Code section 22978.4.

The provisions of this regulation are effective as of [DATE OF EXPECTED OAL APPROVAL]

~~Persons who are not engaged in business in this state may apply for a distributor's license. Holders of such licenses are required to file a certified monthly report or return with the Board on Board of Equalization Form BOE-501-CTS entitled "Cigarette and Tobacco~~

~~Products Tax Return for Shipments to California Consumers" reporting the following: distributor's name, account number, his or her total number of distributions of cigarettes, total excise tax due on cigarettes, total cost of tobacco purchased, total excise tax due on cost of tobacco products, total excise tax due for all cigarettes and tobacco products, remitting payment of taxes, including any applicable interest or penalty, the name and address of each purchaser from whom an order is taken, the number of cigarettes and/or type, quantity, and wholesale cost of tobacco products sold and delivered pursuant to each order, and the amount of tax required to be collected from each purchaser. Further, the licensee is required to collect the tax, give receipts for the collected tax, and pay the tax to the Board in the same manner as licensees engaged in business in this state.~~

Regulation 4022. Inventories of Cigarettes.

Reference: Sections 30182, 30188, 30453, and 30454, Revenue and Taxation Code.

Every distributor and wholesaler engaged in the sale of cigarettes shall furnish ~~with~~ his or her monthly certified report to the ~~board~~Department, on ~~Board of~~EqualizationDepartment Form ~~BOECDTFA~~-501-CD (10/17) entitled "Cigarette Distributor's Tax Report" or ~~Board of Equalization~~Department Form ~~BOECDTFA~~-501-CW (09/17) entitled "Cigarette Wholesaler's Report," either via paper or electronically, which includes a statement of the cigarettes on hand at the end of the month covered by the report, and distributors must show~~showing~~ the number of cigarettes on hand contained in packages to which tax stamps ~~or meter impressions~~ are affixed and the number not bearing tax stamps ~~or meter impressions~~. The statement shall be furnished in one of the following manners:

(a) If the distributor or wholesaler has a cycle count inventory system and perpetual inventory system in place, the monthly statement shall be based on the perpetual inventory report run on the last business day of the month for which the distributor's or wholesaler's report is filed. However, at least once every calendar year, the monthly statement shall be based on a physical inventory of cigarettes on hand on the last business day of the month for which the distributor's or wholesaler's report is filed.

A "cycle count inventory system" is a system that provides evidence that all cigarettes are counted on a regular basis, with each item being counted at least once every three-month period.

A "perpetual inventory system" is a system in which inventory records are maintained and updated continuously as items are purchased or sold.

(b) If the distributor or wholesaler does not have a cycle count inventory system and perpetual inventory system in place, the monthly statement shall be based on the inventory on hand at the end of the month covered by the report. However, at least once every six months, the monthly statement shall be based on a physical inventory of cigarettes on hand performed within the last five days of the month for which the distributor's or wholesaler's report is filed.

Regulation 4027. Manufacturer's Monthly Report.

Reference: Sections 30453 and 30454, Revenue and Taxation Code.

(a) Each cigarette or tobacco products manufacturer shall file with the ~~board~~ Department by the 25th day of each calendar month a certified report with respect to all releases and deliveries of cigarettes or tobacco products in this state and all shipments of cigarettes or tobacco products from a point outside this state to a point within this state made or authorized by the manufacturer during the preceding calendar month. The releases, deliveries and shipments for each purchaser shall be grouped together in the report.

A manufacturer or importer of cigarettes shall submit a report to the Department, either via paper or electronically, which must contain the following information:

- (1) The company and account number of the manufacturer or importer filing the report;
- (2) The month, year, and due date of the report;
- (3) The name and account number of the cigarette distributor required under section 30140 or 30140.1 of the Revenue and Taxation Code;
- (4) The destination street, city, state, zip code and country of the disbursement;
- (5) The method of transportation of cigarettes;
- (6) The product brand or variant name, and corresponding Universal Product Code (UPC);
- (7) The unit of measure, expressed as cartons or packs, and the quantity of product distributed;
- (8) The date and number of the bill of lading.

(b) A manufacturer or importer of tobacco products shall submit a report to the Department, either via paper or electronically, which must contain the following information:

- (1) The account number and name of the manufacturer/importer filing the report;
- (2) The reporting period and due date of the report;
- (3) The date of the delivery or shipment;
- (4) The name of the purchaser;
- (5) The tobacco products distributor's California License Number required under section 22795 of the Business and Professions Code, or reason for exemption;
- (6) The invoice or document number for delivery of shipment;

- (7) The type of tobacco product;
- (8) The tobacco product brand name;
- (9) "Roll your own" tobacco delivered or shipped, reported in ounces;
- (10) The wholesale cost of the tobacco product.

~~The report shall be on Board of Equalization Form BOE-501-MC entitled "Manufacturer's Report of Cigarettes Released from Storage in California or Shipped into California" or Board of Equalization Form BOE-501-MT entitled "Manufacturer's Report of Tobacco Products Released from Storage in California or Shipped into California" and shall show the following information with respect to each release, delivery or shipment:~~

- ~~(1) the date of the release, delivery or shipment;~~
- ~~(2) the location from which the release, delivery or shipment was made;~~
- ~~(3) the name and address of the purchaser;~~
- ~~(4) the address of the place to which the cigarettes or tobacco products were shipped, released or consigned;~~
- ~~(5) the number of cigarettes or type, quantity and wholesale cost of tobacco products released, delivered or shipped;~~
- ~~(6) the invoice or document number and date thereof representing the release, delivery or shipment;~~
- ~~(7) if released to a licensed distributor, the license number of such distributor; and~~
- ~~(8) in the case of a cancellation of any release, delivery or shipment, information indicating the transaction was cancelled.~~

The above information need not be supplied with respect to cigarettes or tobacco products which are non-tax-paid under the provisions of Chapter 52 of the Internal Revenue Act of 1954, as amended, and are released, delivered or shipped in internal revenue bond or customs control.

(b) In lieu of the monthly reports required by paragraph (a) of this section, a manufacturer may arrange with the ~~board~~Department to supply the required information by supplying data processing media or other data in such manner and in such format as is satisfactory to the ~~board~~Department.

Regulation 4034. Report of Shipments to Consumers.

Reference: Sections 30105.5, 30108, 30140, 30151, 30182, 30183, 30453, and 30454, Revenue and Taxation Code.

~~(a) Every person engaged in business in this state who sells or solicits orders for cigarettes, the use or consumption of which is subject to the tax, must file a certified return with the board, on Board of Equalization Form BOE-501-CI entitled "Cigarette and Tobacco Products Excise Tax Return, on or before the 25th day of the calendar month following the calendar month in which the cigarettes were delivered in this state showing:~~

~~(1) the name and address of each purchaser from whom an order was taken;~~

~~(2) the number of cigarettes sold and delivered pursuant to each order; and~~

~~(3) the amount of tax required to be collected from each purchaser, together with a remittance of such tax.~~

~~(b) Every person engaged in business in this state who sells or solicits orders for tobacco products, the use or consumption of which is subject to the tax, must file a return with the board as follows:~~

~~(1) If the person is required to be a licensed tobacco products distributor, he or she shall report on the tobacco products distributor's monthly certified tax return (Board of Equalization Form BOE-501-CT entitled "Tobacco Products Distributor Tax Return") the wholesale cost of all tobacco products distributed to consumers, together with a remittance of the tax due. The return shall be filed on or before the 25th day of the calendar month following the calendar month in which the tobacco products were delivered in this state.~~

~~(2) If the person is required to be a registered tobacco products distributor, he or she shall file a certified return with the board, on Board of Equalization Form BOE-501-CTS entitled "Cigarette and Tobacco Products Tax Return", on or before the 25th day of the calendar month following the calendar month in which the tobacco products were delivered in this state showing:~~

~~(A) the name and address of each purchaser from whom an order was taken;~~

~~(B) the type, quantity, and wholesale cost of tobacco products sold and delivered pursuant to each order; and~~

~~(C) the amount of tax required to be collected from each purchaser, together with a remittance of such tax.~~

~~(ae) Every person engaged in business in this state who, as permitted by state law and the terms of the November 23, 1998 Master Settlement Agreements with the state which are applicable to the signatories to those Agreements, makes gifts of untaxed cigarettes or~~

tobacco products as samples by means of shipment from an out-of-state point directly to a donee in this state shall collect the tax from the donee if the donee is other than a licensed distributor and shall give the donee a receipt showing the name and place of business of the donor, the name and address of the donee, the number of cigarettes donated, and the amount of tax required to be collected, or the type, quantity and wholesale cost of the tobacco products donated and a statement indicating that the tobacco products tax has been paid.

Each package of sample cigarettes shall have imprinted on it: "Not for Sale. Applicable state tax has been paid." and each package of sample tobacco products shall be clearly marked as a sample.

(1) Donors of sample cigarettes shall notify the ~~board-Department~~ in writing in advance of the shipment of the cigarettes into the state giving information as to the approximate date or dates, location or locations, brand, and the method of shipment into the state. Each donor of cigarettes and tobacco products shall file a return with the ~~board-Department~~ on or before the 25th day of the calendar month following the calendar month in which the cigarettes ~~or tobacco products~~ were delivered in this state showing :

A. The total number of sample cigarettes shipped into this state distributed, including the number of cigarettes in each sample package;

B. ~~or the type, quantity and wholesale cost of the tobacco products and the amount of tax required to be collected from each donee, together with a remittance of such tax.~~ The total number of cigarettes distributed representing taxable sales to the U.S. Government;

C. The total remaining number of cigarettes representing taxable distributions;

D. The total amount of tax required to be collected on taxable distributions, together with a remittance of such tax.

(2) Donors of sample tobacco products shall file a return with the Department, either via paper or electronically, on or before the 25th day of the calendar month in which the tobacco products were delivered in to this state and the return must contain the following:

A. The total wholesale cost of nontaxable transactions for the reporting period.

B. The total wholesale cost of tobacco products samples distributed by type (i.e. snuff, chewing tobacco, pipe tobacco, cigars, roll-your-own, nicotine, electronic cigarettes sold with nicotine);

A.C. The total amount of tax required to be collected on taxable distributions, together with a remittance of such tax.

| ~~(b)~~ The taxes required to be collected constitute debts owed by the distributor, or other person required to collect the taxes, to this state.

| ~~(c)~~ "Engaged in business in the state" means and includes any of the following:

(1) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business.

(2) Having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the distributor or its subsidiary for the purpose of selling, delivering, or the taking of orders for cigarettes.

| ~~(d)~~ The requirements of this regulation do not apply to those distributions of federally tax-free cigarettes or tobacco products which are exempt from tax under Section 30105.5 of the Revenue and Taxation Code.

Regulation 4061. Unused Stamps and Unused Meter Settings.

Reference: Sections 30162 and 30176, Revenue and Taxation Code.

(a) The ~~board~~ Department will refund or credit to a distributor the denominated value, less the purchase discount, of any identifiable unused stamps which are returned to the ~~board~~ Department.

The ~~board~~ Department will refund or credit to a distributor the denominated value, less the purchase discount, ~~of any verifiable meter setting remaining on a meter when the meter is returned to the bank for cancellation of the meter setting.~~ A claim for refund or credit must be signed by the claimant or the claimant's authorized representative and made on Board of Equalization Form BOE-1024 entitled "Claim For Refund For California Cigarette Tax Stamps" and filed with the board Department, either via paper or electronically, and must include providing the following information:

- (1) The time period covered by the claim;
- (2) The specific grounds upon which the claim is based;
- (3) Documentation to support the claim;
- (4) The -distributor's name, account number, address, and telephone number;
- (5), ~~the~~ date, ~~district office,~~ number, and type of cigarette tax stamps being claimed for refund;
- (6) The, amount of claim for each type of cigarette tax stamp being claimed for refund;
- (7) The, total amount of the claim less the discount of .0085 allowed under Section 30166, and
- (8) The reason for the claim.

~~The form further requires acknowledgement by a board representative and his or her supervisor of receipt of the cigarette tax stamps being claimed for refund and certification by a board representative of the receipt and destruction of the cigarette tax stamps being claimed for refund~~ The Department will verify the cigarette tax stamps being claimed for refund and provide a certification to the distributor of the amount of cigarette tax stamps that have been verified by the Department as acceptable to be included in the claim.

(b) "Unused stamp" means a tax stamp on a tax stamp roll that has not been affixed to packages of cigarettes. ~~or on a package of cigarettes which is not yet distributed and includes only those stamps on which 4 of the 5 characters of the stamp's serial number can be identified. If fewer than 4 characters in the stamp's serial number can be identified, the distributor shall provide evidence concerning the remainder of the tax stamp to show that the remainder of the stamp is not affixed to a package of cigarettes that has been~~

~~distributed. Such proof may include, but is not limited to, the paper from the stamp roll or package of cigarettes to which the remainder of the stamp is affixed.~~ If the stamp is of a design generated by a technology capable of being read by a scanning or similar device, a majority of the stamp must be present and should be able to be read by a scanning or similar device in accordance with Section 30162. Alternatively, as evidence of unused stamps, a distributor may return damaged stamps in such a form that a ~~board~~ Department representative is otherwise able to verify authenticity and that the stamps have not been used.

~~(e) If the refund or credit is for tax stamps that are affixed to packages of cigarettes, an authorized board employee, upon verification that the refund or credit is due, shall ensure that the distributor obliterated the stamp with the use of a permanent marker.~~

~~(e)~~ If the refund or credit is for tax stamps remaining on a roll, upon verification that the refund or credit is due, the roll shall be returned to the ~~board~~ Department for destruction.

Regulation 4063.5. Exported Tax-Paid Tobacco Products.

Reference: Sections 30008, 30108, 30140.1, 30176.1, 30178.1, 30178.2, and 30179.1, 30361, Revenue and Taxation Code.

(a) The ~~board~~ Department will refund or credit to a distributor the excise tax paid on tobacco products which are:

(1) ~~(a)~~ Shipped to a point outside this state, pursuant to a contract of sale, by delivery by the distributor to such point by means of:

(A) ~~(1)~~ Ffacilities operated by the distributor;

(B) ~~(2)~~ Delivery by the distributor to a carrier for shipment to a consignee at such point, or

(C) ~~(3)~~ Delivery by the distributor to a customs broker or forwarding agent for shipment outside this state.

(2) ~~(b)~~ Sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the ~~cigarettes or~~ tobacco products abroad and actually carried to a foreign destination.

(3) ~~(e)~~ Sold for use solely outside this state and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States.

(b) The Department will refund or credit to a licensed wholesaler as defined under section 22975 of the Business and Professions Code (BPC), or a licensed retailer as defined under section 22972 of the BPC, the excise tax paid by a licensed wholesaler or licensed retailer to an out-of-state licensed distributor on tobacco products which are:

(1) Purchased exclusively excise tax-paid from an out-of-state licensed tobacco products distributor that are delivered from outside the state to the licensed wholesaler or retailer in accordance with the taxation and invoicing provisions of Regulation 4011, and subsequently shipped to a point outside this state, pursuant to a contract of sale, by delivery by the wholesaler or retailer to such point by means of:

(A) Facilities operated by the wholesale or retailer,

(B) Delivery by the wholesaler or retailer to a carrier for shipment to a consignee at such point or,

(C) Delivery by the wholesaler or retailer to a customs broker or forwarding agent for shipment outside of this state.

(2) Sold to a foreign purchaser for shipment abroad and delivered to a ship, airplane, or other conveyance furnished by the purchaser for the purpose of carrying the tobacco products abroad and actually carried to a foreign destination.

(3) Sold for use solely outside this state and delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the exterior limits of the State of California.

(c) The distributor, wholesaler, or retailer must file the claim for refund on Board of Equalization Form BOE-1024-T entitled "Claim for Refund—Exported Tax-Paid Tobacco Products" with the Department, either via paper or electronically. The claim must be signed by the claimant or the claimant's authorized representative and must and provide the following information:

(1) The time period covered by the claim;

(2) The specific grounds upon which the claim is based and;

(3) Documentation to support the claim. Types of supporting documentation includes, but is not limited to:

(A) copies of documentation to support payment of taxes, as well as Bills of lading or other documentary evidence of the delivery of the tobacco products to a carrier, customs broker or forwarding agent for shipments outside this state. The original documents must be retained by the distributor, wholesaler, or retailer for inspection by employees of the Department.

(B) -In the case of tobacco products for foreign export, copies of United States Customs and Border Protection Electronic Export Information Automated Export System shipper's export declarations filed with the Collector for Customs or other documentary evidence of export must be obtained and retained.

(4) Retailers and wholesalers must also provide documentation proving payment of the excise tax, and that the excise tax was calculated correctly based on the purchase price of the product for which the excise tax was paid.

No refund or credit will be given if the tobacco products are diverted in transit or for any reason are not actually delivered outside the state pursuant to the contract of sale or are not shipped abroad by a foreign purchaser. Any application for refund or credit based upon the exportation of excise tax-paid tobacco products from this state shall be filed with the Department within three months after the close of the calendar month in which the tobacco products are exported.

Regulation 4065. Unsalable Cigarettes.

Reference: Section 30177, Revenue and Taxation Code.

(a) The ~~board-Department~~ will refund or credit to a distributor the denominated value, less the purchase discount, of identifiable stamps or meter impressions affixed to packages of cigarettes which have become unfit for use or unsalable before distribution, or after distribution if the cigarettes have been returned for credit or have been replaced and proof is submitted to the ~~board-Department~~ showing that the cigarettes have not been used for smoking in California. Claim for refund or credit must be signed by the claimant or the claimant's representative and filed with the Department, either via paper or electronically, and contain the following information:

- (1) The time period covered by the claim;
- (2) The specific grounds upon which the claim is based;
- (3) Documentation to support the claim;
- (4) The distributor's name, account number, address, and telephone number,
- (5) The date, number and type of cigarette stamps being claimed for refund,
- (6) The total amount of the claim, less the discount allowed under Section 30166, and
- (7) The reason for the claim.

~~made on a form prescribed by the board and shall be accompanied by a properly executed receipt and a copy of the credit memorandum of the manufacturer for returned stock, or by proof of destruction of the cigarettes with the tax stamps or meter impressions thereon in the presence of an employee of the board authorized to witness the destruction.~~(b) An authorized Department employee, upon verification that the refund or credit is due, shall ensure that the distributor has used a permanent marker, or any other method authorized by the Department, to darken the affixed cigarette tax stamp so that it is no longer recognizable. Once this has been verified, the Department staff will provide a certification to the distributor with the amount of affixed cigarette tax stamps that are acceptable to be included in the claim.

(c) The distributor shall provide a properly executed receipt and a copy of the credit memorandum of the manufacturer for returned stock that indicates the amount of cigarette tax stamps that were affixed to the returned stock, or by proof of destruction of the cigarettes with the tax stamps affixed thereon in the presence of an employee of the Department authorized to witness the destruction.

Regulation 4066. Stolen Indicia.

Reference: Section 30451, Revenue and Taxation Code

Refund or credit will not be given for stamps, ~~meter settings or meter impressions~~ which are lost through theft or mysterious disappearance of any unaffixed stamps, ~~any meter,~~ or any packages of cigarettes to which stamps or meter impressions have been affixed. If identifiable stamps, ~~meter settings or meter impressions~~ which have been lost through theft or mysterious disappearance are later recovered, credit or refund may be given under Regulations 4061 or 4065.

Regulation 4091. Payment by Consumer.

Reference: Sections 6201, 30005, 30005.5, 30106, 30107, and 30108, Revenue and Taxation Code.

(a) Each consumer or user of cigarettes or tobacco products subject to the excise tax, resulting from the consumer having:

- (1) ~~P~~purchased cigarettes or tobacco products in any quantity, when such cigarettes or tobacco products are shipped to the consumer from out-~~of-~~state,
- (2) ~~P~~personally transported or brought into the state untaxed cigarettes in quantities of more than 400 cigarettes in a single lot for his or her own use or consumption, or
- (3) ~~O~~btained more than 400 untaxed cigarettes at one time from a federal instrumentality listed in Revenue and Taxation Code Section 30102 must pay the excise tax either to the licensed or registered distributor under the Cigarette and Tobacco Products Tax Law from whom the cigarettes or tobacco products were purchased, or directly to the ~~board~~ Department if the person from whom the cigarettes or tobacco products were purchased is not a licensed or registered distributor. A person who pays the excise tax directly to the ~~Board~~ Department must file ~~a certified Board of Equalization Form BOE-501-CI entitled "Cigarette and Tobacco Products Excise Tax Return,"~~ return with the Department, either via paper or electronically, that contains the following information:

~~(A) -and report t~~ (A) The brand name;

~~(B) Product type (i.e. cigarettes, cigars, pipe tobacco);~~

~~(C) -, Seller's name, seller's internet address or phone number;~~

~~(D) -dPurchase date of cigarettes or tobacco product, and;~~

~~(A)(E) _____ ate received, and n~~ (E) Total number of cartons or type and cost of tobacco products received, total cost of cigarettes purchased, and total cost of tobacco products received.

(b) Consumers or users will be liable for payment of the excise tax to the ~~board~~ Department unless receipts as provided by Regulation 4092 are obtained for payment of the excise tax to the distributor.

(c) Consumers or users will also be liable for payment of the Use Tax to the Department as provided under sections 6201 of the Revenue and Taxation Code, and will also be required to report to the Department, either via paper or electronically, the total cost of the cigarettes or tobacco products purchased, less any separately stated shipping charges, and any use tax due.