

California Department of Tax and Fee Administration
SALES OF CIGARETTES AND TOBACCO PRODUCTS IN CALIFORNIA
WHAT ALL RETAILERS SHOULD KNOW

(March 2018)

THE LAW

The information in this presentation provides general information regarding the law and CDTFA processes. For detailed information, visit the CDTFA website or contact the offices listed at the end of this presentation.

California Cigarette and Tobacco Products Licensing Act

The California Cigarette and Tobacco Products Licensing Act (CTPLA) requires all sellers of cigarette and tobacco products to be licensed with the California Department of Tax and Fee Administration (CDTFA):

- Retailers
- Wholesalers
- Distributors
- Importers
- Manufacturers

(Figure of the state of California)

California state law defines “tobacco products” as:

- A product containing, made, or derived from **tobacco** or **nicotine** that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigars, little cigars, chewing tobacco, pipe tobacco, shisha, or snuff, and as of June 2016, “electronic cigarettes.”

Note: Therapeutic nicotine products approved by the U.S. Food and Drug Administration for smoking cessation are **not** considered a tobacco product, for example, a nicotine patch.

(Figure of loose tobacco in a container, a pipe with loose tobacco, and a box of cigars)

Electronic Cigarettes

- Electronic cigarettes means any device or delivery system **sold in combination** with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form, including, but not limited to, eCigarettes, eCigars, ePipes, eHookahs, or vape pens. Electronic cigarettes include any component, part or accessory of such a device that is used during the operation of the device when **sold in combination with** any liquid or substance containing nicotine for a single price.

- Electronic cigarettes also include any liquid or substance containing nicotine, whether sold separately or sold in combination with any device that could be used to deliver to person nicotine in aerosolized or vaporized form.

(Figure of eCigarettes, vape pens, and liquid nicotine)

STATE LICENSE

What CTPLA License Do You Need?

Retailer License (LRQ*):

- Allows you to sell tax-paid cigarettes and other tobacco products (OTP) to legal-aged customers.
- Application license fee is \$265 per location; annual renewal fee is \$265 per location.
- Valid for 12 months; renewal reminder sent 60 days in advance.

Wholesaler License (LWQ):

- Allows you to obtain and sell tax-paid cigarettes and OTP to retailers and other wholesalers.
- Application license fee is \$1,200 per location; annual renewal fee is \$1,200 per location.
- Valid for a calendar year (Jan – Dec); renewal reminder sent in October.

Distributor License (LDQ):

- Allows you to sell tax-paid cigarettes and OTP to retailers, wholesalers, and other distributors.
 - Application license fee is \$1,200 per location; annual renewal fee is \$1,200 per location.
 - Valid for a calendar year (Jan – Dec); renewal reminder sent in October.
 - Security deposit required.
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- ❖ New locations must be added to your seller's permit before a cigarette and tobacco product license can be activated for that location.
 - ❖ A license is not assignable or transferable.
 - ❖ License fee may not be prorated.

*Beginning May 2018, the Retailer CTPLA license designation will change from LRQ to CRL.

CDTFA Cigarette/Tobacco Products License

- Apply for a license online at: <https://services.cdtfa.ca.gov/ereg/index.boe>
- Pay all license fees.

- Application may take 7-10 days to process.
- Upon approval, license and related information will be emailed to you.
- Must have and display license before making purchases or sales.
- CDTFA tobacco products license is separate from a local city or county tobacco license.

(Sample of a CTPLA Retailer's License)

INSPECTIONS

The Investigations Division (ID) of the CDTFA conducts inspections of all businesses selling cigarettes and OTP. When ID inspectors arrive at your business, they will:

- Identify themselves, show their CDTFA identification, and give their business card.
- Ask for the person in charge and for their identification.
- Explain the inspection process.
- Request access to any secured cigarette/tobacco products storage areas.
- Ask to see your last 12 months of cigarette and tobacco products invoices.
- Check that you have and properly display the appropriate licenses/permits.

(Figure of inspector showing a business card)

The inspectors will verify that...

- Our information for your business is current.
- The STAKE Act sign is posted.
- All tobacco products are tax paid.
- All cigarette packs are affixed with valid California tax stamps.
- Single sticks of cigarettes are not being sold.
- All cigarettes comply with the California Cigarette Fire Safety and Firefighter Protection Act.
- All cigarettes and (RYO) tobacco products are listed on the Attorney General's California Tobacco Directory: <https://oag.ca.gov/tobacco/directory>.

Note: Except menthol, all flavored cigarettes are banned from sale in the U.S. and are subject to seizure.

(Figure of the STAKE Act sticker, CA tax stamp, and a box of single cigarettes)

California Tobacco Directory

Only cigarettes and RYO tobacco brands and brand families certified by the California Attorney General's Office are listed on the California Tobacco Directory. Under the law, only cigarettes and RYO tobacco brands and brand families listed on the California

Tobacco Directory may be lawfully distributed, sold, offered for sale, or possessed for sale in California.

When products are removed from the Tobacco Directory, the law allows retailers to:

- possess,
- transport, and
- sell

the tax-paid product for **60** days from the effective date of the product's removal. After the 60 days, the "delisted" product becomes contraband and subject to seizure.

(Figure of California Tobacco Directory Webpage)

INVOICES

You can expect us to review your last 12 months of purchase invoices for cigarette and tobacco products and verify:

- Excise tax has been paid on all tobacco products.
- Invoices are valid and are from a CDTFA licensed distributor or wholesaler.

To verify a valid distributor or wholesaler license, check our website:

- ❖ Distributor: www.cdtfa.ca.gov/taxes-and-fees/AB71Distrib.pdf
- ❖ Wholesaler: www.cdtfa.ca.gov/taxes-and-fees/AB71Wholsr.pdf

(Figure of paid invoices)

A valid cigarette or tobacco product purchase invoice must be legible and contain:

- The date of purchase.
- An itemized list of products purchased.
- The amount of CA excise taxes paid.
 - distributor may use the statement: "All California cigarette and tobacco products taxes are included in the total amount of this invoice."
- The name, address, telephone number, and license number of the wholesaler or distributor from whom the cigarettes and/or tobacco products were purchased.
- The purchaser's name, address, and license number.

The last 12 months of invoices must be kept on the premises, and a total of 4 years on or off premises. Failure to have 12 months of cigarette and OTP invoices on the premises may result in a citation.

Note: Retention of invoices also applies to eCigarettes and other nicotine delivery devices, their component parts, or accessories when sold in combination with nicotine.

Unacceptable vs. Acceptable Invoices

(Figure of an invalid invoice and a valid invoice)

Multiple Business Locations Transfer of Products

A licensed retailer with multiple business locations is allowed to transfer cigarettes or OTP **only** when the legal owner (as registered with the CDTFA) of the licensed location transferring the product is the same as the legal owner of the licensed location receiving the product.

For example:

Store Transferring Product	Store Receiving Product	Is It 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

Product Transfer Guidelines

Transfer logs must be prepared **at the time of transfer** and must include the following:

- The transferring retail location and license information where the original purchase was made.
- The receiving retail location and license information where the product was transferred.
- The supplier's name, license number, and date of original purchase.
- A detailed description and quantities of products transferred, i.e., brands, types of packaging, flavors, styles, milligrams, etc.

Note: Transfer logs created or provided after an inspection will **not** be accepted. Copies of the transfer log and related invoices must be kept at both locations.

Sample Transfer Log

Retailer Transferring Product	Retailer Receiving Product	Date of Transfer	Items Transferred	Original Purchase From
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A Street Market 123 A Street Anywhere, CA LRQ 91-000000	B Street Market 123 B Street Anywhere, CA LRQ 91-111111	March 2, 2016	<ul style="list-style-type: none"> • 50 packs Marlboro cigarettes, Red Hard Pack 100's • 5 boxes Romeo Y Juliet Reserve Real Churchill Cigars (25 ea) 	LD Tobacco Distributors LDQ 90-222222 February 14, 2016
A Street Market 123 A Street Anywhere, CA LRQ 91-000000	B Street Market 123 B Street Anywhere, CA LRQ 91-111111	January 31, 2017	<ul style="list-style-type: none"> • 7 rolls Grizzly Long Cut, Mint (5 ea) • 2 packs Black & Mild cigars, wine flavor (5 ea) • 3 packs Black & Mild Cigars, Wine flavor, Wood Tip (5 ea) 	LD Tobacco Distributors LDQ 90-222222 December 27, 2016
A Street Market 123 A Street Anywhere, CA LRQ 91-000000	B Street Market 123 B Street Anywhere, CA LRQ 91-111111	March 5, 2017	<ul style="list-style-type: none"> • 15 ea. Conspiracy Refill Liquid eHookah, Cappuccino Flavor (30ml) • 30 ea. VC to Go! eCigarette Starter Kit-Menthol (18 mg) • 5 ea. Strawberry 10 ml eLiquid, 11 mg Nicotine 	LD Tobacco Distributors LDQ 90-222222 January 14, 2017

SEIZURES

The CDTFA may seize cigarettes or OTP for many reasons, including:

- Cigarettes have counterfeit-stamps; are unstamped or out-of-state stamps; have reused stamps; or are counterfeit cigarettes.
- Cigarettes are labeled "Not for Sale in U.S."
- Stamped cigarettes are not listed on the California Tobacco Directory.
- Possessing untaxed tobacco
 - Products purchased from an unlicensed supplier.
 - Products not supported by valid purchase invoices.

Products will also be seized if:

- Cigarettes or OTP are sold or gifted while a cigarette and tobacco license is suspended or revoked.
- There are continued unlicensed sales of cigarettes or OTP.

Note: Cigarettes or OTP seized for continued sales or gifting either without a valid license or after a notification of suspension or revocation are forfeited to the state pursuant to Business and Professions Code section 22980.2(C).

(Figure of pack of cigarettes marked U.S. Tax Exempt for Use Outside of U.S.)

What happens if my cigarette or tobacco products are subject to seizure?

We will take a physical inventory of all items to be seized and make a detailed list (description, quantities, and reason[s] for seizure) on the CDTFA "Receipt for Property Seized." A copy will be given to you at the time of seizure. The receipt will show:

- Date and time of seizure.
- Name of the inspector seizing the product.
- Name of the owner of items seized and business address where the seizure occurred.
- Name, address, and signature of person in control of the property at time of seizure.

Note: Signing the Receipt does not waive your petition rights; it simply confirms that the list of products seized as noted on the form is correct.

(Sample of Seizure Receipt form)

Notice to Owner/Public

Owner:

The CDTFA will mail a written notice of the seizure to the business owner stating:

- What was seized and why,
- When it occurred, and
- The right to petition for its return.

Public:

The CDTFA will also post a public notice on its website:

www.cdtfa.ca.gov/legal/seizurecigtoboprod.htm

When:

- Seizure is 61 or more cartons of cigarettes,
- Wholesale cost of OTP seized is equal to 61 cartons or more of cigarettes, or
- The combined value of cigarettes and OTP seized is equivalent to 61 cartons or more of cigarettes.

(Picture of certified mail)

Can seized products be returned?

- Your cigarettes and OTP products may be returned to you only if they were erroneously or illegally seized.

- To request the return of your seized products, you must file a “Verified Petition for Release” with the CDTFA within 20 days from the date of Notice of Seizure and Forfeiture.
- If a petition is timely filed, the seized products will be held by the CDTFA until your petition is resolved.
- If a petition is not timely filed, the products seized will be forfeited and destroyed.
- If you establish that the products were erroneously or illegally seized, they will be returned. Otherwise, they will be forfeited and destroyed once the petition process is resolved.
- All seized cigarettes and OTP products that are forfeited to the state are destroyed.

(Figure of pallet of contraband cigarettes and OTP)

CITATIONS

- CDTFA’s inspectors with Limited Peace Officers (LPO) status are authorized to issue citations for violations of the:
 - California Cigarette and Tobacco Products Licensing Act of 2003
 - California Cigarette and Tobacco Products Tax Laws
- A civil or criminal citation may be issued depending on the violations found during a cigarette and tobacco products inspection.
- The LPO will explain why the citation is being issued, the specific section(s) of law violated, and your right to appeal.
- Civil citations are processed by the Business Tax and Fee Division (BTFD) of the CDTFA.
- Criminal citations are processed through the Courts.

(Figures of the CDTFA civil and criminal citations)

How can citations be avoided?

- Make sure your valid cigarette/tobacco license is displayed.
- Sell only cigarettes and RYO tobacco products that are listed on the California Tobacco Directory.
- Keep 12 months of valid purchase invoices on the premises. OTP invoices should reflect that excise taxes were paid.
- Buy only from **licensed** distributors/ wholesalers.
- To verify a valid distributor or wholesaler license, check our website:
 - Distributor: www.cdtfa.ca.gov/taxes-and-fees/AB71Distrib.pdf
 - Wholesaler: www.cdtfa.ca.gov/taxes-and-fees/AB71Wholsr.pdf

(Image of a check list)

Penalties and Fines

Depending on the violations cited, penalties may include but are not limited to:

- A Warning Notice.
- Suspension or revocation of license.
- Fines up to \$5,000 per offense (not to exceed the max allowed by statute).
- Imprisonment not to exceed 1 year.
- Both fines and imprisonment.

The level of penalty imposed as a result of a civil or criminal citation will depend on the type of violation and frequency of offense.

In the case of criminal citations:

- The CDTFA may assess additional civil penalties in addition to the penalties imposed by the Court.
- These additional civil penalties may include suspension or revocation of the cigarette and tobacco products license and possible fines.
- Civil fines assessed by the CDTFA will be reduced by any court fines imposed.

(Figure of stack of money with a gavel on top)

APPEALS

Civil Citation Appeals

There are three levels of appeal available for civil citations issued by the CDTFA for violations of the cigarette and tobacco products tax laws.

- 1). CDTFA Business Tax & Fee Division – initial review of the appeal.
- 2). CDTFA Appeals Bureau – review of the BTFD decision.
- 3). Office of Tax Appeals – review of the CDTFA Appeals Bureau decision.

(Figure of a person writing)

First Level - CDTFA Business Tax & Fee Division (BTFD)

- To appeal a Warning Notice or Notice of Violation received as a result of a civil citation, a written request for conference must be filed with the CDTFA within **30 days** from the date on the Notice and state the specific grounds for contesting the cited violation(s).
- The BTFD conference is an informal proceeding conducted by telephone to discuss relevant facts and the applicable laws and regulations.
- BTFD will mail its written decision within 90 days from the date of conference, setting forth its findings and conclusions, and any applicable penalties.

- A letter sent with the decision will explain your right to appeal to the CDTFA Appeals Bureau, if you disagree with the BTFD decision. If you do not submit a timely appeal, the BTFD decision becomes final.

(Figure of a gentleman on the phone taking notes)

Second Level - CDTFA Appeals Bureau

- To appeal the BTFD Decision, a written request for an Appeals Bureau conference must be filed within **30 days** from the date on the notice accompanying the BTFD decision. The request must specify the grounds upon which the findings and conclusions of that decision are being contested.
- If a timely request is filed, the Appeals Bureau will conduct an appeals conference by telephone.
- The Appeals Bureau will mail its written decision generally within 90 days from the conference, setting forth its findings and conclusions.
- A letter sent with the decision will explain your right to appeal to the Office of Tax Appeals (OTA) if you disagree with the Appeals Bureau decision. If you do not submit a timely appeal, the Appeals Bureau decision becomes final.
- OTA is a separate state agency that provides an independent review for appeals of CDTFA programs.

Third Level - Office Of Tax Appeals (OTA)

- To contest the CDTFA Appeals Bureau decision, a written request for review by OTA must be filed within **30 days** from the date of the letter mailed with the Appeals Bureau decision. If no request is filed, the decision of the Appeals Bureau becomes final.
- If you file a timely request, you will have an opportunity to submit an opening brief to OTA explaining why the Appeals Bureau decision is in error and why that error justifies a different result.
- Once the briefing process is complete, OTA will ask you if you want an oral hearing before a panel of three administrative law judges, or if you prefer the panel make its decision based on the record, including the briefs submitted.
- OTA will issue its written opinion explaining the reason for granting or denying your appeal. The opinion becomes final 30 days after the mailing date, unless a petition for rehearing with OTA is filed.
- Once OTA's opinion is final, OTA will return the appeal to CDTFA to issue you the applicable notification based on OTA's final opinion.*

Note: Pursuant to Revenue & Taxation Code §30440, petitioners denied recovery of administratively seized cigarettes or tobacco products may file an action against the CDTFA in the Superior Court.

(Figure of legal person reviewing legal documents next to a gavel)

SUSPENSION/REVOCAION OF CTPLA LICENSE

Suspension

The CDTFA may suspend your cigarette and tobacco products license for violations of the cigarette and tobacco products tax laws.

- Suspensions may be issued for various violations and range in number of days.
- If you are subject to a suspension, you will receive notification in the mail form CDTFA.
- Requires the posting of the Suspension Notice during the entire period indicated by the CDTFA.
- CTPLA licensees are prohibited from selling, gifting, or displaying for sale cigarettes or OTP for the entire period of their suspension.
- Imposes a penalty for the continued display for sale of cigarettes or OTP during a period of suspension (\$1,000 for each offense).

Businesses with the suspended licenses are listed on the following website:

www.boe.ca.gov/sptaxprog/pdf/cigtoblic_suspen.pdf

(Image of a Notice of Suspension)

Revocation

The CDTFA may revoke your CTPLA license for violation of the cigarette and tobacco products tax laws including, but not limited to:

- Selling cigarettes or tobacco products during a suspension period.
- Revocation of your seller's permit or any permit or license under any provision of the Revenue and Taxation Code.
- A cigarette or tobacco-related felony conviction.

A revocation:

- Is location specific.
- Requires the revocation notice to be posted during the first **30 days** of the revocation.
- Does not allow you to reapply for a new license for a minimum of 6 months, after which a new license may be issued at the discretion of the CDTFA.
- Imposes a penalty for the continued display for sale of cigarettes or tobacco products during a period of revocation (\$1,000 for each offense).

(Image of a Revocation Notice)

For More Information...

The following publications related to cigarettes and tobacco products are available on the CDTFA website: www.cdtfa.ca.gov:

- Pub 78 Sales of Cigarettes and Tobacco Products in California
- Pub 93 Cigarette and Tobacco Products Taxes
- Pub 152 Cigarette and Tobacco Product Inspections
- Pub 161 Criminal Citations Include a Civil Administrative Process
- Pub 403 California's Counterfeit-Resistant Cigarette Tax Stamp
- Pub 407 Master Settlement Agreement
- Pub 429 Flavored Cigarettes Banned in the United States
- Pub 473 Things to Know Before You Buy Cigarettes and Tobacco Products!

Note: Some publications are available in multiple languages.

www.cdtfa.ca.gov/formspubs/

OTHER EDUCATIONAL MATERIALS

The California Dept. of Public Health (CDPH), Tobacco Control Program, also produces educational materials for tobacco retailers. These materials are available on the CDPH website.

<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/Pages/Tobacco21.aspx>

(Image of Tobacco Control Branch Webpage)

E-mail Notices

To get the latest information about changes in law or other updates related to the sales of cigarettes and tobacco products, use the CDTFA website shown below to register for automatic email notices from the Business Tax and Fee Division.

<http://www.cdtfa.ca.gov/subscribe/sptaxesfees.aspx>

(Figure of a computer keyboard)

CDTFA Contact Information

For information regarding licenses, civil citations, petitions, or appeals:

Business Tax and Fee Division, MIC:88
CA Department of Tax and Fee Administration
PO Box 942879
Sacramento, CA 94279-0088

Phone: 1-800-400-7115

Fax: 1-916-323-9297

For information regarding inspections, seizures, or criminal citations:

Investigations Division, MIC:42
CA Department of Tax and Fee Administration
PO Box 942879
Sacramento, CA 94279-0042

Phone: 1-916-324-0105

Fax: 1-916-324-1578

Questions?

You can also email questions to:

EAD-.AB71OnlineQs@cdtfa.ca.gov

(Figure of post-it notes with question marks)