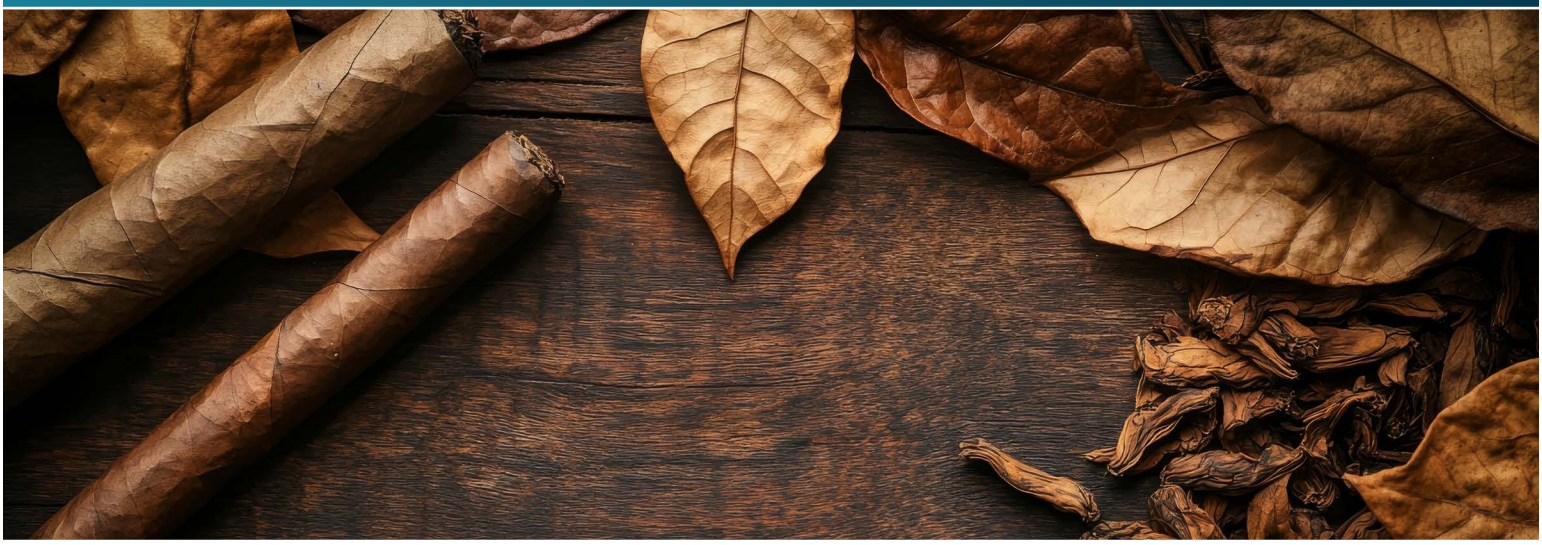
CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION



# Cigarette and Tobacco Products Taxes

This publication generally explains how the cigarette and tobacco products excise taxes apply to your business. For more in-depth information, definitions, how revenues are used, and industry topics, please visit our *Tax Guide for Cigarettes and Tobacco Products* at *www.cdtfa.ca.gov/industry/cigarette-and-tobacco-products.htm*.

We also administer and collect the California Electronic Cigarette Excise Tax (CECET) under the California Healthy Outcomes and Prevention Education (HOPE) Act. The CECET is imposed upon purchasers (California consumers) at the time of a retail sale. In-state and out-of-state retailers of electronic cigarettes containing or sold with nicotine must collect the CECET (at the rate of 12.5 percent of the retail selling price of electronic cigarettes containing or sold with nicotine) from the California consumer at the time of purchase. For more information regarding CECET, please refer to our *Tax Guide for California Electronic Cigarette Excise Tax* at *www.cdtfa.ca.gov/taxes-and-fees/california-electronic-cigarette-excise-tax/*. Information on the HOPE Act can be found at *www.cdtfa.ca.gov/lawguides/vol3/hope/hope-toc.html*.

## Excise taxes

We administer and collect the excise taxes on cigarettes and tobacco products. 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 with us to pay the excise taxes owed.

A list of the current and historical excise tax rates are available on our *Tax Rates—Special Taxes and Fees* webpage at *www.cdtfa.ca.gov/taxes-and-fees/tax-rates-stfd.htm*.

### *Cigarettes*

The excise taxes are imposed on each cigarette distributed in California.

Distributors pay the taxes by purchasing California cigarette tax stamps from us. The cost of the cigarette tax stamp includes all the excise taxes in effect. At the time of purchase, distributors receive a discount of 0.85 percent, up to one dollar ($1.00), of the denominated value of each stamp at the time of purchase to help offset the cost of affixing cigarette tax stamps.

Distributors must affix the California tax stamp to each package of cigarettes before distribution. Distributors pass the excise taxes on to their customers, and the taxes become part of the cigarettes' retail selling price.

For information on purchasing cigarette tax stamps, see publication 63, *Cigarette Distributor Licensing and Tax Stamp Guide*, at *www.cdtfa.ca.gov/formspubs/pub63.pdf*.

### *Tobacco products*

The excise tax on tobacco products is imposed upon the distribution of tobacco products. We determine the tobacco products tax rate annually, and it is equivalent to the combined rate of the excise taxes applied to cigarettes.

The rate is applied to the wholesale cost of the tobacco products. The wholesale cost is the amount the distributor paid for the tobacco products before any discounts or trade allowances, including federal excise tax but excluding any transportation charges for shipment originating within the United States.

If a manufacturer or an importer is also the distributor, the wholesale cost of tobacco includes:

- All manufacturing costs. Manufacturing costs include all direct and indirect overhead expenses attributable to the production of finished tobacco products.
- The cost of raw materials (including waste materials not incorporated into the finished product) prior to any discounts or trade allowances.
- The cost of labor.
- Federal excise taxes paid.
- U.S. Customs taxes paid.
- All freight or transportation charges for shipment of materials and unfinished products from a supplier to a manufacturer.
- All non-domestic freight or transportation charges for shipment of finished products.

For additional information on calculating or estimating the wholesale cost, please refer to Regulation 4076, *Wholesale Cost of Tobacco Products*.

## Who is required to register and have a license?

You are required to register if you are a distributor, wholesaler, manufacturer, importer, retailer, or delivery seller of cigarettes or tobacco products in or into California.

You must be registered with the appropriate cigarette and tobacco product license and associated account for each location where you sell cigarettes and tobacco products in California. For example, a cigarette distributor must have a cigarette and tobacco products distributor license, a cigarette distributor license reporting account, and a cigarette stamp account to purchase California cigarette tax stamps.

The licenses and accounts are required under the California Cigarette and Tobacco Products Licensing Act of 2003, which is available at *www.cdtfa.ca.gov/lawguides/vol3/ctplal/cigarette-and-tobacco-products-licensing-act-law.html*, and the Cigarette and Tobacco Products Tax Law, which can be viewed at *www.cdtfa.ca.gov/lawguides/vol3/ctptl/cigarette-and-tobacco-products-tax-law.html*.

All licenses must be renewed annually and must include the applicable license renewal fee payment. A distributor's license requires a minimum $1,000 security deposit per location. A security deposit is not required for a retailer, wholesaler, manufacturer, or importer license.

You can register with us online at *https://onlineservices.cdtfa.ca.gov* by selecting *Register for a Permit, License, or Account* under *Registration*. You will answer questions regarding your business activities, and our system will identify the permits and licenses required. For more information related to our Online Services, please view our *Resources* at *www.cdtfa.ca.gov/services/#Resources* and our *Tutorials* at *www.cdtfa.ca.gov/video-resources.htm*.

You can find cigarette and tobacco products license fees at *www.cdtfa.ca.gov/taxes-and-fees/tax-rates-stfd.htm*.

### *Delivery Sellers*

- A delivery seller must have a distributor license or retailer license. In some cases, both are required. For example, a delivery seller who has a physical presence selling in California and has a warehouse storing untaxed tobacco products in California must have both a distributor license and a retailer license.
- Delivery sellers must comply with all California laws regarding the sale of cigarettes and tobacco products as if they were located in California.

### *CECET*

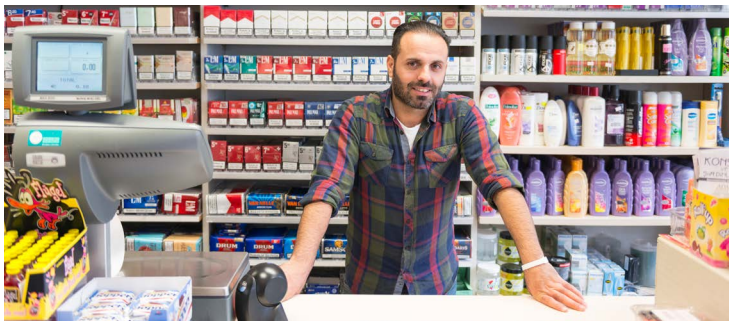
For CECET registration information, please refer to the *Getting Started* section of our *Tax Guide for California Electronic Cigarette Excise Tax* at *www.cdtfa.ca.gov/taxes-and-fees/california-electronic-cigarette-excise-tax/*.

### *Prevent All Cigarette Trafficking (PACT) Act*

Any person who operates a business for profit that sells, transfers, ships, advertises, or offers for sale cigarettes, roll-your-own tobacco, smokeless tobacco, or electronic nicotine delivery systems (ENDS) through interstate commerce into California, a locality, or an Indian country located within California's borders must be registered with us.

### *Retailer*

Tobacco products are more broadly defined for retailer licensing requirements. For example, a vape pen sold with 0 mg of nicotine is subject to the retailer licensing requirement even though the product may not be subject to the tobacco products excise tax. For more information, see publication 78, *Sales of Cigarettes and Tobacco Products in California—License Requirements for Retailers*, available at *www.cdtfa.ca.gov/formspubs/pub78.pdf*.



## What are the reporting requirements?

All licensed distributors, wholesalers, manufacturers, and importers must electronically file cigarette and tobacco products tax returns, reports, and schedules. These 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 required for all cigarette and tobacco products tax returns, reports, and schedules. View our video tutorials at *www.cdtfa.ca.gov/video-resources.htm* and online filing instructions at *www.cdtfa.ca.gov/services/online-filing-instructions.htm*. Additional filing information can be found at *www.cdtfa.ca.gov/taxes-and-fees/cigarette-tax-filing.htm*. You, as a taxpayer, must keep and maintain all records at your licensed premises in California, unless we approve another location.

### *Distributor*

- A cigarette distributor must file a monthly return or report along with any accompanying schedules to report receipts, disbursements, and inventory for cigarettes and tax stamps.
- A tobacco products distributor must calculate and report the tobacco products excise tax due based on the wholesale cost of the tobacco products distributed, file a tax return, and pay the amounts owed each month. The tobacco products tax rate that applies is the rate in effect at the time the tobacco product is sold or distributed by the distributor.

### *Wholesaler*

- A cigarette wholesaler must file a monthly report of their cigarette inventory activity.
- A tobacco products wholesaler does not have a reporting requirement.

### *Manufacturer or Importer*

- A tobacco products manufacturer or importer and a cigarette manufacturer must file a monthly tax return along with accompanying schedules and report and pay for cigarettes or tobacco products given away as samples per Regulation 4027 and Regulation 4081.
- A cigarette importer does not file a monthly tax return. Instead, a cigarette importer must file a monthly report along with accompanying schedules.

### *PACT Act*

- A person registered with a PACT Act account must file CDTFA-5204-PA, *California PACT Act Report*, online with us. The report is due on or before the tenth day of each calendar month and must include every shipment made into California during the previous calendar month.

### *CECET*

- The CECET return must be filed with us by the last day of the month following each calendar quarterly period. For CECET reporting requirements, please refer to the *Getting Started* section of our *Tax Guide for California Electronic Cigarette Excise Tax* at *www.cdtfa.ca.gov/taxes-and-fees/california-electronic-cigarette-excise-tax/*.

## Transactions not subject to the excise taxes

The following sales and distributions of cigarettes and tobacco products are generally not subject to the excise taxes but may still be subject to reporting requirements. The list may not include all transactions that are not subject to the excise taxes.

- 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 [RTC] section 30105).
- Sales or gifts of federally tax-free cigarettes or tobacco products when these products are delivered directly from the manufacturer under Internal Revenue bond to a State of California veterans' home or a United States Veterans' Administration hospital or domiciliary facility for free 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 residents (RTC section 30105.5).
- Sales of cigarettes or tobacco products by the manufacturer to a licensed distributor (RTC section 30103).
- Sales by a distributor to a common carrier engaged in interstate or foreign passenger service (RTC section 30104).

- Sales to United States military exchanges, commissaries, ship stores, or the U.S. Department of Veterans Affairs (RTC section 30102).
- Distributions of federally untaxed cigarettes or tobacco products that are under Internal Revenue bond or U.S. Customs control (RTC section 30102.5).
- The personal use or consumption of not more than 400 untaxed cigarettes (typically 20 packs or two cartons) obtained at one time from any of the federal instrumentalities listed in RTC section 30102 or personally transported into California in a single lot or shipment (RTC section 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 cigarettes and tobacco products are not to be returned to California before use.
- Sales of cigarettes or tobacco products by a Native American tribe to a member of that tribe on that tribe's land.
- Sales of untaxed cigarettes or tobacco products by a distributor and exported to a point outside of California (Regulation 4080).

You are responsible for maintaining and making available for examination, upon our request, all records necessary to determine the correct tax liability and all records necessary for the proper completion of the required tax return or report (Regulation 4026).

## Untaxed cigarettes or tobacco products purchased by a consumer

If a consumer purchases cigarettes or tobacco products for their own use from a vendor who did not collect the California excise tax or use tax at the time of sale, the consumer must electronically file a *Cigarette and Tobacco Products Excise and Use Tax Return*, which is available at *www.cdtfa.ca.gov/online-filing-instructions/CIU-Excise-and-Use-Tax-Return.htm*, and pay the taxes directly to us. The return is due at the end of the month following the quarter in which the purchases were made. This includes products purchased by mail, telephone, or the Internet that are shipped into California. A consumer also owes the taxes if they physically bring more than 400 untaxed cigarettes (typically more than 20 packs or two cartons) or any quantity of untaxed tobacco products into California.

These purchases are also subject to California use taxes. For information regarding California use tax, please visit *www.cdtfa.ca.gov/taxes-and-fees/use-tax.htm*.

## Distributors must contact us before destroying cigarettes or tobacco products

To prevent possible tax liability issues, we should be present when you destroy cigarettes or tobacco products. To arrange for a CDTFA representative to be present for the destruction, call 1-916-309-0284 or email *adab@cdtfa.ca.gov*. If you do not have an authorized CDTFA representative witness the destruction of the cigarettes or untaxed tobacco products, you may owe any unpaid cigarette and tobacco products taxes. We will presume that all cigarettes or tobacco products acquired by a distributor are untaxed. We will also presume that all cigarettes or tobacco products manufactured in this state or transported into this state and no longer in the possession of the distributor have been distributed (RTC section 30109).

If you have cigarettes affixed with California cigarette tax stamps which have become unfit for sale or use and need to be returned to the manufacturer or destroyed, you may file a claim for refund for the stamps by logging in to our Online Services at *www.cdtfa.ca.gov/services/#Overview*, selecting your cigarette stamp account, and selecting *Submit a Cigarette Stamp Refund Claim*. For unsellable cigarettes that need to be returned to multiple cigarette manufacturers, you must file a separate claim for refund for each cigarette manufacturer.

For more information, see publication 63, *Cigarette Distributor Licensing and Tax Stamp Guide*, at *www.cdtfa.ca.gov/formspubs/pub63.pdf*.

## Definitions

*Distribution* includes selling, using, or consuming untaxed cigarettes or tobacco products in this state or placing untaxed cigarettes or tobacco products in vending machines or in retail stock in this state for sales to consumers.

*Distributor* includes any person who distributes cigarettes or tobacco products or who sells or accepts orders for cigarettes or tobacco products for transport from a point outside this state to a consumer within this state. A distributor purchases untaxed (unstamped) cigarettes or untaxed tobacco products and distributes them.

*Wholesaler* includes any person, other than a licensed distributor, who sells tax-paid (stamped) cigarettes or tax-paid tobacco products purchased from a distributor or another wholesaler for resale in this state.

*Importer* includes any person who purchases for resale in the United States cigarettes or tobacco products manufactured outside the United States for making a first sale or distribution within the United States.

*Manufacturer* includes any person who manufactures, fabricates, assembles, mixes, blends, combines, processes, or labels finished cigarettes or tobacco products sold in this state.

*Prevent All Cigarette Trafficking (PACT) Act* is a federal law that amended the federal Jenkins Act (*www.govinfo.gov/content/pkg/PLAW-111publ154/pdf/PLAW-111publ154.pdf*). The PACT Act (*www.atf.gov/alcohol-tobacco/prevent-all-cigarette-trafficking-act-pact-2009*) revises the laws regarding the tax collection and trafficking of cigarettes, roll-your-own tobacco, smokeless tobacco, and electronic nicotine delivery systems (ENDS) by requiring remote sellers (including online sellers) to comply with the same laws that apply to local cigarette and tobacco product sellers.

*Delivery seller* is a person who makes a delivery sale.

*Delivery sale* means the sale of cigarettes or tobacco products to a consumer into and in this state in any of the following ways:

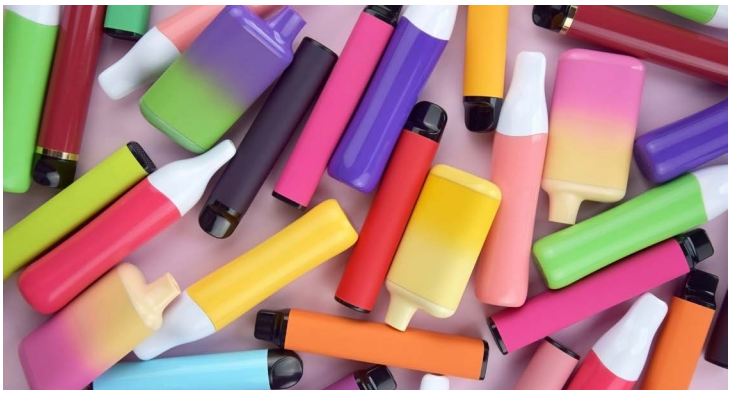
- The consumer submits their purchase order by telephone, mail, or online, or the seller is otherwise not in the consumer's physical presence when the order is made, or
- The cigarettes or tobacco products are delivered to the consumer by common carrier, private delivery service, or other remote delivery, or the seller is not in the consumer's physical presence when the consumer acquires the cigarettes or tobacco products.

*Wholesale cost* means the distributor's cost of their tobacco products before any discounts or trade allowances.

*Retailer* includes any person who engages in the sale of cigarettes or tobacco products directly to the public from a retail location in California. A retailer includes a person who operates a vending machine from which cigarettes or tobacco products are sold in this state.

*Retail stock* includes all cigarettes and tobacco products:

- Intended and available for sale to consumers by a person who holds a retailer license.
- Stored in an area where retail sales are made or displayed for sale to consumers, including a walk-in humidor.
- Displayed for sale to consumers by a person who holds both a distributor license and a retailer license at the same location.



Retail stock does not include:

- Cigarettes and tobacco products that are securely stored and away from the retail sales area.
  - Untaxed cigarettes and tobacco products must be in their original manufacturer packaging with an unbroken seal and must be secured and separated from inventory accessible by consumers.
- Tobacco products inside a walk-in humidor in their original manufacturer packaging with an unbroken seal, secured and separated from retail stock, and not displayed for sale to consumers.

*Tobacco products* include, but are not limited to:

- Cigars or little cigars.
- Pipe tobacco, smoking tobacco (including shisha), chewing tobacco, or snuff.
- Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption.
- Electronic cigarettes (eCigarettes) means:
  - Any device or delivery system sold in combination with nicotine for a single price that can be used to deliver aerosolized or vaporized nicotine to a person.
  - Any component, part, or accessory of an eCigarette that is used during the operation of the device when sold in combination with nicotine.
  - Any liquid or substance containing nicotine, whether sold separately or sold in combination with any device.

Tobacco products *do not* include:

- Cigarettes.
- Any products that have been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes (for example, nicotine patches) where that product is marketed and sold solely for that approved use.
- Food products as defined in RTC section 6359.

## Report suspected violations

Violating the law hurts everyone, so help us help you. To report suspected violations, call us at 1-888-334-3300 or visit our website at *www.cdtfa.ca.gov/report-violation.htm*.

## Additional resources

Helpful guides, regulations, forms and publications, video tutorials, online seminars, and other resources are available at *www.cdtfa.ca.gov*. Some of our most relevant resources are:

### *Industry Guides*

*Tax Guide for Cigarettes and Tobacco Products*

*Tax Guide for California Electronic Cigarette Excise Tax*

### *Publications*

63 *Cigarette Distributor Licensing and Tax Stamp Guide*

78 *Sales of Cigarettes and Tobacco Products in California—License Requirements for Retailers*

152 *Cigarette and Tobacco Products Inspections*

201 *Special Taxes and Fees Newsletters*

403 *California Counterfeit-Resistant Cigarette Tax Stamp*

## For more information

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

## Customer Service Center

Telephone (toll-free): **1-800-400-7115 (TTY:711)**

Customer service representatives are available Monday through Friday from 7:30 a.m. to 5:00 p.m. (Pacific time), except state holidays. Select the option for *Special Taxes and Fees*.

Website: *www.cdtfa.ca.gov/email*

Mailing address:
Special Taxes and Fees, MIC:88
California Department of Tax and Fee Administration
PO Box 942879
Sacramento, CA 94279-0088

## Tax Information Bulletin

The quarterly *Tax Information Bulletin* (TIB) includes articles on the application of law to specific types of transactions, announcements about new and revised publications, and other articles of interest. You can find current TIBs on our website at *www.cdtfa.ca.gov/taxes-and-fees/tax-bulletins.htm*. Sign up for CDTFA email lists at *www.cdtfa.ca.gov/subscribe* to receive notification when the latest issue of the TIB has been posted to our website.

## Taxpayers' Rights Advocate

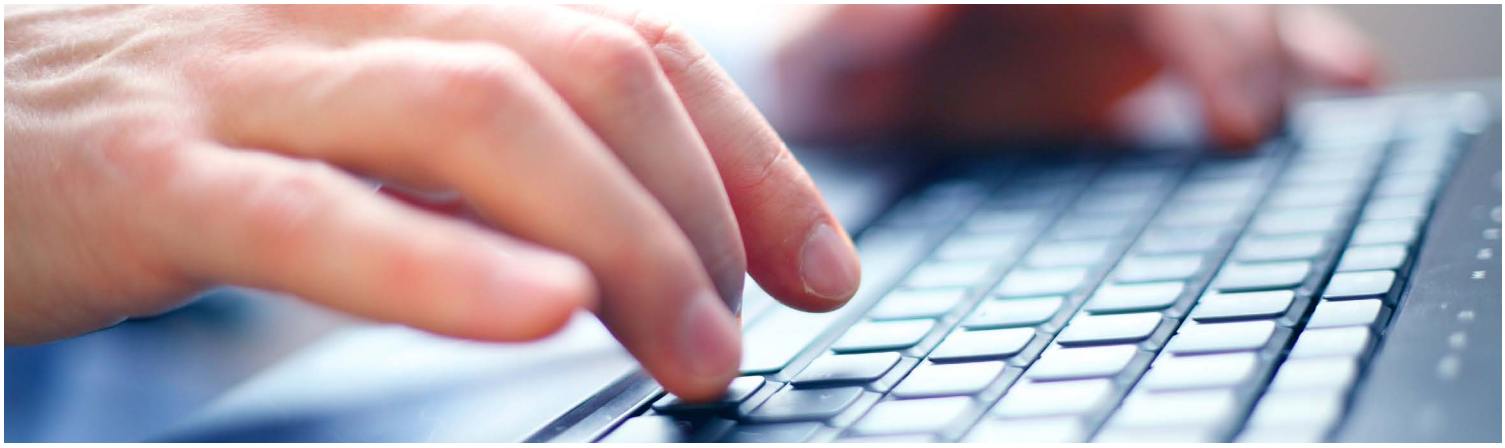
If you are unable to resolve a tax issue with us through the normal channels, such as speaking to a supervisor, or if you would like more information regarding your rights, contact our Taxpayers' Rights Advocate Office at:

Telephone (toll-free): **1-888-324-2798**
Fax: **1-916-323-3319**

Website: *www.cdtfa.ca.gov/tra*

Mailing address:
Taxpayers' Rights Advocate Office, MIC:70
California Department of Tax and Fee Administration
PO Box 942879
Sacramento, CA 94279-0070

*Please 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 information in this publication and the law or regulations, decisions will be based on the law or regulations and not on this publication.



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