

M e m o r a n d u m

To: Mike Loretta
Assistant Chief
Investigations Bureau (MIC:42)

Date: November 24, 2020

From: Sunny Paley
Attorney III
Tax and Fee Programs Bureau (MIC:82)

Subject: Business and Professions Code section 22978.4 – Address Requirement
Assignment No. 20-627

Your October 6, 2020, email to Pamela Bergin was forwarded to me for response. You ask whether the address required to be included in a tobacco products retailer's purchase invoice is the address of the retailer's licensed location, or whether a different address, such as a mailing address, is acceptable to comply with the provisions of Business and Professions Code section (Section) 22978.4. The facts surrounding your inquiry, as we understand them, are as follows:

During the inspection of a tobacco products retailer, the licensee did not have purchase invoices at the retail location to establish that all the retail stock of tobacco products was purchased tax-paid. Following the inspection, the licensee provided purchase invoices that generally comply with the provisions of Section 22978.4. These purchase invoices had the correct retailer license number, but the address indicated on the purchase invoices is not the address of the retail location. Rather, the address indicated on the purchase invoices is the licensee's home address, which is also the same address at which the licensee's husband is licensed to operate as a tobacco products wholesaler. The licensee later explained that she uses this address as her retail store's mailing address.

Section 22978.4 states:

- (a) Except as otherwise provided in paragraph (7), each distributor and each wholesaler shall include the following information on each invoice for the sale of cigarettes or tobacco products:
- (1) The name, address, and telephone number of the distributor or wholesaler.
 - (2) The license number of the distributor or the wholesaler as provided by the board.
 - (3) The amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products.
 - (4) *The name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold* (emphasis added).
 - (5) An itemized listing of the cigarettes or tobacco products sold.
 - (6) The date the cigarette or tobacco products are sold.
 - (7) Notwithstanding paragraph (3), a distributor that is also a retailer or manufacturer shall include either one of the following on each invoice for the sale of cigarettes or tobacco products:

- (A) A statement that reads: All California cigarette and tobacco product taxes are included in the total amount of this invoice.
- (B) The amount of excise taxes due to the board by the distributor on the distribution of cigarettes and tobacco products.
- (b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.
- (c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

To summarize, the statute requires each distributor and each wholesaler to include on their sales invoices the “address . . . of the retailer” to whom tobacco products are sold. The plain language of the statute indicates that “address” means the address of the retail location at which the retailer is licensed to make sales. This reading is consistent with the overall statutory framework.

A retailer must have a license to engage in the sale of tobacco products. (Bus. & Prof. Code, § 22972, subd. (a).) A retailer who owns more than one retail location must obtain a separate license for each retail location. (*Ibid.*) A “retail location” is defined to include “any building from which cigarettes or tobacco products are sold at retail.” (Bus. & Prof. Code, § 22971, subd. (q).) A retailer license applicant must provide the address of the retail location (Bus. & Prof. Code, § 22973, subd. (a)(2).) The address of the retail location is the address indicated on the retailer’s license, which must be conspicuously displayed at the retail location. (Bus. & Prof. Code, § 22972, subd. (b)). The address of the retail location is also posted on the Department’s website for persons searching the validity of a retailer license number.

Further context for the intent and meaning of “address of the retailer” is found in Section 22974:

A retailer shall retain purchase invoices that meet the requirements set forth in Section 22978.4 for all cigarettes or tobacco products the retailer purchased for a period of four years. The records shall be kept at the retail location for at least one year after the purchase. Invoices shall be made available upon request during normal business hours for review inspection and copying by the board or by a law enforcement agency. Any retailer found in violation of these requirements or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

As the purpose of the section is to require retention of documentation at the licensed retail location in order to ensure and prove proper cigarette and tobacco product licensure and payment of tax, the retail location is the pertinent address. Because it is only lawful for the tobacco products to be sold at retail at the licensed retail location, it is the retail location address that is significant and should be used for Investigations Bureau inspections and compliance enforcement. To accept as valid a retailer’s purchase invoice showing a different address is not consistent with the statutory framework, and it is particularly problematic in this instance, where the address included in the invoice is the address of a different licensed wholesaler.

Please let me know if you would like further assistance regarding this matter.

SP:yg

cc: Pamela Bergin (MIC: 82)
Stephen Smith (MIC: 82)