

**California Department of Tax and Fee Administration**  
**SALES OF CIGARETTES AND TOBACCO PRODUCTS IN CALIFORNIA –**  
**A GUIDE FOR WHOLESALERS AND DISTRIBUTORS**

(January 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 CTPLA**

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

- Retailers
- Wholesalers
- Distributors
- Importers
- Manufacturers

### **California state law defines “tobacco products” as, but not limited to:**

- 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.)
- “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 a person nicotine in aerosolized or vaporized form.

## **STATE LICENSE**

### **CDTFA Cigarette/Tobacco Products License**

- Apply online
- Pay all license fees.
- Applications may take 7-10 days to process.
- Upon approval, you will be able to go online to print your license, along with related information.
- Must have license before making purchases or sales.

- Local tobacco license may also be required.

## **Which CTPLA license do you need?**

- Retailer license (LRQ\*):
  - Allows you to sell tax-paid cigarettes and tobacco products only to legal-aged consumers.
  - Annual fee of \$265 per location; separate license for each location.
  - Valid for 12 months; renewed annually; renewal reminder sent 60 days in advance.
- Wholesaler license (LWQ):
  - Allows you to obtain and sell tax-paid cigarettes and tobacco products to retailers and other wholesalers.
  - Annual fee of \$1,200 per location; separate license for each location.
  - Valid for a calendar year (Jan – Dec); renewal reminder sent in October.
- Distributor license (LDQ):
  - Allows you to sell tax-paid cigarettes and tobacco products to retailers, wholesalers, and other distributors.
  - Annual fee of \$1,200 per location; separate license for each location.
  - Valid for a calendar year (Jan – Dec); renewal reminder sent in October.

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

### **Retailer**

- Cigarette/Tobacco Retailer – anyone who sells cigarettes or other tobacco products (OTP) directly to the public from a retail location.
- Can purchase only tax-paid inventory from a CDTFA-licensed Wholesaler or Distributor.

For example, a mini-mart retailer cannot purchase cigarettes for resale from the retail grocery store down the street.

- “Tax-paid” means California excise taxes have been paid on cigarettes and OTP.
- Cannot sell to other retailers, wholesalers, or distributors.
- License is not transferable.
- For current and historical cigarette and tobacco products tax rates, see the CDTFA website.

### **Wholesaler**

- Cigarette/Tobacco Wholesaler – anyone who sells for resale cigarettes or OTP and is not a Distributor by definition.
- A Wholesaler resells tax-stamped cigarettes and tax-paid OTP.
- “Stamped” cigarette packs have a valid California tax stamp applied, which represents excise taxes paid.
- A Wholesaler cannot be in possession of untaxed cigarettes or OTP and cannot purchase inventory from an importer or manufacturer.
- A Wholesaler must obtain a seller’s permit (SR) and cigarette/OTP license (LWQ) from the CDTFA before making sales.

Note: CTPLA license not required for a storage location where no sales or shipments are made; it is registered as a sub-location with the CDTFA.

- If retail sales of cigarettes and OTP will also be made, a Wholesaler must obtain a Retailer’s license (LRQ) in addition to the Wholesaler’s license (LWQ).

When you register for a Wholesaler license, the CDTFA will also assign you one or both of the following accounts, depending on the type of tobacco products you sell.

#### **CW License – Cigarette**

- Wholesaler license required if selling cigarettes.
- Requires you to report your beginning inventory of stamped cigarettes, the amount purchased, and the amount sold.
- The amounts are reported by carton and filed monthly. These are informational reports only.

#### **TW License – Tobacco**

- Wholesaler permit required if making sales of OTP.
- No reporting requirements.

#### **Distributor**

- Cigarette/Tobacco Distributor – anyone who sells or possesses for distribution cigarettes or OTP.
- A Distributor may possess untaxed cigarettes/OTP and inventory may be purchased directly from an importer or manufacturer.
- A Distributor applies California cigarette tax stamps on cigarette packs and resells them to California distributors, wholesalers, and retailers.
- A Distributor pays the excise tax on OTP and resells the tax-paid product.
- A tobacco Distributor must obtain a seller's permit (SR), LDQ, CR (cigarette) and/or CP (tobacco) licenses from the CDTFA before making sales.

Note: CTPLA license not required for a storage location where no sales or shipments are made; it is registered as a sub-location with the CDTFA.

- If retail sales of cigarettes and OTP will also be made, a Distributor must obtain a Retailer's license (LRQ) in addition to the Distributor's license (LDQ).

When you register for a distributor license, the CDTFA, we will also assign you one or both of the following accounts (security deposit required), depending on the type of tobacco products you sell.

#### **CR License – Cigarette**

- Distributor CR license required if selling cigarettes.
- License allows you to purchase California cigarette tax stamps.
- Requires you to report your monthly levels of stamped and unstamped cigarettes:
  - beginning inventory,
  - amount purchased during the month, and
  - end-of-month inventory.
- Amounts are reported in "sticks."
- These are informational reports only, due on or before the 25th day of the following month.

#### **CP License – Tobacco**

- Distributor CP license required if selling OTP.
- Requires you to report wholesale cost of all OTP:
  - distributed,
  - any exemptions (primarily interstate or foreign commerce sales), and
  - total amount of tax due.
- Tax is due on or before the 25th day of the following month in which the OTP is purchased or when distributed (as selected by licensee during registration).

Inspectors will show you their CDTFA identification.

- The Investigations Division (ID) of the CDTFA conducts inspections of all businesses selling cigarettes and OTP.
- Wholesaler inspections are not scheduled but are conducted during regular business hours.

- Distributors typically receive contact from ID before an inspection.
- When they arrive at your business, inspectors will:
  - Ask the person in charge and for their identification.
  - Explain the inspection process.
  - Request permission to conduct the inspection and access to any secured cigarette/OTP storage areas.
  - Check that you have the appropriate licenses/permits:
    - SR, LWQ, CW, TW, LDQ, CR, CP, LRQ
    - Other business licenses that may be required

The inspectors will verify that...

- Our information for your business is current.
- The STAKE Act sign is posted.
- All your cigarette packs are affixed with valid California tax stamps.
- All your cigarettes comply with the California Cigarette Fire Safety and Firefighter Protection Act (FSC).
- All your cigarette brands and roll-your-own (RYO) tobacco products are listed on the Attorney General's California Tobacco Directory.

Note:

- California Distributors may possess unlisted and/or unstamped cigarette brands or unlisted RYO tobacco only if sales and delivery of these brands are made to out-of-state customers.
- All flavored cigarettes, except Menthol, are banned from sale in the U.S. and are subject to seizure.

### **California Tobacco Directory**

- Only cigarettes and RYO tobacco brands and brand families certified by the California Attorney General's Office (AG's Office) are listed on the California Tobacco Directory.
- Wholesalers and Distributors may **only** sell, offer for sale, or possess for sale in California brands listed in the Directory.
  - Brands are added or removed from the Directory by the AG's Office as necessary.
  - When a brand is pending removal from the Directory for cause,
    - The AG's Office will notify the manufacturer, distributors, and wholesalers of its pending action.
    - For **40 days** from this notice, a licensed Distributor may purchase, stamp, or sell the affected product, and a licensed Wholesaler may purchase or sell the product.
    - No later than **7 days** after receiving the "pending" removal notice from the AG's Office, Distributors and Wholesalers must notify each of their existing customers of the impending removal of the product from the Directory.
    - No later than **7 days** after the AG's Office issues the Notice of Removal, Distributors and Wholesalers must provide a copy of the Notice of Removal to their existing customers.

Note: Retailers have **60 days** after the date of the removal to possess, transport, and sell the tax-paid product. Thereafter, the product becomes contraband and subject to seizure.

### **INVOICES**

#### **Distributor/Wholesaler Sales and Purchase Invoices Must Be Legible and ...**

Must contain:

- Seller's name, address, telephone number, license number, and amount of excise tax due or paid.

Distributors may use the statement, "All California cigarette and tobacco products taxes are included in the total amount of this invoice."

- Itemized list of cigarettes/OTP sold and date of the sale.
- The purchaser's name, address, and license number.

Must be kept for:

- The last 12 months on the business premises, and
- A total of 4 years on or off premises.

Retention of invoices also applies to OTP, as defined by state law, such as eCigarettes and other nicotine delivery devices, their components, parts, or accessories when sold in combination with nicotine.

- Failure to have 12 months of cigarette and OTP invoices on the premises may result in a citation.

### **Multiple business locations...Transfer of Products**

A licensed Distributor or Wholesaler with multiple business locations is allowed to transfer cigarettes or OTP between its business locations **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:

Wholesaler Transferring Product	Wholesaler 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...**

Prepare a transfer log **at the time you transfer** the product. Transfer logs created or provided after an inspection will not be accepted. Copies of the transfer log and related invoices should be kept at both locations and include:

- Your location and license information for the original purchase.
- Your supplier's name, license number, and date of original purchase.
- Your location and license information where the product was transferred.
- Detailed descriptions and quantities of products transferred, i.e., brands, types of packaging, flavors, styles, milligrams, etc.

## Sample Log

Wholesaler Transferring Product	Wholesaler Receiving Product	Date of Transfer	Items Transferred	Original Purchase From
TBA Wholesale 123 A Street Anywhere, CA LWQ 09-111111	TBA Wholesale 456 B Street Anywhere, CA LWQ 09-222222	October 30, 2016	<ul style="list-style-type: none"> <li>■ 500 Packs Marlboro Cigarettes, 100s</li> <li>■ 50 Boxes Romeo y Juliet Cigars (25 ea)</li> </ul>	LD Tobacco Distributors LDQ 09-555555 September 25, 2016
TBA Wholesale 123 A Street Anywhere, CA LWQ 09-111111	TBA Wholesale 456 B Street Anywhere, CA LWQ 09-222222	January 31, 2017	<ul style="list-style-type: none"> <li>■ 7 Rolls Grizzly Long Cut, Mint (5 ea)</li> <li>■ 2 Packs Black &amp; Mild Cigars, Wine Flavor (5 ea)</li> <li>■ 3 packs Black &amp; Mild Cigars, Wine Flavor, Wood Tip (5 ea)</li> </ul>	LD Tobacco Distributors LDQ 09-555555 December 27, 2016
TBA Wholesale 123 A Street Anywhere, CA LWQ 09-111111	TBA Wholesale 456 B Street Anywhere, CA LWQ 09-222222	June 5, 2017	<ul style="list-style-type: none"> <li>■ 15 ea. Refill Liquid eHookah Flavor 30 ml Hazelnut Cappuccino Conspcy</li> <li>■ 30 ea. VC To Go! eCigarette Starter Kit – Menthol (18 mg)</li> <li>■ 5 ea. Strawberry 10 ml eLiquid, 11 mg Nicotine</li> </ul>	LD Tobacco Distributors LDQ 90-222222 April 14, 2017

## **SEIZURES**

There are several reasons why the CDTFA may seize cigarettes or OTP, including:

- Cigarettes have counterfeit stamps, are unstamped or have out-of-state stamps (wholesalers), 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.
- Possession of untaxed tobacco (wholesaler).
- Products were purchased from an unlicensed supplier.
- Products are 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 and 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).

### **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 inspector seizing the product
  - Name of the owner of items seized and business address where 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.

### **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 Notice**

- The CDTFA will also post a public notice on its website when:
  - Seizure is 61 or more cartons of cigarettes,
  - Wholesale cost of OTP seized is equivalent to 61 cartons or more of cigarettes, or
  - The combined value of cigarettes and OTP seized is equal to 61 cartons or more of cigarettes.

### **Can my seized products be returned?**

- Your cigarettes and OTP products may be returned to you 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 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 is resolved.

## CITATIONS

- CDTFA's inspectors with Limited Peace Officer (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.

### How can I avoid common violations cited?

- Possess a valid California cigarette/tobacco license prior to purchasing or selling cigarette or OTP products.
- Sell only cigarettes and RYO tobacco that are listed on the California Tobacco Directory.
- Keep 12 months of valid purchase invoices on the premises. OTP invoices should reflect that the excise taxes were paid.
- Only buy from and/or sell to California licensed wholesalers, distributors, importers, or manufacturers.
- Check the CDTFA website to verify a valid Distributor or Wholesaler license.

### Penalties and Fines . . .

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

- A Warning Notice
- Suspension or revocation of the CTPLA license
- Fines up to \$50,000 (not to exceed 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 penalties imposed by the Court.
- These additional penalties may include suspension or revocation of the CTPLA license and possible fines.
- Civil fines assessed by the CDTFA will be reduced by any court fines imposed.

## **APPEALS**

### **Civil Citations – Three Levels of Appeal**

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 and 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.

#### **First Level – CDTFA Business Tax and 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 upon which the violations cited are being contested.
- 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 an appeal, the BTFD decision becomes final.

#### **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 and 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 an 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 reasons 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.

## **SUSPENSION / REVOCATION 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 varying violations and range in the number of days.
- If you are subject to a suspension, you will receive notification in the mail from the CDTFA.
- CTPLA licensees are prohibited from selling, gifting, or displaying for sale cigarettes or other tobacco products for the entire period of their suspension.
- Businesses with suspended licenses are listed on the CDTFA website.

### **Revocations**

The CDTFA may revoke your CTPLA license for violations 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/tobacco-related felony conviction

A revocation:

- Is location specific
- 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.

## **FOR MORE INFORMATION**

The following cigarette and tobacco products resources are available on the CDTFA website—

<http://www.cdtfa.ca.gov/>

- **Publications**
  - 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 Cigarette and Tobacco Products!

Note: Some publications are available in multiple languages.

- **Cigarette and Tobacco Products Classes for Retailers**

### **E-mail Notices . . .**

To get the latest information about changes in law or other updates related to the sales of cigarette and tobacco products, [Register Here](#) or use the CDTFA website shown below to register for eMail notices.

Once registered, notices regarding cigarette and tobacco products changes in law or other related changes will automatically be sent to you by CDTFA.

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

### **CDTFA Contacts...**

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

Business Taxes and Fees 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?**

Email your seminar questions here: AB71OnlineQs ([EAD-.AB71OnlineQs@boe.ca.gov](mailto:EAD-.AB71OnlineQs@boe.ca.gov))