

**Proposed Text of California Code of Regulations,
Title 18,
Division 2. California Department of Tax and Fee Administration –
Business Taxes
Chapter 8.7. Cannabis Tax Regulations
Section 3703. Excess Cannabis Tax**

(A new regulation to be added to the California Code of Regulations.)

Regulation 3703. Excess Cannabis Tax

(a) Excess Cannabis Tax. For purposes of this regulation, “excess cannabis tax” means any amount:

(1) A cannabis retailer collected from a purchaser under the representation by the cannabis retailer that it was cannabis excise tax, which was computed upon an amount that is not subject to cannabis excise tax or was in excess of the amount of cannabis excise tax required to be collected from the purchaser.

(2) A distributor collected from a cannabis retailer under the representation by the distributor that it was cannabis excise tax, which was computed upon an amount that is not subject to cannabis excise tax or was in excess of the amount of cannabis excise tax required to be collected from the cannabis retailer.

(3) A distributor or manufacturer collected from a cultivator under the representation by the distributor or manufacturer that it was cultivation tax, which was computed upon an amount that is not subject to cultivation tax or was in excess of the amount of cultivation tax required to be collected from the cultivator.

(4) A distributor or manufacturer collected from a cultivator under the representation by the distributor or manufacturer that it was cultivation tax, which was computed upon harvested cannabis or harvested cannabis used to make cannabis products that did not enter the commercial market on or before June 30, 2022.

(b) Debt for Unreturned Excess Cannabis Tax. Any amount of excess cannabis tax that is not returned to the purchaser, cannabis retailer, or cultivator that paid it constitutes a debt owed to this state.

(c) Procedures for Cannabis Retailers. When a cannabis retailer ascertains that they have collected excess cannabis tax from a purchaser that has not been paid to the state, they should

refund the excess cannabis tax to the purchaser that paid it. If the cannabis retailer is unable or chooses not to refund the excess cannabis tax to the purchaser that paid it, then they shall report and remit it to the Department, unless it was remitted to a distributor pursuant to Regulation 3700 prior to the effective date of this regulation under Government Code section 11346.1.

(d) Procedures for Distributors and Manufacturers.

(1) When a manufacturer ascertains that they collected excess cannabis tax from a cultivator that has not been paid to the state, they should refund the excess cannabis tax to the cultivator that paid it. If the manufacturer is unable or chooses not to refund the excess cannabis tax to the cultivator that paid it, then they shall notify the Department so it can collect the excess cannabis tax from the manufacturer, unless the excess cannabis tax was transferred to a distributor to report and remit to the Department pursuant to Regulation 3700 prior to the effective date of this regulation under Government Code section 11346.1.

(2) When a distributor ascertains that they collected excess cannabis tax from a cultivator or cannabis retailer that has not been paid to the state, they should refund the excess cannabis tax to the cultivator or cannabis retailer that paid it. If the distributor is unable or chooses not to refund the excess cannabis tax to the cultivator or cannabis retailer that paid it, then they shall notify the Department so it can collect the excess cannabis tax from the distributor, unless the distributor remitted the excess cannabis tax to the Department on or before January 31, 2023.

(e) Determination for Excess Cannabis Tax. When the Department ascertains that a cannabis retailer, distributor, or manufacturer has collected excess cannabis tax that has not been paid to the state, they will be afforded an opportunity to establish that it has been or will be refunded to the purchaser, cannabis retailer, or cultivator that paid it. If the cannabis retailer, distributor, or manufacturer fails or refuses to refund the excess cannabis tax, the Department will issue a notice of determination for the amount of the excess cannabis tax not previously refunded or paid to the state.

(1) A cannabis retailer, distributor, or manufacturer that disagrees with any item included in a notice of determination for excess cannabis tax may file a petition for redetermination with the Department within 30 days from the date that the notice of determination was mailed in accordance with the procedures in article 2a of chapter 1 of division 5 (commencing with section 35005) of title 18 of the California Code of Regulations. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final and collectible at the expiration of that period.

(2) A timely filed petition for redetermination shall be acknowledged and reviewed in accordance with articles 2a and 8 of chapter 1 of division 5 (commencing with section

35005) of title 18 of the California Code of Regulations, and the amount determined to be due becomes final and collectible 30 days after the Department's final decision on the petition was mailed.

(f) Evidence to Establish that Excess Cannabis Tax Has Been or Will be Refunded.

(1) A person may establish that excess cannabis tax was refunded to a purchaser, cannabis retailer, or cultivator by providing any type of record showing the refund that can be verified by audit, such as a receipt, cancelled check, or books of account showing that credit has been allowed the purchaser, cannabis retailer, or cultivator as an offset against an existing indebtedness owed to the person making the refund.

(2) To establish that excess cannabis tax will be refunded to a purchaser, cannabis retailer, or cultivator, the person must:

(A) Inform the purchaser, cannabis retailer, or cultivator in writing that the excess cannabis tax will be refunded to the purchaser, cannabis retailer, or cultivator or that, at their option, they will be credited with such amount as an offset against an existing indebtedness owed to the person making the refund; and

(B) Obtain and retain for verification by the Department an acknowledgement from the purchaser, cannabis retailer, or cultivator that they received notice of the amount of indebtedness of the person to the purchaser, cannabis retailer, or cultivator.

(g) Records. A cannabis retailer, distributor, or manufacturer shall maintain and make available for examination on request by the Department or its authorized representatives all records necessary to determine whether it owes excess cannabis tax to the state. Such records include, but are not limited to:

(1) Books of account;

(2) Receipts, invoices, cash register tapes, and other documents of original entry supporting the entries in the books of account; and

(3) Schedules or working papers used in connection with the preparation of tax returns and reports.

(h) Other Excess Cannabis Excise Tax Provisions Superseded. The excess cannabis excise tax provisions in subdivision (h) of Regulation 3700 are superseded by the provisions in this regulation and no longer operative on and after the effective date of this regulation under Government Code section 11346.1.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34011, 34012, 34012.3, 34012.5, 34013 and 34015, Revenue and Taxation Code.