

Potential Questions from Retailers Regarding Tobacco Licensing For Internal Use Only

1. How do I apply for a license to sell cigarettes and tobacco products?

You must contact the State Board of Equalization. They can be reached at (800) 400-7115 or on the web at www.boe.ca.gov.

2. How much will it cost?

The retailer license costs \$100 per location. The cost is one-time only, but each retailer must renew his or her license annually. (Business and Professions Code Sections 22972 (a) and 22973 (d))

3. Do I have to have a license?

You must obtain a license to sell cigarettes and tobacco products. There are severe penalties of up to \$5,000, or up to one year imprisonment in the county jail, or both the fine and imprisonment if you are caught selling cigarettes or tobacco products without a license (Business and Professions Code Sections 22980.1 (h) and 22981).

4. How long is the application period?

Initially, Retailers have to apply for their license on or before April 15, 2004 and have it in place by June 30, 2004. Licenses will continue to be granted to new businesses or existing businesses that choose to begin selling cigarette or tobacco products after June 30, 2004 (Business and Profession Code Section 22973 (a)). BOE anticipates sending out applications by mid February. If an application is not received by then please contact BOE.

5. Do I have to renew it?

Yes. The license must be renewed annually, but there is no cost associated with renewal (Business and Professions Code Section 22972 (d)).

6. Do I get a license for each of my stores, or is one license to me sufficient?

You must obtain one license for each store. For example, if you operate several different stores and each sells cigarette or tobacco products, you must obtain a separate license for each store. However, you may submit a single application for multiple licenses, and include \$100 for each license (Business and Professions Code Section 22972 (a)).

7. Can our corporate office buy licenses for all of our stores in the field, or do each of my branches have to apply separately?

A corporate office could purchase licenses for each of its stores in the field, but the appropriate information (address, etc.) must be stated on the application along with the \$100 fee for each store (Business and Professions Code Sections 22972 (a) and 22973 (a)).

8. If I lose my right to purchase/sell, do I lose the right to advertise?

While AB 71 does not address this issue, should a retailer have his/her license suspended or revoked, a local jurisdiction could require by law that all tobacco advertising be taken down during the suspension/revocation period.

First, the Federal Cigarette Labeling and Advertising Act (FCLAA) does not allow the states to regulate cigarette advertising if the regulation is based upon "smoking and health." However, during a suspension/revocation, advertising restrictions are not preempted by the FCLAA because the regulation is not based upon "smoking and health" but is instead based upon protecting consumers from deceptive practices and on discouraging illegal transactions.

Second, the First Amendment does not protect commercial speech when it proposes an illegal transaction or is false or inherently misleading. In this case, tobacco advertising by a retailer who can not legally sell tobacco would be proposing an illegal transaction and would be misleading because consumers would expect to be able to legally purchase tobacco from the retailer (through witnessing the advertising) even though such sales would be prohibited during the suspension or revocation time period.

9. Who is enforcing this law?

The State Board of Equalization, the Office of the Attorney General and any law enforcement officer in the state.

10. Who will be checking to see if I have a license?

BOE staff, DHS staff as well as local authorities

11. Do I have to post the license?

Yes. Business and Professions Code Section 22972 (b) requires every retailer to conspicuously display their license at each retail location in a manner visible to the public. If a retailer fails to display the license, they

are liable for a penalty of \$500 (Business and Profession Code Section 22974.5) and may ultimately be subject to suspension and revocation.

12. What are the requirements for cigarette and tobacco wholesalers, distributors, manufacturers or importers that impact retailers?

Pursuant to Business and Professions Code Section 22980.1, no cigarette manufacturer, distributor, wholesaler or importer is permitted to sell cigarette or tobacco products to a retailer who is not licensed or has had his license suspended or revoked. Additionally, a retailer is not permitted to purchase cigarettes or tobacco products from an unlicensed cigarette or tobacco wholesaler, distributor or importer. If a retailer fails to comply with these requirements, they are subject to a fine of up to \$5,000 for each offense, or imprisonment of up to one year in the county jail, or both the fine and imprisonment (Business and Professions Code Section 22981). Additionally, they are subject to a misdemeanor under Revenue and Taxation Code 30478.

13. Where can I get more information about the law?

Contact the State Board of Equalization at (800) 400-7115 or at www.boe.ca.gov

14. What will happen if I refuse to obtain a license?

If you do not obtain a license and continue to sell cigarettes or tobacco products, you will be subject to fines of up to \$5,000 or imprisonment up to one year in county jail, or both the fine and imprisonment. (Business and Professions Code Sections 22980.1 (h) and 22981).

15. What types of products are covered under the law? Do I have to be licensed to sell cigars or pipe tobacco?

All types of tobacco products are covered under this law. You must obtain a license if you sell any type of tobacco product, including cigarettes, cigars, smokeless tobacco, pipe tobacco, etc. (Business and Professions Code Sections 22972 (a), 22970.3 (e), and 22970.3 (1))

16. Can a city or county require a retailer to obtain a license or permit to sell cigarettes or tobacco products even though the State requires a license?

Yes. Business and Professions Code Section 22971.3 permits cities and counties to enact local tobacco retail licensing requirements that may include annual fees and provide for the suspension or revocation of the local license for any violation of a state tobacco control law.

17. Do I have to apply separately for my local county or city license? How do I do that?

Prospective licensees should consult with their local health department to determine if there is a local licensing requirement in their community and learn how to comply with its requirements.