State of California
Office of Administrative Law

In re: California Department of Tax and Fee Administration

Regulatory Action:
Title 18, California Code of Regulations
Adopt section: 3701

NOTICE OF APPROVAL OF EMERGENCY REGULATORY ACTION

Government Code Sections 11346.1 and 11349.6
OAL Matter Number: 2017-1219-02
OAL Matter Type: Emergency (E)

This emergency rulemaking by the Department of Tax and Fee Administration establishes procedures relating to the collection and remittance of the cannabis excise tax.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 12/28/2017 and will expire on 12/31/2019. The Certificate of Compliance for this action is due no later than 12/30/2019 pursuant to Revenue and Taxation Code section 34013, subdivision (d).

Date: December 28, 2017
Nicole C. Carrillo
Attorney

For: Debra M. Cornez
Director

Original: Nicolas Maduros, Director
Copy: Kim Rios
STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW  
NOTICE PUBLICATION/REGULATIONS SUBMISSION

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**A. PUBLICATION OF NOTICE**  (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE  
   TITLE(S)  
   FIRST SECTION AFFECTED  
   2. REQUESTED PUBLICATION DATE

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**B. SUBMISSION OF REGULATIONS**  (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)  
   Collection and Remittance of the Cannabis Excise Tax

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

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**SECTION(S) AFFECTED**  (List all section number(s) individually. Attach additional sheet if needed.)

ADOPT  
3701

AMEND  

REPEAL  
18

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**3. TYPE OF FILING**

☐ Regular Rulemaking (Gov. Code §11346)

☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §511346.2-11347.3)  
   either before the emergency regulation was adopted or within the time period required by statute.

☐ Emergency (Gov. Code, §511346.1(b))  
   Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §511346.1(b))

☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §511346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.

☐ Emergency Readopt (Gov. Code, §11346.1(b))

☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)  
   Print Only

☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §511346.1(b))

☐ Other (Specify)

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4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(b); Cal. Code Regs., title 1, §100)

☐ Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))

☐ Effective on filing with Secretary of State

☐ $100 Changes Without Regulatory Effect

☐ Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399) (SAM §6660)

☐ Fair Political Practices Commission

☐ State Fire Marshal

☐ Other (Specify)

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7. CONTACT PERSON  
   Kim Rios  
   TELEPHONE NUMBER  
   (916) 324-0293  
   FAX NUMBER (Optional)

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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE  
                                      DATE  

NAME AND TITLE OF SIGNATORY  
Nicolas Maduros, Director  

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ENDORSED APPROVED  
DEC 28 2017  
Office of Administrative Law
Regulation 3701. Collection and Remittance of the Cannabis Excise Tax.

(a) In General. On and after January 1, 2018, a cannabis retailer shall not make a retail sale of cannabis or a cannabis product, unless the purchaser has paid the cannabis excise tax to the retailer at the time of the sale.

(b) Cannabis Retailer’s Remittance to a Distributor – General. If a distributor sells or transfers cannabis or cannabis product to a cannabis retailer on or after January 1, 2018, then the retailer shall remit the cannabis excise tax due on the cannabis or cannabis product based on the average market price to the distributor that sold or transferred the cannabis or cannabis product to the retailer.

(c) Cannabis Retailer’s Remittance to a Distributor – Exception.

(1) A cannabis retailer that possesses or controls cannabis or a cannabis product at 12:01 a.m. on January 1, 2018, and makes a retail sale of that cannabis or cannabis product on or after January 1, 2018, shall remit the cannabis excise tax due based on the average market price to a distributor licensed pursuant to division 10 (commencing with Section 26000) of the Business and Professions Code that the retailer purchased or acquired cannabis or cannabis product from on or after January 1, 2018. The cannabis excise tax shall be remitted by the cannabis retailer to the licensed distributor on or before the fifteenth day of the calendar month following the close of the calendar month in which the tax was collected.

(2) Upon collecting the cannabis excise tax from a cannabis retailer as set forth in subdivision (c)(1), a distributor shall provide the cannabis retailer with an invoice, receipt, or other similar document that contains all of the following:

(A) Date of execution of the invoice, receipt, or other similar document,

(B) Name of the distributor,

(C) Name of the cannabis retailer,

(D) The amount of cannabis excise tax,

(E) The number of the seller’s permit held by the cannabis retailer, and

(F) The number of the seller’s permit held by the distributor. If the distributor is not required to hold a seller’s permit because the distributor makes no sales, the distributor must include a statement to that effect on the receipt in lieu of a seller’s permit number.
(d) Distributor's Reporting and Remittance – General. Unless as otherwise provided in subdivision (e), a distributor shall report and remit the cannabis excise tax due in accordance with subdivision (e) of section 3700 of this chapter.

(e) Distributor's Reporting and Remittance – Exception. A distributor shall report and remit the cannabis excise tax collected from the cannabis retailer pursuant to subdivision (c) with the distributor's first return subsequent to receiving the cannabis excise tax from the cannabis retailer.