

**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**

EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2017-1219-02E
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For use by Office of Administrative Law (OAL) only

2017 DEC 19 P 2:12

OFFICE OF ADMINISTRATIVE LAW

ENDORSED - FILED
Office of the Secretary of State
State of California
DEC 28 2017
1:47pm

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Department of Tax and Fee Administration

AGENCY FILE NUMBER (if any)

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

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

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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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 3701
	AMEND
	REPEAL
TITLE(S) 18	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	

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(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

7. CONTACT PERSON Kim Rios	TELEPHONE NUMBER (916) 324-0293	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) kim.rios@cdtfa.ca.gov
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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 12/19/17
TYPED NAME AND TITLE OF SIGNATORY Nicolas Maduros, Director	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

DEC 28 2017

Office of Administrative Law

Text of California Code of Regulations,

Title 18, Section 3701

(A new regulation to be added to Cal. Code Regs., tit. 18, div. 2)

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.

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