



## CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

TAX POLICY BUREAU

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[www.cdtfa.ca.gov](http://www.cdtfa.ca.gov)GAVIN NEWSOM  
GovernorYOLANDA RICHARDSON  
Secretary, Government Operations AgencyNICOLAS MADUROS  
Director

October 26, 2023

Dear Interested Party:

Enclosed is the Discussion Paper on Regulation 3700, *Cannabis Excise and Cultivation Taxes*, Regulation 3703, *Excess Cannabis Tax*, Regulation 3800, *Application of Chapter and Definitions*, Regulation 3801, *Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit*, Regulation 3805, *Cannabis Excise Tax Credit*, Regulation 3810, *Vendor Compensation*, Regulation 3820, *Responsible Person Liability*, and Regulation 3501, *Records*. We would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

**November 16, 2023****10:00 a.m.****(Microsoft Teams)**

You may join us on your computer or mobile app through [Microsoft Teams](#) or by calling 1-916-535-0987 and then entering the phone conference identification number 778 906 37#. You are also welcome to submit your written comments, including any proposed regulatory language, to me at the address or fax number in this letterhead or via email at [BTfD-BTC.InformationRequests@cdtfa.ca.gov](mailto:BTfD-BTC.InformationRequests@cdtfa.ca.gov) by November 30, 2023. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics, refer to the CDTFA webpage at (<http://www.cdtfa.ca.gov/taxes-and-fees/business-taxes-committee.htm>) for copies of discussion papers and calendars of current and prior issues.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact Business Taxes Committee team member Sarah Smith at 1-916-309-5292, who will be leading the meeting.

Sincerely,

A handwritten signature in cursive script that reads "Aimee Olhiser".

Aimee Olhiser, Chief  
Tax Policy Bureau  
Business Tax and Fee Division

AO:sps

Enclosures

cc: (all with enclosures)

Mr. Nicolas Maduros (MIC 104)  
Mr. Christopher Schutz (MIC 83)  
Ms. Trista Gonzalez (MIC 104)  
Ms. Christine Castillo (MIC 104)  
Ms. Susanne Buehler (MIC 43)  
Ms. Michele Linton (MIC 105)  
Mr. Jason Mallet (MIC 25)  
Mr. Mike Skikos (MIC 47)  
Mr. Harry Lucho (MIC 47)  
Ms. Claudette Yang (MIC 70)  
Mr. James Dahlen (MIC 57)  
Mr. Jason Parker (MIC 49)  
Mr. Steven Mercer (MIC 25)  
Ms. Ester Cabrera (MIC 23)  
Mr. Jeff Vest (MIC 85)  
Mr. Mike Loretta (MIC 42)  
Ms. Pamela Bergin (MIC 82)  
Mr. Bradley Heller (MIC 82)  
Ms. Dana Brown (MIC 85)  
Ms. Casey Tichy (MIC 85)  
Ms. Leslie Ang (MIC 82)  
Ms. Elaine Chu (MIC 82)  
Mr. Brian Kimsey (MIC 62)  
Mr. Chris Miller (MIC 48)  
Mr. LaDaughn Coilton (MIC 33)  
Ms. Sandy Barrow (MIC 31)  
Ms. Lynn Whitaker (MIC 50)  
Mr. Greg Buehrer (MIC 44)  
Mr. Gentian Droboniku (MIC 67)  
Mr. Tom Trach (MIC 67)  
Mr. Marc Alviso (MIC 104)  
Ms. Karina Torrez (MIC 92)  
Ms. Karina Magana (MIC 47)  
Mr. Brian Duckett (MIC 31)  
Ms. Connie Rodriguez (MIC 31)  
Mr. Robert Wilke (MIC 50)  
Ms. Sarah Smith (MIC 50)

## DISCUSSION PAPER

**Regulation 3700, *Cannabis Excise and Cultivation Taxes***  
**Regulation 3703, *Excess Cannabis Tax***  
**Regulation 3800, *Application of Chapter and Definitions***  
**Regulation 3801, *Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit***  
**Regulation 3805, *Cannabis Excise Tax Credit***  
**Regulation 3810, *Vendor Compensation***  
**Regulation 3820, *Responsible Person Liability***  
**Regulation 3501, *Records***

### Issue

Whether the California Department of Tax and Fee Administration (Department) should propose to adopt the following regulations through the regular rulemaking process:

- The emergency amendments to Cannabis Tax Regulation 3700, *Cannabis Excise and Cultivation Taxes*;
- Emergency Cannabis Tax Regulation 3703, *Excess Cannabis Tax*;
- New Cannabis Tax Regulation 3800, *Application of Chapter and Definitions*;
- Emergency Cannabis Tax Regulation 3800, *Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit*, renumbered as Regulation 3801 with amendments;
- Emergency Cannabis Tax Regulation 3805, *Cannabis Excise Tax Credit*;
- Emergency Cannabis Tax Regulation 3810, *Vendor Compensation* with amendments;
- New Cannabis Tax Regulation 3820, *Responsible Person Liability*; and
- Amendments to Fee Collection Procedures Law Regulation 3501, *Records*.

### Background

On June 30, 2022, the Legislature enacted Assembly Bill No. (AB) 195 (Stats. 2022, ch. 56). As relevant here, AB 195 amended the Cannabis Tax Law (CTL) (commencing with Revenue and Taxation Code (RTC) section 34010) to:

- Discontinue the imposition of the cultivation tax beginning July 1, 2022.
- Change the cannabis excise tax so it is imposed at the rate of 15 percent of the cannabis retailer's gross receipts from the retail sale of cannabis or cannabis products, rather than 15 percent of the average market price of the cannabis or cannabis products, beginning January 1, 2023.
- Move the reporting and remittance of the cannabis excise tax from the distributor to the cannabis retailer beginning January 1, 2023.
- Remove the requirement for the distributor to collect the cannabis excise tax from the cannabis retailer on cannabis or cannabis products sold or transferred to the cannabis retailer on or after January 1, 2023.
- Require all cannabis retailers to obtain a separate cannabis tax permit from the Department beginning January 1, 2023.

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- Allow a cannabis retailer to claim a credit for cannabis excise tax paid to a distributor on cannabis or cannabis products the retailer sold to a purchaser on or after January 1, 2023.
- Allow a licensed cannabis retailer that is approved by the Department of Cannabis Control (DCC) for a fee waiver to retain vendor compensation in an amount equal to 20 percent of the cannabis excise tax after they are approved by the Department.
- Make a responsible person liable for cannabis taxes they willfully fail to pay or cause to be paid for a corporation, partnership, limited partnership, limited liability partnership, or limited liability company under specified circumstances.

#### *Cultivation Tax*

Subdivision (a) of RTC section 34012 imposed a cultivation tax on harvested cannabis that entered the commercial market from January 1, 2018, to June 30, 2022. Cannabis entered the commercial market on or before June 30, 2022, if the cannabis or cannabis products made from the cannabis completed and complied with both the testing and quality assurance review described in Business and Professions Code (BPC) section 26110 on or before June 30, 2022. (RTC, § 34010, subd. (m).)

Cultivators are liable for the cultivation tax imposed under RTC section 34012 until the tax is paid to the state. (RTC, § 34012, subd. (h).) Distributors and manufacturers were required to collect the cultivation tax from a cultivator on the cultivator's first sale or transfer of cannabis to a distributor or manufacturer if the sale or transfer occurred on or before June 30, 2022. (RTC, § 34012, subds. (a)(2) & (h); Reg. 3700, subd. (d).) Also, an invoice, receipt, or other document given to a cultivator by a licensed distributor or manufacturer is sufficient to relieve the cultivator from further liability for the cultivation tax to which the invoice, receipt, or other document refers. (RTC, § 34012, subd. (h).)

Once collected, the associated cultivation tax was required to follow the cannabis and the cannabis products made from the cannabis it was collected on, from one licensed party to the next, until the cannabis and cannabis products reached the distributor that performed the quality assurance review described in BPC section 26110. (RTC, § 34012, subd. (h); Reg. 3700, subd. (d).) The associated cultivation tax was imposed under RTC section 34012 if the cannabis or cannabis products completed and complied with the testing and quality assurance review requirements described in BPC section 26110 on or before June 30, 2022. If imposed, the associated cultivation tax was required to be reported and paid to the Department by the distributor that performed the quality assurance review with their return for the period in which the tax was imposed. (RTC, §§ 34012, subd. (h), & 34015, subd. (a) (as amended by section 29 of AB 195); Reg. 3700, subd. (e).) Therefore, a distributor should have already filed their last cultivation tax return with the Department. Also, subdivision (a) of RTC section 34012.5 provides that the cultivation tax required to be collected by a distributor or required to be collected by a manufacturer, and any amount unreturned to the cultivator that is not tax but was collected from the cultivator under the representation by the distributor or the manufacturer that it was tax, constitutes a debt owed by the distributor or the manufacturer to this state.

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#### *Cannabis Excise Tax Effective Before January 1, 2023*

RTC section 34011 (as amended by section 19 of AB 195) applies to cannabis and cannabis products sold in this state from January 1, 2018, to December 31, 2022. Section 34011 imposes a cannabis excise tax at the rate of 15 percent of the average market price of any retail sale by a cannabis retailer. In an arm's length transaction, the average market price is the wholesale cost of the cannabis or cannabis products sold or transferred to the cannabis retailer, plus a mark-up, as determined by the Department. (RTC, § 34010, subd. (c)(1)(A).) In a nonarm's length transaction, the average market price is the cannabis retailer's gross receipts from the retail sale of the cannabis or cannabis products. (RTC, § 34010, subd. (c)(2).)

Subdivision (b)(1) of RTC section 34011 requires a distributor to collect the cannabis excise tax from the cannabis retailer within 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer in an arm's length transaction before January 1, 2023. It requires a distributor to collect the cannabis excise tax from the cannabis retailer within 90 days after the sale or transfer of cannabis or cannabis product to the cannabis retailer in a nonarm's length transaction before January 1, 2023, or at the time of retail sale by the cannabis retailer, whichever is earlier. A distributor is also required to report and remit the cannabis excise taxes it is required to collect under RTC section 34011 to the Department on or before the last day of the month following the period in which the distributor sold or transferred the cannabis or cannabis products to the cannabis retailer. (RTC, §§ 34011, subd. (b)(1) & 34015 as amended by section 29 of AB 195; Reg. 3700, subd. (j).) Therefore, a distributor should have already filed their last cannabis excise tax return, reporting their sales and transfers of cannabis and cannabis products to cannabis retailers, with the Department on or before January 31, 2023. Also, a distributor should have remitted the cannabis excise taxes on the sales and transfers reported on their last return by January 31, 2023, whether or not the taxes were collected or required to be collected from cannabis retailers before January 31, 2023.

In addition, subdivision (b)(1) of RTC section 34011 requires a cannabis retailer to collect the cannabis excise tax from the purchaser on their retail sales of cannabis or cannabis products before January 1, 2023. It also requires a cannabis retailer to pay their distributor(s) the cannabis excise tax required to be collected on cannabis or cannabis products the distributor(s) sold or transferred to the cannabis retailer before January 1, 2023, whether or not the cannabis or cannabis products are sold by the retailer to a purchaser before January 1, 2023. Therefore, a cannabis retailer may be required to pay cannabis excise taxes under RTC section 34011 to a distributor that it cannot collect from a purchaser because the cannabis or cannabis products were not sold to a purchaser prior to January 1, 2023. However, a cannabis retailer may claim a credit for cannabis excise tax amounts paid to a distributor, pursuant to RTC section 34011, on cannabis or cannabis products sold to a purchaser on or after January 1, 2023, as discussed in more detail below.

Finally, subdivision (a) of RTC section 34012.5 provides that the cannabis excise tax required to be collected by a distributor, and any amount unreturned to the cannabis retailer that is not tax but was collected from the cannabis retailer under the representation by the distributor that it was tax,

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constitutes a debt owed by the distributor to this state. Also, subdivision (h) of Regulation 3700 defines excess cannabis excise tax to mean an amount represented by a cannabis retailer to a customer as constituting cannabis excise tax that is computed upon an amount that is not taxable or is in excess of the taxable amount, and requires a cannabis retailer to refund excess cannabis excise tax to the customer from which it was collected or remit it to the distributor so it can be reported and paid to the Department.

#### *Cannabis Excise Tax Effective On and After January 1, 2023*

Subdivision (a)(1) of RTC section 34011.2 provides that effective on and after January 1, 2023, a modified cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state at the rate of 15 percent of the gross receipts of any retail sale by a cannabis retailer. Subdivision (a)(2) of RTC section 34011.2 requires the Department to adjust the rate of this cannabis excise tax, in consultation with the Department of Finance, for the 2025-2026 fiscal year and every two years thereafter. Subdivision (c) of RTC section 34011.2 requires a cannabis retailer to collect this cannabis excise tax from the purchaser on their retail sales on and after January 1, 2023, and report and remit the tax directly to the Department pursuant to RTC section 34015 (as added by section 30 of AB 195, operative January 1, 2023). Subdivision (b) of RTC section 34011.2 provides that a purchaser's liability for the cannabis excise tax is not extinguished until the cannabis excise tax has been paid to this state, except that an invoice, receipt, or other document from a cannabis retailer given to the purchaser pursuant to section 34011.2 is sufficient to relieve the purchaser from further liability for the tax to which the invoice, receipt, or other document refers.

Subdivision (a) of RTC section 34015 provides that the cannabis excise tax imposed by RTC section 34011.2 is due and payable to the Department quarterly, unless otherwise prescribed by the Department, and requires each cannabis retailer to file a return for the proceeding quarterly period with the Department on or before the last day of the month following each quarterly period of three months. Also, subdivision (a) of RTC section 34012.3 provides that the cannabis excise tax required to be collected by a cannabis retailer, and any amount not returned to the purchaser that is not tax but was collected from the purchaser under the representation by the cannabis retailer that it was tax, constitutes debt owed by the cannabis retailer to this state.

#### *Transition Provisions*

Subdivision (a) of RTC section 34011.01 provides that any amount owed by a cannabis retailer to a distributor in connection with the collection of cannabis excise tax owed prior to January 1, 2023, shall be paid by the retailer to the distributor on or before April 1, 2023. However, this shall not be construed to require the Department to enforce this obligation.

For all cannabis and cannabis product sales by a retailer after January 1, 2023, the retailer must collect the cannabis excise tax due and remit that tax directly to the Department pursuant to RTC section 34011.2. Where a retailer has already paid excise tax on that cannabis or cannabis product

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to a distributor pursuant to RTC section 34011 prior to January 1, 2023, subdivision (b) of RTC section 34011.01 provides that the retailer may claim a credit on the cannabis excise tax return for those amounts. Also, subdivision (a) of RTC section 34014 requires all cannabis retailers to obtain and maintain a separate cannabis tax permit from the Department and relieves distributors from the requirement to obtain and maintain a separate cannabis tax permit from the Department, beginning January 1, 2023.

#### *Fee Collection Procedures Law*

Subdivision (a) of RTC section 34013 provides that the Department shall administer the cannabis taxes imposed by the CTL pursuant to the Fee Collection Procedures Law (FCPL) (commencing with RTC section 55001). Also, when the Department determines that any amount, including cannabis excise tax, has been paid more than once, the FCPL authorizes the Department to credit the excess amount paid on amounts then due from the person that paid them and refund the balance if a timely claim for refund or credit is filed. (RTC, §§ 55221 & 55222.)

#### *Vendor Compensation*

Subdivision (a)(1) of RTC section 34011.1 (operative January 1, 2023) provides that until December 31, 2025, a licensed cannabis retailer that has received approval from the DCC for a fee waiver under BPC section 26249 may retain vendor compensation in an amount equal to 20 percent of the cannabis excise tax collected by the retailer. Approval for a fee waiver under BPC section 26249 includes approval for a fee waiver that is contingent upon the availability of funds.

Subdivision (a)(2) of RTC section 34011.1 provides that to apply to retain vendor compensation, a cannabis retailer shall complete a one-page application in a form and manner prescribed by the Department that sets forth the name under which they transact or intend to transact business, the location of their place or places of business, and any other information the Department may require. It also provides that the cannabis retailer shall also include with the application their seller's permit number and cannabis tax permit number and a copy of their cannabis license and DCC approved fee waiver. An application for a permit shall be authenticated in a form or pursuant to methods as may be prescribed by the Department.

Subdivision (a)(3) of RTC section 34011.1 provides that upon verification that a licensed cannabis retailer meets the requirements of RTC section 34011.1, the Department shall issue the cannabis retailer a notice approving vendor compensation.

Subdivision (a)(4) of RTC section 34011.1 provides that to maintain eligibility for vendor compensation, a licensed cannabis retailer shall maintain eligibility for a fee waiver under BPC section 26249 and any relevant implementing regulations. An approval for vendor compensation shall expire on the last day of the calendar quarter following notification to the Department that a cannabis retailer is no longer eligible for a fee waiver. If a cannabis retailer maintains eligibility for a fee waiver, an approval for vendor compensation shall remain valid for one year commencing

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on the first day of the calendar quarter following the date the Department issues the notice and may be renewed as prescribed by the Department.

Subdivision (a)(5) of RTC section 34011.1 provides that to notify the Department of a cannabis retailer's eligibility for vendor compensation under this section, the DCC shall either maintain a database accessible to the Department reflecting whether a cannabis retailer is eligible or has become ineligible for a fee waiver under BPC section 26249 and implementing regulations or otherwise provide information upon request of the Department for purposes of verifying a cannabis retailer's eligibility under RTC section 34011.1.

Also, California Code of Regulations (CCR), title 4, section (DCC Regulation) 15000.1 requires a separate commercial cannabis license for each location where a licensee engages in commercial cannabis activity. DCC Regulation 15014.1, implements BPC section 26249 and provides that commercial cannabis businesses that satisfy the requirements for a license fee waiver are only eligible for one such waiver from the DCC per 12-month licensure period. DCC Regulation 15014.1 also requires a commercial cannabis business to submit a complete application for licensure or renewal as part of their application for a fee waiver and provides that the DCC will only process their complete fee waiver request in the order in which the application or renewal for commercial cannabis licensure has been approved by the DCC. While the fee waiver from the DCC applies to a 12-month licensure period, a commercial cannabis business may reapply for a fee waiver for a subsequent licensure period.

In addition, DCC Regulation 15020 clarifies that the same commercial cannabis license can be renewed before it expires by submitting a completed license renewal form and the annual license fee to the DCC no later than the last business day before it expires. It clarifies that the same commercial cannabis license can still be renewed after it expires by submitting a completed license renewal form, the annual license fee, and a 50 percent late fee to the DCC within 30 calendar days after the license expired. It clarifies that in the event a license is not renewed prior to its expiration date, the licensee must not sell, transfer, transport, manufacture, test, or distribute any commercial cannabis or cannabis products under that license until the license is renewed. It also clarifies that a licensee that does not submit a complete license renewal application, including the late fee, to the DCC within 30 calendar days after the expiration of their license shall forfeit their eligibility for a license renewal and be required to submit a new license application for a new commercial cannabis license. Also, the DCC has authority to revoke commercial cannabis licenses and subdivision (b) of BPC section 26055 provides that revocation of a commercial cannabis license issued by the DCC shall terminate the ability of the licensee to operate pursuant to that license within California until a new license is obtained.

#### *Responsible Person Liability*

Subdivision (a) of RTC section 34015.2 provides that upon the termination, dissolution, or abandonment of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company, any officer, member, manager, partner, or other person



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having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax for, or who is under a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of the CTL, shall, notwithstanding any provision in the Corporations Code to the contrary, be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, partner, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to the CTL.

Subdivision (b) of RTC section 34015.2 provides that the officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period they had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

Subdivision (c) of RTC section 34015.2 provides that personal liability may be imposed pursuant to this section only if the Department can establish that the corporation, partnership, limited partnership, limited liability partnership, or limited liability company is required to collect the cannabis excise tax imposed pursuant to RTC section 34011 or 34011.2 or cultivation tax imposed pursuant to RTC section 34012 and that it failed to report and pay the tax.

Subdivision (d) of RTC section 34015.2 provides that except as provided in subdivision (e), the sum due for the liability under this section may be collected by determination and collection in the manner provided in chapter 3 (commencing with section 55040) and chapter 4 (commencing with section 55121) of the FCPL.

Subdivision (e) of RTC section 34015.2 provides that a notice of deficiency determination under this section shall be mailed within three years after the last day of the calendar month following the quarterly period in which the Department obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company, or, within eight years after the last day of the calendar month following the quarterly period in which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company business was terminated, dissolved, or abandoned, whichever period expires earlier. If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the Department, this filing shall not constitute actual knowledge by the Department under this section.

Subdivision (f) of RTC section 34015.2 provides that for purposes of this section, “willfully fails to pay or to cause to be paid” means that the failure was the result of an intentional, conscious, and voluntary course of action.

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#### *Medicinal Cannabis Designated for Donation*

To provide access to medicinal cannabis patients who have difficulty accessing cannabis or cannabis products, BPC section 26071 allows a licensed cannabis retailer to provide free cannabis or cannabis products to a medicinal cannabis patient or their primary caregiver. Also, BPC section 26071 and DCC Regulation 15411 require cannabis and cannabis products to be designated for donation by a licensee in the track and trace system before they are provided to a medicinal cannabis patient or their primary caregiver. DCC Regulation 15049 requires all licensees to record the destruction of cannabis or cannabis products in the track and trace system, including cannabis or cannabis products designated for donation. Also, DCC's website explains that licensees, including licensed cannabis retailers, cannot change the donation designation made by another licensee, but a licensee may change its own donation designations.<sup>1</sup>

In addition, subdivision (h) of RTC section 34011.2 provides that this section shall not be construed to impose a cannabis excise tax upon medicinal cannabis, or medicinal cannabis product, donated for no consideration to a medicinal cannabis patient pursuant to BPC section 26071.

#### *Trade Samples*

DCC Regulations 15041.2 through 15041.7 define the term "trade sample," establish rules for licensees to designate cannabis or cannabis products in their possession as a trade sample, provide trade samples to other licensees and their own employees, and for the consumption of trade samples pursuant to BPC section 26153.1.

DCC Regulation 15041.4 allows a licensed cultivator, manufacturer, distributor, microbusiness, or cannabis retailer to designate trade samples. It allows a licensed cultivator, manufacturer, distributor, or microbusiness to provide trade samples to their own employees and other licensees, including licensed cannabis retailers. It only allows a licensed cannabis retailer to provide trade samples to their own employees and prohibits a licensed retailer from providing trade samples to other licensees or other unlicensed persons, including retail customers. It also prohibits a licensee, including a licensed retailer, from providing trade samples for any payment or consideration or to an employee as compensation, and prohibits an employee from selling a trade sample provided by its employer.

DCC Regulation 15041.6 requires trade samples that are not consumed by a licensee or their employee to be destroyed. Also, DCC Regulation 15041.3 provides that once cannabis or cannabis products have been designated as a trade sample, the designation cannot be changed, unless the designation is changed to medicinal cannabis or cannabis products for donation by the licensee that originally designated the cannabis or cannabis products as a trade sample. So, a licensed cannabis retailer may not change the designation of trade samples provided by another licensee,

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<sup>1</sup> <https://cannabis.ca.gov/2020/02/donations-of-cannabis-and-cannabis-product/>.

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but they can change the designation of trade samples they designated to medicinal cannabis or cannabis products for donation.

In addition, subdivision (i)(1) of RTC section 34011.2 provides that this section shall not be construed to impose a cannabis excise tax upon cannabis or cannabis products designated as a trade sample pursuant to BPC section 26153.1. Subdivision (i)(2) of RTC section 34011.2 further provides that a person licensed under division 10 (commencing with section 26000) of the BPC that sells cannabis or cannabis products designated as a trade sample pursuant to BPC section 26153.1 shall be liable for the cannabis excise tax imposed by this section as if the person were a cannabis retailer at the time of sale.

#### **Discussion**

RTC section 34013 authorizes the Department to prescribe, adopt, and enforce regulations relating to the administration and enforcement of the CTL. Also, AB 195 amended subdivision (e) of RTC section 34013 to authorize the Department to prescribe, adopt, and enforce any emergency regulations, until January 1, 2024, as necessary to implement, administer, and enforce its duties under division 2 of the RTC, which includes the CTL and FCPL. Subdivision (e) also specifies that the emergency regulations adopted by the Department may remain in effect for two years from adoption.

The Department determined that there were issues regarding the return, remittance, and collection of excess cannabis tax, issues regarding credits for cannabis excise tax retailers paid to distributors on cannabis or cannabis products sold to purchasers on or after January 1, 2023, and issues regarding the CTL's new vendor compensation provisions. The Department held an interested parties meeting on October 6, 2022, to discuss proposed emergency regulations to address those issues. Following the interested parties meeting the Department adopted new chapter 8.8 (commencing with Regulation 3800) in division 2 of title 18 of the CCR (chapter 8.8), new Cannabis Tax Regulations 3703, 3800, 3805, and 3810, and added subdivision (h)(6) to Regulation 3700 as emergency regulations to address the above issues and implement the CTL's new requirements for cannabis retailers to obtain cannabis tax permits, as discussed further below. The emergency regulations became operative on January 30, 2023, and will be repealed by operation of law on January 31, 2025, unless the Department adopts them as permanent regulations through the regular rulemaking process in the Administrative Procedure Act (APA) (commencing with Government Code section 11340) and submits the completed rulemaking file to the Office of Administrative Law by January 30, 2025.

#### *Excess Cannabis Tax*

Any amount a distributor or manufacturer collected from a cultivator under the representation that it was cultivation tax that 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 is not tax and constitutes a debt owed to the state under RTC section 34012.5, unless it is returned to the

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cultivator that paid it. Any amount a distributor or manufacturer collected from a cultivator under the representation that it was cultivation tax on cannabis or cannabis used to make cannabis products that did not enter the commercial market on or before June 30, 2022, is not tax and constitutes a debt owed to the state under RTC section 34012.5, unless it is returned to the cultivator that paid it. Any amount a distributor collected from a cannabis retailer under the representation by the distributor that it was cannabis excise tax that 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 represents a debt owed to the state under RTC section 34012.5, unless it is returned to the retailer that paid it. Additionally, any amount a cannabis retailer collected from a purchaser under the representation that it was cannabis excise tax that 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 constitutes debt owed by the cannabis retailer to this state under RTC section 34012.3, unless it is returned to the purchaser that paid it. Also, the procedures for the remittance of excess cannabis excise tax in subdivision (h) of Regulation 3700 are outdated now that the CTL requires retailers to report and remit cannabis excise tax directly to the Department and no longer requires distributors to collect cannabis excise tax from retailers and report and remit it to the Department.

Emergency Regulation 3703, *Excess Cannabis Tax*, included in chapter 8.7 of division 2 of title 18 of the CCR (chapter 8.7), defines excess cannabis tax to include all the amounts described above and provides procedures to ensure that excess cannabis tax is refunded to the person that paid it or paid to the Department. Regulation 3703 supersedes the outdated excess cannabis excise tax provisions in subdivision (h) of Regulation 3700 and subdivision (h)(6) was added to Regulation 3700 to expressly clarify that the excess cannabis excise tax provisions in subdivision (h) are superseded by the provisions in Regulation 3703 and no longer operative on and after January 30, 2023. The Department is now proposing to adopt emergency Regulation 3703 and the amendments adding subdivision (h)(6) to Regulation 3700, as permanent regulations through the APA's regular rulemaking process without any changes. (See Exhibits 1 and 2.)

#### *Chapter 8.8 and the CTL's New Requirements for Cannabis Retailers*

Subdivision (a)(1) of RTC section 34011.2 provides that effective on and after January 1, 2023, a cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state at a rate of 15 percent of the gross receipts of any retail sale by a cannabis retailer. Subdivision (c) of RTC section 34011.2 provides that the cannabis retailer shall be responsible for collecting the cannabis excise tax from the purchaser and remitting that tax to the Department. Also, subdivision (a)(2) of RTC section 34014 requires all cannabis retailers to obtain and maintain a separate cannabis tax permit from the Department and prohibits any person from engaging in business as a cannabis retailer without such a permit, beginning January 1, 2023. Therefore, the Department adopted emergency Regulation 3800, *Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit*, included in chapter 8.8, to clarify the application of the cannabis excise tax imposed on and after January 1, 2023, incorporate the requirement for the cannabis retailer to collect and remit the cannabis excise tax, incorporate the requirement for a person to have a

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cannabis tax permit from the Department to engage in business as a cannabis retailer on and after January 1, 2023, and clarify how a person can obtain such a permit.

Subdivision (a) of emergency Regulation 3800 defines and clarifies the meaning of terms used in the regulation. As relevant here, it provides that “business information” means information the Department deems necessary to determine if a person is required to obtain a cannabis retailer excise tax permit from the Department, determine if the person is required to remit the cannabis excise tax it collects by electronic funds transfer, assign the person a reporting period, and determine how to obtain access to the person’s books and records. Such information includes, but is not limited to, the name of the person’s business, the addresses of the person’s business locations, the date the person’s business started or will start, the business’s business activities, the business’s projected revenue, and the name and contact information of at least one individual the Department may contact to obtain access to the business’s books and records. It provides that “contact information” means information the Department deems necessary to contact and communicate with a person applying for a cannabis retailer excise tax permit and with that person’s authorized representative(s). Such information includes, but is not limited to, a current mailing address, email address, and telephone number. It provides that “Department” means the California Department of Tax and Fee Administration. It provides that “identifying information” means information the Department deems necessary to specifically identify a person applying for a cannabis retailer excise tax permit. Such information includes, but is not limited to, the person’s name, the person’s type (e.g., individual, partnership, limited liability company, corporation, etc.), and the person’s federal Employer Identification Number, and may also include, but is not limited to, the person’s driver’s license number or other government-issued identification card number or entity number issued by the California Secretary of State. It provides that “ownership information” means information the Department deems necessary to identify the owners of an entity or business. Such information may include, but is not limited to, the owners’ names and contact information. It also provides that “representative information” means information the Department deems necessary to verify that the individual that submitted an application for a cannabis retailer excise tax permit is the person applying for a cannabis retailer excise tax permit or is authorized to submit the application on behalf of the person applying for a cannabis retailer excise tax permit. Such information includes, but is not limited to, the individual’s name, title, and contact information.

Subdivision (b) of emergency Regulation 3800 clarifies that a cannabis excise tax is imposed on purchasers of cannabis or cannabis products sold at retail in this state on and after January 1, 2023, pursuant to RTC section 34011.2. It also clarifies that the tax is 15 percent of the cannabis retailer’s gross receipts from the retail sale of the cannabis and cannabis products to the purchaser on and after January 1, 2023, and the cannabis retailer is responsible for collecting the cannabis excise tax from the purchaser and remitting that tax to the Department. Subdivision (c) of the emergency regulation incorporates the requirement for a person to have a cannabis tax permit from the Department to engage in business as a cannabis retailer on and after January 1, 2023. Subdivision (d) of the emergency regulation requires a person to complete and submit an application for a cannabis retailer excise tax permit through the Department’s online services portal via its website

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at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov) to obtain a cannabis retailer excise tax permit. It also clarifies that every application for a cannabis retailer excise tax permit shall provide the applicant's identifying information, contact information, business information, ownership information, and representative information.

The Department is now proposing to adopt new Regulation 3800, *Application of Chapter and Definitions*, to be included in chapter 8.8, through the APA's regular rulemaking process and proposing to renumber emergency Regulation 3800 as Regulation 3801 and adopt renumbered Regulation 3801 as a permanent regulation through the APA's regular rulemaking process. New Regulation 3800 clarifies that:

- Chapter 8.8 applies to the cannabis excise tax imposed by Revenue and Taxation Code section 34011.2 on and after January 1, 2023; and
- Chapter 8.7 applies to the cannabis excise tax imposed by Revenue and Taxation Code section 34011 before January 1, 2023, the cultivation tax imposed by Revenue and Taxation Code section 34012 before July 1, 2022, and excess cannabis tax.

New Regulation 3800 also incorporates renumbered emergency Regulation 3801's definition of "Department" and defines "division 10" to mean division 10 of the BPC because those terms are used in more than one regulation in chapter 8.8, and it's more efficient to define them once at the beginning of the chapter. (See Exhibit 3.) Therefore, the Department is also proposing to delete the definition of "Department" from renumbered emergency Regulation 3801, subdivision (a) and emergency Regulation 3810 (discussed below) and shorten the reference to division 10 in emergency Regulation 3810.

In addition, subdivision (a) of RTC section 34011.2 requires the Department, in consultation with the Department of Finance, to adjust the cannabis excise tax rate for the 2025-26 fiscal year and every two years. Subdivisions (c) and (d) of RTC section 34011.2 require a cannabis retailer to collect the cannabis excise tax from purchasers and provide each purchaser with an invoice, receipt, or other document that separately states the cannabis excise tax. Also, subdivision (b) of RTC section 34011.2 provides that a purchaser's liability for the cannabis excise tax is not extinguished until the cannabis excise tax has been paid to this state, except that an invoice, receipt, or other document given to the purchaser by the cannabis retailer is sufficient to relieve the purchaser from further liability for the tax to which the invoice, receipt, or other document refers.

To avoid any potential future confusion over the applicable cannabis excise tax rate, the Department is proposing to amend the second sentence in subdivision (b) of renumbered emergency Regulation 3801 so that:

- It clarifies that the rate of the cannabis excise tax applies to the gross receipts from any retail sale of cannabis or cannabis products by a cannabis retailer on and after January 1, 2023, and

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- It no longer refers to the rate itself, which will be adjusted for the 2025–26 fiscal year and every two years thereafter and be available on the Department’s website.

To avoid any potential future confusion over the applicable receipts requirements, the Department is proposing to reformat the second half of the second sentence in subdivision (b) of renumbered emergency Regulation 3801, as the third sentence, and amend that sentence so it clarifies that the cannabis retailer is responsible for collecting the cannabis excise tax, providing the purchaser with an invoice, receipt, or other document that separately states the cannabis excise tax, and remitting the tax to the Department. The Department is also proposing to add a new fourth sentence to subdivision (b) in renumbered emergency Regulation 3801 to further clarify that a purchaser’s liability for the cannabis excise tax is not extinguished until the cannabis excise tax has been paid to the Department, except that an invoice, receipt, or other document given to the purchaser by the cannabis retailer that separately states the cannabis excise tax is sufficient to relieve the purchaser from further liability for the tax to which the invoice, receipt, or other document refers.

Finally, subdivision (a) of RTC section 34014.1 authorizes the Department to suspend or revoke a person’s cannabis retailer excise tax permit when the person fails to comply with the provisions of the CTL or the Department’s regulations relating to the cannabis excise tax, or the cannabis retailer’s seller’s permit has been suspended or revoked under the Sales and Use Tax Law, or its cannabis license issued by DCC has been suspended or revoked under division 10 of the BPC. It also requires the Department to give a person notice and conduct a hearing before revoking or suspending their cannabis retailer excise tax permit. Subdivision (a)(2) of RTC section 34014 provides that any person required to obtain a permit who engages in business as a cannabis retailer without a permit or after a permit has been canceled, suspended, or revoked, and each officer of any corporation that so engages in business, is guilty of a misdemeanor. Also, Penal Code section 19 provides that a misdemeanor under subdivision (a)(2) of RTC section 34014 is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both because no other statute prescribes the punishment for that offense. Therefore, the Department is proposing to add new subdivision (e) to renumbered emergency Regulation 3801 to clarify when a cannabis retailer excise tax permit may be revoked or suspended in accordance with RTC section 34014.1 and clarify that any person required to obtain a cannabis retailer excise tax permit who engages in business as a cannabis retailer without a permit or after a permit has been canceled, suspended, or revoked, and each officer of any corporation that so engages in business, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both. (See Exhibit 4.)

#### *Regulation 3805, Cannabis Excise Tax Credit*

RTC section 34011.2 requires a cannabis retailer to collect the cannabis excise tax imposed by section 34011.2 from the purchaser and remit that tax to the Department. Subdivision (a) of RTC section 34011.01 provides that any amount owed by a cannabis retailer to a distributor in connection with the collection of cannabis excise tax imposed by RTC section 34011 owed prior

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to January 1, 2023, shall be paid by the retailer to the distributor. Subdivision (b) of RTC section 34011.01 also provides that a cannabis retailer may claim a credit on their cannabis tax return for cannabis excise tax paid to a distributor, pursuant to RTC section 34011, *before* January 1, 2023, on cannabis or cannabis products the retailer sold to a purchaser on or after January 1, 2023, in a retail sale for which it is responsible for collecting and remitting cannabis excise tax to the Department under RTC section 34011.2.

In addition, for purposes of a cannabis retailer claiming a cannabis excise tax credit, we are not aware of any significant difference between cannabis excise tax a retailer paid to a distributor, pursuant to RTC section 34011, *before or after* January 1, 2023, on cannabis or cannabis products:

- The distributor sold or transferred to the cannabis retailer prior to January 1, 2023; and
- The cannabis retailer sold to a purchaser on or after January 1, 2023, in a retail sale subject to cannabis excise tax, pursuant to RTC section 34011.2.

When a cannabis retailer pays cannabis excise tax to a distributor after January 1, 2023, on cannabis or cannabis products sold or transferred to the cannabis retailer before January 1, 2023, pursuant to RTC section 34011, and then remits cannabis excise tax on the retail sale of the same cannabis or cannabis products after January 1, 2023, pursuant to RTC section 34011.2, the FCPL authorizes the Department to credit the excess amount the retailer paid to the distributor against amounts owed by the retailer and refund the difference because the retailer paid cannabis excise tax twice on the same retail sale. Also, nothing indicates that the enactment of RTC section 34011.01 was intended to limit the Department's authority to credit or refund amounts under the FCPL. Therefore, the Department adopted emergency Regulation 3805, *Cannabis Excise Tax Credit*, included in chapter 8.8, to provide guidance to cannabis retailers about how to claim a credit on their cannabis tax return for cannabis excise tax amounts they paid to a distributor, pursuant to RTC section 34011, on cannabis or cannabis products the distributor sold or transferred to the cannabis retailer prior to January 1, 2023, and the cannabis retailer sold to a purchaser on or after January 1, 2023, in a retail sale subject to cannabis excise tax, pursuant to RTC section 34011.2. Also, the Department is now proposing to adopt emergency Regulation 3805, as a permanent regulation through the APA's regular rulemaking process without any changes.

Subdivision (a) of emergency Regulation 3805 provides that a cannabis retailer may claim a credit on their cannabis tax return for the cannabis excise tax amount the cannabis retailer paid to a distributor, pursuant to RTC section 34011, on cannabis or cannabis products the distributor sold or transferred to the cannabis retailer prior to January 1, 2023, and the cannabis retailer sold to a purchaser on or after January 1, 2023, in a retail sale subject to cannabis excise tax, pursuant to RTC section 34011.2. Subdivision (a) clarifies that the credit must be taken on the cannabis retailer's cannabis tax return filed for the period in which the retail sale of the cannabis or cannabis products occurred. If the credit is not taken on the proper return, the cannabis retailer may file a claim for refund for the amount for which they could have claimed a timely credit. Subdivision (a) also clarifies that a cannabis retailer may not claim a credit or refund for any amount that a



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distributor refunded to the cannabis retailer. Subdivision (b) of emergency Regulation 3805 explains the records necessary to support a cannabis excise tax credit or refund. (See Exhibit 5.)

#### *Regulation 3810, Vendor Compensation*

RTC section 34011.1, operative January 1, 2023, provides that until December 31, 2025, a licensed cannabis retailer that has received approval from the DCC for a fee waiver under BPC section 26249 may retain vendor compensation in an amount equal to 20 percent of the cannabis excise tax. To apply to retain vendor compensation, a cannabis retailer shall complete a one-page application in a form and manner prescribed by the Department and include a copy of their DCC issued cannabis license and DCC approved fee waiver. The Department shall issue the cannabis retailer a notice approving the vendor compensation upon verification that the cannabis retailer meets the requirements of RTC section 34011.1. An approval is generally valid for one year. Therefore, the Department adopted emergency Regulation 3810, *Vendor Compensation*, included in chapter 8.8, to prescribe the form and manner of the application to retain vendor compensation, clarify the requirements to receive approval to retain vendor compensation, clarify the periods for which vendor compensation may be retained, clarify the cannabis excise taxes from which vendor compensation may be retained, provide procedures for reporting and claiming vendor compensation. Also, the Department is now proposing to adopt emergency Regulation 3810, as a permanent regulation through the APA's regular rulemaking process with minor changes to subdivision (a). The Department proposes to delete the definition of "Department" from subdivision (a)(2) and renumber the other subdivisions accordingly. The Department also proposes to delete the clarification that division 10 commences with section 26000 of the Business and Professions Code in renumbered subdivision (a)(5). Definitions for both "Department" and "Division 10" are included in proposed Regulation 3800.

Subdivision (a) of emergency Regulation 3810 defines and clarifies the meaning of terms used in the regulation. As relevant here, it clarifies that "cannabis excise tax" means the cannabis excise tax imposed by RTC section 34011.2. It clarifies that "fee waiver" means a retailer license fee waiver or retailer license renewal fee waiver. It clarifies that a licensed cannabis retailer is a cannabis retailer that has obtained a retailer license pursuant to division 10 of the BPC. It also clarifies that "licensed retail premises" means the physical location from which commercial cannabis activities are authorized to be conducted under a retailer license.

Subdivision (b) of emergency Regulation 3810 incorporates the first sentence in subdivision (a)(1) of RTC section 34011.1 and clarifies that a licensed cannabis retailer may retain vendor compensation in an amount equal to 20 percent of the cannabis excise taxes imposed on the cannabis retailer's retail sales of cannabis or cannabis products authorized under their retailer license for one licensed retail premises if the licensed retailer has received: (1) approval from DCC for a fee waiver that applies to the issuance or renewal of that retailer license; and (2) a notice from the Department approving the licensed cannabis retailer to retain vendor compensation from the cannabis excise taxes imposed on their retail sale of cannabis or cannabis products authorized under that retailer license. The clarifications make the regulation consistent with DCC's

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regulations, which only provide for the issuance of license fee waivers, provide that a licensee shall be eligible for one license fee waiver from the DCC per 12-month licensure period, and require a separate license for each location where a licensee engages in commercial cannabis activity.

Subdivisions (c)(1), (2), and (3) of emergency Regulation 3810 implement subdivision (a)(2) of RTC section 34011.1. Subdivision (c)(1) requires a licensed cannabis retailer to request approval to retain vendor compensation by submitting a completed Vendor Compensation Application through the Department's online services portal. Subdivision (c)(2) requires a completed application to include the information required by subdivision (a)(2) of RTC section 34011.1, and clarifies that the place or places of business referred to in subdivision (a)(2) of RTC section 34011.1 are the place or places where the licensed cannabis retailer is authorized to engage in retail sales of cannabis or cannabis products. In addition to the information required by statute, subdivision (c)(2) of the regulation requires a licensed cannabis retailer's application to include their contact information and indicate the place where commercial cannabis activities are authorized to be conducted under the retailer license for which DCC approved the cannabis retailer's fee waiver, the issuance and expiration date and number of that retailer license, and the date DCC approved the fee waiver to assist the Department with determining eligibility to retain vendor compensation. Subdivision (c)(3) requires a completed application to be submitted with the documents required by subdivision (a)(2) of RTC section 34011.1 and clarifies that a retailer is required to submit the retailer license for which DCC approved the fee waiver.

Subdivision (c)(4) of emergency Regulation 3810 implements subdivision (a)(3) of RTC section 34011.1. It provides that the Department will notify the cannabis retailer in writing as to whether the cannabis retailer is approved to retain vendor compensation and if they are approved, the Department will also specify the quarterly periods for which they are approved to retain vendor compensation.

Subdivision (d) of emergency Regulation 3810 incorporates and clarifies subdivisions (a)(4) and (5) of RTC section 34011.1. It provides that an approval to retain vendor compensation is effective on the first day of the calendar quarter commencing after the date in which the Department issues a notice approving a Vendor Compensation Application and is valid for that calendar quarter. It clarifies that an approval generally remains valid for four consecutive calendar quarters unless it expires earlier under subdivision (d)(3). Subdivision (d)(3) clarifies that an approval to retain vendor compensation expires on the last day of the calendar quarter commencing after the date DCC first notifies the Department that the cannabis retailer is no longer eligible for a fee waiver pursuant to RTC section 34011.1, unless the approval already expired.

Subdivision (d)(4) also clarifies that a licensed cannabis retailer may not retain vendor compensation from the cannabis excise taxes required to be reported for any period after the date their approval to retain vendor compensation expires. Finally, subdivision (d) provides examples to illustrate the specified retention periods. One example provides that a licensed cannabis retailer that is approved to retain vendor compensation during the first calendar quarter of 2023 will be

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approved to retain vendor compensation for the second, third, and fourth calendar quarters of 2023, and first calendar quarter of 2024, unless the approval to retain vendor compensation expires earlier under subdivision (d)(3).

Subdivision (e) of emergency Regulation 3810 clarifies that an approval to retain vendor compensation only approves a licensed cannabis retailer to retain vendor compensation from cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under the retailer license for which they received approval from DCC for a fee waiver. Subdivision (e) also clarifies that an approval to retain vendor compensation does not approve a licensed cannabis retailer to retain vendor compensation from cannabis excise taxes imposed on any other retail sales, including, but not limited to, sales made after the retailer license for which they received approval from DCC for a fee waiver has expired and before that license is renewed, or made after that retailer license is revoked, or made under any other retailer license.

Subdivision (f) of emergency Regulation 3810 provides that a new Vendor Compensation Application must be submitted if the licensed cannabis retailer's previous approval has expired or their retailer license for which they received approval from the DCC for a fee waiver has expired and not been renewed or has been revoked. Subdivision (g) of emergency Regulation 3810 requires a licensed cannabis retailer to report the vendor compensation retained from the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products, as a credit on their Cannabis Retailer Excise Tax Return for the corresponding reporting period in which the cannabis retailer made the retail sales of the cannabis or cannabis products. Subdivision (g) also provides that a cannabis retailer must file a claim for refund with the Department if the cannabis retailer remits any amount of cannabis excise tax to the Department that it was eligible to retain. Finally, subdivision (h) of emergency Regulation 3810 clarifies that a cannabis retailer shall not retain vendor compensation from cannabis excise taxes imposed on retail sales of cannabis or cannabis products made after December 31, 2025, as provided in subdivision (a)(1) of RTC section 34011.1. (See Exhibit 6.)

#### *Proposed Regulation 3820, Responsible Person Liability*

The Department is proposing to adopt new Regulation 3820, *Responsible Person Liability*, to be included in chapter 8.8, through the regular rulemaking process, to incorporate and clarify the provisions of RTC section 34015.2, which make a responsible person liable for unpaid cannabis excise taxes, interest, and penalties owed by a corporation, partnership, limited partnership, limited liability partnership, or limited liability company under specified circumstances. Subdivision (a) of the proposed regulation establishes the general rule that any responsible person who willfully fails to pay or to cause to be paid any cannabis excise tax due from a corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to RTC section 34011.2 shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company if the Department establishes that, while the person was a responsible person, the corporation,

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partnership, limited partnership, limited liability partnership, or limited liability company was required to collect the cannabis excise tax imposed pursuant to Revenue and Taxation Code section 34011.2 and failed to remit such tax when due.

Subdivision (b)(1) of proposed Regulation 3820 defines “responsible person” to mean any officer, member, manager, employee, director, shareholder, partner, or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of cannabis excise tax or who has a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of the CTL. It also clarifies that the fact that the person possesses any of the aforementioned titles, in and of itself, is not sufficient to establish that a person is a “responsible person.” Subdivision (b)(2) defines “willfully fails to pay or to cause to be paid” to mean that the failure was the result of an intentional, conscious, and voluntary course of action” as provided in subdivision (f) of RTC section 34015.2. It clarifies that a failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or motive. It also clarifies that a person has willfully failed to pay the taxes or to cause them to be paid, only when the Department establishes all of the following:

- On or after the date that the taxes came due, as prescribed by RTC section 34015, the responsible person had actual knowledge that the taxes were due, but not being paid;
- The responsible person had the authority to pay the taxes or to cause them to be paid on the date that the taxes came due, as prescribed by RTC section 34015, and when the responsible person had actual knowledge that the taxes were due, but not being paid; and
- When the responsible person had actual knowledge that the taxes were due, but not being paid, the responsible person had the ability to pay the taxes but chose not to do so.

It also clarifies that a responsible person who was required to obtain approval from another person prior to paying the taxes at issue and was unable to act on their own in making the decision to pay the taxes does not have the authority to pay the taxes or to cause them to be paid.

Subdivision (b)(3) of proposed Regulation 3820 clarifies that the “termination” of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company includes the discontinuance or cessation of all business activities for which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was required to hold a cannabis retailer excise tax permit.

Subdivision (c) of proposed Regulation 3820 incorporates the collection provisions from subdivisions (d) and (e) of RTC section 34015.2 and subdivision (d) clarifies that the Department has the burden to prove that the requirements for personal liability have been satisfied under the preponderance of the evidence standard of proof. (See Exhibit 7.)

#### *Proposed Amendments to Regulation 3501, Records*

RTC sections 55302 authorizes the Department to examine a cannabis retailer’s books and records as it deems necessary to administer and collect cannabis taxes pursuant to the FCPL. FCPL

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Regulation 3501, *Records*, currently requires a cannabis retailer to maintain and make available for examination, records in the manner set forth in Regulation 4901, *Records*. Also, Regulation 4901 currently requires a cannabis retailer to maintain and make available all records necessary to determine their correct cannabis tax liability and all records necessary for the proper completion of their required cannabis tax returns. It also currently provides that the failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade cannabis tax and may result in penalties or other appropriate administration action.

RTC section 34011.2 does not impose cannabis excise tax on medicinal cannabis or medicinal cannabis product donated for no consideration to a medicinal cannabis patient pursuant to BPC section 26071, or cannabis or cannabis products designated as a trade sample pursuant to BPC section 26153.1. (RTC, § 34011.2, subds. (h) and (i)(1).) However, RTC section 34011.2 does impose cannabis excise tax on purchases of medicinal cannabis, medicinal cannabis products, and cannabis or cannabis products designated as trade samples in retail sales and subdivision (i)(2) of RTC section 34011.2 expressly provides that any person licensed under division 10 of the BPC that sells cannabis or cannabis products designated as a trade sample pursuant to BPC section 26153.1 is liable for the cannabis excise tax imposed by section 34011.2 as if the person were a cannabis retailer at the time of sale. Therefore, a cannabis retailer needs to maintain records and make them available to the Department to establish that they did not make retail sales of any medicinal cannabis or cannabis products designated for donation and they did not make any sales of cannabis or cannabis products designated as trade samples, which are subject to cannabis excise tax.

To avoid any potential future confusion over these record keeping requirements, the Department is proposing to add new subdivision (c) to Regulation 3501 through the regular rulemaking process to clarify that the records cannabis retailers are required to maintain and make available under Regulation 4901, include, but are not limited to, records documenting:

- Their receipt of cannabis and cannabis products designated as trade samples pursuant to BPC section 26153.1 and implementing regulations, their consumption of such trade samples, their providing of such trade samples to their employee for that employee's inspection or consumption, and the destruction of such trade samples.
- The cannabis and cannabis products they designate as trade samples to be provided to an employee pursuant to BPC section 26153.1 and implementing regulations, their providing of such trade samples to their employee for that employee's inspection or consumption, the destruction of such trade samples, and the changing of such trade samples' designation to medicinal cannabis and cannabis products for donation.
- Their receipt of medicinal cannabis and cannabis products designated for donation in the track and trace system, their providing of such medicinal cannabis and cannabis products to a medicinal cannabis patient or primary caregiver pursuant to BPC section 26071, and the destruction of such medicinal cannabis and cannabis products.

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- The medicinal cannabis and cannabis products they designate for donation in the track and trace system, their providing of such medicinal cannabis and cannabis products to a medicinal cannabis patient or primary caregiver pursuant to BPC section 26071, the destruction of such medicinal cannabis and cannabis products, and the removal of the donation designation from such medicinal cannabis and cannabis products.

In addition, the Department is proposing to replace “board” with “Department” in subdivision (a) of Regulation 3501 to clarify that “board,” as used in RTC section 55302, means the Department pursuant to RTC section 20. Also, the Department is proposing to change the name of subdivision (b) of Regulation 3501 from “Specific Applications” to “Ballast Water Management Fee” because that subdivision only clarifies the record keeping requirements for that fee. (See Exhibit 8.)

### **Summary**

The Department proposes to adopt the emergency amendments to Regulation 3700, emergency Regulation 3703, new Regulation 3800, renumbered emergency Regulation 3801, emergency Regulation 3805, emergency Regulation 3810 with amendments, new Regulation 3820, and the amendments to Regulation 3501, through the regular rulemaking process.

We welcome any comments, suggestions, and input from interested parties on this issue. We also invite interested parties to participate in the November 16, 2023, interested parties meeting. The deadline for interested parties to provide their written submissions regarding this discussion paper will be November 30, 2023.

Prepared by the Tax Policy Bureau, Business Tax and Fee Division

Current as of October 19, 2023.

**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 3700. Cannabis Excise and Cultivation Taxes**

**Regulation 3700. Cannabis Excise and Cultivation Taxes.**

(a) Definitions. For purposes of this chapter (Cannabis Tax Regulations, commencing with Regulation 3700), the definitions of terms in part 14.5, Cannabis Tax, (commencing with section 34010) of division 2 of the Revenue and Taxation Code shall apply and the following terms are defined or further defined below.

(1) “California Cannabis Track-and-Trace system” means the system all persons licensed pursuant to division 10 (commencing with section 26000) of the Business and Professions Code are required to use to record the inventory and movement of cannabis and cannabis products through the commercial cannabis supply chain.

(2) “Cannabis accessories” shall have the same meaning as set forth in section 11018.2 of the Health and Safety Code.

(3) “Cannabis flowers” means the flowers of the plant *Cannabis sativa* L. that have been harvested, dried, trimmed or untrimmed, and cured, and prior to any processing whereby the plant material is transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. The term “cannabis flowers” excludes leaves and stems removed from the cannabis flowers prior to the cannabis flowers being transferred or sold.

(4) “Cannabis leaves” means all parts of the plant *Cannabis sativa* L. other than cannabis flowers that are sold or consumed.

(5) “Cultivator” means all persons required to be licensed to cultivate cannabis pursuant to division 10 (commencing with section 26000) of the Business and Professions Code, including a microbusiness that cultivates cannabis as set forth in paragraph (3) of subdivision (a) of section 26070 of the Business and Professions Code.

(6) “Distributor” means a person required to be licensed as a distributor pursuant to division 10 (commencing with section 26000) of the Business and Professions Code, including a

microbusiness that acts as a licensed distributor as set forth in paragraph (3) of subdivision (a) of section 26070 of the Business and Professions Code.

(7) “Fresh cannabis plant” means the flowers, leaves, or a combination of adjoined flowers, leaves, stems, and stalk from the plant *Cannabis sativa* L. that is either cut off just above the roots, or otherwise removed from the plant.

To be considered “fresh cannabis plant,” the flowers, leaves, or combination of adjoined flowers, leaves, stems, and stalk must be weighed within two hours of the plant being harvested and without any artificial drying such as increasing the ambient temperature of the room or any other form of drying, or curing and must be entered into the California Cannabis Track-and-Trace system, manifested, and invoiced as “fresh cannabis plant.” If the California Cannabis Track-and-Trace system is not available, or a licensee is not required to record activity, the paper manifest or invoice shall indicate “fresh cannabis plant” is being sold or transferred.

(8) “Manufacturer” means a person required to be licensed as a manufacturer pursuant to division 10 (commencing with section 26000) of the Business and Professions Code, including a microbusiness that acts as a licensed manufacturer as set forth in paragraph (3) of subdivision (a) of section 26070 of the Business and Professions Code.

(9) “Ounce” means 28.35 grams.

(10) “Plant waste” means waste of the plant *Cannabis sativa* L. that is managed pursuant to the cannabis waste management provisions of chapter 1, division 8 of title 3 of the California Code of Regulations.

(11) “Wholesale cost” means:

(A) Prior to January 1, 2020, the amount paid by the cannabis retailer for the cannabis or cannabis products, including transportation charges. Discounts and trade allowances must be added back when determining wholesale cost.

For purposes of this subdivision, “discounts or trade allowances” are price reductions, or allowances of any kind, whether stated or unstated, and include, without limitation, any price reduction applied to a supplier’s price list. The discounts may be for prompt payment, payment in cash, bulk purchases, related-party transactions, or “preferred-customer” status.

(B) On and after January 1, 2020, the amount paid by the cannabis retailer for the cannabis or cannabis products, including transportation charges.



(b) Collection of Cultivation Tax When Testing Requirement is Waived. For purposes of the cultivation tax imposed on all harvested cannabis that enters the commercial market pursuant to section 34012 of the Revenue and Taxation Code, when the testing requirement is waived pursuant to subdivision (1) of section 26070 of the Business and Professions Code, a distributor shall collect the cultivation tax from cultivators when cannabis is transferred or sold to the distributor.

(c) Cultivation Tax. For transactions made on and after January 1, 2018, the rate of the cultivation tax applies as follows:

- (1) Per dry-weight ounce of cannabis flowers, and at a proportionate rate for any other quantity.
- (2) Per dry-weight ounce of cannabis leaves, and at a proportionate rate for any other quantity.
- (3) Per ounce of fresh cannabis plant, and at a proportionate rate for any other quantity.

(d) Cultivation Tax Invoicing Requirements. A cultivator is liable for the cultivation tax imposed pursuant to section 34012 of the Revenue and Taxation Code. A cultivator's liability for the cultivation tax is not extinguished until the cultivation tax has been paid to the State, except as otherwise provided in subdivision (h) of Revenue and Taxation Code section 34012.

- (1) The distributor shall provide to the cultivator, or to the manufacturer if the cannabis was first sold or transferred to a manufacturer, an invoice, receipt, or similar document that identifies the licensee receiving the product, the originating cultivator, associated unique identifier of the cannabis, the amount of cultivation tax, and the weight and category of the cannabis. The weight and category of the cannabis identified on the invoice shall equal the weight and category of the cannabis entered into the California Cannabis Track-and-Trace system.
- (2) The manufacturer shall provide to the cultivator when a cultivator sells or transfers cannabis to a manufacturer, an invoice, receipt, or similar document that identifies the licensee receiving the product, the originating cultivator, the associated unique identifier of the cannabis, the amount of cultivation tax, and the weight and category of the cannabis. The weight and category of the cannabis identified on the invoice shall equal the weight and category of the cannabis entered into the California Cannabis Track-and-Trace system.
- (3) The manufacturer shall include on the invoice, receipt, or similar document to the distributor or the next party in the transaction, the associated weight and category of the cannabis used to produce the cannabis products. This associated cultivation tax and the weight and category of the cannabis used to produce a cannabis product shall follow the

cannabis product from one party to the next until it reaches a distributor for quality assurance review, as described in section 26110 of the Business and Professions Code.

(e) Remittance of Cultivation Tax. A distributor who conducts the required quality assurance review before the cannabis or cannabis products can be sold or transferred to a cannabis retailer pursuant to section 5307, of chapter 2, division 42 of title 16 of the California Code of Regulations, is responsible for the remittance of the cultivation tax based on the weight and category of the cannabis that enters the commercial market.

(f) Cannabis Removed from a Cultivator’s Premises is Presumed Sold.

(1) Unless the contrary is established, it shall be presumed that all cannabis removed from the cultivator’s premises, except for plant waste, is sold and thereby taxable pursuant to section 34012 of the Revenue and Taxation Code.

(2) The presumption in subdivision (f)(1) may be rebutted by a preponderance of the evidence demonstrating that the cannabis was removed for purposes other than for entry into the commercial market. Reasons for which cannabis may be removed and not subject to tax on that removal include, but are not limited to, the following:

(A) Fire,

(B) Flood,

(C) Pest control,

(D) Processing by a cultivator, such as trimming, drying, curing, grading, packaging, or labeling,

(E) Storage prior to the completion of, and compliance with, the quality assurance review and testing, as required by Business and Professions Code section 26110, and

(F) Testing.

(g) Receipts for Cannabis Excise Tax Paid to Cannabis Retailers. A purchaser of cannabis or cannabis products is liable for the cannabis excise tax imposed pursuant to section 34011 of the Revenue and Taxation Code. A purchaser’s liability for the cannabis excise tax is not extinguished until the cannabis excise tax has been paid to the State, except as otherwise provided in subdivision (g)(2).

(1) Each cannabis retailer is required to provide a purchaser of cannabis or cannabis products with an invoice, receipt, or other document that includes a statement that reads: “The cannabis excise taxes are included in the total amount of this invoice.”

(2) An invoice, receipt, or other document with the required statement set forth in subdivision (g)(1) obtained from the cannabis retailer is sufficient to relieve the purchaser of the cannabis excise tax imposed on the purchase of the cannabis or cannabis products.

(3) A cannabis retailer may separately state a charge for the cannabis excise tax when the cannabis or cannabis products are sold to a purchaser and the separately stated charge shall be equal to the cannabis excise tax required to be paid to a distributor pursuant to section 34011 of the Revenue and Taxation Code.

(h) Excess Cannabis Excise Tax Collected by a Cannabis Retailer.

(1) Definition. When an amount represented by a cannabis retailer to a customer as constituting cannabis excise tax is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the cannabis retailer, the amount so paid is excess cannabis excise tax collected. Excess cannabis excise tax is charged when tax is computed on a transaction which is not subject to cannabis excise tax, when cannabis excise tax is computed on an amount in excess of the amount subject to cannabis excise tax, when cannabis excise tax is computed using a tax rate higher than the rate imposed by law, and when mathematical or clerical errors result in an overstatement of the cannabis excise tax on an invoice, receipt, or similar document.

(2) Procedure Upon the Determination of Excess Cannabis Excise Tax Collected. Whenever the Department determines that a person has collected excess cannabis excise tax, the person will be afforded an opportunity to refund the excess cannabis excise tax collection to the customers from whom they were collected.

(3) Evidence Sufficient to Establish that Excess Cannabis Excise Tax Amounts Have Been or Will Be Returned to the Customer.

(A) If a person already has refunded to each customer amounts collected as excess cannabis excise tax due, this may be evidenced by any type of record that can be verified by audit such as:

1. Receipts or cancelled checks.
2. Books of account showing that credit has been allowed the customer as an offset against an existing indebtedness owed by the customer to the person.

(B) If a person has not already made excess cannabis excise tax refunds to each customer but desires to do so rather than incur an obligation to the state, the person must:

1. Inform in writing each customer from whom an excess cannabis excise tax amount was collected that the excess cannabis excise tax amount collected will be refunded to

the customer or that, at the customer's option, the customer will be credited with such amount, and

2. The person must obtain and retain for verification by the Department an acknowledgement from the customer that the customer has received notice of the amount of indebtedness of the person to the customer.

(C) In the event a cannabis retailer is unable to make such refunds to a customer, the cannabis retailer shall remit the excess cannabis excise tax to a distributor pursuant to paragraph 4 of this subdivision.

(4) Cannabis Retailer's Remittance of Excess Cannabis Excise Tax to a Distributor.

(A) Once a cannabis retailer determines that it has collected excess cannabis excise tax and is unable to make a refund to the customer, and has not previously paid the excess cannabis excise tax to a distributor, the cannabis retailer shall remit the excess cannabis excise tax to a distributor licensed pursuant to division 10 (commencing with section 26000) of the Business and Professions Code.

(B) Upon a cannabis retailer's remittance of the excess cannabis excise tax to a distributor, as set forth in subdivision (h)(4)(A), a distributor shall provide the cannabis retailer with an invoice, receipt, or other similar document that contains all of the following:

1. Date of execution of the invoice, receipt, or other similar document,
2. Name of the distributor,
3. Name of the cannabis retailer,
4. The amount of excess cannabis excise tax,
5. The number of the seller's permit held by the cannabis retailer, and
6. 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.

(5) Distributor's Reporting and Remittance of the Excess Cannabis Excise Tax. A distributor shall report and remit the excess cannabis excise tax collected from the cannabis retailer pursuant to subdivision (h)(4) with the distributor's first return subsequent to receiving the excess cannabis excise tax from the cannabis retailer.

(6) The excess cannabis excise tax provisions in subdivisions (h)(1) through (5) are superseded by the provisions in Regulation 3703 and no longer operative on and after January 30, 2023.

(i) Cannabis or Cannabis Products Sold with Cannabis Accessories. A cannabis excise tax shall be imposed upon purchasers of cannabis or cannabis products sold in this state at the rate of 15 percent of the average market price of any retail sale by a cannabis retailer. Unless as otherwise provided below, the cannabis excise tax does not apply to cannabis accessories.

(1) When cannabis or cannabis products are sold or transferred with cannabis accessories (e.g., vape cartridges) to a cannabis retailer, and a distributor separately states the price of the cannabis or cannabis products from the cannabis accessories, the cannabis excise tax applies to the average market price of the cannabis or cannabis products, and not to the separately stated charge for the cannabis accessories.

(A) A distributor that makes a sales price segregation must maintain supporting documentation used to establish the individual cost of the cannabis or cannabis products and the cannabis accessories.

(B) Charges will be regarded as separately stated only if they are separately set forth in the invoice, receipt, or other document issued to the purchaser contemporaneously with the sale. The fact that the charges can be computed from other records will not suffice as a separate statement.

(2) When cannabis or cannabis products are sold or transferred with cannabis accessories (e.g., vape cartridges) to a cannabis retailer, and a distributor does not separately state the sales price of the cannabis or cannabis products from the cannabis accessories, the cost of the cannabis accessories shall be included in the average market price to which the cannabis excise tax applies.

(j) Reporting the Cannabis Excise Tax. A distributor shall report and remit the cannabis excise tax due with the return for the quarterly period in which the distributor sells or transfers the cannabis or cannabis products to a cannabis retailer.

(1) A person that holds both a cannabis retailer license and a distributor license, or a microbusiness that is authorized to act as a distributor, is subject to the same cannabis excise tax collection and reporting requirements as a person that holds only a distributor license.

(2) A distributor that sells or transfers cannabis or cannabis products to another distributor is not responsible for collecting the cannabis excise tax from the other distributor.

(3) Transactions between two distributors shall document that no cannabis excise tax was collected or remitted on the invoice between the two distributors. Documentation shall

identify the selling distributor, the selling distributor's license number, the purchasing distributor, and the purchasing distributor's license number. When the transaction is between a distributor and a microbusiness acting as a distributor, the documentation shall indicate that the microbusiness is acting as a distributor.

(4) The distributor or microbusiness that sells or transfers cannabis or cannabis products to a cannabis retailer is responsible for collecting the cannabis excise tax from the cannabis retailer based on the average market price of the cannabis or cannabis products supplied to the cannabis retailer.

(k) Penalties.

(1) Penalty for Unpaid Taxes. In addition to any other penalty imposed pursuant to the Fee Collection Procedures Law (commencing with section 55001 of the Revenue and Taxation Code) or any other penalty provided by law, a penalty of 50 percent of the amount of the unpaid cannabis excise tax or cannabis cultivation tax shall be added to the cannabis excise tax and cultivation tax not paid in whole or in part within the time required pursuant to sections 34015 and 55041.1 of the Revenue and Taxation Code.

(2) Relief from Penalty for Reasonable Cause. If the Department finds that a person's failure to make a payment of the cannabis excise tax or cannabis cultivation tax is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by subdivision (k)(1) for such failure.

Any person seeking to be relieved of the penalty shall file with the Department a statement under penalty of perjury setting forth the facts upon which the claim for relief is based.

Note: Authority cited: Section 15570.40(b), Government Code; and Section 34013, Revenue and Taxation Code. Reference: Sections 34010, 34011, 34012, 34013, 34015, 55041.1 and 55044, Revenue and Taxation Code; Section 11018.2, Health and Safety Code; and Section 15570.40(b), Government Code.

**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**

**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 January 30, 2023.

(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 January 30, 2023.

(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.

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

**Proposed Text of California Code of Regulations**

**Title 18. Public Revenues**

**Division 2. California Department of Tax and Fee Administration –**

**Business Taxes**

**Chapter 8.8 Cannabis Excise Tax Effective on and after January 1, 2023**

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

**Regulation 3800. Application of Chapter and Definitions.**

(a) Application of Chapter. This chapter applies to the cannabis excise tax imposed by Revenue and Taxation Code section 34011.2 on and after January 1, 2023. Chapter 8.7 of division 2 of title 18 of the California Code of Regulations (commencing with Reg. 3700) applies to the cannabis excise tax imposed by Revenue and Taxation Code section 34011 before January 1, 2023, the cultivation tax imposed by Revenue and Taxation Code section 34012 before July 1, 2022, and excess cannabis tax.

(b) Definitions. For purposes of this chapter, the following terms have the following meanings:

(1) “Department” means the California Department of Tax and Fee Administration.

(2) “Division 10” means division 10 (commencing with section 26000) of the Business and Professions Code and any regulations adopted by the Department of Cannabis Control or any successor implementing, interpreting, or making specific that division.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Section 34011.2, Revenue and Taxation Code.

**Proposed Text of California Code of Regulations**

**Title 18. Public Revenues**

**Division 2. California Department of Tax and Fee Administration –**

**Business Taxes**

**Chapter 8.8 Cannabis Excise Tax Effective on and after January 1, 2023**

**Regulation ~~3801~~3800. Cannabis Excise Tax and Cannabis Retailer Excise Tax Permit.**

(a) Definitions. For purposes of this regulation, the following terms have the following meanings:

(1) “Business information” means information the Department deems necessary to determine if a person is required to obtain a cannabis retailer excise tax permit from the Department, determine if the person is required to remit the cannabis excise tax it collects by electronic funds transfer, assign the person a reporting period, and determine how to obtain access to the person’s books and records. Such information includes, but is not limited to, the name of the person’s business, the addresses of the person’s business locations, the date the person’s business started or will start, the business’s business activities, the business’s projected revenue, and the name and contact information of at least one individual the Department may contact to obtain access to the business’s books and records.

(2) “Contact information” means information the Department deems necessary to contact and communicate with a person applying for a cannabis retailer excise tax permit and with that person’s authorized representative(s). Such information includes, but is not limited to, a current mailing address, email address, and telephone number.

~~(3) “Department” means the California Department of Tax and Fee Administration.~~

(4) “Identifying information” means information the Department deems necessary to specifically identify a person applying for a cannabis retailer excise tax permit. Such information includes the person’s name, the person’s type (e.g., individual, partnership, limited liability company, corporation, etc.), and the person’s Federal Employer Identification Number, and may also include, but is not limited to, the person’s driver’s license number or other government-issued identification card number or entity number issued by the California Secretary of State.

(5) “Ownership information” means information the Department deems necessary to identify the owners of an entity or business. Such information includes, but is not limited to, the owners’ names and contact information.

(65) “Representative information” means information the Department deems necessary to verify that the individual who submitted an application for a cannabis retailer excise tax permit is the person applying for a cannabis retailer excise tax permit or is authorized to submit the application on behalf of the person applying for a cannabis retailer excise tax permit. Such information includes, but is not limited to, the individual’s name, title, and contact information.

(b) A cannabis excise tax is imposed upon purchasers of cannabis or cannabis products sold at retail in this state on and after January 1, 2023, pursuant to Revenue and Taxation Code section 34011.2. The rate of the cannabis excise tax applies to the~~is 15 percent of the cannabis retailer’s~~ gross receipts from any~~the~~ retail sale of ~~the~~ cannabis ~~or~~and cannabis products by a cannabis retailer~~to the purchaser~~ on and after January 1, 2023,~~, and the~~ The cannabis retailer is responsible for collecting the cannabis excise tax from the purchaser, providing the purchaser with an invoice, receipt, or other document that separately states the cannabis excise tax, and remitting that tax to the Department. A purchaser’s liability for the cannabis excise tax is not extinguished until the cannabis excise tax has been paid to the Department except that an invoice, receipt, or other document given to the purchaser by the cannabis retailer that separately states the cannabis excise tax is sufficient to relieve the purchaser from further liability for the tax to which the invoice, receipt, or other document refers.

(c) On and after January 1, 2023, a person must have a cannabis retailer excise tax permit issued by the Department to engage in business as a cannabis retailer.

(d) To obtain a cannabis retailer excise tax permit, a person shall complete and submit an application for a cannabis retailer excise tax permit through the Department’s online services portal via its website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov). Every application for a cannabis retailer excise tax permit shall provide the applicant’s identifying information, contact information, business information, ownership information, and representative information.

(e) (1) The Department may revoke or suspend a person’s cannabis retailer excise tax permit if:

(A) The person fails to comply with any provision of the Cannabis Tax Law relating to the cannabis excise tax or any rule or regulation of the Department relating to cannabis excise tax.

(B) The person’s seller’s permit has been suspended or revoked under the Sales and Use Tax Law.

(C) The person’s license issued by the Department of Cannabis Control or any successor has been suspended or revoked under division 10.

(2) The Department shall comply with the notice and hearing requirements of Revenue and Taxation Code section 34014.1 before revoking or suspending a person’s cannabis retailer excise tax permit.

(3) Any person required to obtain a cannabis retailer excise tax permit who engages in business as a cannabis retailer without a permit or after a permit has been canceled, suspended, or revoked, and each of any corporation that so engages in business, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34011.2, 34014, 34014.1, 34015 and 55302, Revenue and Taxation Code.

**Proposed Text of California Code of Regulations**

**Title 18. Public Revenues**

**Division 2. California Department of Tax and Fee Administration –**

**Business Taxes**

**Chapter 8.8. Cannabis Excise Tax Effective on and after January 1, 2023**

**Regulation 3805. Cannabis Excise Tax Credit.**

(a) A cannabis retailer may claim a credit on their cannabis tax return for the cannabis excise tax amount the cannabis retailer paid to a distributor, pursuant to Revenue and Taxation Code section 34011, on cannabis or cannabis products the distributor sold or transferred to the cannabis retailer prior to January 1, 2023, and the cannabis retailer sold to a purchaser on or after January 1, 2023, in a retail sale subject to cannabis excise tax, pursuant to Revenue and Taxation Code section 34011.2.

(1) The credit must be taken on the cannabis retailer’s cannabis tax return filed for the period in which the retail sale of the cannabis or cannabis products occurred. If the credit is not taken on the proper return, the cannabis retailer may file a claim for refund for the amount for which they could have claimed a timely credit.

(2) A cannabis retailer may not claim a credit or refund under this regulation for any amount that a distributor refunded to the retailer.

(b) To support a cannabis excise tax credit or refund, the cannabis retailer shall maintain records, such as invoices, receipts, and other similar documents, that can be verified by audit of:

(1) The retail sale of the cannabis or cannabis products to the purchaser on or after January 1, 2023, including the associated unique identifier for the cannabis or cannabis products sold to the purchaser.

(2) The cannabis excise tax paid to the distributor on the cannabis or cannabis products sold to the purchaser, including:

(A) The distributor’s name and Department of Cannabis Control license number;

(B) The date the distributor sold or transferred the cannabis or cannabis products to the cannabis retailer;

(C) The amount of cannabis excise tax the cannabis retailer paid to the distributor on the cannabis or cannabis products sold to the purchaser; and

(D) The associated unique identifier for the cannabis or cannabis products on which the cannabis excise tax was paid to the distributor.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34011.01 and 55302, Revenue and Taxation Code.

**Proposed Text of California Code of Regulations**

**Title 18. Public Revenues**

**Division 2. California Department of Tax and Fee Administration –**

**Business Taxes**

**Chapter 8.8. Cannabis Excise Tax Effective on and after January 1, 2023**

**Regulation 3810. Vendor Compensation**

(a) Definitions. For purposes of this regulation, the following definitions shall apply:

(1) “Cannabis excise tax” means the cannabis excise tax imposed by section 34011.2 of the Revenue and Taxation Code.

~~(2) “Department” means the California Department of Tax and Fee Administration.~~

(3) “Fee waiver” means a retailer license fee waiver or retailer license renewal fee waiver provided pursuant to section 26249 of the Business and Professions Code and implementing regulations.

(4) “Licensed cannabis retailer” means a cannabis retailer, as defined in section 34010 of the Revenue and Taxation Code, that has obtained a retailer license.

(5) “Licensed retail premises” means the physical location from which commercial cannabis activities are authorized to be conducted under a retailer license.

(6) “Retailer license” means a license issued by the Department of Cannabis Control pursuant to division 10 ~~(commencing with section 26000) of the Business and Professions Code~~ authorizing a cannabis retailer to engage in the retail sale of cannabis or cannabis products to customers.

(b) Requirements to Retain Vendor Compensation. A licensed cannabis retailer may retain vendor compensation in an amount equal to 20 percent of the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under their retailer license for one licensed retail premises, during the periods prescribed by subdivision (d), if the licensed cannabis retailer has received:

(1) Approval from the Department of Cannabis Control for a fee waiver that applies to the issuance or renewal of that retailer license; and



(2) A notice from the Department described in subdivision (c)(4) approving the licensed cannabis retailer to retain vendor compensation from the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under that retailer license.

(c) Vendor Compensation Application.

(1) A licensed cannabis retailer must request approval to retain vendor compensation by submitting a completed Vendor Compensation Application to the Department through the Department’s online services portal via its website at [www.cdtfa.ca.gov](http://www.cdtfa.ca.gov).

(2) Every Vendor Compensation Application shall include the following:

(A) The name under which the cannabis retailer transacts or intends to transact business;

(B) The addresses of each licensed premises at which the licensed cannabis retailer is authorized to engage in retail sales of cannabis or cannabis products, and identification of the licensed premises where commercial cannabis activities are authorized to be conducted under the retailer license for which the Department of Cannabis Control approved the licensed cannabis retailer’s fee waiver;

(C) The number of the licensed cannabis retailer’s cannabis tax permit issued pursuant to part 14.5 (commencing with section 34010) of division 2 of the Revenue and Taxation Code;

(D) The issuance and expiration dates and number of the retailer license of the licensed cannabis retailer for which the Department of Cannabis Control approved the licensed cannabis retailer’s fee waiver;

(E) The date the Department of Cannabis Control approved the licensed cannabis retailer’s fee waiver;

(F) The number of the licensed cannabis retailer’s seller’s permit issued pursuant to article 2 (commencing with section 6066), chapter 2, part 1, division 2 of the Revenue and Taxation Code; and

(G) The contact information for the individual completing the application, including the individual’s first and last name, telephone number, and email address.

(3) Each completed Vendor Compensation Application shall also be submitted with the following:

(A) A copy of the Department of Cannabis Control approved fee waiver issued to the licensed cannabis retailer; and

(B) A copy of the retailer license of the licensed cannabis retailer for which the Department of Cannabis Control approved the licensed cannabis retailer’s fee waiver.

(4) The Department will notify the licensed cannabis retailer in writing as to whether they are approved to retain vendor compensation. If they are approved, the Department will also specify the quarterly periods for which they are approved to retain vendor compensation, as provided in subdivision (b), from the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under their retailer license referred to in subdivision (b).

(d) Retention Periods.

(1) An approval to retain vendor compensation is effective on the first day of the calendar quarter commencing after the date the Department issued the notice approving a licensed cannabis retailer’s Vendor Compensation Application and is valid for that calendar quarter. For example, if the Department issues the notice approving a licensed cannabis retailer’s Vendor Compensation Application on February 22, 2023, then the cannabis retailer’s approval is effective April 1, 2023, and the cannabis retailer is approved to retain vendor compensation, as provided in subdivision (b), from the cannabis excise taxes they are required to report to the Department for the second calendar quarter of 2023.

(2) In general, an approval to retain vendor compensation shall remain valid for four consecutive calendar quarters beginning with the first calendar quarter commencing after the date the Department issued the notice approving the licensed cannabis retailer’s Vendor Compensation Application and shall expire at the end of that one-year period.

For example, if the Department issues the notice approving a licensed cannabis retailer’s Vendor Compensation Application on February 22, 2023, then the cannabis retailer is approved to retain vendor compensation, as provided in subdivision (b), from the cannabis excise taxes they are required to report to the Department for the second, third, and fourth calendar quarters of 2023, and first calendar quarter of 2024, unless the approval to retain vendor compensation expires earlier under subdivision (d)(3).

(3) Unless an approval to retain vendor compensation would expire earlier pursuant to subdivision (d)(2), it shall expire on the last day of the calendar quarter commencing after the date the Department of Cannabis Control first notifies the Department that the cannabis retailer is no longer eligible for a fee waiver, pursuant to subdivision (a)(5) of section 34011.1 of the Revenue and Taxation Code, by either:

(A) Updating a database maintained by the Department of Cannabis Control and accessible to the Department to reflect that the cannabis retailer has become ineligible for a fee waiver; or

(B) Otherwise providing information to the Department reflecting that the cannabis retailer has become ineligible for a fee waiver at the Department's request and for purposes of verifying a cannabis retailer's eligibility to retain vendor compensation.

For example, if the Department of Cannabis Control first notifies the Department on March 20, 2024, that a cannabis retailer has become ineligible for a fee waiver, the cannabis retailer's approval to retain vendor compensation expires at the end of the second quarter on June 30, 2024, unless the approval to retain vendor compensation already expired under subdivision (d)(2).

(4) A licensed cannabis retailer may not retain vendor compensation from the cannabis excise taxes required to be reported to the Department for any period commencing after the date their approval to retain vendor compensation expires.

(e) License Limitation. An approval to retain vendor compensation issued under this regulation only approves a licensed cannabis retailer to retain vendor compensation from cannabis excise taxes imposed on their retail sales of cannabis or cannabis products authorized under their retailer license referred to in subdivision (b), including retail sales authorized under that retailer license after it was renewed. An approval to retain vendor compensation does not approve a licensed cannabis retailer to retain vendor compensation from cannabis excise taxes imposed on any other retail sales. Such retail sales include, but are not limited to, retail sales made after their retailer license referred to in subdivision (b) expired and before that retailer license was renewed, made after that retailer license was revoked, or made under any other retailer license, including a new retailer license for the same premises.

(f) New Application Requirement. If a licensed cannabis retailer's approval to retain vendor compensation has expired or their retailer license referred to in subdivision (b) has expired and not been renewed or has been revoked, the licensed cannabis retailer must submit a new Vendor Compensation Application to the Department as provided in subdivision (c) along with:

(1) A copy of the current Department of Cannabis Control approved fee waiver issued to the licensed cannabis retailer; and

(2) A copy of the current retailer license of the licensed cannabis retailer for which the Department of Cannabis Control approved the licensed cannabis retailer's fee waiver.

(g) Claiming Vendor Compensation.

(1) If approved, a licensed cannabis retailer shall report the amount of vendor compensation retained from the cannabis excise taxes imposed on their retail sales of cannabis or cannabis products, pursuant to subdivision (b), as a credit on their Cannabis Retailer Excise Tax Return for the corresponding reporting period in which they made the retail sales of cannabis or cannabis products.

(2) If a licensed cannabis retailer remits any amount of cannabis excise tax to the Department that they were eligible to retain under this regulation, then the licensed cannabis retailer must file a timely claim for refund to obtain a refund for that amount.

(h) Expiration. A licensed cannabis retailer shall not retain vendor compensation from cannabis excise taxes imposed on retail sales of cannabis or cannabis products made after December 31, 2025.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34010, 34011.1 and 34011.2, Revenue and Taxation Code.

**Proposed Text of California Code of Regulations**

**Title 18. Public Revenues**

**Division 2. California Department of Tax and Fee Administration –**

**Business Taxes**

**Chapter 8.8 Cannabis Excise Tax Effective on and after January 1, 2023**

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

**Regulation 3820. Responsible Person Liability.**

(a) General. Any responsible person who willfully fails to pay or to cause to be paid, under circumstances set forth below, any cannabis excise tax due from a corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to Revenue and Taxation Code section 34011.2 shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination, dissolution, or abandonment of the business of a the corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

Personal liability shall only be imposed if the Department establishes that while the person was a responsible person, as defined in subdivision (b)(1), the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was required to collect the cannabis excise tax imposed pursuant to Revenue and Taxation Code section 34011.2 and failed to remit such tax when due.

(b) Definition of Terms.

(1) “Responsible person” means any officer, member, manager, employee, director, shareholder, partner, or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of cannabis excise tax or who has a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any requirement of the Cannabis Tax Law. The fact that the person possesses any of the aforementioned titles, in and of itself, is not sufficient to establish that a person is a “responsible person.”

(2) “Willfully fails to pay or to cause to be paid” means that the failure was the result of an intentional, conscious, and voluntary course of action. A failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or motive. A person has willfully failed to pay the taxes or to cause them to be paid, only when the Department establishes all of the following:

(A) On or after the date that the taxes came due, as prescribed by Revenue and Taxation Code section 34015, the responsible person had actual knowledge that the taxes were due, but not being paid.

(B) The responsible person had the authority to pay the taxes or to cause them to be paid (i) on the date that the taxes came due, as prescribed by Revenue and Taxation Code section 34015, and (ii) when the responsible person had actual knowledge as defined in subparagraph (A). A responsible person who was required to obtain approval from another person prior to paying the taxes at issue and was unable to act on their own in making the decision to pay the taxes does not have the authority to pay the taxes or to cause them to be paid.

(C) When the responsible person had actual knowledge as defined in (A), the responsible person had the ability to pay the taxes but chose not to do so.

(3) “Termination” of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company includes discontinuance or cessation of all business activities for which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was required to hold a cannabis retailer excise tax permit.

(c) Collection.

(1) Once the Department has established the requirements for personal liability in subdivision (a), and further defined in subdivision (b), the Department may issue a Notice of Determination, in the manner provided in chapter 3 of the Fee Collection Procedures Law, for the amount of the personal liability of the responsible person, and penalties and interest shall be added to the amount due as applicable. The Department may collect the amounts due from the responsible person in the manner provided by chapter 4 of the Fee Collection Procedures Law.

(2) A Notice of Determination shall be mailed within whichever of the following periods expires earlier:

(A) Three years after the last day of the calendar month following the quarterly period in which the Department obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company; or

(B) Eight years after the last day of the calendar month following the quarterly period in which the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was terminated, dissolved, or abandoned.

(3) If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the Department, this filing shall not constitute actual knowledge by the Department under this regulation.

(d) Burden of Proof and Standard of Proof. The Department has the burden to prove that the requirements for personal liability in subdivision (a), and further defined in subdivision (b), have been satisfied under the preponderance of the evidence standard of proof.

Note: Authority cited: Section 34013, Revenue and Taxation Code. Reference: Sections 34011.2, 34014, 34015, and 34015.2, Revenue and Taxation Code.

**Proposed Text of California Code of Regulations**  
**Title 18. Public Revenues**  
**Division 2. California Department of Tax and Fee Administration –**  
**Business Taxes**  
**Chapter 8.5 Fee Collection Procedures Law**

**Regulation 3501. Records.**

(a) General. A feepayer shall maintain and make available for examination on request by the [Department](#)~~board~~ or its authorized representatives, records in the manner set forth at California Code of Regulations, Title 18, Section 4901.

(b) [Ballast Water Management Fee](#)~~Specific Applications~~. In addition to the record keeping requirements set forth in subdivision (a), feepayers subject to the Ballast Water Management Fee shall keep records documenting ballast water loading and discharge, ship schedules, ports of call and routes taken.

(c) Cannabis Excise Tax. The records cannabis retailers are required to maintain and make available in the manner set forth in subdivision (a) shall include, but are not limited to, records documenting:

(1) Their receipt of cannabis and cannabis products designated as trade samples pursuant to Business and Professions Code section 26153.1 and implementing regulations, their consumption of such trade samples, their providing of such trade samples to their employee for that employee's inspection or consumption, and the destruction of such trade samples.

(2) The cannabis and cannabis products they designate as trade samples to be provided to an employee pursuant to Business and Professions Code section 26153.1 and implementing regulations, their providing of such trade samples to their employee for that employee's inspection or consumption, the destruction of such trade samples, and the changing of such trade samples' designation to medicinal cannabis and cannabis products for donation.

(3) Their receipt of medicinal cannabis and cannabis products designated for donation in the track and trace system, their providing of such medicinal cannabis and cannabis products to a medicinal cannabis patient or primary caregiver pursuant to Business and Professions Code section 26071, and the destruction of such medicinal cannabis and cannabis products.

(4) The medicinal cannabis and cannabis products they designate for donation in the track and trace system, their providing of such medicinal cannabis and cannabis products to a



[medicinal cannabis patient or primary caregiver pursuant to Business and Professions Code section 26071, the destruction of such medicinal cannabis and cannabis products, and the removal of the donation designation from such medicinal cannabis and cannabis products.](#)

NOTE: Authority cited: Section 55301, Revenue and Taxation Code. Reference: Section 55302, Revenue and Taxation Code.