



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN Excise Tax Bulletin #3

CIGARETTES AND TOBACCO PRODUCTS

This bulletin is intended solely as advice to assist persons in determining and complying with their obligations under Maine tax law. It is written in a relatively informal style and is intended to address issues commonly faced by those engaged in the sale or distribution of cigarettes or tobacco products in the State of Maine.

Taxpayers are responsible for complying with all applicable tax statutes and rules. Although bulletins issued by Maine Revenue Services ("MRS") do not have the same legal force and effect as rules, justifiable reliance upon this bulletin will be considered in mitigation of any penalties for any underpayment of tax due. This bulletin is current as of the last revision date shown at the end of this document.

The Cigarette Tax Law is found in Title 36, Chapter 703 of the Maine Revised Statutes ("M.R.S."); the Tobacco Products Tax Law is found in Title 36, Chapter 704. Title 36, MRS rules, and all forms and affidavits referenced in this bulletin may be viewed on the MRS website, www.maine.gov/revenue.

The law applies to cigarettes and tobacco products purchased and brought into the State for sale or use in Maine when the appropriate excise tax has not already been paid. This bulletin pertains to tobacco product retailers, distributors, wholesalers and consumers, as well as cigarette distributors and purchasers.

1. CIGARETTE TAX

A. DEFINITIONS

(1) Cigarette. "Cigarette" means any roll of tobacco wrapped in paper or in any substance not containing tobacco, as well as any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

(2) Cigarette distributor. A cigarette distributor is any person who produces, manufacturers, imports, or makes wholesale purchases or sales of cigarettes in this State on which the cigarette excise tax has not already been paid.

B. REGISTRATION AND LICENSING. Each cigarette distributor must register with MRS and obtain a cigarette distributor license. The license is non-transferable, does not need

to be renewed, and does not expire. Licenses must be displayed in a prominent place in the business and be available for verification. A license will not be issued unless the applicant provides MRS certification that it is in compliance with 22 M.R.S. § 1580-L. An application for registration is available from MRS.

The State Tax Assessor may revoke or suspend the license of any distributor for failure to comply with the terms of the Cigarette Tax Law, or if the distributor no longer imports or sells cigarettes. A license that has been revoked or suspended must be immediately surrendered to the State Tax Assessor. If a distributor no longer holds a valid license, whether through cancellation, revocation, or suspension, the distributor is responsible for notifying all current customer accounts within ten (10) business days, in writing, that it is no longer licensed as a Maine cigarette distributor.

C. CIGARETTE TAX STAMPS; RETENTION OF RECORDS. Cigarette tax stamps may be obtained by completing a Cigarette Stamp Order Form (Form "Cig-1"). The distributor may delay payment for the tax stamps for a period of up to thirty days, provided that the distributor is bonded for at least 50% of the sale price of the stamps.

Cigarettes sold by a distributor and delivered in Maine will be subject to the cigarette excise stamp, even when the sale is claimed to be for export. Cigarettes may be directly exported from the State without containing an excise tax stamp. Cigarettes removed from a federally bonded warehouse under federal supervision for export from the United States may be sold unstamped.

Cigarette distributors must keep complete and accurate records of all cigarettes manufactured, produced, transferred, or sold for a period of six years.

D. REDEMPTION OF STAMPS. A refund of the purchase price of cigarette tax stamps will be made to the distributor only under the following conditions:

(1) Destruction of stamps by fire or unavoidable calamity. The request for a refund must be made in writing to MRS within ten (10) days of the loss. The distributor's records must be adequate to substantiate the number and value of the stamps destroyed.

(2) Unsalable or unfit for use and consumption. A request for refund is available to the distributor for properly stamped packs that have been returned to the manufacturer. The request for a refund must be made on a Cigarette Tax Refund Application and be accompanied by a statement from the manufacturer that the packs have been returned with the Maine excise stamps affixed to the pack. Requests must be made within 90 days of return of the cigarettes to the manufacturer.

(3) Damaged or improperly stamped. A refund will be made for stamps that have been affixed to packs and have become damaged or were improperly stamped, prior to sale to a retailer or wholesaler. The destruction of the cigarettes must be made under the supervision of an employee of MRS.

(4) Unused and uncanceled. A refund will be made for stamps that are unused and uncanceled if they are returned within one year of the date of purchase by a licensed distributor. A refund is allowed only for full, unopened rolls unless the distributor ceases business as a distributor and returns its cigarette distributor's license to MRS.

No refund is allowed for cigarette stamps that are lost, stolen, or destroyed by error, carelessness, or misuse. No refund will be made for stamps that are claimed to be unsalable if they are discarded, destroyed, or disposed of in any manner other than by return to the manufacturer or destruction under the supervision of an employee of MRS.

E. PROHIBITED SALES. A cigarette distributor may not:

(1) Sell, offer to sell, or display cigarettes in Maine that do not have a proper tax stamp;

(2) Sell or offer to sell cigarettes to a retailer unless the retailer has provided documentation to the distributor that the retailer holds a current retail tobacco license issued under 22 M.R.S. § 1551-A; or

(3) Sell or offer to sell, or affix a stamp to, a package of cigarettes if the package violates federal law (see 36 M.R.S. § 4366-C(1) for details).

F. VENDING MACHINES. Vending machines containing cigarettes must be plainly marked with the name and address of the vending machine operator. Cigarettes sold in vending machines must be in sealed packages and be properly stamped. The cigarettes must be loaded so the tax stamps are visible from the outside. If the machine is constructed in a manner that prohibits the display of the tax stamps, the operator must agree to open the machine for inspection upon request from an employee of MRS.

G. IMPORTATION PENALTIES. Any person other than a licensed distributor that imports, transports, or possesses untaxed cigarettes in this State may be subject to fines and/or criminal prosecution.

2. OTHER TOBACCO PRODUCTS

A. DEFINITIONS.

(1) Distributor. For purposes of the Maine Tobacco Products Tax, a "distributor" means any person who:

(a) Produces or manufactures tobacco products in Maine for sale or use in Maine;

(b) Is engaged in the business of selling tobacco products in Maine, and

1. Brings, or causes to be brought, tobacco products into Maine for sale to a retailer;

2. Ships or transports tobacco products to retailers for sale in Maine;
- (c) Is a retailer and imports, receives, or acquires tobacco products for sale in Maine from a person other than a licensed distributor; or
- (d) Makes sales of tobacco products to a consumer in Maine when:
1. The purchaser submits the order for the sale via telephone, the internet, or a delivery service; and
 2. The tobacco products are delivered by use of a delivery service.

(2) Retailer. A "retailer" is any person engaged in the business of selling tobacco products to ultimate consumers.

(3) Tobacco products. "Tobacco products" means cigars; cheroots; stogies; electronic smoking devices and liquids used in electronic smoking devices, whether or not they contain nicotine; perique, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; snus; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means.

The term "tobacco products" does not include:

- (a) Cigarettes taxable under the Cigarette Tax Law;
- (b) Drugs, devices or combination products authorized for sale by the U.S. Dept. of Health and Human Services, Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act;
- (c) Any product that contains adult use marijuana subject to tax under Title 36, chapter 723; or
- (d) Any product that contains marijuana or marijuana products subject to the Maine Medical Use of Marijuana Act, Title 22, chapter 558-C.

(4) Electronic smoking device. An electronic smoking device is defined as a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol, including, without limitation, devices manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, or so-called "vape pens". **Beginning January 2, 2020, electronic smoking devices and the liquids used in electronic smoking devices, whether or not they contain nicotine, are subject to the Tobacco Products Tax.**

B. REGISTRATION AND LICENSING. Each retailer must verify that it purchases tobacco products only from licensed tobacco distributors. A retailer that purchases tobacco products from someone other than a Maine licensed tobacco products distributor must register and license as a distributor. MRS provides a list of licensed tobacco distributors at least annually to all holders of a current Maine Department of Health and Human Services ("DHHS") Retail Tobacco license. A current list is also available on the MRS website, and by mail, email, or fax upon request. The licensed tobacco distributor list should be checked periodically to verify distributor status and minimize unexpected tax liability and risk. This is particularly important when considering a new tobacco product supplier for your business.

Each distributor must register with MRS and obtain a tobacco distributor's license. The license is non-transferable, does not need to be renewed, and does not expire. Licenses must be displayed in a prominent place in the business and be available for verification. An application for registration is available from MRS.

The State Tax Assessor may revoke or suspend the license of any distributor for failure to comply with the terms of the Tobacco Products Tax law, or if the person no longer imports or sells tobacco products. A license that has been revoked or suspended must be immediately surrendered to the State Tax Assessor. If a tobacco products distributor no longer holds a valid license, whether through cancellation, revocation, or suspension, the distributor is responsible for notifying all current customer accounts within ten (10) business days, in writing, that it is no longer licensed as a Maine tobacco products distributor.

C. REPORTING AND PAYMENT. Each tobacco distributor must file a monthly Tobacco Products Tax return. The distributor that first receives or causes untaxed tobacco products to be brought into the State must pay the tax. Returns and supporting schedules are due on or before the last day of each month for transactions occurring during the previous month. Payment is due when the return is filed. Failure to complete support schedules may prevent returns from being processed in a timely manner. Failure to receive a blank tax return from MRS does not excuse a distributor from filing and payment obligations prescribed by law. Blank tax returns and schedules are available on the MRS website. Distributors must maintain complete and accurate records to substantiate all receipts and sales of tobacco products for a period of six years.

D. PROHIBITED SALES. A distributor may not sell or offer to sell tobacco products to a Maine retailer that does not hold a current Retail Tobacco license issued by DHHS. Distributors should record the appropriate Retail Tobacco license number on all sales invoices. DHHS requires any person engaged in retail sales, including sales through vending machines or free distribution of tobacco products, to obtain a Retail Tobacco License before they may sell, keep for sale, or give away in the course of trade any tobacco products. Information for contacting DHHS can be found at the end of this bulletin.

E. IMPORTATION PENALTIES. Except as provided in paragraphs 1 and 2 below, any person other than a licensed distributor that imports, sells, or offers untaxed tobacco product for sale in Maine may be subject to fines and/or criminal prosecution.

(1) Manufacturers. A manufacturer may transport tobacco products into and within Maine for the purpose of marketing and sales, provided that a licensed distributor accounts for the sale or distribution of those products, files all required returns and schedules, and pays any tax due.

(2) Personal use. An individual who is not a distributor may import into and transport within Maine up to 125 cigars or one (1) pound of tobacco products for personal use. **Note: The Maine Tobacco Products Tax and the Maine Sales Tax are still owed on these purchases. See Section 3 below.**

3. CONSUMER RESPONSIBILITIES

Consumers who purchase and use, but do not sell, cigarettes and tobacco products are not required to be licensed as a distributor, but must report purchases of products that have not previously been taxed in Maine (for example, imports from other states or countries and purchases made over the internet).

A. REPORTING AND PAYMENT. Consumers must properly complete a Tax Declaration Form with detailed support schedules for all untaxed purchases made during the previous month. Declarations submitted with incomplete, inaccurate, or missing schedule information may not be processed, and will require additional communication with MRS. Payment is due when the return is filed. Tax Declaration Forms are available on the Forms section of the MRS website by clicking on "Other Taxes" and then either "Cigarette" or "Tobacco," or by contacting the MRS Sales, Fuel & Special Tax Division.

B. LIMITS ON IMPORTATION. A consumer may not import into or transport within Maine more than 125 untaxed cigars or one (1) pound of other untaxed tobacco products without being licensed as a tobacco distributor. Importation or transportation of more than that quantity of untaxed tobacco products may subject the person to fines and/or criminal prosecution, and the tobacco products may be subject to seizure or forfeiture. The Maine Tobacco Products Tax and Maine Sales Tax are still owed on these purchases.

A consumer may not import into or transport within Maine more than two cartons of untaxed cigarettes for personal use without being licensed as a cigarette distributor. Importation or transportation of more than that quantity of untaxed cigarettes may subject the person to fines and/or criminal prosecution. The Maine Cigarette Excise Tax and the Maine Sales Tax are still owed on these purchases.

4. ADDITIONAL INFORMATION

The information in this bulletin addresses some of the more common questions regarding the Cigarette Tax and Tobacco Products Tax Laws. It is not intended to be all-inclusive. Requests for additional information on specific situations must be in writing, contain full information as to the transaction in question, and be directed to:

**MAINE REVENUE SERVICES
SALES, FUEL & SPECIAL TAX DIVISION
P.O. BOX 1060
AUGUSTA, ME 04332-1060
TEL: (207) 624-9609
V/TTY: 7-1-1
www.maine.gov/revenue**

Questions related to the Retail Tobacco Licenses issued by the Maine Department of Health and Human Services can be directed to:

Department of Health and Human Services
Health Inspections Program
Division of Environmental Health
11 State House Station
Augusta, ME 04333-0011
TEL: 207-287-5671
www.maine.gov/dhhs/mecdc/environmental-health/el/

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