



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

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## CIGARETTES AND TOBACCO PRODUCTS

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This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains information of interest regarding issues commonly faced by your business. Taxpayers are solely responsible for reviewing and complying with relevant Maine statutory laws. Additional questions about these and other issues you may have should be directed to Maine Revenue Services Sales, Fuel, and Special Tax Division. Contact information and portions of the Cigarette Tax and Tobacco Products Tax law (Title 36, Chapters 703 and 704) referred to in this bulletin can be found in Attachment #1.

This bulletin pertains to tobacco product retailers, distributors, wholesalers and consumers, as well as cigarette distributors and purchasers. The relevant 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.

### 1. CIGARETTE TAX

#### A. Cigarette Distributor Defined

A cigarette distributor is any person who produces, manufactures, imports, or makes wholesale purchases or sales of cigarettes in this State when the cigarette excise tax has not already been paid.

#### B. Registration and Licensing

Each Cigarette Distributor must register with Maine Revenue Services and obtain a Cigarette Distributor License. **The license is non-transferable and must be renewed annually before June 30.** Licenses must be displayed in a prominent place in the business and be available for verification. A license will not be issued unless certification is provided that the distributor is in compliance with 22 MRSA §1580-L. An application for registration is available from Maine Revenue Services.

#### C. Prohibited Sales

A Cigarette Distributor may not:

1. Sell, offer to sell, or display cigarettes in this State that do not have a proper tax stamp, except that a licensed distributor may sell unstamped cigarettes to another licensed distributor if the sales are documented in a form prescribed by the Assessor;

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 MRSA §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 MRSA §4366-C for details).

#### **D. Cigarettes Tax Stamps; Retention of Records**

Cigarette tax stamps may be obtained by completing a Distributors Cigarette Stamp Order form. 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 may be directly exported from the State without containing an excise tax stamp. 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 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 for a period of six years of all cigarettes manufactured, produced, transferred or sold.

#### **E. 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 Maine Revenue Services within 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 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 Maine Revenue Services.

##### **4. Unused and uncancelled**

A refund will be made for stamps that are unused and uncancelled if they are returned within one year of the date of purchase by a licensed distributor. A

refund is allowed only for full, unopened roll unless the distributor ceases business as a distributor and returns to Maine Revenue Services its Cigarette Distributor's License.

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 Maine Revenue Services.

#### **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 Maine Revenue Services.

#### **G. Importation Penalties**

An unlicensed distributor that imports, transports, or possesses untaxed cigarettes in this State is subject to civil fines and penalties as provided by 36 MRSA §4366-B.

## **2. OTHER TOBACCO PRODUCTS**

### **A. Definitions**

#### **1. Tobacco Products**

"Tobacco products" means cigars; cheroots; stogies; periques', granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; 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 suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking. The term "tobacco products" **does not include cigarettes.**

#### **2. Distributor**

For purposes of Maine Tobacco Products Tax, a "distributor" means any person engaged in any of the following activities within this State:

- Producing or manufacturing tobacco products for sale or use;
- Selling, shipping, transporting, bringing or causing tobacco products to be brought into the State to retailers for sale or use; or
- Importing, receiving, or acquiring tobacco products from a person other than a licensed distributor for sale.

#### **3. Retailer**

Any person engaged in the business of selling tobacco products to ultimate consumers.

## **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. Maine Revenue Services provides a list of licensed tobacco distributors at least annually to all holders of a current Department of Health and Human Services Retail Tobacco license. A current list is also available on the Maine Revenue Services web site, 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 Tobacco Products Distributor must register with Maine Revenue Services and obtain a Tobacco Distributor's License. **The license is non-transferable and must be renewed annually before June 30.** Licenses must be displayed in a prominent place in the business and be available for verification. An application for registration is available from Maine Revenue Services.

The Assessor may revoke or suspend the license of any distributor for failure to comply with the terms of the Tobacco Products Tax law. If a Tobacco Products Distributor no longer holds a valid license, whether through cancellation, revocation, suspension, or not renewed under voluntary circumstances, the distributor is responsible for notifying all current customer accounts within ten 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 does not excuse a distributor from filing and payment obligations prescribed by law. Distributors must maintain accurate records at the principle place of business to substantiate all receipts and sales of tobacco products.

## **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 the Maine Department of Health and Human Services. Distributors should record the appropriate Retail Tobacco license number on all sales invoices. The Department of Health and Human Services requires any person engaged in retail sales, including vending machines or free distribution of tobacco products to sell, keep for sale or give away as in the course of trade, to obtain a Retail Tobacco License. Information for contacting the Department of Health and Human Services can be found at the end of this bulletin.

## **E. Importation Penalties**

Except as provided in sections 1 and 2 below, an unlicensed distributor that imports, sells, or offers untaxed tobacco product for sale in the State is subject to civil fines ranging from \$250 to \$1,000 for each offense and may be criminally prosecuted.

### **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 this State and transport within this State up to 125 cigars or 1 pound of tobacco products for personal use without becoming subject to civil fines and penalties. The Maine Tobacco Products Tax and the Maine Sales Tax are still owed on these purchases.

## **3. INDIVIDUAL CONSUMER RESPONSIBILITIES**

### **A. Reporting and Payment**

An individual who purchases and uses, but does not sell, cigarettes and tobacco products is 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).

An individual 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 Maine Revenue Services web site 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**

An individual may not import more than 125 untaxed cigars or 1 pound of other untaxed tobacco products during any given calendar month without being licensed as a Tobacco Distributor. Importation of more than that quantity of untaxed product may be subject to seizure, forfeiture, fines and/or criminal prosecution. The Maine Tobacco Excise and Sales Taxes are still owed on these purchases.

An individual who is not a distributor may import into this State, and transport within this State, up to two cartons of cigarettes for personal use without becoming subject to civil fines and penalties. 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 law. It is not intended to be all-inclusive. Requests for additional information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

Maine Revenue Services

Sales, Fuel and Special Tax Division

P.O. Box 9119

Augusta, ME 04332-9119

TEL: 207-624-9609

TTY: NexTalk 1-888-577-6690

<http://www.maine.gov/revenue>

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

<http://www.maine.gov/dhhs/eng/el/forms.htm>

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**ATTACHMENT 1**  
**Excerpts from Maine Revised Statutes, Title 36**

**UNIFORM ADMINISTRATIVE PROVISIONS**

**§111. Definitions**

**3. Person.** "Person" means an individual, firm, partnership, association, society, club, corporation, financial institution, estate, trust, business trust, receiver, assignee or any other group or combination acting as a unit, the State or Federal Government or any political subdivision or agency of either government.

**§135. Record-keeping requirements**

**1. Taxpayers.** Persons subject to tax under this Title shall maintain such records as the State Tax Assessor determines necessary for the reasonable administration of this Title. Records pertaining to taxes imposed by chapters 371 and 575 and by Part 8 must be retained as long as is required by applicable federal law and regulation. Records pertaining to the special fuel tax user reports filed pursuant to section 3209, subsection 2 and the International Fuel Tax Agreement pursuant to section 3209, subsection 1-B must be retained for 4 years. Records pertaining to all other taxes imposed by this Title must be retained for a period of at least 6 years. The records must be kept in such a manner as to ensure their security and accessibility for inspection by the assessor or any designated agent engaged in the administration of this Title.

**2. Bureau of Revenue Services.** Returns filed under this Title or microfilm reproductions or digital images of those returns must be preserved for 3 years and thereafter until the State Tax Assessor orders their destruction.

**CIGARETTE TAX (Chapter 703)**

**§4361. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**2. Distributor.** "Distributor" means any person engaged in this State in the business of producing or manufacturing cigarettes in this State, importing cigarettes into this State or making wholesale purchases or sales of cigarettes in this State on which the tax imposed by this chapter has not been paid.

## §4362-A. Licenses

**1. Generally.** A distributor doing business in this State shall obtain a license from the assessor. A license must be obtained for each wholesale outlet maintained by the distributor. A distributor's license must be prominently displayed on the premises covered by the license.

**2. Applications; forms.** An application for a distributor's license must be made on a form prescribed and issued by the assessor. Licenses are issued in the form prescribed by the assessor and must contain the name and address of the licensed distributor, the address of the place of business and such other information as the assessor may require for the proper administration of this chapter.

**3. Expiration and reissuance.** A distributor's license expires one year from the 30th day of June next succeeding the date of issuance unless sooner revoked by the assessor pursuant to subsection 5 or unless the business with respect to which the license was issued is sold, in either of which cases the holder of the license shall immediately surrender it to the assessor.

A person may not be issued a distributor's license or granted a renewal of a license unless the person certifies in writing to the Attorney General that the person is in compliance with Title 22, section 1580-L.

**4. Penalties.** The following penalties apply to violations of this section.

A. A distributor who imports into this State any cigarettes without holding a distributor's license issued by the assessor pursuant to this section commits a civil violation for which a fine of not less than \$250 and not more than \$500 must be adjudged.

B. A distributor who violates paragraph A after having been previously adjudicated as violating paragraph A commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 must be adjudged for each subsequent violation.

C. A distributor who sells at wholesale, offers for sale at wholesale or possesses with intent to sell at wholesale any cigarettes without holding a distributor's license issued by the assessor pursuant to this section commits a civil violation for which a fine of not less than \$250 and not more than \$500 must be adjudged.

D. A distributor who violates paragraph C after having been previously adjudicated as violating paragraph C commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 must be adjudged for each subsequent violation.

**5. Revocation or suspension.** The assessor may revoke or suspend the license of a distributor for failure to comply with any provision of this chapter or if the distributor no longer imports or sells cigarettes. Any person aggrieved by a revocation or suspension may request reconsideration as provided in section 151.



## **§4366-A. Cigarette tax stamps**

**2. Provided to sellers.** The State Tax Assessor shall provide stamps to a licensed distributor upon submission by the licensed distributor of a cigarette return in a form prescribed by the assessor. The stamps must be of a design suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by this chapter. The assessor may permit a licensed distributor to pay for the stamps within 30 days after the date of purchase, if a bond satisfactory to the assessor in an amount not less than 50% of the sale price of the stamps has been filed with the assessor conditioned upon payment for the stamps. Such a distributor may continue to purchase stamps on a 30-day deferral basis only if it remains current with its cigarette tax obligations. The assessor may not sell additional stamps to a distributor that has failed to pay in full within 30 days for stamps previously purchased until such time as the overdue payment is received. The assessor shall sell cigarette stamps to licensed distributors at the following discounts from their face value:

D. For stamps at the face value of 100 mills, the discount rate is 1.15%.

**3. Affixed to cigarettes.** A distributor shall affix stamps of the proper denominations to individual packages of cigarettes sold or distributed by the distributor in this State. The distributor shall affix the stamps in the manner specified by the assessor before the cigarettes are transferred out of the possession of the distributor. A distributor may not sell, offer for sale or display for sale in this State cigarettes that do not bear stamps evidencing the payment of the tax imposed by this chapter, except that a licensed distributor may sell unstamped cigarettes to another licensed distributor if the sales are documented in a form prescribed by the assessor. The face value of the stamps must be considered as part of the retail cost of the cigarettes.

**4. Resale and reuse of stamps prohibited.** A distributor may not:

A. Sell, transfer, reaffix or reuse cigarette stamps issued by the assessor pursuant to this chapter.

**4-A. Redemption of stamps.** The assessor shall redeem any unused, uncanceled stamps presented within one year of the date of purchase by a licensed distributor at a price equal to the amount paid for them. Credit for uncanceled stamps is allowed only on full, unopened rolls unless the distributor ceases business as a distributor and returns the license issued under section 4362-A. The assessor may also redeem, at face value, cigarette tax stamps affixed to packages of cigarettes that have become unsalable if application is made within 90 days of the return of the unsalable cigarettes to the manufacturer.

**5. Possession of unstamped cigarettes; presumption of intent for sale.** The possession in this State by any person other than a licensed distributor of unstamped cigarettes is prima facie evidence that the cigarettes have been imported and that they are intended for sale in this State.

**6. Penalties.** The following penalties apply to violations of this section.

A. A person who sells, offers for sale, displays for sale or possesses with intent to sell unstamped cigarettes in violation of this section commits a Class D crime.

B. Deleted.

C. A person who sells, transfers, reaffixes or reuses cigarette stamps in violation of this section commits a Class D crime.

D. Deleted.

Except as otherwise specifically provided, violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

### **§4366-B. Importation of cigarettes**

**1. Generally.** Except as provided in subsection 2, only a licensed distributor may import unstamped cigarettes into this State.

**2. Exception for personal use.** An individual who is not a licensed distributor may transport cigarettes into this State and may transport cigarettes from place to place within this State for the individual's personal use in a quantity not greater than 2 cartons.

**3. Evidence.** The possession of more than 2 cartons of unstamped cigarettes by a person who is not a licensed distributor is prima facie evidence of a violation of this section.

**4. Penalties.** The following penalties apply to violations of this section.

A. A person who sells, offers for sale, displays for sale or possesses with intent to sell unstamped cigarettes in violation of this section commits a Class D crime.

B. Deleted.

C. A person who sells, transfers, reaffixes or reuses cigarette stamps in violation of this section commits a Class D crime.

D. Deleted.

Except as otherwise specifically provided, violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

## **§4366-C. Sales of cigarettes in contravention of law**

**1. Cigarettes; stamps not affixed.** A distributor may not offer for sale, sell or affix a stamp to a package of cigarettes if the package:

A. Does not comply with the Federal Cigarette Labeling and Advertising Act, 15 United States Code, Section 1331, et seq., for the placement of labels, warnings or any other information for a package of cigarettes to be sold within the United States;

B. Is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S." or with other wording indicating that the manufacturer did not intend that the product be sold in the United States;

C. Has been altered by adding or deleting wording, labels or warnings described in paragraphs A and B;

D. Has been imported into the United States in violation of 26 United States Code, Section 5754; or

E. In any way violates federal trademark or copyright laws.

**2. Deceptive practice.** Selling a package of cigarettes described in subsection 1, with or without a stamp, is an unfair or deceptive act or practice under the Maine Unfair Trade Practices Act.

**2-A. Shipment only to licensed retailers.** A distributor may not 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 Title 22, section 1551-A.

**3. Penalties.** The following penalties apply to violations of this section.

A. A distributor who violates this section commits a Class E crime.

B. A distributor who violates this section when the dealer or distributor has one or more prior convictions for violation of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

## **§4372-A. Seizure and forfeiture of contraband cigarettes**

**1. Generally.** Except as provided in subsection 2, any unstamped cigarettes or cigarettes described in section 4366-C, subsection 1 that are found in this State are hereby declared to be contraband goods subject to seizure by and forfeiture to the State. All law enforcement officers, including contract officers pursuant to Title 22, section 1556-A, and duly authorized agents of

the State Tax Assessor may seize contraband cigarettes under the process described in subsection 3.

**2. Exceptions.** The following cigarettes are not subject to seizure:

A. Unstamped cigarettes in the possession of a licensed distributor;

B. Unstamped cigarettes in the course of transit from outside the State that are consigned to a licensed distributor; and

C. Unstamped cigarettes in a quantity of 2 cartons or less in the possession of an individual who is not a licensed distributor.

Notwithstanding paragraphs A, B and C, cigarettes described in section 4366-C, subsection 1 are subject to seizure under the process described in subsection 3, unless the distributor can prove the cigarettes are to be exported out of the country.

**3. Procedure for seizure.** Contraband cigarettes may be seized by law enforcement officers and by duly authorized agents of the State Tax Assessor who have probable cause to believe that the cigarettes are unstamped cigarettes or cigarettes described in section 4366-C, subsection 1 under the following circumstances:

A. When the cigarettes are discovered in a place where the law enforcement officer or agent has the lawful right to be in the performance of official duties; or

B. When the seizure is incident to a search under a valid search warrant or an inspection under a valid administrative inspection warrant.

**4. Procedure for forfeiture.** A petition for forfeiture must be filed as provided in this subsection.

A. A district attorney or assistant district attorney, or the Attorney General or an Assistant Attorney General, may petition the District Court in the name of the State in the nature of a proceeding in rem to order the forfeiture of contraband cigarettes.

B. There may be no discovery other than under the Maine Rules of Civil Procedure, Rule 36, except by order of the court upon a showing of substantial need. An order permitting discovery must set forth in detail the areas in which substantial need has been shown and the extent to which discovery may take place.

C. A petition for forfeiture filed pursuant to this section must be accepted by the District Court without the assessment or payment of civil entry or filing fees otherwise provided for by rule of court.

**5. Jurisdiction and venue.** Cigarettes subject to forfeiture under this section must be declared forfeited by the District Court having jurisdiction over the cigarettes. Venue is in the location where the contraband cigarettes are seized or in Kennebec County.

**6. Type of action; burden of proof.** A proceeding instituted pursuant to this section is an in rem civil action. The State has the burden of proving all material facts by a preponderance of the evidence and the owner of the cigarettes or other person claiming the cigarettes has the burden of proving by a preponderance of the evidence one of the exceptions set forth in subsection 2.

**7. Hearings; disposition; deposit of funds.** At a hearing, other than a default proceeding, the court shall hear evidence, make findings of fact, enter conclusions of law and file a final order from which the parties have the right of appeal. When cigarettes are ordered forfeited, the final order must provide for the disposition of the cigarettes by the State Tax Assessor by public auction or by the State Purchasing Agent. Proceeds must be deposited in the General Fund. Cigarettes described in section 4366-C, subsection 1 must be destroyed by the State Tax Assessor in a manner that prevents their reintroduction into the marketplace.

**8. Default proceedings.** Default proceedings must be held in the same manner as default proceedings in other civil actions, except that service of motions and affidavits related to the default proceedings need not be served upon any person who has not answered or otherwise defended in the action.

#### **§4373-A. Records required; inspection and examination; assessment of tax deficiency**

**1. Generally.** Distributors shall keep complete and accurate records of all cigarettes that they manufacture, produce, transfer or sell. The records must be of a kind and in the form prescribed by the State Tax Assessor and must be safely preserved for 6 years in a manner that ensures permanency and accessibility by authorized agents of the assessor. Records maintained by distributors must include the following data on either a calendar or fiscal year basis:

- A. An inventory of unaffixed Maine cigarette stamps by denomination;
- B. An inventory of stamped cigarettes, by pack size;
- C. An inventory of unstamped cigarettes, by pack size; and
- D. Copies of all documents supporting redemption for tax on unused, uncanceled stamps and for unsalable cigarettes.

If the rate of tax imposed by section 4365 is changed, a distributor shall take a new inventory.

**2. Inspection and examination; penalty.** The assessor or any authorized agent may enter into or upon any premises where there is reason to believe that cigarettes are possessed, stored or sold, and may examine the books, papers, records and cigarette stock of any distributor to determine compliance with the provisions of this chapter. Failure or refusal to permit an ex-

amination pursuant to this subsection is a civil violation for which a fine in the amount of \$250 must be imposed, no part of which may be suspended.

**3. Assessment of tax deficiency; presumptions.** If the assessor determines that a distributor has not purchased sufficient stamps to cover sales of cigarettes or has made sales of unstamped cigarettes, the assessor shall assess the tax deficiency pursuant to section 141. When a distributor cannot produce evidence of sufficient stamp purchases to cover receipts and sales or other disposition of cigarettes, it is presumed that the cigarettes were sold without having the proper stamps affixed to them.

#### **§4374. Fraudulent stamps**

Any person who, with the intent to defraud, makes, forges or counterfeits any stamp prescribed by the State Tax Assessor under this chapter or who causes or procures the same to be done, who knowingly utters, publishes, passes or renders as true any false, altered, forged or counterfeited stamp or who knowingly possesses any such false, altered, forged or counterfeited stamp, for the purpose of evading the tax imposed by this chapter, commits a Class C crime.

#### **§4382. Tax is levy on consumer**

The liability for, or the incidence of, the tax on cigarettes is declared to be a levy on the consumer. The distributors shall add the amount of the tax on cigarettes presently levied to the price of the cigarettes and the distributor may state the amount of the taxes separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills and statements which advertise or indicate the price of such cigarettes. This section shall in no way affect the method of collection of such taxes on cigarettes as now provided by existing law.

#### **§4384. Reporting and payment of tax**

A person who is not a licensed distributor who imports, receives or otherwise acquires unstamped cigarettes for use or consumption in the State in a quantity greater than 2 cartons in any one month from a person other than a licensed distributor shall file, on or before the last day of the month following each month in which unstamped cigarettes were acquired, a return on a form prescribed by the State Tax Assessor together with payment of the tax imposed by this chapter at the rate provided in section 4365. The return must report the number of unstamped cigarettes imported, received or otherwise acquired during the previous calendar month and additional information the assessor may require.

## TOBACCO PRODUCTS TAX (Chapter 704)

### §4401. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**2. Distributor.** "Distributor" means any person engaged in the business of producing or manufacturing tobacco products in this State for sale in this State, any person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State any tobacco products for sale to a retailer or any person engaged in the business of selling tobacco products who ships or transports tobacco products to retailers for sale in this State or any retailer who imports, receives or acquires, from a person other than a licensed distributor, tobacco products for sale within the State.

**5. Retailer.** "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

**9. Tobacco products.** "Tobacco products" means cigars; cheroots; stogies; periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; finecut 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 suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include tobacco products that are subject to the tax provided by chapter 703.

### 4402. Licenses

**1. Generally.** Every distributor shall obtain a license from the State Tax Assessor before engaging in business. A retailer required to be licensed as a distributor pursuant to this chapter must also hold a current retail tobacco license issued under Title 22, section 1551-A.

**2. Applications; forms.** Every license application must be made on a form prescribed by the assessor and must state the name and address of the applicant, the address of the applicant's principal place of business and such other information as the assessor may require for the proper administration of this chapter. A person outside the State who ships or transports tobacco products to a retailer in this State must make application as a distributor and be granted by the assessor a license subject to all the provisions of this chapter and agree, upon applying for a license, to submit that person's books, accounts and records to examination by the bureau during reasonable business hours and to accept service of process by mail when service is made in any proceeding involving enforcement of this chapter.

**3. Expiration and reissuance.** A license issued pursuant to this section expires on June 30th of each year unless sooner revoked by the assessor. The license must be promi-

nently displayed on the premises covered by the license and may not be transferred to any other person.

**4. Penalties.** The following penalties apply to a violation of this section.

A. A distributor that imports into this State any tobacco product without holding a distributor's license issued by the assessor pursuant to this section commits a civil violation for which a fine of not less than \$250 and not more than \$500 must be adjudged.

B. A distributor that violates paragraph A after having been previously adjudicated as violating paragraph A commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 must be adjudged for each subsequent violation.

C. A distributor that sells at wholesale or retail, offers for sale at wholesale or retail or possesses with intent to sell at wholesale or retail any tobacco product without holding a distributor's license issued by the assessor pursuant to this section commits a civil violation for which a fine of not less than \$250 and not more than \$500 must be adjudged.

D. A distributor that violates paragraph C after having been previously adjudicated as violating paragraph C commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 must be adjudged for each subsequent violation.

**5. Revocation or suspension.** The assessor may revoke or suspend the license of any distributor for failure to comply with any provision of this chapter or if the person no longer imports or sells tobacco products. A person aggrieved by a revocation or suspension may petition the assessor for a hearing as provided in section 151.

**6. License directory maintained.** The assessor shall maintain a directory of distributors licensed pursuant to this chapter. The assessor shall update the directory as necessary, but not less than annually. Notwithstanding the provisions of section 191, the list must be available to the public and must be posted on a publicly accessible web site maintained by the assessor. The directory must be mailed annually to all retailers at or near the time of renewal of a retail tobacco license issued under Title 22, section 1551-A.

**7. Notification.** A licensed distributor that does not renew or maintain a license, or that has its license suspended or revoked, shall inform in writing all its accounts in this State that it no longer holds a valid license under this section. The licensed distributor shall inform its accounts in this State within 10 business days of the event giving rise to such notice. Notwithstanding the provisions of section 191, the assessor may publish the names of distributors that have not renewed or maintained a license or that have had a license suspended or revoked.



#### **§4403. Tax on Tobacco Products**

**1. Smokeless tobacco.** Effective July 1, 2009 a tax is imposed on all smokeless tobacco, including chewing tobacco and snuff, at the rate of \$2.02 per ounce, prorated, except for packages that contain less than 1 ounce of tobacco, for which the rate is \$2.02 per package. For the period October 1, 2005 to June 30, 2009 the rate is 78% of the wholesale sales price.

**2. Other tobacco.** A tax is imposed on cigars, pipe tobacco and other tobacco intended for smoking at the rate of 20% of the wholesale sales price beginning October 1, 2005.

**3. Imposition.** The tax is imposed at the time the distributor brings or causes to be brought into this State tobacco products that are for sale to consumers or to retailers or for use or at the time tobacco products are manufactured or fabricated in this State for sale in this State.

**4. Exclusion.** The tax imposed on tobacco products does not apply to those products exported from this State or to any tobacco products which under laws of the United States may not be subject to taxation by this State.

#### **§4404. Returns; Payment of Tax and Penalty**

Every distributor subject to the licensing requirement of section 4402 shall file, on or before the last day of each month, a return on a form prescribed and furnished by the State Tax Assessor together with payment of the tax due under this chapter. The return must report all tobacco products held, purchased, manufactured, brought in or caused to be brought in from outside the State or shipped or transported to retailers within the State during the preceding calendar month. Every distributor shall keep a complete and accurate record at its principal place of business to substantiate all receipts of tobacco products.

The return must include further information as the assessor may prescribe and must show a credit for any tobacco products exempted as provided in section 4403. Records must be maintained to substantiate the exemption. Tax previously paid on tobacco products that are returned to a manufacturer because the product has become unfit for use, sale or consumption may be taken as a credit on a subsequent return upon receipt of the credit notice from the original supplier.

A person who is not a distributor licensed pursuant to this chapter who imports, receives or otherwise acquires tobacco products for use or consumption in the State from a person other than a licensed distributor shall file, on or before the last day of the month following each month in which tobacco products were acquired, a return on a form prescribed by the assessor together with payment of the tax imposed by this chapter at the rate provided in section 4403. The return must report the quantity of tobacco products imported, received or otherwise acquired from a person other than a licensed distributor or retailer during the previous calendar month and additional information the assessor may require.

## **§4404-A. Importation of Tobacco Products**

**1. Generally.** Except as provided in subsections 2 and 3, only a person licensed pursuant to section 4402 may import tobacco products into this State.

**2. Manufacturers.** A manufacturer may transport tobacco products into this State and may transport tobacco products from place to place within this State in quantities greater than those excepted in section 3 for the purpose of marketing and sales if the sale or distribution of those tobacco products is accounted for and the taxes are paid by a person licensed pursuant to section 4402.

**3. Exception for personal use.** A person who is not a licensed distributor may:

A. Import or transport tobacco products other than cigars into this State and transport those tobacco products from place to place within this State for personal use in a quantity not greater than one pound; or

B. Import or transport cigars into this State and transport those cigars from place to place within this State for personal use in a quantity of no more than 125 cigars.

Untaxed tobacco products imported or transported into this State in any quantity are subject to the tax imposed by section 4403.

**4. Evidence.** The possession by a person who is not licensed pursuant to section 4402 of more than 125 cigars or one pound of other tobacco product for which the tax imposed by this chapter has not been paid is prima facie evidence of a violation of this section.

**5. Penalties.** The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime.

B. A person who violates this section when the person has one or more prior convictions for violation of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Violation of this section by a person other than a retailer is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. It is an affirmative defense to a prosecution under this section that a retailer, alleged to have imported tobacco products or caused tobacco products to be imported, reasonably relied on licensing information annually mailed to the retailer pursuant to section 4402, subsection 6 that listed the company from which the retailer obtained tobacco products as being a licensed distributor.

## **§4404-B. Sales of tobacco products in contravention of law**

**1. Tobacco products.** A distributor may not offer for sale or sell tobacco products if the package containing the tobacco products:

A. Is subject to and does not comply with 15 United States Code, Section 4401, et seq., for the placement of labels, warnings or any other information for a package of tobacco products to be sold within the United States and 26 United States Code, Section 5723;

B. Is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S." or with other wording indicating that the manufacturer did not intend that the product be sold in the United States;

C. Has been altered by adding or deleting wording, labels or warnings described in paragraphs A and B;

D. Has been imported into the United States in violation of 26 United States Code, Section 5754; or

E. In any way violates federal trademark or copyright laws.

**2. Shipment only to licensed retailers.** A distributor may not sell or offer to sell tobacco products to a retailer unless the retailer has provided documentation to the distributor that the retailer holds a current retail tobacco license issued under Title 22, section 1551-A.

**3. Deceptive practice.** A distributor that sells tobacco products described in subsection 1, with or without having paid the appropriate tax, commits an unfair or deceptive act or practice under the Maine Unfair Trade Practices Act.

**4. Penalties.** The following penalties apply to violations of this section.

A. A distributor that violates this section commits a Class E crime.

B. A distributor that violates this section when the distributor has one or more prior convictions for violation of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.