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South Carolina Cigarette and Tobacco Tax Manual

SOUTH CAROLINA DEPARTMENT OF REVENUE

POLICY DIVISION

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Introduction

The purpose of this cigarette and tobacco products tax manual is to provide businesses, Department of Revenue employees and tax professionals a central summary of information concerning South Carolina's cigarette and tobacco products tax law. To that end, the manual references specific authority, including the law, regulations, and Department advisory opinions.¹

While it is not possible to discuss every issue, this manual strives to deal with a variety of issues. In addition, due to changes in tax law, this manual is a constant "work-in-progress." Suggestions for improvements and areas of discussion for future editions are welcomed.

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This publication is written in general terms for widest possible use and may not contain all the specific requirements or provisions of authority. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. This publication does not constitute tax, legal, or other advice and may not be relied on as a substitute for obtaining professional advice or for researching up-to-date original sources of authority. Nothing in this publication supersedes, alters, or otherwise changes provisions of the South Carolina Code, regulations, or Department advisory opinions. This publication does not represent official Department policy. The Department would appreciate any comments or notification of any errors. Such comments should be sent to:

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References

Department Website. This publication cites many South Carolina Code sections and Department advisory opinions (Revenue Procedures, Revenue Rulings, etc.) The full text of these references is available through the Department's website at: **dor.sc.gov**.

¹ Department advisory opinions include revenue rulings, revenue procedures, private letter rulings, technical advice memorandums and information letters.

Advisory Opinions by E-Mail. The Department has an “Advisory Opinion E-Mail Subscription Service.” Persons who sign up for this free service will automatically receive draft, temporary, and final Revenue Rulings and Revenue Procedures, and final Private Letter Rulings and Information Letters by e-mail. These statements provide guidance concerning the application of laws administered by the Department. To sign up, go to the Department’s website and click on “Policy and Publications,” then “Law & Policy,” and then “Sign up to receive Policy emails.”

Advisory Opinion Index. Advisory opinions issued by the Department are available on the Department’s website and are indexed by both tax type and calendar year. To view these indexes, click on “Policy and Publications,” then “Law & Policy.”

Other Sites. Also available through the Department’s website are Administrative Law Court decisions and proposed legislation at the General Assembly. These sites can be accessed from the Department’s website by clicking on “Policy and Publications,” then “Law & Policy,” and then “Helpful Links.”

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Chapter 1

General Overview

South Carolina imposes a tax on cigarettes and tobacco products.¹ These taxes are imposed for the privilege of selling cigarettes and tobacco products within South Carolina and for the privilege of importing, receiving, or acquiring cigarettes and tobacco products from outside of South Carolina, or from any source, for use or consumption within South Carolina.

A. Cigarettes

The following provides a short history of the taxation of cigarettes from 1923 until the present. It is not intended to be a complete history, but is provided for information purposes as to the method of taxation and the tax rates imposed on cigarettes over the years.

In 1923,² the tax imposed on cigarettes was based on the weight of 1000 cigarettes. Cigarettes weighing not more than 3 pounds per 1000 cigarettes were taxed at \$1.00 per thousand and cigarettes weighing more than 3 pounds per 1000 were taxed at \$2.41 per thousand.

In 1924,³ the method of taxation changed so as to tax cigarettes on a per package basis depending on the retail selling price. Packages retailing for \$0.10 or less were taxed at \$0.01 per package and packages retailing for more than \$0.10 were taxed at \$0.01 per package plus an additional \$0.01 for each \$0.05 or fraction thereof of the selling price in excess of \$0.10.

In 1927,⁴ the method of taxation remained the same but the rates were changed. Packages retailing for \$0.05 or less were taxed at \$0.01 per package and packages retailing for more than \$0.05 were taxed at \$0.01 per package plus an additional \$0.01 for each \$0.05 or fraction thereof of the selling price in excess of \$0.05.

In 1942, the method of taxation was changed once again to tax cigarettes on a per cigarette basis. This is the method still in place today; however, the rates imposed have changed over the years as follows

1942 – 1½ mills per cigarette or \$0.03 per pack of 20 cigarettes⁵

¹ By definition, the term “tobacco products” does not include cigarettes.

² Act No. 11 of 1923.

³ Act No. 733 of 1924.

⁴ Act No. 73 of 1927.

⁵ Act No. 721 of 1942.

1950 – 2½ mills per cigarette or \$0.05 per pack of 20 cigarettes⁶

1951 - 1½ mills per cigarette or \$0.03 per pack of 20 cigarettes⁷

1959 - 2½ mills per cigarette or \$0.05 per pack of 20 cigarettes⁸

1960 - 2½ mills per cigarette or \$0.05 per pack of 20 cigarettes⁹

1969 - 3 mills per cigarette or \$0.06 per pack of 20 cigarettes¹⁰

1977 – 3½ mills per cigarette or \$0.07 per pack of 20 cigarettes¹¹

2010 - \$0.0285 per cigarette or \$0.57 per pack of 20 cigarettes¹²

As of the date of this publication, the tax on cigarettes remains at \$0.0285 per cigarette¹³ or \$0.57 per pack of 20 cigarettes.

Finally, for many years the tax on cigarettes was paid via a stamp that was required to be adhered to each individual package of cigarettes. The stamp method of administering and collecting the cigarettes taxes was abandoned in 1995 in favor of a reporting method.¹⁴ The stamp method for administering and collecting the cigarette taxes was reinstated in 2019.¹⁵

However, all distributors must make a report to the Department of Revenue on a monthly basis with respect to sales or dispositions of cigarettes on a form prescribed by the Department. The report must be filed monthly and is due on or before the 20th day of the month following the month in which the sale or disposition took place.¹⁶

⁶ Act No. 1053 of 1950. This was a temporary change that was only in effect for the 1950-1951 State fiscal year.

⁷ Since the rate increase in 1950 (Act No. 1053 of 1950) was only for the 1950-1951 State fiscal year, the rate decreased to 1½ mills per cigarette or \$0.03 per pack of 20 cigarettes at the beginning of the 1951-1952 State fiscal year. In fact, Act No. 78 of 1953 was enacted to clarify a codification clerical error which occurred when the 1952 Code was printed. Instead of noting the rate as 1½ mills per cigarette, the 1952 publication incorrectly printed the temporary rate of 2½ mills per cigarette.

⁸ Act No. 140 of 1959. This was a temporary change that was only in effect for the 1959-1960 State fiscal year.

⁹ Act No. 802 of 1960. This made the temporary increase of 1959 permanent.

¹⁰ Act No. 349 of 1969.

¹¹ Act No. 219 of 1977.

¹² Act No. 170 of 2010.

¹³ The cigarette tax is actually a combination of two taxes – an excise tax of 3½ mills per cigarette and a surtax of \$0.025 per cigarette.

¹⁴ Act No. 114 of 1995.

¹⁵ Act No. 145 of 2016.

¹⁶ SC Regulation 1600.1.

B. Tobacco Products

The following provides a short history of the taxation of certain tobacco products from 1923 until the present. It is not intended to be a complete history, but is provided for information purposes as to the method of taxation and the tax rates imposed on certain tobacco products over the years.

In 1923,¹⁷ pipe tobacco was taxed at a rate of \$0.06 per pound. A special commission ruled that the tax was a tax on pipe tobacco only and did not apply to plug chewing tobacco or snuff.

In 1924,¹⁸ a tax on smoking tobacco was imposed at a rate of \$0.01 per 3 ounces or fraction thereof. Smoking tobacco included granulated plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such a manner for smoking in a pipe or cigarette.

In 1925,¹⁹ snuff and chewing tobacco were taxed at a rate of \$0.01 for each 3 ounces or fraction thereof.

In 1927,²⁰ the method of taxation changed so as to tax smoking tobacco on a per package basis depending on the retail selling price. Packages retailing for \$0.10 or less were taxed at \$0.02 per package and packages retailing for more than \$0.10 were taxed at \$0.02 per package plus an additional \$0.01 for each \$0.10 of the selling price.

In 1928,²¹ the method of taxation for smoking tobacco remained the same but the rates were changed. Packages retailing for \$0.05 or less were taxed at \$0.01 per package and packages retailing for more than \$0.05 were taxed at \$0.01 per package plus an additional \$0.01 for each \$0.05 of the selling price.

In 1959,²² the tax rates on smoking tobacco and snuff and chewing tobacco were changed. Packages of smoking tobacco retailing for \$0.10 or less were taxed at \$0.02 per package and packages retailing for more than \$0.10 were taxed at \$0.02 per package plus an additional \$0.02 for each \$0.05 of the selling price. Packages of snuff and chewing tobacco were taxed at \$0.01 for each 2 ounces or fraction thereof. These were temporary rate changes for the 1959-1960 State fiscal year only. However, in 1960,²³ these tax rates were made permanent.

¹⁷ Act No. 11 of 1923.

¹⁸ Act No. 733 of 1924.

¹⁹ Act No. unknown.

²⁰ Act No. 73 of 1927.

²¹ Act No. 643 of 1928.

²² Act No. 140 of 1959.

²³ Act No. 802 of 1960.

In 1962,²⁴ the tax rates on smoking tobacco and snuff and chewing tobacco were changed. Packages of smoking tobacco retailing for \$0.05 or less were taxed at \$0.01 per package and packages retailing for more than \$0.05 were taxed at \$0.01 per package plus an additional \$0.01 for each \$0.05 of the selling price. Packages of snuff and chewing tobacco were taxed at \$0.01 for each 3 ounces or fraction thereof.

In 1968,²⁵ the stamp method of administering and collecting the taxes on all tobacco products was abandoned in favor of a reporting method that is still in place today. In addition, the tax rate on smoking tobacco was changed to 30% of the manufacturer's price to the wholesaler and the tax rate on snuff and chewing tobacco was changed to 5% of the manufacturer's price to the wholesaler.²⁶

In 1969,²⁷ the tax rate on smoking tobacco was increased to 36% of the manufacturer's price to the wholesaler.

Finally, in 1996,²⁸ the tax rate on smoking tobacco and all other tobacco products was changed to 5% of the manufacturer's price to the wholesaler.²⁹ As of the date of this publication, the tax on all tobacco products remains at this rate.

The statutes imposing the tax on cigarettes and tobacco products can be found in Article 5, Chapter 21 of Title 12 of the South Carolina Code of Laws.

²⁴ Act No. 872 of 1962.

²⁵ Act No. 1263 of 1968.

²⁶ Act No. 1311 of 1968.

²⁷ Act No. 349 of 1969.

²⁸ Act No. 239 of 1996.

²⁹ For a time period prior to this rate change, the tax on cigars was based on the weight of the cigars per 1000 cigars and the retail selling price of the cigar. This rate change now taxes cigars as a "tobacco products" at a rate of 5% of the manufacturer's price to wholesalers. A detailed history of how cigars have been taxed since 1923 is not included in this overview.

Chapter 2

Cigarette Tax Imposition

A. Imposition

The cigarette tax is imposed upon:¹

- (1) every person engaged within South Carolina in the business of selling cigarettes, or
- (2) every person within South Carolina importing, receiving or acquiring cigarettes from outside of South Carolina or from any source whatsoever.

The tax is imposed on the person or distributor first receiving the untaxed cigarettes for sale or other disposition in South Carolina² and upon any person importing, receiving or acquiring untaxed cigarettes from outside South Carolina or from any source whatsoever for use or consumption.³

The tax applies whether the cigarettes are sold or otherwise disposed of in South Carolina, unless the sale or disposition is otherwise exempt under the law. In other words, if the person liable for the tax is unable to account for any cigarettes, such cigarettes are subject to the tax.

The tax imposed on cigarettes is paid by purchasing and affixing cigarette tax stamps to each individual package of cigarettes.⁴

B. Definition of a Cigarette

A “cigarette” is defined under the cigarette tax law⁵ as:

- (1) any roll for smoking containing tobacco or any substitute for tobacco wrapped in paper or in any substance other than a tobacco leaf; or
- (2) any roll for smoking containing tobacco or any substitute for tobacco, wrapped in any substance, weighing three pounds per thousand or less; however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1).

¹ South Carolina Code §12-21-610.

² South Carolina Code §12-21-735.

³ South Carolina Code § 12-21-610.

⁴ South Carolina Code § 12-21-735.

⁵ South Carolina Code §§ 12-21-620(B) and 12-21-625(D).

Since the imposition of the cigarette tax applies to “all cigarettes made of tobacco or any substitute for tobacco,” cigarettes that do not contain tobacco, such as clove cigarettes, are subject to the tax.⁶

In addition, a cigar (or any other roll for smoking that contains tobacco or any substitute for tobacco) which weighs three pounds per thousand or less, regardless of how it’s labeled or named, is considered a cigarette for the purposes of the cigarette tax if because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, it is likely to be offered to, or purchased by, consumers as a cigarette.⁷

C. Tax Rate

The tax rate for cigarettes is \$0.0285, on each cigarette.⁸ Cigarettes are typically sold in packs of 20 or packs of 25; therefore, the tax on a pack of 20 cigarettes is \$0.57 and the tax on a pack of 25 cigarettes is \$0.7125.

The tax applies to all cigarettes – whether sold, used, consumed, given-away or otherwise disposed of – unless the transaction is exempt under the law. In addition, once the cigarette tax has been paid by affixing a tax stamp to a pack of cigarettes, no additional cigarette taxes are due with respect to that pack regardless of the number of times the pack is resold in South Carolina.⁹

D. Samples¹⁰

Cigarettes shipped into South Carolina by manufacturers to representatives, who are licensed in accordance with Code §12-21-660, for promotional use must be accompanied by an invoice stating the name of each brand, the number of packages of each brand, and the number of cigarettes in each package for each brand included in the shipment. Each package of cigarettes shipped into South Carolina for promotional use must bear either a cigarette tax stamp or a tax exempt stamp, and each such package is subject to South Carolina state and local use tax.

E. Persons Liable for the Cigarette Tax

Each person or distributor of cigarettes first receiving untaxed cigarettes for sale, distribution, or other disposition in South Carolina is subject to the cigarette tax. The tax is also imposed upon any person within South Carolina importing, receiving, or acquiring

⁶ Stamps only may be affixed to packages of cigarettes that are listed on the South Carolina Tobacco Directory published by the Office of the Attorney General pursuant to Code §11-48-30. See Code §12-21-735(G).

⁷ See footnote 6.

⁸ South Carolina Code §§12-21-620(1) and 12-21-625(A). The cigarette tax is actually a combination of two taxes – an excise tax of 3½ mills per cigarette and a surtax of \$0.025 per cigarette.

⁹ South Carolina Code §12-21-760.

¹⁰ SC Regulation 117-1600.6.

untaxed cigarettes from outside of South Carolina or from any source whatsoever for use or consumption.¹¹ The taxes imposed on cigarettes must be paid by affixing cigarette tax stamps to each individual pack of cigarettes. Stamps must be affixed to each pack by a distributor before being sold, distributed, or shipped to another person.¹²

F. Persons Not Liable for the Cigarette Tax

The following are examples of persons who are not liable for the cigarette tax:

- (1) Retailers only receiving cigarettes with South Carolina tax stamps affixed from a South Carolina wholesaler, who was the first person to receive the untaxed cigarettes for distribution in South Carolina.

Since the South Carolina wholesaler was the first person to receive the untaxed cigarettes into South Carolina, the wholesaler, not the retailer, is liable for the tax.

- (2) Individuals only purchasing cigarettes with a South Carolina tax stamp affixed from a South Carolina retailer. The retailer only receives cigarettes with South Carolina tax stamps affixed from a South Carolina wholesaler, who was the first person to receive the untaxed cigarettes for distribution in South Carolina.

Since a South Carolina wholesaler was the first person to receive the untaxed cigarettes for distribution in South Carolina, the wholesaler, not the retailers or the individual consumers, is liable for the tax.

- (3) Operators of fairs, circuses and carnivals, or vendors at such locations, who only purchase cigarettes with a South Carolina tax stamp affixed from South Carolina wholesalers or retailers. South Carolina wholesalers are the first persons to receive the untaxed cigarettes for distribution in South Carolina.

Since South Carolina wholesalers are the first persons to receive the untaxed cigarettes for distribution in South Carolina, the wholesalers, and not the retailers, operators or vendors, are liable for the tax.

G. Stamping Requirements and Restrictions¹³

The following requirements and restrictions apply in affixing tax stamps to cigarettes.

- (1) Stamps must be affixed to each individual package of cigarettes by distributors before being sold, distributed, or shipped to another person, except as otherwise provided in Code §12-21-735.

¹¹ South Carolina Code §12-21-610.

¹² South Carolina Code §12-21-735(A).

¹³ South Carolina Code § 12-21-735(A), (B), and (G).

- (2) A distributor may affix stamps only to packages of cigarettes obtained directly from a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713.
- (3) If cigarettes are manufactured in this State and sold directly to consumers in this State by a manufacturer or importer, the cigarette packages must be stamped by a licensed distributor before being sold.
- (4) Only manufacturers or importers with a valid permit issued pursuant to 26 U.S.C. Section 5713, or licensed distributors, may receive or possess unstamped packages of cigarettes.
- (5) Only a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. §5713 may ship or otherwise cause to be delivered unstamped packages of cigarettes in, into, or from this State, except that a licensed distributor may transfer, transport, or cause to be transported unstamped cigarettes from a facility owned by the distributor to another facility, wherever located, owned by the distributor.
- (6) Stamps may only be affixed to packages of cigarettes that are listed on the South Carolina Tobacco Directory published by the Office of the Attorney General pursuant to Code §11-48-30.

H. Purchase of Tax Stamps

Qualifying distributors may purchase tax stamps and order tax-exempt stamps directly from the Department's website through MyDORWAY. Stamps are shipped directly to qualifying distributors from the Department's designated vendor.

Tax stamps for 20-count packs are purchased in increments of 30,000, and tax stamps for 25-count packs are purchased in increments of 3,000. Tax-exempt stamps are ordered in increments of 3,000.

As of January 1, 2019, distributors receive a discount of 4.25% of the face value of each purchase of cigarette tax stamps.¹⁴ In addition, distributors are able to purchase stamps on 30-day credit terms rather than paying cash at the time of purchase, provided certain requirements are met.

See Chapter 7 of this manual for more detailed information about purchasing tax stamps and ordering tax-exempt stamps.

¹⁴ This was an increase from the prior 3.5% discount authorized for timely filing and paying the cigarette tax under the prior method of filing a return.

I. Reporting Requirements

Since the cigarette taxes are remitted through the purchase of cigarette tax stamps, a distributor does not remit taxes through the filing of a tax return. However, cigarette distributors must file a report for informational purposes – Monthly Cigarette Report, with information for 20-count and 25-count cigarette packs, cigarette stamps, and non-participating manufacturer cigarettes. This report must be filed monthly and is due on or before the 20th day of the month following the month in which the sale or disposition took place.

The Monthly Cigarette Report is required by state statutes and regulation and is needed by the Department to file the quarterly Non-Participating Manufacturer's (NPM) Report with the South Carolina Attorney General's Office. The Monthly Cigarette Report is considered filed with the Attorney General's Office upon filing the report with the Department.¹⁵

See SC Regulation 117-1600.1 and Chapter 7 of this manual for more detailed information about reporting requirements for cigarettes and cigarette tax stamps.

J. Storage Requirements

Cigarettes stamped with South Carolina tax stamps are required to be stored in a separate area within the warehouse if the distributor uses the advanced stamping method, meaning the cigarettes are stamped upon arrival at the warehouse. However, if the distributor uses the stamp-to-order method, meaning the cigarettes are not stamped until pulled from stock to fill an order, then the unstamped cigarettes do not have to be stored separately. Once stamped, the cigarettes should be placed on a delivery truck or on the loading dock to be loaded onto a delivery truck.

See SC Regulation 117-1600.5 and Chapter 7 of this manual for more detailed information concerning separate area storage requirements.

K. Penalties¹⁶

In addition to any other applicable penalties, persons required to purchase stamps for cigarettes who fail to affix the stamps properly, or to comply with statutory provisions, are subject to a penalty of \$50 to \$500 for each failure.

¹⁵ SC Regulation 117-1600.1.

¹⁶ South Carolina Code §12-54-43(H).

Chapter 3

Tobacco Products Imposition

A. Imposition

The tobacco products tax is imposed upon every person engaged within South Carolina in the business of selling tobacco products¹ as a distributor.² A distributor is:

- (1) any person engaged in the business of selling tobacco products in South Carolina who brings or causes to be brought into South Carolina from without South Carolina any tobacco products for sale;³
- (2) any person who makes, manufactures, or fabricates tobacco products in South Carolina for sale in South Carolina;⁴ and
- (3) any person engaged in the business of selling tobacco products outside of South Carolina who ships or transports tobacco products to retailers in South Carolina to be sold by such retailers in South Carolina.⁵

Essentially, the tax is imposed on the person first receiving the untaxed tobacco products for sale, distribution or other disposition in South Carolina⁶ and upon any person within South Carolina importing, receiving or acquiring tobacco products from outside of South Carolina or from any source whatsoever for use or consumption.⁷

Once the tobacco products tax has been paid with respect to a tobacco product package, no additional tobacco products tax is due with respect to that package regardless of the number of times the package is resold in South Carolina.⁸

The tax applies whether the tobacco products are sold or otherwise disposed of in South Carolina, unless the sale or disposition is otherwise exempt under the law. In other words, if the person liable for the tax is unable to account for any tobacco products, such tobacco products are subject to the tax.

¹ South Carolina Code §12-21-800. By definition, the term “tobacco products” does not include cigarettes.

² South Carolina Code §§12-21-610 and 12-21-780.

³ South Carolina Code §12-21-810(A).

⁴ South Carolina Code §12-21-810(B).

⁵ South Carolina Code §12-21-810(C).

⁶ South Carolina Code §12-21-810.

⁷ South Carolina Code § 12-21-610.

⁸ South Carolina Code §12-21-760.

B. Definition of Tobacco Products⁹

The term “tobacco products” is defined to mean “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 tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in a manner to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing or smoking, but does not include cigarettes.”¹⁰

C. Tax Rate

The tax rate on tobacco products is 5% of the manufacturer’s price.¹¹ The manufacturer’s price is the established price at which the manufacturer sells to a wholesaler.¹²

It has been the Department’s longstanding policy that the “established price” is recognized and accepted sum of money asked for a tobacco product which a manufacturer sells to a wholesaler.¹³ The “established price” also depends on the facts and circumstances, such as in the case of the promotions and incentives discussed below.

The following provides guidance with respect to determining the “established price” for various promotions and incentives:¹⁴

Promotional Packaging - A product packaged for the consumer as part of a “buy one get one free” promotion by the manufacturer is a packaged unit with an established price that is distinct and separate from the established price for the same product sold individually. Therefore, the established price is the recognized and accepted sum of money asked by the manufacturer for each packaged unit during the promotion.

Products Received Free of Charge - For the incentive program in which the manufacturer will offer a wholesaler, during a specified time period, the opportunity to receive one case of a product free of charge if he purchases one or more cases of the same product, the total price that the wholesaler pays is the “established price” for the all the cases received under the promotion.

For example, if the wholesaler purchases 10 cases for \$200 and receives one case free, the established price upon which the tax is calculated for all 11 cases is \$200. A transaction must be viewed based upon its substance rather than its form. As such, the taxpayer in the example has purchased 11 cases for \$200.

⁹ South Carolina Code §12-21-800.

¹⁰ See Chapter 2, Cigarette Tax Imposition, for the definition of a “cigarette.”

¹¹ South Carolina Code §12-21-620(A)(2).

¹² South Carolina Code §12-21-620(A)(2).

¹³ SC Revenue Ruling #94-7.

¹⁴ SC Revenue Ruling #94-7.

Promotional Allowance - For the incentive program in which a manufacturer offers for a limited time a promotion that merely reduces the price of the product, the established price is the recognized and accepted sum of money asked by the manufacturer for the product during the promotion.

For example, the product may sell for \$175 per case; however, the manufacturer is offering the product during a specified time period for \$160 per case with the invoice showing a unit price of \$175 and a promotional allowance of \$15. As a result of the promotion, the established price is \$160.

Finally, the established price is the amount charged by the manufacturer to the wholesaler before any cash discounts for early payment are allowed and taken.¹⁵

D. Examples of Persons Liable for the Tobacco Products Tax

The following are examples of persons who are liable for the tobacco products tax:

- (1) Wholesalers first receiving untaxed tobacco products from outside of South Carolina for sale or distribution in South Carolina.¹⁶

Most persons liable for the tobacco products tax will fall within this category.

- (2) Retailers first receiving untaxed tobacco products from outside of South Carolina for sale or distribution in South Carolina.

While most retailers will not be liable for the tobacco products tax since they are purchasing taxed tobacco products from the wholesalers listed above, some retailers specializing in selling cigarettes and tobacco products will fall into this category. These specialty tobacco shops may directly import or receive untaxed tobacco products from outside of South Carolina.

- (3) Manufacturers who employ sales representatives who bring untaxed tobacco products into South Carolina for sale by retailers in South Carolina.¹⁷ For example, manufacturers may send “car stock” to their sales representative in South Carolina for restocking or promotional purposes.

- (4) Operators of fairs, circuses and carnivals, or vendors at such locations, who bring untaxed tobacco products into South Carolina to sell or give-away as prizes.¹⁸

¹⁵ SC Revenue Ruling #94-7.

¹⁶ South Carolina Code §12-21-810(A).

¹⁷ South Carolina Code §12-21-810(C).

¹⁸ South Carolina Code §12-21-810(A).

- (5) Individuals who bring untaxed tobacco products into South Carolina for their own use or consumption.

These individuals are liable for the tax as a person importing, receiving or acquiring tobacco products from outside South Carolina for use of consumption.¹⁹

E. Examples of Persons Not Liable for the Tobacco Products Tax

The following are examples of persons who are not liable for the tobacco products tax:

- (1) Retailers only receiving taxed tobacco products from South Carolina wholesalers.

Since the South Carolina wholesaler was the first person to receive the untaxed tobacco products into South Carolina, the wholesaler, not the retailer, is liable for the tax.²⁰

- (2) Individuals only purchasing taxed tobacco products from South Carolina retailers.

Since either a South Carolina wholesaler or retailer was the first person to receive the untaxed tobacco products into South Carolina, the wholesaler or retailer, not the individual consumer, is liable for the tax.²¹

- (3) Operators of fairs, circuses and carnivals, or vendors at such locations, who only purchase taxed tobacco products from South Carolina wholesalers or retailers.

Since either a South Carolina wholesaler or retailer was the first person to receive the untaxed tobacco products into South Carolina, the wholesaler or retailer is liable for the tax.²²

¹⁹ South Carolina Code §§12-21-610 and 12-21-140.

²⁰ South Carolina Code §12-21-810(A).

²¹ South Carolina Code §12-21-810(A).

²² South Carolina Code §12-21-810(A).

Chapter 4

Exemptions and Refunds

The South Carolina cigarette and tobacco products taxes contain several exemptions and a refund provision. The following briefly describes these exemptions and the refund provision.

A. Out-of-State Sales or Dispositions – Exemption

Cigarette Tax¹

A qualified licensed distributor may sell cigarettes without South Carolina tax stamps affixed to the package, provided that:

- (1) The cigarettes are set forth in separate stock for sale to a licensed distributor of cigarettes in another state;
- (2) If the cigarettes are not in the possession of a qualified licensed distributor, the cigarettes must be in the possession of a person having immediate evidence of a license in business as a distributor of cigarettes in the another state, and the cigarettes must be purchased for the purpose of resale in the other state; and
- (3) The cigarettes, at the time of sale by the distributor, are properly stamped with revenue stamps authorized and issued by another state for use on the cigarettes, if the other state requires revenue stamps, or any applicable tax imposed on the cigarettes by the other state has been paid if the law of the other state permits the sale of the cigarettes to consumers in a package not bearing a stamp.

In addition, the cigarettes must at all times be accompanied by an invoice indicating the purchase date, the name, address, and telephone number of the seller, and the name, address, and telephone number of the purchaser. A distributor must have on file a record of each sale, the original purchase order, a copy of the invoice, and a signed receipt from the purchaser showing that the purchase was made exclusively for resale in another state.

Tobacco Products Tax

The tobacco products tax is not due on tobacco products shipped outside of South Carolina to a wholesaler, retailer or user or consumer by a wholesaler or retailer who is liable for the tobacco products tax (i.e., the wholesaler or retailer who first received the untaxed tobacco products in South Carolina).²

¹ South Carolina Code §12-21-735(C).

² South Carolina Code §12-21-780.

Note: Tobacco products shipped out-of-state by any other person are subject to the tobacco products tax (e.g., a retailer not liable for the tax or an individual who purchased the tobacco products for use or consumption).

Note: Another provision³ allows a refund for cigarettes and tobacco products sold and shipped to a regular dealer in such articles in another state. The South Carolina seller is entitled to the refund if the South Carolina seller provides to the Department (1) an affidavit that the cigarettes or tobacco products were so sold and shipped to an out-of-state dealer⁴ and (2) a written statement from the out-of-state retail dealer (including the name and address of the out-of-state retail dealer) that he has received the cigarettes or tobacco products and stating the amount of South Carolina tax paid on the cigarettes or tobacco products. This refund may only be claimed by the person legally liable for the cigarette stamp tax or tobacco products tax.⁵

B. Sales to the United States Government – Exemption

The following sales of cigarettes and tobacco products are exempt from the cigarette stamp tax and tobacco products taxes:

- (1) sales to the United States Government;⁶
- (2) sales to a United States Government instrumentality for Army, Navy, Marine or Air Force purposes and delivered to a place lawfully ceded to the United States;⁷ and
- (3) sales to a United States Government instrumentality for Army, Navy, Marine or Air Force purposes and delivered to a ship belonging to the United States Navy for distribution and sale to members of the military establishment only.⁸

Note: Cigarettes that qualify for any of the above exemptions must have an exempt stamp affixed to each package of cigarettes.⁹ In addition, in the event any cigarettes to which tax stamps have been affixed are delivered to the Federal Government or any instrumentality thereof, the value of such tax stamps will not be refunded by the Department of Revenue.¹⁰

³ South Carolina Code §12-21-90.

⁴ The out-of-state dealer must be a regular dealer of cigarettes and tobacco products in the other state. South Carolina Code §12-21-90.

⁵ South Carolina Code §12-60-470(C).

⁶ South Carolina Code §12-21-100.

⁷ South Carolina Code §12-21-100.

⁸ South Carolina Code §12-21-100.

⁹ South Carolina Code § 12-21-735(D).

¹⁰ See SC Regulation 117-1600.3.

C. Sales to Ships Regularly Engaged in Foreign or Coastwise Shipping – Exemption

Sales of cigarettes and tobacco products are exempt when sold and delivered to ships regularly engaged in foreign or coastwise shipping between points in South Carolina and points outside of South Carolina.¹¹

Note: Cigarettes that qualify for any of the above exemptions must have an exempt tax stamp affixed to each package of cigarettes.¹²

D. Leaf Tobacco – Exemption

Sales of unprocessed leaf tobacco (i.e., tobacco not prepared in a manner suitable for chewing or smoking) are not subject to the tobacco products tax.¹³

For example, whole leaf tobacco, or decorative tobacco hands and decorative tobacco braids made of whole leaf tobacco, sold for ceremonial purposes are not subject to the tobacco products tax. However, if the person purchasing the whole leaf tobacco, or decorative tobacco hands and decorative tobacco braids made of whole leaf tobacco, processes such tobacco for sale in South Carolina, then such person is liable for the tobacco products tax.

E. Refunds for Tobacco Products Tax

Code §12-21-90 allows a refund for tobacco products sold and shipped to a regular dealer in such articles in another state, provided certain statutory requirements are met. In addition, the tax paid on tobacco products “which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer” may be refunded.¹⁴ A refund request must be filed with the Department of Revenue by the person legally liable for the tobacco products tax¹⁵ within three years of the time the tax return was filed, or two years from the date the tax was paid, whichever is later.¹⁶

F. Refunds for Cigarette Stamp Tax

The only refunds which will be made with respect to cigarette stamp taxes will be for the following:

- (1) Cigarettes shipped out of the geographic limits of the State of South Carolina in accordance with the provisions of Section 12-21-90;

¹¹ South Carolina Code §12-21-100.

¹² South Carolina Code § 12-21-735(D).

¹³ South Carolina Code §§12-21-800 and 12-21-660.

¹⁴ South Carolina Code §12-21-110. While this provision still references tax stamps, the Department still allows refunds for damaged cigarettes and tobacco products.

¹⁵ South Carolina Code §12-60-470(C).

¹⁶ South Carolina Code §12-54-85(F)(1).

- (2) Damaged cigarettes in accordance with the provisions of Section 12-21-110 and any applicable regulations of the South Carolina Department of Revenue;¹⁷
- (3) Damaged tax stamps; (the distributor must contact the Department of Revenue Tobacco office to request an inspection by the Field Audit Team and possibly the manufacturer of the stamps);
- (4) Cigarettes returned as unsellable;
- (5) Cigarettes unrecoverable as a result of bad debt; and
- (6) Any other circumstance authorized by the General Assembly.

For purposes of determining the refund for cigarettes unrecoverable as a result of a bad debt, a bad debt is an amount that is charged off as such for state income tax purposes.

All refunds must be properly documented in order for the Department of Revenue to issue refunds. Proper documentation for refunds includes, but is not limited to, bills of lading, shipment receipts, documentation for shipments of cigarettes returned to a manufacturer, and any other documentation as determined by the Department of Revenue. The Department of Revenue may require a physical verification on a case-by-case basis (e.g., receipt of damaged tax stamps by a distributor).

A refund request must be filed with the Department of Revenue by the person legally liable for the cigarette stamp tax¹⁸ within two years from the date the tax was paid.¹⁹

Note: In the event any cigarettes to which tax stamps have been affixed are delivered to the Federal Government or any instrumentality thereof, the value of such tax stamps will not be refunded by the Department of Revenue.²⁰

¹⁷ The cigarette stamp tax paid on cigarettes “which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer” may be refunded.

¹⁸ South Carolina Code §12-60-470(C).

¹⁹ South Carolina Code §12-54-85(F)(1).

²⁰ See SC Regulation 117-1600.3.

Chapter 5

Catawba Indian Reservation

A. The Catawba Indian Claims Settlement Act

Chapter 16, Title 27 of the South Carolina Code of Laws is known as “The Catawba Indian Claims Settlement Act” (“The Act”). The Act is based on the agreement in principle reached between the State of South Carolina and the Catawba Indian Tribe to settle differences between the two parties.

This act took effect on November 29, 1993 when the Governor certified that the Counties of York and Lancaster had taken all actions required of them by the Settlement Agreement and that the federal implementing legislation enacted by Congress and signed in law by the President was consistent with the Settlement Agreement.

With respect to the taxation of the tribe and members of the tribe, the act states that “the Tribe, its members, the Tribal Trust Funds, and other persons or entities affiliated with or owned by the Tribe, members of the Tribe, or the Tribal Trust Funds, whether a resident, located, or doing business on or off the Reservation, are subject to all state and local taxes, sales taxes, real and personal property taxes, excise taxes, estate taxes, and all other taxes, licenses, levies, and fees, except as expressly provided in this section or the federal implementing legislation.”¹

In addition, the act states that “[a]ny other person or business entity which locates, operates, or does business on the Reservation is subject without exception to all state and local taxes, licenses, and fees, unless otherwise expressly provided in this chapter.”²

A review of the act establishes that no special provisions or exemptions were enacted concerning the cigarette stamp tax or the tobacco products tax.³

B. Taxation of Cigarettes and Tobacco Products on the Catawba Indian Reservation

Since there is no exemption provided for cigarettes or tobacco products sold to or by the Catawba Indian Tribe, its members, or businesses located on or off the Reservation, the following sales require that the cigarette packs bear a tax stamp and that the tobacco products tax be paid by the person liable for the tax.⁴

¹ South Carolina Code §27-16-130(A).

² South Carolina Code §27-16-130(A).

³ Title 27, Chapter 16 of the South Carolina Code of Laws.

⁴ See Chapter 2, “Cigarette Tax Imposition,” and Chapter 3, “Tobacco Products Imposition,” for information as to the person liable for the tax. See Chapter 4 for information on exemptions and refunds applicable for the cigarette stamp tax and tobacco products tax.

Catawba Indian Tribe

Cigarettes and tobacco products sold by the Catawba Indian Tribe, whether on or off the Reservation, are subject to the cigarette stamp tax and the tobacco products tax.

Cigarettes and tobacco products sold to the Catawba Indian Tribe, whether on or off the Reservation, are subject to the cigarette stamp tax and the tobacco products tax.

Tribal Members

Cigarettes and tobacco products sold by members of the Catawba Indian Tribe, whether on or off the Reservation, are subject to the cigarette stamp tax and the tobacco products tax.

Cigarettes and tobacco products sold to members of the Catawba Indian Tribe, whether on or off the Reservation, are subject to the cigarette stamp tax and the tobacco products tax.

Businesses Located on the Reservation

Cigarettes and tobacco products sold by businesses located on the Reservation (whether the sales are to the tribe, tribal members, other businesses or other individuals) are subject to the cigarette stamp tax and the tobacco products tax.

Cigarettes and tobacco products sold to businesses located on the Reservation are subject to the cigarette stamp tax and the tobacco products tax.

Businesses Located off the Reservation, but Selling onto the Reservation

Cigarettes and tobacco products sold by businesses located off the Reservation to persons (e.g., the tribe, tribal members, other businesses or individuals) on the Reservation are subject to the cigarette stamp tax and the tobacco products tax.

Note: See Chapter 2, “Cigarette Tax Imposition,” and Chapter 3, “Tobacco Products Tax Imposition” for information as to the person liable for the tax. See Chapter 4 for information on exemptions and refunds applicable for the cigarette stamp tax and tobacco products tax.

Chapter 6

Confiscation of Contraband Cigarettes

Cigarettes found at any point within South Carolina that do not have South Carolina cigarette tax stamps or tax exempt stamps required by law properly affixed to their package are contraband goods if the goods are in the possession of a person:

- (1) offering the cigarettes for sale or distribution and that person was not the first to receive the untaxed cigarettes in South Carolina;
- (2) importing, receiving, or acquiring cigarettes for use or consumption within South Carolina; or
- (3) offering the cigarettes for sale at retail within South Carolina.

Cigarettes declared to be contraband goods may be seized by the Department, its employees, or any State law enforcement agency without a warrant from any wholesaler, retailer, or any person. The seized cigarettes must be delivered to the Department.¹ Any proceeding against cigarettes seized are considered a proceeding in rem.²

A. Examples of Cigarettes Subject to Confiscation³

- (1) Retailer A travels to another state, purchases cigarettes with the other state's tax stamp affixed to the packages, and returns to South Carolina to sell these cigarettes at his store. Since these cigarettes are being sold at retail in South Carolina without South Carolina cigarette tax stamps affixed, these cigarettes are contraband subject to confiscation.
- (2) Retailer B orders cigarettes over the Internet for sale in his South Carolina store, and the cigarettes arrive without South Carolina cigarette tax stamps affixed. Retailer B is not a licensed South Carolina cigarette distributor and may not

¹ South Carolina Code §12-21-2870.

² South Carolina Code §12-21-2900; South Carolina Code §12-21-2870. Black's Law Dictionary, Sixth Edition, states in part: "In the strict sense of the term, a proceeding 'in rem' is one which is taken directly against property or one which is brought to enforce a right in the thing itself."

³ While it is not a tax issue, wholesalers and retailers of cigarettes should be aware that it is illegal to sell or distribute "gray market cigarettes" in South Carolina. "Gray market cigarettes" are those that are not intended to be sold in the United States. The packages may be labeled "For export only," "U.S. tax exempt," or "For use outside U.S." Cigarette packages which do not comply with federal labeling and advertising requirements with regards to labels, warnings or other information are also considered "gray market cigarettes." Anyone who sells or distributes "gray market cigarettes" in violation of the state law may be sentenced to a maximum three years in prison, fined up to \$1,000, or both. Law enforcement officers may seize and destroy any illegal cigarettes or may sell the cigarettes to the manufacturer to be exported outside the United States. See South Carolina Code §16-17-505 and SC Department of Revenue news release dated October 8, 1999.

affix South Carolina cigarette tax stamps to the cigarettes. Since these cigarettes are being sold in South Carolina at retail without South Carolina cigarette tax stamps affixed, these cigarettes are contraband subject to confiscation.

- (3) Wholesaler C orders cigarettes from a manufacturer who ships the cigarettes to Wholesaler C's South Carolina wholesale distribution facility. Wholesaler C will sell the cigarettes from this facility to retailers located inside and outside of South Carolina. Wholesaler C inadvertently ships cigarettes with another state's tax stamp or without any tax stamp affixed to a South Carolina retailer. These cigarettes are contraband in the possession of a South Carolina retailer who purchased the cigarettes from Wholesaler C.
- (4) Mr. Smith travels outside of South Carolina and purchases a supply of cigarettes for use by him and his wife and brings the cigarettes back to South Carolina. Since South Carolina cigarette tax stamps are not affixed to the packages, the cigarettes are contraband subject to confiscation.

B. Seizure and Confiscation of Unstamped Cigarettes

The following outlines the procedure for confiscating contraband cigarettes found in South Carolina and prosecuting the case to secure forfeiture of the seized cigarettes.

- (1) If any contraband cigarettes are found any place within South Carolina, the Department, its employees, or any law enforcement agency of the State may seize those cigarettes without a warrant.⁴ Seized cigarettes must be delivered to the Department.⁵
- (2) The Department may, depending on the facts, issue a Violation Proposed Assessment to either the person in possession of the contraband cigarettes at the time of seizure or the person who was responsible for properly affixing a cigarette tax stamp or tax exempt stamp to the contraband cigarettes. The Department may assess any applicable penalties through the Violation Proposed Assessment.
- (3) A taxpayer may agree with portions of the Violation Proposed Assessment and disagree with others. The portion of the Violation Proposed Assessment with which the taxpayer agrees may be paid to avoid additional interest and penalties, and the remainder can be appealed.

⁴ South Carolina Code §12-21-2870. "The department may enter upon the premises of any taxpayer or the business premises of any other person and examine or cause to be examined by any agent or representative designated by it for that purpose any books, papers, records, memoranda, commodities or other things bearing upon the amount of taxes payable and secure from such taxpayer or other person any other information directly or indirectly concerned in the enforcement of [Chapter 21 of Title 12]." South Carolina Code §12-21-2860.

⁵ South Carolina Code §12-21-2870.

- (4) If the taxpayer disagrees with part or all of the Violation Proposed Assessment, the taxpayer may appeal by sending a written protest to the Department within 90 calendar days of the date on the Violation Proposed Assessment. See Chapter 7 of this manual for information about the Department's internal tax appeals process and procedure.
- (5) Any cigarettes seized by the Department which are ultimately determined to be contraband cigarettes are turned over to the South Carolina Law Enforcement Division and destroyed.

Chapter 7

Administrative Requirements

A. Cigarette and Tobacco Products License

Who Must Obtain a License?

A cigarette and tobacco products license must be obtained, at no cost, by the following persons before engaging in the sale of cigarettes or tobacco products in South Carolina:¹

- (1) Wholesalers of cigarettes or tobacco products;
- (2) Retailers that purchase untaxed cigarettes or untaxed tobacco products;
- (3) Vending machine operators selling cigarettes or tobacco products through vending machines placed on another person's premises; and
- (4) Sales representatives for manufacturers of cigarettes or tobacco products.

Wholesalers and retailers must obtain a license for each place of business.² Vending machine operators and sales representatives; however, are only required to obtain one license.³ Vending machine operators, while only required to obtain one license, must maintain an up-to-date list of the location of each cigarette or tobacco products vending machine in South Carolina.⁴

Who Is Not Required to Obtain a License?

A cigarette and tobacco products license is not required of:⁵

- (1) Retailers that only purchase taxed cigarettes or taxed tobacco products;
- (2) Vending machine operators selling cigarettes or tobacco products through vending machines only located on their own premises;
- (3) Persons selling or distributing leaf tobacco;
- (4) Churches, schools, or charitable organizations operating booths at state, county, or community fairs; and

¹ South Carolina Code §12-21-660.

² South Carolina Code §12-21-660.

³ South Carolina Code §12-21-660.

⁴ South Carolina Code §12-21-660.

⁵ South Carolina Code §12-21-660.

- (5) Church or school entertainments.

Specific License Requirements

Persons required to obtain a cigarette and tobacco products license must comply with the following provisions:⁶

- (1) The license must be obtained before engaging in the business of purchasing, selling and distributing cigarettes and tobacco products in South Carolina;
- (2) The license must be displayed at all times in a conspicuous place;
- (3) The license cannot be transferred to another person; and
- (4) The license is only valid for transacting business at the place designated on the license.

Taxpayers may obtain a license for cigarette stamps, a license for other tobacco products (OTP), or a license for both.

B. Bond Requirements

Cigarettes⁷

Distributors who purchase cigarette tax stamps on thirty-day credit period must execute a bond with a solvent surety company qualified to do business in South Carolina in an amount of one hundred ten percent of the distributor's estimated tax liability for thirty days. However, the bond amount must not be less than two thousand dollars. The purchase of cigarette tax stamps on a thirty-day credit period is conditioned upon the distributor paying all cigarette stamp taxes due. This form of payment is in lieu of cash or its equivalent.

Payment is due on or before the twentieth day of the month following the month the cigarette tax stamps were purchased, including Sundays and holidays. At the discretion of the Department, default in the bonding and payment provisions by any distributor may result in the revocation of the distributor's privilege to purchase stamps.

Tobacco Products

A bond or statement of financial stability is not specifically required with respect to the tobacco products tax. However, distributors of tobacco products can be required to post a bond if the distributor fails to pay the tobacco products tax for as many as two filing periods in a 12 month period.⁸

⁶ South Carolina Code §12-21-670.

⁷ South Carolina Code §12-21-735(E)(7).

⁸ South Carolina Code §12-54-200.

C. Purchase of Tax Stamps

Qualifying distributors may purchase tax stamps and order tax-exempt stamps directly from the Department's website through MyDORWAY. As of January 1, 2019, distributors receive a discount of 4.25% of the face value of each purchase of cigarette tax stamps.⁹

Tax stamps for 20-count packs are purchased in increments of 30,000, and tax stamps for 25-count packs are purchased in increments of 3,000. Tax-exempt stamps are ordered in increments of 3,000. Stamps are shipped directly to qualifying distributors from the Department's designated vendor and are not available for pickup at the Department.

In addition, distributors are able to purchase stamps on 30-day credit terms rather than paying cash at the time of purchase, provided the following requirements are met:¹⁰

- (1) The distributor must not have any outstanding tax stamp purchase liabilities (i.e., no additional credit purchases will be allowed if a distributor has any credit purchase liability that is past due); and
- (2) The distributor must post a surety bond executed with a solvent surety company qualified to do business in South Carolina prior to purchasing stamps on credit in the amount of 110% of its estimated tax liability for 30 days, but not less than \$2,000.

Payment for each calendar month's liability is due on or before the 20th day of the following month, including Sundays and holidays. For example, if a credit purchase is made during May, full payment for that credit purchase is due on or before the 20th day of June.

In the event of default in the bonding or payment provisions, the Department has discretion to revoke a distributor's privilege to purchase stamps. Failure to timely pay will also subject a distributor to all applicable penalties, interest, and possible revocation of the distributor's license. In addition, SC Regulation 117-1600.2(d) states that no distributor may purchase stamps unless and until the distributor is current in filing all reports and other documentation required by the regulation.

⁹ This was an increase from the prior 3.5% discount authorized for timely filing and paying the cigarette tax under the prior method of filing a return.

¹⁰ South Carolina Code §12-21-735(E)(7) and SC Regulation 117-1600.2(a).

D. Reporting Requirements

Cigarettes¹¹

Distributors must file a monthly report with the Department of Revenue with respect to sales or dispositions of cigarettes. The report is due on or before the 20th day of the month following the month in which the sales or dispositions took place and is delinquent if it is postmarked after the 20th day following the close of the period.

This report is required by South Carolina Regulation 117-1600 and by South Carolina Code §11-48-50(A) which provides that “distributors also shall provide this information and documentation to the Department of Revenue and any other documentation requested by the Department of Revenue.” Once filed with the Department, the report shall be considered filed with the Attorney General’s Office.

The report shall include, but is not limited to, the following information for 20-count and 25-count cigarette packs, cigarette stamps, and non-participating manufacturer cigarettes, respectively:

Cigarette Information

Each distributor shall file a cigarette report as part of the monthly report which includes, but is not limited to, the following information:

- (1) Beginning inventory;
- (2) Purchases during the month (listed by name of manufacturer, the total number of 20-count packs purchased from each manufacturer, the total number of 25-count packs purchased from each manufacturer, the total number of 20-count packs received from all sources, and the total number of 25-count packs received from all sources);
- (3) Total of beginning inventory and purchases during month;
- (4) South Carolina tax exempt sales (listed by state, name of manufacturer, the total number of 20-count packs purchased from each manufacturer, the total number of 25-count packs purchased from each manufacturer, the total number of all 20-count packs invoiced exempt, and the total number of all 25-count packs invoiced exempt); and
- (5) Ending inventory.

¹¹ See SC Regulation 117-1600.1.

Cigarette Stamp Information

Distributors must file a cigarette stamp report as part of the monthly report which includes, but is not limited to, the following information:

- (1) Beginning inventory of taxable and tax exempt stamps;
- (2) Taxable and tax exempt stamps received during the month; and
- (3) Ending inventory of taxable and tax exempt stamps.

Non-participating Manufacturer Cigarette Information

Distributors must file a report of tax paid cigarettes from non-participating manufacturers as part of the monthly report, even if there were no purchases made from non-participating manufacturers during the reporting period. This report must include, but is not limited to, the file number of the distributor, the period end date, and the following information for each non-participating manufacturer:

- (1) Name and address of each non-participating manufacturer;
- (2) Full brand name of the product sold;
- (3) Name, address, and file number of the person from whom each pack of cigarettes was purchased;
- (4) Number of packs of cigarettes sold in South Carolina;
- (5) Number of cigarettes per pack (pack size of cigarettes sold by distributor and produced by nonparticipating manufacturers); and
- (6) Number of packs of cigarettes sold in South Carolina *times* the number of cigarettes per pack.

Other Information and Report Provisions

Distributors must provide any other information deemed necessary by the Department of Revenue to enforce Chapters 47 and 48 of Title 11 as well as the cigarette provisions of Chapter 21 of Title 12.

Tobacco Products

Persons liable for the tobacco products tax must file a monthly return and remit the taxes due. All licensed distributors of tobacco products must report and remit the tax under

either the “receipts method” or the “sales method.”¹² Distributors who follow the receipts method must report and remit the tobacco products tax for all tobacco products purchased each month. Distributors following the sales method must report and remit the tax for all tobacco products which are sold or disposed of each month. The return must be filed with the Department on or before the 20th day of the month following the month in which the tobacco products were purchased, sold, or otherwise disposed of.¹³

The Department, at its discretion, may require tobacco products tax returns and payment of taxes for other than monthly periods.¹⁴

When a taxpayer files a tobacco products tax return and remits the tobacco products taxes due in a timely manner, the taxpayer may take a deduction on the return equal to 3½% of the taxes due.¹⁵

E. Storage Requirements¹⁶

Stamping Methods

Distributors generally stamp and store cigarettes in one of two methods - a “Stamp-to-Order” method and an “Advanced Stamping” method. These methods can be briefly described as follows:

Stamp-to-Order Method: Under this method, cigarettes are stamped only as orders are received. Once the cigarettes are stamped, distributors typically load the order onto a truck or place the order in a staging area for loading onto a truck either later that day or the next day.

Advanced Stamping Method: Under this method, cigarettes are stamped before orders are received.

Storage Requirements

The storage requirements addressed below only apply to warehouses located in South Carolina. Each warehouse in South Carolina which, in addition to selling South Carolina tax paid cigarettes, sells cigarettes in another state or cigarettes which are tax exempt in South Carolina, must obtain approval of its storage method from the Department in advance of implementation. South Carolina warehouses which only sell South Carolina tax paid cigarettes are not required to obtain approval of their storage methods.

¹² Distributors select a filing method on the license application. Once a filing method has been chosen, a distributor must continue to file under this method on the monthly return, unless the Department, at its discretion, authorizes a change in method. If a taxpayer seeks a change in reporting method, the taxpayer must submit a written request explaining the reason why such change is needed.

¹³ South Carolina Code §12-21-780.

¹⁴ South Carolina Code §12-21-785.

¹⁵ South Carolina Code §12-21-780.

¹⁶ SC Regulation 117-1600.5.

Stamp-to-Order

If a distributor is approved by the Department to use the stamp-to-order method, then the distributor is not required to maintain separate compartments or areas for South Carolina tax paid cigarettes, cigarettes to be sold in another state, and cigarettes to be sold tax exempt in South Carolina. However, the distributor's staging areas must be clearly marked and separated to avoid commingling of South Carolina tax paid cigarettes with cigarettes to be sold in another state or cigarettes to be sold tax exempt in South Carolina.

The Department must approve the distributor's staging areas in advance of implementation. The Department will provide a copy of the written approval to the distributor to maintain for the distributor's records. If the distributor at a later date redesigns its warehouse or system whereby the Department-approved staging areas are changed, such change must be approved by the Department in advance of implementation.

Advanced Stamping

If a distributor is approved by the Department to use the advanced stamping method, then the distributor is required to maintain separate compartments or areas for cigarettes. Distributors who follow the advanced stamping method must, at a minimum, maintain one separate area for South Carolina tax paid cigarettes and one separate area for cigarettes to be sold in another state and/or cigarettes to be sold tax exempt in South Carolina. Alternatively, distributors may choose to maintain a separate area for each respective state and a separate area for cigarettes to be sold tax exempt in South Carolina.

These areas may be separated by creating a separate room(s), compartment(s), by using a bin(s), or other manner of storage clearly separating South Carolina tax paid cigarettes from cigarettes to be sold in another state and/or cigarettes to be sold tax exempt in South Carolina. Distributors must clearly mark the separate areas with signs warning employees regarding which cigarettes are South Carolina tax paid cigarettes, which cigarettes are to be sold in another state, and which cigarettes are to be sold tax exempt in South Carolina.

Any distributor operating a warehouse where cigarettes are stamped in advance must obtain approval from the Department for its separate room(s), compartment(s), bin(s), or other manner of storage in advance of implementation. The Department will provide a copy of the written approval to the distributor to maintain for the distributor's records. If the distributor at a later date redesigns its warehouse or system whereby the Department-approved separate room(s), compartment(s), bin(s), or other manner of storage is changed, such change must be approved by the Department in advance of implementation.

Other Stamping and Storage Methods

There may be other stamping and storage methods than stamp-to-order and advanced stamping. All other stamping and storage methods must be approved by the Department on a case-by-case basis. Written approval for another stamping and storage method must be obtained from the Department in advance of implementation.

Approval of stamping and storage methods will be determined on a warehouse-by-warehouse basis. The Department will provide a copy of the written approval to the distributor to maintain for the distributor's records. If the distributor at a later date redesigns its warehouse or system whereby the Department-approved stamping and storage method is changed, such change must be approved by the Department in advance of implementation.

F. Returning a License¹⁷

When a business is closed, sold or otherwise transferred to another person, the cigarette and tobacco products license, as well as all other licenses issued by the Department, must be returned to the Department for cancellation and the taxpayer must remit unpaid or accrued taxes.

The Department may refuse to issue a license to a person, and may revoke one or more licenses held by a person, who has failed to return a license and remit taxes.¹⁸

G. Recordkeeping

Every person subject to the cigarette and tobacco products taxes is required to keep "books, papers, memoranda, records...and comply with the regulations as the department prescribes."¹⁹ This includes records in electronic format.²⁰ Records must be kept for a period of **four years**.²¹

The penalty for failing to keep records as required by the Department is a maximum of \$500 per tobacco tax return.²²

H. Penalties and Interest

Taxpayers who fail to file tax returns, or fail to pay taxes when they are due, are subject to certain penalties. Penalties are imposed as follows:

¹⁷ South Carolina Code §12-54-126. See also SC Regulation 117-300.6 for special rules regarding partnerships.

¹⁸ South Carolina Code §12-54-90.

¹⁹ South Carolina Code §12-54-210; SC Regulation 117-200; and SC Regulation 117-200.1.

²⁰ SC Regulation 117-200.2.

²¹ SC Regulation 117-200.1.

²² South Carolina Code §12-54-210.

Failure to File

This penalty is imposed at the rate of 5% of the taxes due for each month, or fraction of a month, the return is late. For example, if the May return is filed on June 30th, the return is 10 days late and the taxpayer is subject to a penalty equal to 5% of the tax due on that return. If this same return had not been filed until July 23rd, the taxpayer would be subject to a penalty equal to 10% of the tax due on that return.

Failure to Pay

This penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, the taxes are late. For example, if the taxes due with the May return are remitted on June 30th, the remittance is 10 days late and the taxpayer is subject to a penalty equal to 0.5% of the tax shown as due on that return. If these same taxes had not been remitted until July 23rd, then the taxpayer would be subject to a penalty equal to 1% of the taxes shown as due on the May return.

If the taxpayer is audited and taxes are found to be due, then the failure to pay penalty is not due if the taxes are paid within 10 days of the Department's assessment for such taxes.

If the taxes found to be due under the audit are not paid within 10 days of the Department's assessment, then the penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, from the 11th day after the assessment is issued until the taxes are paid.

Failure to Allow Inspection

The Department may conduct inspections of a business premises to ensure compliance with the cigarette and tobacco tax laws.²³ A taxpayer who refuses to allow, or interferes with, an inspection of a business premises to ensure compliance with the cigarette and tobacco tax laws is subject to civil and criminal penalties.²⁴

Other Penalties

Other penalties, such as those imposed with respect to negligence,²⁵ fraud²⁶ and operating without a license, can be found in Chapter 54 of Title 12 of the South Carolina Code of Laws.

²³ South Carolina Code §12-21-2860.

²⁴ Depending on the facts, a taxpayer may be subject to a civil penalty of not less than \$50 and not more than \$500 for failure to comply with statutory provisions (South Carolina Code §12-54-43(H)) or a misdemeanor subject to a criminal penalty, upon conviction, of not less than \$20 nor more than \$200, or imprisonment for not less than 10 days nor more than 60 days, or both (South Carolina Code §12-21-3080).

²⁵ South Carolina Code §12-54-43(F)(1).

²⁶ South Carolina Code §§12-54-43(G) and 12-54-44.

Interest

The Department, by law, imposes interest if a taxpayer fails to pay any cigarette or tobacco products taxes due. The interest rate may be found on the Department's website.²⁷

Waiver of Penalties

The Department has the authority to waive penalties imposed if there is reasonable cause to do so and to reduce penalties if there are significant mitigating factors. Taxpayers who request a waiver or reduction of penalties imposed should do so in writing, and should set forth the reasons why such penalties should be waived or reduced. The Department employee reviewing the request will then determine if a waiver or reduction of penalties is warranted under the guidelines set forth by the Department in SC Revenue Procedure #08-6.

I. Assessments

The Department may assess unpaid taxes within 36 months from the date the return or document was filed or due to be filed, whichever is later,²⁸ or within 36 months after the later of the date the tax was due or the first date on which any part of the tax was paid if a tax is not required to be remitted with a return or document.²⁹

Example: If a taxpayer files the June 2020 Monthly Other Tobacco Products (OTP) Return on the due date, July 20, 2020, the Department has until July 20, 2023, to determine if additional taxes are due and assess the taxpayer on such tobacco product taxes. If the taxpayer filed the June 2020 return late on August 30, 2020, then the Department has until August 30, 2023, to determine if additional tobacco products taxes are due and assess the taxpayer for those taxes.

However, there are exceptions to the 36 month limitation to assess additional taxes. The Department may assess for additional taxes after the 36 month period if any one of the following situations applies:

The taxpayer has consented in writing to extending the time period for assessing the tax.³⁰ This consent form must be completed before the 36 month time limit expires. This consent form is usually completed at the beginning of the audit process when the taxpayer and the auditor agree to the period of time to be audited.

²⁷ Interest rate information is published quarterly in an information letter issued by the Department.

²⁸ South Carolina Code §12-54-85(A).

²⁹ South Carolina Code §12-54-85(B)(1).

³⁰ South Carolina Code §12-54-85(C)(4).

The taxpayer understates 20% of total taxes. In this case, the Department has six years to assess the taxpayer for the unpaid taxes.³¹

The taxpayer has failed to file the return or document.³² In this case, the Department may go back as far as August of 1985.³³

The taxpayer has filed a fraudulent return with the intent to evade the tax.³⁴ In this case, the Department may go back as far as August of 1985.³⁵

J. Refunds

The information below explains the South Carolina tax appeals procedure for cigarette stamp tax and tobacco products tax refund claims.

Initial Process

- A. A taxpayer may seek a refund of any cigarette stamp tax or tobacco products tax paid by filing a written claim for refund with the Department of Revenue.
- B. The refund claim must specify:³⁶
 - (1) the taxpayer's name, address, and telephone number;
 - (2) the appropriate taxpayer identification number or numbers;
 - (3) the tax period or date for which the tax was paid;
 - (4) the nature and kind of tax paid;
 - (5) the amount which the taxpayer claims was erroneously paid;
 - (6) a statement of facts supporting the taxpayer's positions;

³¹ South Carolina Code §12-54-85(C)(3).

³² South Carolina Code §12-54-85(C)(2).

³³ South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

³⁴ South Carolina Code §12-54-85(C)(1).

³⁵ South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

³⁶ South Carolina Code §12-60-470(B).

(7) a statement outlining the reasons for the refund claim, including any law or other authority upon which the taxpayer relies; and

(8) other relevant information that the Department may reasonably require.

Only the person who is legally liable for the cigarette stamp tax or tobacco products tax may file a refund claim.

- C. As a general rule, the refund claim must be filed within three years of the time the return was filed, or two years from date the tax was paid, whichever occurs later. If no return was filed, a claim for refund must be filed within two years from date the tax was paid.³⁷
- D. The appropriate division of the Department will decide what refund is due, if any, and give the taxpayer written notice of its decision.
- E. If a taxpayer's claim for refund is denied, the taxpayer can appeal by filing a written protest with the Department. The protest must be filed within 90 days from the date of the written denial of the refund claim. The protest must contain the same information the refund claim is required to include (see Section B above).
- F. During the appeals process, the taxpayer may represent itself or the taxpayer may be represented by the same persons who may participate in the administrative tax process under §12-60-90 of the South Carolina Code. This includes, but is not limited to, attorneys, certified public accountants, enrolled agents, and officers of a corporation.

Review by the Department and Conferences with the Department

- A. If the taxpayer files a protest, the division within the Department that denied the refund claim will acknowledge receipt of the protest in writing and provide the taxpayer with information as to how to request a division meeting to discuss the protest and the taxpayer's refund claim. If the taxpayer wants to request a division meeting, the taxpayer must do so within 30 days of the date of the acknowledgement letter. If the taxpayer requests a division meeting, the division will make every attempt to hold the meeting within 60 days of the date of the acknowledgement letter. The purpose of the meeting is for the taxpayer and the division representative to discuss the facts and issues, to allow the taxpayer to present any additional information or authority supporting the taxpayer's position, and resolve the appeal if possible. The meeting may be conducted by telephone if the taxpayer and the division agree. After the meeting, if the taxpayer's appeal has not been resolved and the taxpayer wishes to continue with the appeal, the taxpayer's protest and file will be forwarded to the Appeals Section of the Department.

³⁷ South Carolina Code §12-54-85(F).

- B. The Appeals Section will conduct a substantive review of the taxpayer's appeal and will offer the taxpayer a conference. The conference may be conducted by telephone if the taxpayer and the Appeals Section agree. The purpose of the conference is for the taxpayer and the Appeals Section to discuss the appeal, agree on the preliminary stipulation of facts and issues, and resolve the appeal if possible.
- C. If the taxpayer's appeal is not resolved after the Appeals Section conference, and the taxpayer chooses to go forward on the appeal, the taxpayer's protest and file will be forwarded to the General Counsel for Litigation.
- D. A Department representative within the General Counsel for Litigation's office will conduct a substantive review of the protest and file. If the taxpayer or the Department representative believes a conference would help resolve the matter, a conference will be held. The conference may be held by telephone if the taxpayer and the Department representative agree. If the appeal is not resolved, the Department representative will prepare a written Department Determination addressing the issues raised in the taxpayer's appeal. The Department Determination will be mailed or delivered to the taxpayer, and generally, must be issued within one year of the taxpayer's filing of the protest.

Request for a Contested Case Hearing

- A. If the taxpayer disagrees with the Department Determination, the taxpayer may request a contested case hearing before the Administrative Law Court.
- B. If the Department Determination is not issued timely, the Department will notify the taxpayer in writing of the right to request a contested case hearing.
- C. The request for a contested case hearing must be made in writing and must be made within 30 days of when the Department Determination or notice was sent or delivered to the taxpayer. The request must be sent to the Administrative Law Court and the Department.
- D. The rules of the Administrative Law Court will control from this point forward.
- E. If the taxpayer does not request a contested case hearing within 30 days of the date of the Department Determination or notice, the taxpayer's refund claim will be deemed denied and no refund of taxes will be issued to the taxpayer.

For information as to what must be included in the protest and how to file the protest, as well as other rules relating to appeals, see SC Revenue Procedure #20-1, "Department of Revenue Internal Tax Appeals Process and Procedure," available at dor.sc.gov.

K. Tax Assessments, License Revocations, and Denials

The information below explains the South Carolina tax appeals procedure for cigarette stamp tax and tobacco products tax assessments, license revocations, and denials.

Initial Process

- A. A taxpayer may appeal a proposed assessment made by the Department of Revenue by filing a protest within 90 days of the date of the proposed assessment. The taxpayer may agree with portions of the proposed assessment and disagree with others. The portion of the proposed assessment with which the taxpayer agrees may be paid to avoid additional interest and penalties, and the remainder can be appealed through the taxpayer's protest.

The revocation or denial of a tax license is appealed in the same manner as the proposed assessment.

- B. The taxpayer's protest must be in writing and must contain, as applicable:

- (1) the name, mailing address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was proposed;
- (4) the nature and kind of tax (or license) in dispute;
- (5) a statement of facts supporting the taxpayer's position;
- (6) a statement outlining the reasons for the protest, including any law or authority upon which the taxpayer relies; and
- (7) any other relevant information the Department may reasonably prescribe.

The taxpayer does not need to provide legal or other authority if the total amount of the proposed assessment is less than \$2,500. This does not apply to partnerships, "S" corporations, exempt organizations, or employee plans if the proposed tax is imposed by Chapter 6, 11, or 13 of Title 12.

- C. During the appeals process, the taxpayer may represent itself or the taxpayer may be represented by the same persons who may participate in the administrative tax process under §12-60-90 of the South Carolina Code. This includes, but is not limited to, attorneys, certified public accountants, enrolled agents, and officers of a corporation.

Review by the Department and Conferences with the Department

- A. If the taxpayer files a protest, the division within the Department that issued the proposed assessment will acknowledge receipt of the protest in writing and provide the taxpayer with information as to how to request a division meeting to discuss the protest and the taxpayer's appeal. If the taxpayer wants to request a division meeting, the taxpayer must do so within 30 days of the date of the acknowledgement letter. If the taxpayer requests a division meeting, the division will make every attempt to hold the meeting within 60 days of the date of the acknowledgement letter. The purpose of the meeting is for the taxpayer and the division representative to discuss the facts and issues, to allow the taxpayer to present any additional information or authority supporting the taxpayer's position, and resolve the appeal if possible. The meeting may be conducted by telephone if the taxpayer and the division agree. After the meeting, if the taxpayer's appeal has not been resolved and the taxpayer wishes to continue with the appeal, the taxpayer's protest and file will be forwarded to the Appeals Section of the Department.
- B. The Appeals Section will conduct a substantive review of the taxpayer's protest and file and will offer the taxpayer a conference. The conference may be conducted by telephone if the taxpayer and the Appeals Section agree. The purpose of the conference is for the taxpayer and the Appeals Section to discuss the appeal, agree on the preliminary stipulation of facts and issues, and resolve the appeal if possible.
- C. If the taxpayer's appeal is not resolved after the Appeals Section conference and review, and the taxpayer chooses to go forward on the appeal, the taxpayer's protest and file will be forwarded to the General Counsel for Litigation.
- D. A Department representative within the General Counsel for Litigation's office will conduct a substantive review of the protest and file. If the taxpayer or the Department representative believes a conference would help resolve the matter, a conference will be held. If the appeal is not resolved, the Department representative will prepare a written Department Determination addressing the issues raised in the taxpayer's appeal. The Department Determination will be mailed or delivered to the taxpayer, and generally, must be issued within one year of the taxpayer's filing of the protest.

Request for a Contested Case Hearing

- A. If the taxpayer disagrees with the Department Determination, the taxpayer may request a contested case hearing before the Administrative Law Court.
- B. If the Department Determination is not issued timely, the Department will notify the taxpayer in writing of the right to request a contested case hearing.

- C. The request for a contested case hearing must be made in writing and must be made within 30 days of when the Department Determination or notice was sent or delivered to the taxpayer. The request must be sent to the Administrative Law Court and the Department.
- D. The rules of the Administrative Law Court will control from this point forward.
- E. If the taxpayer does not request a contested case hearing within 30 days of the date of the Department Determination or notice, the taxpayer's proposed tax assessment or the revocation or denial of the license will become final and non-appealable and the Department may begin collecting on the underlying tax debt and/or the applicable license will be revoked or not issued. If the taxpayer is unable to pay the debt, the taxpayer may contact the Department about an installment agreement.

Note: Notwithstanding the above, if the Department determines that public health, safety, or welfare requires emergency action, it shall seek an emergency license revocation order from the Administrative Law Court.

For information as to what must be included in the protest and how to file the protest, as well as other rules relating to appeals, see SC Revenue Procedure #20-1, "Department of Revenue Internal Tax Appeals Process and Procedure," available at dor.sc.gov.

Chapter 8

Frequently Asked Questions

The following are various frequently asked questions concerning the cigarettes stamp tax, the tobacco products tax, and several other issues related to cigarettes and tobacco products. The questions are divided into categories, by subject matter, as indicated below.

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Licensing Requirements – Frequently Asked Questions

1. Q. Who is required to be licensed?
 - A. *A cigarette and tobacco products license must be obtained, at no cost, by the following persons before engaging in the sale of cigarettes or tobacco products in South Carolina:*
 - (1) *Wholesalers of cigarettes or tobacco products;*
 - (2) *Retailers that purchase untaxed cigarettes or untaxed tobacco products;*
 - (3) *Vending machine operators selling cigarettes or tobacco products through vending machines placed on another person's premises; and*
 - (4) *Sales representatives for manufacturers of cigarettes or tobacco products.*

Wholesalers and retailers must obtain a license for each place of business. Vending machine operators and sales representatives; however, are only required to obtain one license. Vending machine operators, while only required to obtain one license, must maintain an up-to-date list of the location of each cigarette or tobacco products vending machine in South Carolina.
2. Q. Do cigarette and tobacco products representatives have to be licensed by the Department?
 - A. *Yes.*
3. Q. What is the cost of a cigarette or tobacco products tax license?
 - A. *There is no cost to obtain a cigarette or tobacco products tax license.*
4. Q. Are smoke shops required to obtain a tobacco products license if they purchase all tax paid products?
 - A. *No. Retailers are required to obtain a license only if they purchase untaxed cigarettes or untaxed tobacco products.*
5. Q. Are cigarette and tobacco products licenses transferable?
 - A. *No. A license is valid only for the person in whose name it is issued and only for the transaction of business at the place designated in the license.*

6. Q. How does a person-to apply for a cigarette or tobacco products tax license?

A. *A person must apply online using the Department's online tax portal, MyDORWAY, to obtain a cigarette or tobacco products tax license.*

7. Q. Is a bond required in order to obtain a license?

A. Cigarettes

A bond or statement of financial stability is not required to obtain a cigarette license. However, distributors who purchase cigarette tax stamps on a 30-day credit period must execute a bond with a solvent surety company qualified to do business in South Carolina in an amount of 110% of the distributor's estimated tax liability for 30 days, but not less than \$2,000. See questions below for more information regarding purchasing tax stamps on credit.

Tobacco Products

A bond or statement of financial stability is not specifically required with respect to the tobacco products tax. However, distributors of tobacco products can be required to post a bond if the distributor fails to pay the tobacco products tax for as many as two filing periods in a 12 month period.

Cigarettes - Frequently Asked Questions

GENERAL GUIDANCE

8. Q. What is the definition of a cigarette?

A. *A "cigarette" is defined under the cigarette tax law as:*

- (1) any roll for smoking containing tobacco or any substitute for tobacco wrapped in paper or in any substance other than a tobacco leaf; or*
- (2) any roll for smoking containing tobacco or any substitute for tobacco, wrapped in any substance, weighing three pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1).*

Since the imposition of the cigarette tax applies to "all cigarettes made of tobacco or any substitute for tobacco," cigarettes that do not contain tobacco, such as clove cigarettes, are subject to the tax.

In addition, a cigar (or any other roll for smoking that contains tobacco or any substitute for tobacco) which weighs three pounds per thousand or less, regardless of how its labeled or named, is considered a cigarette for the purposes of the cigarette tax if because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, it is likely to be offered to, or purchased by, consumers as a cigarette.

9. Q. What is the tax rate on cigarettes?

A. *The tax rate for cigarettes is \$0.0285, on each cigarette.¹ Cigarettes are typically sold in packs of 20 or packs of 25; therefore, the tax on a pack of 20 cigarettes is \$0.57 and the tax on a pack of 25 cigarettes is \$0.7125.*

10. Q. What is a “gratis” cigarette?

A. *A “gratis” cigarette is one which is usually given away during some type of cigarette promotion or advertising event and the item is identified by being marked “Not for Resale”, or some other appropriate term. The distributor is responsible for paying the tax on “gratis” cigarettes. Cigarettes shipped into South Carolina by manufacturers to representatives, who are licensed in accordance with Code §12-21-660, for promotional use must be accompanied by an invoice stating the name of each brand, the number of packages of each brand, and the number of cigarettes in each package for each brand included in the shipment. Each package of cigarettes shipped into South Carolina for promotional use must bear either the cigarette tax stamp or the tax-exempt stamp required by Code §12-21-735, and each such package is subject to South Carolina state and local use tax.*

11. Q. Are cigarettes that do not contain tobacco, such as “clove” cigarettes, subject to the tax?

A. *Yes. The tax is imposed “upon all cigarettes made of tobacco or any substitute for tobacco.”*

Note: Stamps may only be affixed to packages of cigarettes that are listed on the South Carolina Tobacco Directory published by the Office of the Attorney General pursuant to Code §11-48-30.

LIABILITY FOR THE CIGARETTE STAMP TAX

12. Q. Who is liable for the cigarette tax?

A. *The South Carolina licensed distributor first receiving untaxed cigarettes for sale or distribution in the State of South Carolina is liable for the cigarette stamp tax.*

¹ South Carolina Code §§12-21-620(A)(1) and 12-21-625(A). The cigarette tax is actually a combination of two taxes – an excise tax of 3½ mills per cigarette and a surtax of \$0.025 per cigarette.

Note: The South Carolina licensed distributor must purchase cigarettes directly from a manufacturer or importer who holds a valid permit issued under 26 U.S.C. §5713.

13. Q. Who is required to stamp cigarettes?

A. Any South Carolina licensed distributor first receiving untaxed cigarettes for sale or distribution in the State of South Carolina who purchases cigarettes directly from a manufacturer or importer who holds a valid permit issued under 26 U.S.C. §5713 is required to stamp cigarettes.

PURCHASE OF STAMPS

14. Q. Where can I purchase tax stamps?

A. Qualifying distributors will be able to purchase tax stamps directly from the Department's website through MyDORWAY.

15. Q. What is the process for purchasing tax stamps?

A. Qualifying distributors may purchase tax stamps directly from the Department's website through MyDORWAY. Distributors who qualified for the stamping machine credit and received approval from the Department are allowed a credit for the purchase of a stamping machine and related equipment against the purchase of tax stamps for 18 months in which a stamp purchase is made. Tax stamps are shipped directly to distributors from the Department's designated vendor.

16. Q. Are tax stamps available for pickup at the Department of Revenue?

A. No. Tax stamps are shipped directly to qualifying distributors from the Department's designated vendor.

17. Q. Can I purchase tax stamps on credit?

A. Yes, distributors are able to purchase tax stamps on 30-day credit terms rather than paying cash at the time of purchase. See questions below for more information regarding purchasing tax stamps on credit.

18. Q. How does the process of purchasing tax stamps on credit work?

A. Payment for each calendar month's liability is due on or before the 20th day of the following month, including Sundays and holidays. For example, if a credit purchase is made during May, full payment for that credit purchase is due on or before the 20th day of June.

19. Q. Are there any requirements or restrictions for purchasing stamps on credit?

A. *Yes. In order for a distributor to purchase stamps on credit, the following requirements must be met:*

(1) The distributor must not have any outstanding tax stamp purchase liabilities (i.e., no additional credit purchases will be allowed if a distributor has any credit purchase liability that is past due); and

(2) The distributor must post a surety bond prior to purchasing stamps on credit in the amount of 110% of its estimated tax liability for 30 days, but not less than \$2,000.

Note: In the event of default in the bonding or payment provisions, the Department has discretion to revoke a distributor's privilege to purchase stamps. Failure to timely pay will also subject a distributor to all applicable penalties, interest, and possible revocation of the distributor's license. In addition, under SC Regulation 117-1600.2(d), no distributor may purchase stamps unless and until the distributor is current in filing all reports and other documentation required by the regulation.

20. Q. If a distributor intends to purchase stamps using the 30-day credit plan, will the Department still accept financial statements in lieu of cash or a surety bond as done in the past?

A. *No, the statute requires a distributor purchasing stamps on credit to obtain a surety bond, and the amount of that bond must be equal to 110% of the distributor's estimated tax liability for 30 days, but not less than \$2,000.*

21. Q. What if the distributor cannot get a bond?

A. *Code §12-21-735(E)(7) states that in order to obtain stamps using the 30-day credit plan, a distributor must post a bond in an amount equal to 110% of the distributor's estimated monthly tax liability, but not less than \$2,000. Therefore, without a bond, a distributor must pay for stamps at the time a stamp order is placed.*

22. Q. How many stamps are included in a roll of tax stamps or tax-exempt stamps?

A. *Tax stamps for 20-count packs are purchased in increments of 30,000, and tax stamps for 25-count packs are purchased in increments of 3,000. Tax-exempt stamps are ordered in increments of 3,000*

23. Q. Is there a limit on the number of stamps that may be purchased at any one time?

A. No, the law does not place any limitations on how many stamps may be purchased in one order. However, the excise tax must be paid at the time of purchase, unless the stamp order is purchased using the 30-day credit method. See questions above for more information regarding 30-day credit purchases.

24. Q. Do distributors receive any compensation for affixing and accounting for cigarette tax stamps?

A. Yes, as of January 1, 2019, distributors receive a discount of 4.25% of the face value of each purchase of cigarette tax stamps.

STAMPING OF CIGARETTES

25. Q. May a licensed distributor, instead of using a stamping machine, use another device which imprints distinctive indicia evidencing the payment of the cigarette tax?

A. At this time, the Department has not approved any other method for evidencing the payment of the cigarette tax.

26. Q. What cigarettes can a licensed distributor apply a cigarette tax stamp to?

A. Cigarette tax stamps must only be applied to cigarettes that meet BOTH of the following requirements: (1) the product meets South Carolina's definition of a cigarette (Code §§12-21-620 and 12-21-625); and (2) the product is listed on the South Carolina Attorney General's Tobacco Directory (Code §12-21-735(G)).

Note: Certain tobacco products, including certain little cigars, meet the statutory definition of a cigarette BUT are not included on the Attorney General's Tobacco Directory. It is illegal to stamp OR sell these products in South Carolina.

SEPARATE STOCK

27. Q. Once a South Carolina licensed distributor has stamped the cigarettes with South Carolina tax stamps, is there a requirement to store them separately from other inventory in the warehouse?

A. Yes, if the distributor uses the advanced stamping method, meaning the cigarettes are stamped upon arrival at the warehouse. Distributors using this method must store South Carolina-stamped cigarettes in a separate area within the warehouse from cigarettes to be sold in another state and/or cigarettes to be sold tax-exempt in South Carolina. However, if the distributor uses the stamp-to-order method, meaning the cigarettes are not stamped until pulled from stock to fill an order, then the unstamped cigarettes do not have to be stored separately. Once stamped,

the cigarettes should be placed on a delivery truck or placed in a staging area to be loaded onto a delivery truck. See SC Regulation 117-1600.5 for more detailed information concerning separate area storage requirements.

28. Q. Are licensed distributor warehouses located outside of South Carolina required to separate their inventory once cigarettes have been properly stamped for sale in South Carolina?

A. *No, the inventory separation requirement applies only to licensed distributor warehouses located within South Carolina.*

Note: While there is no inventory separation requirement for out-of-state distributor warehouses, the distributors are responsible for ensuring that all cigarettes entering South Carolina are properly stamped with a South Carolina stamp when delivered to retailers in this state. Any cigarettes found in a retail location with another state's stamp will be considered contraband and subject to seizure and violation.

EXEMPTIONS

29. Q. What sales of cigarettes are exempt from the cigarette tax?

A. *The following sales are exempt by law from the cigarette stamp tax:*

- (1) Sales of cigarettes to the United States Government;*
- (2) Sales of cigarettes to a United States Government instrumentality for Army, Navy, Marine or Air Force purposes and delivered to a place lawfully ceded to the United States;*
- (3) Sales of cigarettes to a United States Government instrumentality for Army, Navy, Marine, or Air Force and delivered to a ship belonging to the United States Navy for distribution and sale to members of the military establishment only;*
- (4) Sales of cigarettes delivered to ships regularly engaged in foreign or coastwise shipping between points in South Carolina and points outside South Carolina; and*
- (5) Sales of cigarettes to a person who is a licensed distributor of cigarettes in another state, where the purchase was made exclusively for resale in another state. Code §12-21-735(C) imposes certain requirements concerning these sales.*

Note: Cigarettes that qualify for an exemption described in (1)-(5) above must have an exempt tax stamp affixed to each package of cigarettes.

30. Q. Is there a charge for tax-exempt stamps?

A. *No. In addition, tax-exempt stamps are ordered in increments of 3,000.*

Note: If for any reason cigarettes with tax-exempt stamps are found in any retailer's location, and sales to that location do not qualify for any exemption listed in (1)-(5) of Q&A # 29 above, the cigarettes are subject to seizure, and the Department may assess any applicable penalties.

31. Q. Are cigarettes sold on military installations within South Carolina subject to the tax?

A. *Cigarettes sold to the United States Government for military use or resale to military personnel are exempt from the tax. However, cigarettes sold by anyone other than the federal government through a vending machine or other means on a military installation are subject to the tax.*

REFUNDS

32. Q. Under what circumstances may a distributor request a refund for cigarette stamp taxes?

A. *The only refunds which will be made with respect to cigarette stamp taxes will be for the following:*

- (1) Cigarettes shipped out of the geographic limits of the State of South Carolina in accordance with the provisions of Code §12-21-90;*
- (2) Damaged cigarettes in accordance with the provisions of Code §12-21-110 and any applicable regulations of the South Carolina Department of Revenue;*
- (3) Damaged tax stamps (the distributor must contact the SCDOR Tobacco Office to request an inspection by the Field Audit Team and possibly the manufacturer of the stamps);*
- (4) Cigarettes returned as unsellable;*
- (5) Cigarettes unrecoverable as a result of bad debt; and*
- (6) Any other circumstance authorized by the General Assembly.*

Note: In the event any cigarettes to which tax stamps have been affixed are delivered to the federal government or any instrumentality thereof, the value of such tax stamps will not be refunded by the Department of Revenue.

33. Q. Is a refund available for lost or stolen cigarette tax stamps?

A. *No, the law does not provide for a refund for lost or stolen cigarette tax stamps.*

34. Q. What is a bad debt for purposes of obtaining a refund?

A. *For purposes of determining the refund for cigarettes unrecoverable as a result of a bad debt, a bad debt is an amount that is charged off as a bad debt for state income tax purposes.*

35. Q. What is the process for obtaining a refund?

A. *Code §12-60-470(C) provides that a refund request must be filed with the Department by the person legally liable for the cigarette stamp tax. In addition, Code §12-54-85(F)(1) establishes the time limits for filing a claim for a credit or refund. Since no return is filed with respect to payment of the cigarette stamp tax (an informational report is filed), claims for refund must be filed within two years from the date the tax stamps were purchased.*

36. Q. Can a South Carolina distributor who purchases tax-paid cigarettes from another South Carolina distributor obtain a refund with respect to the tax paid on those cigarettes?

A. *Since Code §12-60-470(C) only allows the taxpayer legally liable for the tax to apply for and obtain a refund (with certain exceptions), refunds cannot be issued to distributors who purchased tax-paid cigarettes from another distributor who paid the tax to the Department by purchasing tax stamps. (Generally, the distributor who first received untaxed cigarettes in South Carolina is, by law, the person legally liable for the tax and the only person who can receive a refund for cigarette taxes.)*

For more information on who may apply for and receive a refund, and any applicable exceptions, see Code §12-60-470.

37. Q. What documentation is required to obtain a refund?

A. *All refunds must be properly documented in order for the Department of Revenue to issue refunds. Proper documentation for refunds includes, but is not limited to, bills of lading, shipment receipts, documentation for shipments of cigarettes returned to a manufacturer, and any other documentation as determined by the Department of Revenue. The Department of Revenue may require a physical verification on a case-by-case basis (e.g., receipt of damaged tax stamps by a distributor).*

SALES OF UNSTAMPED CIGARETTES BETWEEN DISTRIBUTORS

38. Q. May distributors purchase unstamped cigarettes from other licensed distributors in South Carolina as they did prior to January 2019?

A. *No. Once cigarettes have been brought into the state, the distributor who receives them is responsible for stamping them. Once a South Carolina cigarette tax stamp is affixed to each pack, the stamped cigarettes may be distributed to retailers or other distributors.*

REPORTING REQUIREMENTS

39. Q. Does a distributor need to file a tax return with respect to cigarettes?

A. *Since the cigarette taxes are remitted through the purchase of cigarette tax stamps, a distributor does not remit taxes through the filing of a tax return. However, cigarette distributors must file a report for informational purposes with information for 20-count and 25-count cigarette packs, cigarette stamps, and non-participating manufacturer's cigarettes. This report must be filed monthly and is due on or before the 20th day of the month in which the sale or disposition took place.*

The Monthly Cigarette Report is required by state statutes and regulation and is needed by the Department to file the quarterly Non-Participating Manufacturer's (NPM) report with the South Carolina Attorney General's Office. The Monthly Cigarette Report is considered filed with the Attorney General's Office upon filing the report with the Department.

Note: A separate return is required for reporting and remitting the tax imposed on tobacco products (e.g., cigars, smoking tobacco, etc.).

REGULATIONS

40. Q. Has the General Assembly approved any regulations concerning the new cigarette tax stamp law?

A. *Yes. The General Assembly approved SC Regulation 117-1600 in 2017. This regulation addresses in detail information concerning reporting requirements for distributors, stamp requirements, exemptions and refunds, display of cigarettes in vending machines, stamping and storage of cigarettes in South Carolina by a distributor, and cigarette samples.*

OTHER

41. Q. What is the age limit for an individual to purchase cigarettes at retail?

A. *Code §16-17-500 states that a person must be at least 18 years old to purchase or receive cigarettes at retail. However, effective December 20, 2019, the Federal Food, Drug, and Cosmetic Act was amended to raise the federal minimum age of sale of cigarettes from 18 to 21 years.*

42. Q. Must you show a form of identification to purchase cigarettes at retail?

A. *It is against the law for the retailer to sell cigarettes or tobacco products to an individual who does not present proper proof of age upon demand. See Code §§16-17-500(B) and 16-17-501(5).*

43. Q. Where do you report any evidence of retail sales of cigarettes to minors?

A. *Information concerning retail sales of cigarettes to minors should be reported to the local law enforcement agency.*

Note: Since Code Section 12-60-470(C) only allows the taxpayer legally liable for the tax to apply for and obtain a refund (with certain exceptions), refunds cannot be issued to distributors who purchased tax-paid cigarettes from another distributor who paid the tax to the Department on their cigarette tax return. (Generally, the distributor who first received untaxed cigarettes in South Carolina is, by law, the person legally liable for the tax and the only person who can receive a refund for cigarette taxes).

For more information on who may apply and receive a refund, and any applicable exceptions, see Code Section 12-60-470.

44. Q. Is the State of South Carolina a participant in the Master Settlement Agreement?

A. *Yes.*

Other Tobacco Products – Frequently Asked Questions

GENERAL GUIDANCE

45. Q. What is the definition of tobacco products?

A. *The term “tobacco products” is defined in the law to mean “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 tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in a manner to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing or smoking, but does not include cigarettes.”*

46. Q. What is the tax rate on tobacco products?

A. *The tax rate on tobacco products is five percent of the manufacturer’s price. The manufacturer’s price is “the established price at which a manufacturer sells to a wholesaler.”*

47. Q. What is the “established price” as used in the statute with respect to the tax on tobacco products?

A. *In addressing several issue with respect to what constitutes the “established price,” South Carolina Revenue Ruling #94-7 advised:*

1. *The “established price” of snuff, chewing tobacco and smoking tobacco for purposes of calculating the tobacco tax on promotional packages, products received free of charge, and promotional allowances, as described in the facts, is as follows:*

(a) *Promotional Packaging - A product packaged for the consumer as part of a “buy one get one free” or similar promotion by the manufacturer is a packaged unit with an established price that is distinct and separate from the established price for the same product sold individually. Therefore, the established price is the recognized and accepted sum of money asked by the manufacturer for each packaged unit during the promotion.*

(b) *Products Received Free of Charge - If a manufacturer offers a wholesaler, during a specified time period, the opportunity to receive one case of a product free of charge if he purchases one or more cases of the same product, the total price that the wholesaler pays is the “established price” for all the cases of the product received under the promotion.*

For example, if the wholesaler purchases 10 cases for \$200 and receives one case free, the established price upon which the tax is calculated for all 11 cases is \$200. A transaction must be viewed based upon its substance

rather than its form. As such, the taxpayer in the example has purchased 11 cases for \$200.

- (c) Promotional Allowance - If a manufacturer offers a promotion that merely reduces the price of the product, the established price is the recognized and accepted sum of money asked by the manufacturer for the product during the promotion.*

For example, the product may normally sell for \$175 per case; however, the manufacturer is offering for a limited time the product for \$160 per case with the invoice showing a unit price of \$175 and a promotional allowance of \$15. As a result of the promotion, the established price is \$160.

- 2. The “established price” for the purpose of calculating the tobacco tax is the amount charged by the manufacturer to the wholesaler before any cash discounts for early payment are taken.*

48. Q. What is a “gratis” tobacco product?

- A. A “gratis” tobacco product is one which is usually given away during some type of tobacco promotion or advertising event and the item is identified by being marked “Not for Resale”, or some other appropriate term. The distributor is responsible for paying the tax on “gratis” tobacco products, and each such product is subject to South Carolina state and local use tax.*

49. Q. Are tobacco products substitutes subject to the tax?

- A. Cigarettes made of any substitute for tobacco are subject to the cigarette tax. However, the tax on tobacco products applies to forms of tobacco prepared in a manner suitable for chewing, smoking, or other consumption.*

EXEMPTIONS

50. Q. What sales of tobacco products are exempt from the tobacco products tax?

- A. The following sales are exempt by law from the tobacco products tax:*
- (1) Sales of tobacco products to the United States Government;*
 - (2) Sales of tobacco products to a United States Government instrumentality for Army, Navy, Marine, or Air Force purposes and delivered to a place lawfully ceded to the United States;*
 - (3) Sales of tobacco products to a United States Government instrumentality for Army, Navy, Marine, or Air Force purposes and delivered to a ship belonging*

to the United States Navy for distribution and sale to members of the military establishment only;

(4) Sales of tobacco products delivered to ships regularly engaged in foreign or coastwise shipping between points in South Carolina and points outside of South Carolina;

(5) Sales of tobacco products shipped outside of South Carolina to a wholesaler, retailer or user or consumer by a wholesaler or retailer who is liable for the tobacco products tax (i.e., the wholesaler or retailer who first received the untaxed tobacco products in South Carolina); and

(6) Sales of unprocessed leaf tobacco (i.e., tobacco not prepared in a manner suitable for chewing or smoking).

51. Q. Are tobacco products sold on military installations within South Carolina subject to the tax?

A. *Tobacco products sold to the U.S. Government for military use or resale to military personnel are exempt from the tax. However, tobacco products sold by anyone other than the federal government through a vending machine or other means on a military installation are subject to the tax.*

REFUNDS

52. Q. Are tax refunds available for damaged tobacco products which cannot be sold?

A. *Yes. The tobacco products tax paid on tobacco products “which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer” may be refunded. However, the refund request must be filed with the Department within three years of the time the tax return was filed or two years from the date the tax was paid, whichever is later. This refund may only be claimed and received by the person legally liable for the tobacco products tax (with certain exceptions).*

53. Q. Are tax refunds available for tobacco products which are sold and shipped outside of South Carolina?

A. *Yes. Code §12-21-90 allows a refund for tobacco products sold and shipped to a regular dealer in such articles in another state. The South Carolina seller is entitled to the refund if the South Carolina seller provides to the Department (1) an affidavit that the tobacco products were sold and shipped to an out-of-state dealer and (2) a written statement from the out-of-state dealer (including the name and address of the out-of-state dealer) that he has received the tobacco products and stating the amount of South Carolina tax paid on the tobacco products. The refund request must be filed with the Department within three years of the time the tax return was filed, or two years from the date the tax was paid,*

whichever is later. This refund may only be claimed and received by the person legally liable for the tobacco products tax (with certain exceptions).

For more information on who may apply for and receive a refund, and any applicable exceptions, see Code §12-60-470.

FILING REQUIREMENTS

54. Q. How is the excise tax on Other Tobacco Products (OTP) remitted to the Department?

A. *All licensed distributors are required to file one return for OTP and a separate informational report for cigarettes each month.*

Distributors file a Tobacco Tax Return for Other Tobacco Products (OTP) reporting all OTP purchased, sold, or disposed of for the month (depending on the distributor's reporting method) and paying the excise tax at the rate of 5% of manufacturer's price less a 3.5% discount of the tax due if the return and excise tax are timely filed and paid. The monthly OTP return is due on or before the 20th of the month following the month in which the purchase, sale, or disposition of the tobacco products occurred. Payment of the tobacco products tax due must be remitted with each return.

Note: For cigarettes, distributors must file a report for informational purposes with information for 20-count and 25-count cigarette packs, cigarette stamps, and non-participating manufacturer's cigarettes. This report must be filed monthly and is due on or before the 20th day of the month following the month in which the sale or disposition took place.

OTHER

55. Q. What is the age limit for an individual to purchase tobacco products at retail?

A. *Code §16-17-500 states that a person must be at least 18 years old to purchase or receive tobacco products at retail. However, effective December 20, 2019, the Federal Food, Drug, and Cosmetic Act was amended to raise the federal minimum age of sale of cigarettes from 18 to 21 years.*

56. Q. Must you show a form of identification to purchase tobacco products at retail?

A. *It is against the law for the retailer to sell cigarettes or tobacco products to an individual who does not present proper proof of age upon demand. See Code §§ 16-17-500(B) and 16-17-501(5).*

57. Q. Where do you report any evidence of retail sales of tobacco products to minors?

A. *Information concerning retail sales of tobacco products to minors should be reported to the local law enforcement agency.*

Chapter 9

Other Department of Revenue Responsibilities or Tax Compliance Laws Concerning Cigarettes and Tobacco Products

The Department's primary responsibilities with respect to cigarettes and tobacco products concern the administration and collection of the cigarette stamp tax and tobacco products tax. However, the General Assembly has entrusted the Department with certain other responsibilities involving cigarettes and tobacco products. The following will briefly outline these other responsibilities:

A. Reduced Cigarette Ignition Propensity Standards

In 2008, the General Assembly enacted the "Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act"¹ ("Act"). The purpose of this Act is to provide that cigarettes may not be sold or offered for sale in South Carolina unless the cigarettes have been tested in accordance with certain test methods, met certain performance standards, and received certain certifications. In addition, the cigarettes must be properly marked to indicate compliance with this Act.

While the State Fire Marshal administers this law, and is responsible for promulgating regulations necessary to administer it, the following provisions apply to the Department:

1. The Department, in the regular course of conducting cigarette tax inspections of wholesalers, retailers and anyone liable for the tax, may inspect the cigarettes to determine if they are marked as required under the Act. If the cigarettes are not marked as required, the Department shall notify the State Fire Marshal.²
2. The Department, as well as the Attorney General, the State Fire Marshal and other law enforcement personnel, may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. A person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, is directed and required to give the Department, as well as the Attorney General, State Fire Marshal, and other law enforcement personnel, the means, facilities, and opportunity for these examinations.³

¹ Chapter 51 of Title 23 (Act No. 331 of 2008).

² South Carolina Code §23-51-70(B).

³ South Carolina Code §23-51-80.

3. Cigarettes seized by the State Fire Marshal or any law enforcement personnel for not being marked as required under the Act must be turned over to the Department. These cigarettes are forfeited to the State. Cigarettes seized must be destroyed; however, prior to their destruction, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarettes.⁴
4. Each manufacturer must certify to the State Fire Marshal that each cigarette has been tested and met the requirements of the Act. This certification must contain certain information about each cigarette, such as brand or trade name, style, length, and the marking required under the Act. Each cigarette must be recertified every three years. The certifications must be made available to the Department, as well as the Attorney General.⁵

Note: The Act also contains an uncodified provision that prohibits local governments from enacting or enforcing any ordinance or other local law or regulation conflicting with, or preempted by, the provisions of the Act.⁶

B. Distribution of Tobacco Products to Persons Under 18 Years of Age

While the South Carolina law discussed below makes it illegal to sell, furnish, give, or provide tobacco products to a person under 18 years old, the President signed legislation on December 20, 2019 amending the Federal Food, Drug, and Cosmetic Act, and raising the federal minimum age of sale of tobacco products from 18 to 21 years.⁷

Under South Carolina law, it is unlawful for an individual to sell, furnish, give, distribute,⁸ purchase for, or provide a tobacco product⁹ or an alternative nicotine product¹⁰ to a minor under the age of 18 years.¹¹ In addition, it is illegal to sell a tobacco

⁴ South Carolina Code §23-51-60(G).

⁵ South Carolina Code §23-51-40.

⁶ See Act No. 331 of 2008, §2.

⁷ See Pub.L. 116-94, Div. N, Title I, §603(a), 133 Stat. 3123 (Dec. 20, 2019); and 21 U.S.C.A. §387f(d)(5).

⁸ South Carolina Code §16-17-501(1) defines the term “distribute” to mean “to sell, furnish, give, or provide tobacco products and alternative nicotine products, including tobacco product samples and alternative nicotine product samples, cigarette paper, or a substitute for them, to the ultimate consumer.”

⁹ The term “tobacco product,” as used in South Carolina Code §§16-17-500, 16-17-502, and 16-17-503 means “a product that contains tobacco and is intended for human consumption. ‘Tobacco product’ does not include an alternative nicotine product.” South Carolina Code §16-17-501(5).

¹⁰ The term “alternative nicotine product” as used in South Carolina Code §§16-17-500, 16-17-502, and 16-17-503 means “any vaping product, whether or not it includes nicotine, including electronic smoking devices, that can be ingested into the body by chewing, smoking, absorbing, dissolving, inhaling, or by an other means. ‘Alternative nicotine product’ does not include: (a) cigarette, as defined in Section 12-21-620, or other tobacco products, as defined in Section 12-21-800; (b) a product that is a drug pursuant to 21 U.S.C. 321(g)(1); (c) a device pursuant to 21 U.S.C. 321(h); or (d) a combination product described in 21 U.S.C. 353(g).” South Carolina Code §16-17-501(6).

¹¹ South Carolina Code §16-17-500(A).

product or an alternative nicotine product to an individual who does not present proper proof of age upon demand.¹²

It is also illegal for a person to distribute a tobacco product sample or an alternative nicotine product sample to a person under the age of 18.¹³ A person engaged in sampling must demand proof of age if an ordinary person would conclude that the prospective recipient may be under 18 years old on the basis of appearance.¹⁴ For violating South Carolina Code §16-17-502, the following penalties may be imposed:¹⁵

- (1) a penalty of not more than \$25.00 may be imposed for a first violation,
- (2) a penalty of not more than \$50.00 may be imposed for a second violation, and
- (3) a penalty of not less than \$100.00 may be imposed for a third or subsequent violation.

Except as otherwise provided by law, the Department must enforce these laws in a manner that reasonably may be expected to reduce the extent to which tobacco products or alternative nicotine products are sold or distributed to persons under the age of 18 years. The Department must annually conduct random, unannounced inspections at locations where tobacco products or alternative nicotine products are sold or distributed to ensure compliance and the Department must designate an enforcement officer to conduct the annual inspections.¹⁶

C. Tobacco Escrow Fund and Fund Enforcement

On November 23, 1998, leading United States tobacco product manufacturers entered into the “Master Settlement Agreement” (“Agreement”) with South Carolina. This Agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them, to pay substantial sums to the State based in part on the volume of sales of their products in South Carolina. In 1999, the General Assembly enacted the “Tobacco Escrow Fund Act” and found that it is the policy of this State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State.¹⁷

¹² South Carolina Code §16-17-500(B). Failure to demand identification to verify an individual’s age is not a defense to an action initiated pursuant to this subsection. However, proof that is demanded, is shown, and reasonably is relied upon for the individual’s proof of age is a defense to an action initiated pursuant to this subsection.

¹³ South Carolina Code §16-17-502(A).

¹⁴ South Carolina Code §16-17-502(B).

¹⁵ South Carolina Code §16-17-502(C). Proof that the defendant demanded, was shown, and reasonably relied upon proof of age is a defense to an action brought under this statute.

¹⁶ South Carolina Code §16-17-503(A). See also the “Note” at the end of this section.

¹⁷ Act No. 47 of 1999.

The “Tobacco Escrow Fund Act” provides that any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) shall either become a participating manufacturer, as defined in §II(jj) of the Agreement, and generally perform its financial obligations under the Agreement or place certain amounts into a qualified escrow fund based on the number of cigarettes sold.¹⁸ Under this law, the Department determines the number of cigarettes sold in the State by the applicable tobacco product manufacturer during the year in question, as measured by excise taxes collected by the State on packs or “roll-your-own” tobacco containers.¹⁹ This is the Department’s only duty with respect to this law.

In 2005, the General Assembly enacted provisions to enforce the Tobacco Escrow Fund Act, and safeguard the Agreement, the financial interests of the State, and the public health.²⁰ Administration and enforcement of these provisions rest with the South Carolina Attorney General; however, the Department is involved with two aspects of this law:

1. A cigarette distributor is required to submit information to the Attorney General to facilitate compliance with these enforcement provisions including, but not limited to, a list by brand family of the total number of cigarettes or in the case of roll-your-own, the equivalent stick count for which the cigarette distributor affixed stamps during the previous calendar quarter, or otherwise paid the tax due for the cigarettes. The cigarette distributor shall maintain, and make available to the Attorney General, all invoices and documentation of sales of all non-participating manufacturer cigarettes and other information relied upon in reporting to the Attorney General for a period of five years.²¹

The distributors must also provide this information and documentation to the Department and any other documentation requested by the Department.²² The Department must process this information as needed by it, and as needed by the Attorney General for the purposes of enforcement and for purposes of the Tobacco Escrow Fund Act.²³

2. It is unlawful for a cigarette manufacturer, cigarette importer, cigarette distributor, or cigarette retailer to sell or possess counterfeit cigarettes. A person who violates this subsection is guilty of a felony and, upon conviction, is subject to a fine, imprisonment or both. In addition, certain violations require the

¹⁸ South Carolina Code §11-47-30.

¹⁹ South Carolina Code §11-47-20(j).

²⁰ Chapter 48 of Title 11 of the South Carolina Code of Laws.

²¹ South Carolina Code §11-48-50.

²² Cigarette distributors must file a report for informational purposes with certain information for 20-count and 25-count cigarette packs, cigarette stamps, and non-participating manufacturer’s cigarettes. The Monthly Report is required by state statutes and regulation and is needed by the Department to file the quarterly Non-Participating Manufacturer’s (“NPM”) report with the South Carolina Attorney General’s Office. The Monthly Cigarette Report is considered filed with the Attorney General’s Office upon filing the report with the Department. See SC Regulation 117-1600.1.

²³ South Carolina Code §11-48-50.

revocation by the Department of any cigarette and tobacco products license issued by the Department and held by the cigarette manufacturer, cigarette importer, cigarette distributor, or cigarette retailer.²⁴

Note: All cigarette brands in compliance with the Tobacco Escrow Fund Act, and therefore legal for sale within South Carolina, are listed on the current Tobacco Directory published by the Office of the South Carolina Attorney General.

D. Prevent All Cigarette Trafficking Act (PACT Act)

The Prevent All Cigarette Trafficking Act (PACT Act) was signed into federal law in 2010, amending the Jenkins Act of 1949.

Effective June 29, 2010, federal law requires Internet and mail order sellers of cigarettes and smokeless tobacco, referred to as “delivery sellers”²⁵ under the law, to comply with the following:

- (1) Shipping requirements. The delivery seller must include a statement on the bill of lading (if any) and on the same surface as the delivery address. The statement must state: CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES, AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS.²⁶
- (2) Weight Requirements. The delivery seller may not sell, offer for sale, deliver or cause to be delivered in any single sale or single delivery any cigarettes or smokeless tobacco weighing more than 10 pounds.²⁷
- (3) Age Verification Requirements. The delivery seller must not sell to a person under the legal age for sale or purchase and must comply with certain age verification requirements established in the law.²⁸
- (4) Recordkeeping Requirements. The delivery seller must keep a record of any delivery sale, including a memorandum or a copy of each and every invoice covering every shipment into the state of cigarettes and smokeless tobacco; the name and address of the person receiving the shipment; the brand and quantity thereof; and the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller. All memo and invoice

²⁴ South Carolina Code §11-48-90.

²⁵ The term “delivery seller” means a person who makes a delivery sale and a “delivery sale” means any sale of cigarettes or smokeless tobacco to a consumer if (a) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the Internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or (b) the cigarettes or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco. 15 U.S.C. Section 375.

²⁶ 15 U.S.C. §§376a(a)(1) and 376a(b)(1).

²⁷ 15 U.S.C. §376a(b)(3).

²⁸ 15 U.S.C. §376a(b)(4).

information relating to specific customers must be organized by city or town and zip code. The delivery seller must retain records until the end of the 4th full calendar year that begins after the date of the delivery sale and must make records available to the tax agency of the state.²⁹

- (5) State and Local Laws Applicable to Sales of Cigarettes and Smokeless Tobacco. The delivery seller must comply with state and local laws applicable to sales of cigarettes and smokeless tobacco as if the delivery sale occurred entirely within the state (or local jurisdiction), including excise taxes, licensing and tax-stamping requirements, restrictions on sales to minors, and other payment and legal obligations.³⁰
- (6) Tax Collection Requirements. The delivery seller must not sell or deliver to any consumer, or tender to any common carrier or other delivery service, any cigarettes or smokeless tobacco unless, in advance of the sale, delivery, or tender (i) the excise tax imposed by the state has been paid; (ii) the excise tax imposed by a local government has been paid; and (iii) any required tax stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.³¹

This requirement does not apply to delivery sales of smokeless tobacco if the state law (or local law for a local excise tax) requires the delivery seller to collect the excise tax from the consumer and remit the excise tax to the state (or local law for a local excise tax) and the delivery seller complies with this requirement.³²

A delivery seller must also file a statement with the state tax agency setting forth specific information as outlined in the federal law.³³

In addition, a delivery seller must file with the state tax agency by the 10th of each calendar month a memorandum or a copy of each and every invoice covering every shipment of cigarettes and smokeless tobacco made in the prior month into the state. The memorandum or invoice must include specific information as outlined in the federal law.³⁴

The law also imposes certain requirements and restrictions on common carriers and other persons who sell, transfer, or ship for profit cigarettes and smokeless tobacco in interstate commerce.

For more detailed information on this federal law and its requirements and restrictions, see 15 U.S.C. §375, et. seq.

²⁹ 15 U.S.C. §§376a(a)(2) and 376a(c). See 15 U.S.C. §376(A)(2).

³⁰ 15 U.S.C. §376a(a)(3).

³¹ 15 U.S.C. §376a(d).

³² 15 U.S.C. §376a(d).

³³ 15 U.S.C. §376(a)(1).

³⁴ 15 U.S.C. §376(a)(2).