



Indiana Department of Revenue

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General Tax Information Bulletin #205

Subject: Cigarette Tax

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References: IC 6-7-1

Replaces 205, dated May 2022

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Summary of Changes

Only nonsubstantive, technical changes have been made to this bulletin. It has been primarily changed to reflect updated formatting.

Introduction

The purpose of this bulletin is to provide a high-level overview of Indiana's Cigarette Tax. A similar tax is imposed on tobacco products which do not meet the definition of cigarettes, which is called the Other Tobacco Products (OTP) Tax. There are also two separate taxes on electronic cigarettes and closed system cartridges. More information on the OTP tax, the electronic cigarettes tax, and the closed system cartridges tax can be found in General Tax Information Bulletin #206, available online at: in.gov/dor/legal-resources/tax-library/information-bulletins/general-tax-information-bulletins/.

Definitions

"Cigarette" means (and includes) any roll for smoking or heating made wholly or in part of tobacco, where such roll has a wrapper or cover made of paper or any other material not containing tobacco, regardless of the size or shape of the roll and regardless of whether the tobacco is flavored, adulterated, or mixed with any other ingredient. This term does not include cigars or OTP.

“Individual package” means and includes every individual packet, box, or other container used to contain or to convey cigarettes to the consumer.

“Distributor” means and includes every person who:

- sells, barter, exchanges, or distributes cigarettes in the state of Indiana to retail dealers for the purpose of resale;
- purchases cigarettes directly from a manufacturer of cigarettes; or
- purchases for resale cigarettes directly from a manufacturer of cigarettes or from a wholesaler, jobber, or distributor outside of the state of Indiana who is not a distributor holding a registration certificate.

“Retailer” means every person, other than a distributor, who purchases, sells, offers for sale, or distributes cigarettes to consumers or to any person for any purpose other than resale, regardless of quantity, amount, or the number of sales.

“Consumption” means the possession for use or the use of a cigarette or cigarettes for the purpose of smoking; the term “consumer” means the person using a cigarette or cigarettes; and the term “consume” means to use cigarette or cigarettes.

“Stamps” means the stamps printed, manufactured, or made by authority of the department and issued, sold, or circulated by the department. The term also means the impression, indicium, or character imprinted upon individual packages of cigarettes by a metered stamping machine or other device authorized by the department for use by the holder of a certificate.

Imposition

The cigarette tax is imposed on the sale, exchange, or distribution of cigarettes in Indiana. This also includes bartering, furnishing, or the giving away of cigarettes, including sample packages of cigarettes, whether for advertising or any other purpose. In whatever way the cigarettes are transferred, they shall be taxed in the same manner at the following rates:

- \$0.04975 per individual cigarettes weighing not more than three pounds per thousand.
- \$0.06612 per individual cigarettes weighing more than three pounds per thousand.

However, if any such cigarette is more than 6 ½ inches in length, each 2 ¾ inches (or fraction thereof) will count as a separate cigarette taxed at the first rate above.

The tax is collected from the distributor or retailer who first sells, uses, consumes, handles, or distributes the cigarettes. Distributors who hold certificates and retailers shall be agents of the state in the collection of the tax as described below. The taxes paid by the distributor or retailer is considered an “advance payment,” precollected for convenience and efficiency only, and the amount shall be added to the price of the cigarettes and recovered from the ultimate consumer or user, who is ultimately liable for the cigarette tax.

The tax is paid by a distributor or a retailer through the purchase of stamps. The department will not sell tax stamps to anyone except distributors holding active and valid registration certificates

(as described in Section IV below) and others who have established their need for tax stamps by written statement satisfactory to the department.

When a distributor receives cigarettes subject to the cigarette tax, they are required to affix the stamp on each individual package. Tax stamps must be clearly visible and securely attached to each individual package of cigarettes, including those within a carton or larger containers of cigarettes. Once affixed to the individual packages of cigarettes, it is evidence that the tax has been paid. If a retailer receives cigarettes that do not have the proper amount of stamps firmly affixed to each individual package or stamped by a meter stamping machine by a distributor, they have the duty to stamp or firmly affix stamps immediately on each individual package.

There are two situations in which a distributor is not required to affix stamps. Any distributor engaged in interstate business is permitted to set aside part of their stock that are to be sold and shipped outside the state without affixing the required stamps. The burden of proof is on the distributor to show that such cigarettes actually were sold and shipped outside the state, and did not return to Indiana. Sales or other dispositions of cigarettes to the United States government, its agencies and instrumentalities are not subject to the cigarette tax, so a distributor is not required to affix tax stamps to individual packages of cigarettes in such sales or dispositions. However, this exemption does not extend to individuals, private stores, or concessionaires located upon federal areas that are engaged in the business of selling cigarettes. In these situations, the distributor must affix tax stamps of proper denomination to each individual package of cigarettes before delivery.

Stamps are designed to be firmly affixed on each individual package in such a manner that prevents removal without being mutilated or destroyed. In addition to the stamps, the department may authorize distributors to use metered stamping machines or other devices which will imprint distinctive indicia evincing the payment of the tax upon each individual package. The machines need to be constructed in a manner that will accurately record or meter the number of impressions or tax stamps made. The tax meter machines or other devices shall be kept available at all reasonable times for inspection by the department, and the machines shall be maintained in proper operating condition.

Owners and operators of cigarette vending machines are required to load all packages of cigarettes so that the stamps are clearly visible while in the machine. Vending machines shall have the name and address of the owner and of the operator, if they are not the same, conspicuously displayed on the front of the machine.

Distributors will pay for the tax stamps within 30 calendar days from the date of the purchase. Payment must be made by electronic funds transfer. Most distributors and other authorized purchasers must pay full value for the stamps. However, in determining the amount to pay for stamps, a distributor may be entitled to a discount. This discount is a credit against the cost of stamps purchased in an amount equal to the distributor's receivables that:

- (1) are attributable to stamps purchased by the distributor and affixed to cigarettes that were transferred to a retailer;

- (2) resulted from a transfer of cigarettes to a retailer in which the distributor did not collect the cigarette tax from the retailer; and
- (3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code after December 31, 2006.

If payment is not received by the due date, the discount will be disallowed and penalty and interest will be charged. Additionally, no further stamps will be sold to the distributor until full payment is made.

If a distributor claims a credit and subsequently collects **all** of the associated receivable, the distributor must remit the entire amount of the credit previously claimed to the department within 30 days of collection. If a distributor claims a credit and subsequently collects only **part** of the associated receivable, the distributor must remit the amount determined under the following formula to the department within 30 days after collection:

STEP ONE: Determine the part of the associated receivable before collection that is attributable to the taxable price of the products subject to the cigarette tax.

STEP TWO: Determine the part of the associated receivable before collection that is attributable to the amount paid by the distributor for the stamps affixed to the products that were transferred to the retailer.

STEP THREE: Determine the sum of the STEP ONE result plus the STEP TWO result.

STEP FOUR: Determine the lesser of the amount collected or the STEP THREE result.

STEP FIVE: Divide the STEP TWO result by the STEP THREE result.

STEP SIX: Multiply the STEP FOUR result by the STEP FIVE result.

If the amount of the credit to which a distributor is entitled exceeds the cost of the stamps that the distributor seeks to purchase, the remainder of the credit may be applied to future purchases of stamps by the distributor. For any uncollectible receivable used to establish a credit, the amount of the credit that is available to be applied to a purchase of stamps is the total amount of the credit determined above reduced by the sum of partial credits applied by the distributor to previous purchases of stamps.

NOTE: The right to a credit is not assignable to an individual or entity that is not part of the same affiliated group as the assignor. An affiliated group in this context means either of the following: the meaning provided in Section 1504 of the Internal Revenue Code (except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using 50% instead of 80%) or a relationship described in Section 267(b)(11) of the Internal Revenue Code; or two or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in in the first meaning, as determined under the rules adopted by the department.

If stamps or individual packages to which affixed stamps have become mutilated, they can be replaced at no cost to the distributor if the distributor notifies the department and an investigation discloses that the stamps have not evidenced a taxable transaction. Additionally, any unused

stamps may be returned to the department by the distributor who purchased those stamps. The department will then refund the amount paid for the stamps to the distributor.

If a person transports cigarettes over Indiana highways that do not bear Indiana tax stamps, they are required to carry invoices or delivery tickets for those cigarettes containing the following information:

- the name and address of the consignor or seller;
- the name and address of the consignee or purchaser;
- the quantity and brands of the cigarettes; and
- the name and address of the person liable for the cigarette tax.

However, this requirement does not apply to licensed distributors, to common carriers, or to employees of the state or federal government who are performing their official duties in the enforcement of this tax. A common carrier is liable for any unpaid cigarette tax on cigarettes that are lost or stolen in transit, or where the carrier takes possession of the cigarettes because they were damaged or they were not accepted by the consignee and where the carrier does not return the cigarettes to the manufacturer.

Registration

Each distributor must obtain a registration certificate from the department. A distributor must file an "Application For Cigarette Distributor's Registration Certificate" (Form CIG-1A), pay an annual fee of \$500, and file a \$1000 bond or letter of credit. Registration certificates are issued only to the distributor that made the application and are not transferable. If a distributor transacts business at two or more places where they operate as a distributor, a separate registration certificate is required for each place of business. Each certificate must be posted in a conspicuous place at the place of business for which it is issued. Certificates are valid for one year from the date of issuance unless it is revoked or suspended for cause by the department. Subject to notice and a hearing, the department may revoke, cancel, or suspend the registration certificate of any distributor for any violation of, or noncompliance with any of the provisions of the cigarette tax code, or for noncompliance with any lawful rule or regulation promulgated by the department.

Any person who changes his or her place of business shall return his or her certificate and the department shall issue a new certificate for the new place of business free of charge. Any certificate issued may be surrendered to the department at any time prior to its expiration, and the department shall refund the amount of money which is proportionate to the original fee paid for annually. However, no refunds are allowed if a certificate is revoked, or if refunds exceed \$400.

Once approved, distributors holding a certificate are agents of the department to affix the required stamps. They are also entitled to purchase the stamps from the department at a discount of \$0.013 per individual package of cigarettes as compensation for their labor and expense. Additionally, distributors who hold certificates and who are admitted to do business in Indiana are permitted to pay for revenue stamps within 30 days after the date of purchase on the express condition that:

- a bond or letter of credit satisfactory to the department, in an amount not less than the sales price of the stamps, is filed with the department;
- proof of payment is made of all property taxes, excise taxes, and listed taxes (as defined in IC 6-8.1-1-1) for which the distributor may be liable; and
- payment for the revenue stamps must be made by electronic funds transfer.

The bond or letter of credit must be executed by the distributor as principal and by a corporation duly authorized to engage in business as a surety company or financial institution in Indiana.

NOTE: If a distributor has at least five consecutive years of good credit standing with the state, the distributor will not be required to post a bond or letter of credit.

Manufacturers of cigarettes that do not meet the definition of a distributor are not required to register as a distributor. However, all drop shipments (meaning any shipment billed to someone other than the person receiving the shipment) made by a manufacturer of cigarettes within the state of Indiana must be shipped and billed through a distributor licensed by the state of Indiana.

Reporting Requirements

All distributors are required to file Form CIG-M (Cigarette Distributor's Monthly Return) by the 15th day of each month. The cigarette tax returns must be filed electronically. Electronic payments are made through an ACH Credit transaction.

Every distributor engaged in interstate business is required to file a report of all shipments or deliveries that were made out of state during the preceding month with the department. These will be included as separate schedules to the CIG-M.

Record Keeping Requirements

Every registered distributor of cigarettes shall keep complete and accurate records of cigarettes held, purchased, manufactured, brought in, or caused to be brought in from without the state, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, copies of bills of sale, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. Distributors are required to keep and preserve records and invoices showing the purchase and sale of all cigarettes for at least three years after the date of said documents, or the date of the entries thereof appearing in such records. Distributors also must keep separate invoices and records of stamps that they have purchased. Such records, invoices, and stocks of cigarettes and unused stamps on hand are open to inspection by the department at all reasonable times. Such books, records, papers, and documents shall be kept at the location of the registered certificate unless written approval is given by the department to have such records kept at another location.

At the time of shipping or delivering any cigarettes, every distributor is required to make a duplicate invoice, showing the complete details of each transaction, which is subject to the

inspection by the department or its agent. Every distributor must also include with each shipment or delivery of cigarettes an invoice showing complete details of the transactions.

Every retailer shall retain for not less than two weeks the invoice included with each shipment or delivery of cigarettes, which is subject to inspection by the department or its agent. A retailer may request a duplicate invoice from a distributor.

Advertising

Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of cigarettes. However, it is unlawful to advertise (in any medium of communication) or offer to sell cigarettes within or into the state of Indiana in which it is stated or implied that the cigarette tax will not or need not be paid.

If you have any questions concerning this bulletin, please contact the Tax Policy Division at taxpolicy@dor.in.gov.

A handwritten signature in black ink that reads "Robert J. Grennes, Jr." with a stylized flourish at the end.

Robert J. Grennes, Jr.
Commissioner
Indiana Department of Revenue