

Document No. 4702
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Sections 12-4-320 and 12-21-735

Synopsis:

The South Carolina Department of Revenue is considering adding SC Regulation 117-1600 to implement the imposition of the cigarette tax via tax stamps as set out in Act No. 145 of 2016.

This regulation would contain provisions concerning reporting requirements under Chapters 47 and 48 of Title 11 along with provisions regarding affixing tax stamps, purchasing tax stamps, features of tax stamps, exemptions and refunds, display, storage, transfer, and transport of cigarettes. Tax stamps will be required as of January 1, 2019 in accordance with Act No. 145 of 2016.

The Notice of Drafting was published in the *State Register* on August 26, 2016.

Instructions:

Add SC Regulation 117-1600 to implement the imposition of the cigarette tax via tax stamps as set out in Act No. 145 of 2016.

Text:

117-1600. Cigarette Taxes.

Chapter 21 of Title 12 imposes an excise tax on cigarettes. Chapters 47 and 48 of Title 11 impose certain reporting requirements on cigarette distributors. The following subsections address various aspects of the taxes imposed on cigarettes as well as reporting requirements imposed on distributors under Chapters 47 and 48 of Title 11.

117-1600.1. Reporting Requirements.

All distributors shall make a report to the Department of Revenue on a monthly basis with respect to sales of cigarettes on a form prescribed by the Department. The report shall be due on or before the 20th day of the month following the month in which the sales took place. This report becomes delinquent if it is postmarked after the 20th day (report due on or before the 20th) following the close of the period. This report is required under Section 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.” Upon filing the report required by this regulation 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:

Cigarettes

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);

(5) Ending inventory;

Cigarette Stamps

Each distributor shall 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 Cigarettes

All distributors must also 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 shall 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 non-participating manufacturers); and

(6) Number of packs of cigarettes sold in South Carolina *times* the number of cigarettes per pack.

Other Information and Report Provisions

All distributors shall 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. The Department, at its discretion, may combine the report required under this regulation with the tax return for taxes imposed on other tobacco products under Chapter 21 of Title 12.

117-1600.2. Stamps Required on Cigarettes.

Tax Stamps

(a) Each distributor of cigarettes taxable under Article 5 of Chapter 21 of Title 12 who first receives untaxed cigarettes for sale or distribution in South Carolina is subject to the tax imposed in S.C. Code Section 12-21-620. A licensed South Carolina distributor may not sell, distribute or ship unstamped cigarettes to other South Carolina distributors located in South Carolina. Payment of the tax is evidenced by a cigarette tax stamp affixed to each individual package of cigarettes by distributors before being sold,

distributed, or shipped to another person; however, each individual package of cigarettes must be stamped in accordance with Code Section 12-21-735 and within any time period that may be required under the law so as to not be considered contraband.

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. 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.

Every distributor who first receives within this State manufactured cigarettes on which the required South Carolina cigarette tax stamp has not been affixed shall purchase all necessary stamps directly from the Department of Revenue, or the person designated to receive payment on behalf of the Department, and all such distributors are prohibited from selling or otherwise disposing of South Carolina cigarette tax stamps to any other person, firm, corporation, club or association.

Orders for stamps shall be sent directly to the Department of Revenue, or the person distributing cigarette stamps on behalf of the Department, on order forms prescribed for such use and provided by the Department. The Department of Revenue may, at its discretion, allow or require orders for cigarette stamps to be submitted by paper form or electronically.

The Department also has the discretion to authorize the sale of cigarette tax stamps on thirty-day credit periods. If authorized by the Department, distributors may purchase cigarette tax stamps on thirty-day credit periods, provided a bond has been executed with a solvent surety company qualified to do business in South Carolina in an amount equal to 110% of the distributor's estimated tax liability for thirty days, but not less than \$2,000. For credit purchases, 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.

(b) 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 Section 11-48-30.

(c) No distributor, whose place of business is located without the State of South Carolina and who is engaged in the sale of cigarettes, shall be permitted to purchase South Carolina cigarette tax stamps unless and until such distributor agrees in writing to furnish the South Carolina Department of Revenue any information it may deem necessary concerning the amount of such sales and to whom such sales have been made, and to open for inspection by the Department, its agents or employees any books, records, papers, or memoranda, bearing upon the amount of tax payable to the Department on account of such sales to South Carolina residents or merchants.

(d) No distributor who is engaged in the sale of cigarettes shall be permitted to purchase South Carolina cigarette tax stamps unless and until such distributor is current in filing any and all reports and other documentation required by this regulation.

Exempt Stamps

A distributor that receives or possesses cigarettes intended for sale or distribution into or within South Carolina which are exempt from the tobacco stamp tax under Code Section 12-21-100 shall affix stamps to

each individual package of cigarettes that indicate the package of cigarettes is exempt from tax. Orders for exempt stamps shall be sent directly to the Department of Revenue, or the person distributing cigarette stamps on behalf of the Department, on order forms prescribed for such use and provided by the Department.

Stamp Requirements

The cigarette tax stamps must:

- (1) Be of a type that when affixed on each individual package the stamps cannot be removed without being mutilated or destroyed;
- (2) Contain tamper-evident features as determined by the Department of Revenue to make it difficult to remove or tamper with the stamp as well as anti-counterfeit features as determined by the Department of Revenue;
- (3) Contain a unique serial number or other mark which permits identification of the distributor that affixed the stamp to the particular package of cigarettes; and
- (4) Note whether the taxes prescribed by Chapter 21 of Title 12 were paid or whether the package of cigarettes was exempt from the taxes.

117-1600.3. Exemptions and Refunds.

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;
- (2) Damaged cigarettes in accordance with the provisions of Section 12-21-110 and any applicable regulations of the South Carolina Department of Revenue;
- (3) Damaged tax 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 a bad debt for state income tax purposes.

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.

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 will develop forms and processes for the purpose of authorizing the refunds listed above.

117-1600.4. Cigarettes Displayed in Vending Machines.

Cigarettes displayed for sale in vending machines, where the design of such machine permits such arrangement, shall be so arranged that the cigarette tax stamp required to be affixed to each individual package is at all times in plain view and can be easily seen by duly authorized representatives of the South Carolina Department of Revenue. In any case where the design or manufacture of any such machine is such

that the contents thereof are not readily visible, the owner or person in control of such machine shall leave with some responsible person at the location of such machine, a key or other relevant means to access the machine so that the contents thereof may be inspected upon demand by duly authorized representatives of the Department of Revenue.

117-1600.5. Stamping and Storage of Cigarettes in South Carolina by a Distributor.

(A) 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. The stamp-to-order method is only permissible in South Carolina if the law does not require that cigarettes be stamped within a specified time period in order not to be considered contraband.

Advanced Stamping Method: Under this method, cigarettes are stamped before orders are received. If the law requires that cigarettes be stamped within a specified time period in order not to be considered contraband, then distributors must stamp all cigarettes within the time period established by law so as not to be considered contraband.

(B) Storage Requirements

The storage requirements established in this section 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.

Stamp-to-Order

If a distributor is permitted under this regulation and 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.

(C) 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. The Department will provide forms for distributors to submit requests for approval of stamping and storage methods, and approval 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.

The provisions of this subsection do not apply to distributors who only sell South Carolina tax paid cigarettes and who do not sell cigarettes in another state or cigarettes which are tax exempt in South Carolina.

117-1600.6. Samples.

Cigarettes shipped into South Carolina by manufacturers to representatives, who are licensed in accordance with Code Section 12-21-660, for promotional use shall 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 Section 12-21-735, and each such package is subject to South Carolina state and local use tax.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of adding SC Regulation 117-1600 is to implement the imposition of the cigarette tax via tax stamps as set out in Act No. 145 of 2016.