South Carolina Cigarette and Tobacco Tax Manual

2011 Edition

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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." With that in mind, your suggestions for improvements and areas of discussion for future editions are welcomed

Disclaimer

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: **www.sctax.org.**

[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 "Dept. Advisory Opinions" and "Advisory Opinion E-Mail Subscription Service."

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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 "Links to Other Sites."

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Table of Contents

Chapter **Page**

1. Chapter 1 – General Overview
- A. Cigarettes ..... Chapter 1, Page 1
- B. Tobacco Products ..... Chapter 1, Page 2

2. Chapter 2 – Cigarette Tax Imposition
- A. Imposition ..... Chapter 2, Page 1
- B. Definition of a Cigarette ..... Chapter 2, Page 1
- C. Tax Rate ..... Chapter 2, Page 2
- D. Examples of Persons Liable for the Cigarette Tax ..... Chapter 2, Page 2
- E. Examples of Persons Not Liable for the Cigarette Tax ..... Chapter 2, Page 3

3. Chapter 3 – Tobacco Products Imposition
- A. Imposition ..... Chapter 3, Page 1
- B. Definition of Tobacco Products ..... Chapter 3, Page 2
- C. Tax Rate ..... Chapter 3, Page 2
- D. Examples of Persons Liable for the Tobacco Products Tax ..... Chapter 3, Page 3
- E. Examples of Persons Not Liable for the Tobacco Products Tax ..... Chapter 3, Page 4

4. Chapter 4 – Exemptions and Refunds
- A. Out-of-State Sales or Dispositions - Exemption ..... Chapter 4, Page 1
- B. Sales to the United States Government - Exemption ..... Chapter 4, Page 2
- C. Sales to Other Licensed Wholesalers or Licensed Retailers ..... Chapter 4, Page 2
- D. Sales to Ships Regularly Engaged in Foreign or Coastwise Shipping – Exemption ..... Chapter 4, Page 2
- E. Leaf Tobacco - Exemption ..... Chapter 4, Page 2
- F. Damaged Cigarettes and Tobacco Products - Refunds ..... Chapter 4, Page 3

5. Chapter 5 – Catawba Indian Reservation
- A. The Catawba Indian Claims Settlement Act ..... Chapter 5, Page 1
- B. Taxation of Cigarettes and Tobacco Products on the Catawba Indian Reservation ..... Chapter 5, Page 1

6. Chapter 6 – Confiscation of Contraband Cigarettes
- A. Examples of Cigarettes Subject to Confiscation ..... Chapter 6, Page 1
- B. Seizure and Confiscation of Untaxed Cigarettes ..... Chapter 6, Page 2

Chapter **Page**

7. Chapter 7 – Administrative Requirements

A. Cigarette and Tobacco Products License ..... Chapter 7, Page 1
B. Bond Requirements ..... Chapter 7, Page 2
C. Reporting Requirements ..... Chapter 7, Page 2
D. Returning a License ..... Chapter 7, Page 3
E. Recordkeeping ..... Chapter 7, Page 4
F. Assessments ..... Chapter 7, Page 4
G. Refunds ..... Chapter 7, Page 5
H. Penalties and Interest ..... Chapter 7, Page 7
I. Completion of an Audit ..... Chapter 7, Page 9

8. Chapter 8 – Frequently Asked Questions

A. Frequently Asked Questions ..... Chapter 8, Page 1

9. Chapter 9 – Other Department of Revenue Responsibilities or Tax Compliance Laws Concerning Cigarettes and Tobacco Products

A. Reduced Cigarette Ignition Propensity Standards ..... Chapter 9, Page 1
B. Distribution of Tobacco Products to Persons Under 18 Years of Age ..... Chapter 9, Page 2
C. Tobacco Escrow Fund and Fund Enforcement ..... Chapter 9, Page 3
D. Prevent All Cigarette Trafficking Act ("PACT Act") ..... Chapter 9, Page 4

10. Chapter 10 – Cigarette and Tobacco Tax Forms

A. Form L-915 – Application for License to Purchase, Sell and Distribute Manufactured Tobacco ..... Chapter 10, Page 2
B. Form L-2167 – State Tobacco Tax Bond ..... Chapter 10, Page 4
C. Form L-917 – Manufacturer's Sales Representatives' License Application for Cigarette, Cigar and Tobacco Products ..... Chapter 10, Page 6
D. Form L-922 – Monthly Tobacco Tax Return ..... Chapter 10, Page 7
E. Form L-1025 – Application for Tobacco Tax Refund ..... Chapter 10, Page 11

1

General Overview

Chapter 1

General Overview

South Carolina imposes a tax on cigarettes and a tax on 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 cigarettes[5]

1950 – 2½ mills per cigarette or $0.05 per pack of 20 cigarettes[6]

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[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.

1951 - 1½ mills per cigarette or $0.03 per pack of 20 cigarettes[7]

1959 - 2½ mills per cigarette or $0.05 per pack of 20 cigarettes[8]

1960 - 2½ mills per cigarette or $0.05 per pack of 20 cigarettes[9]

1969 - 3 mills per cigarette or $0.06 per pack of 20 cigarettes[10]

1977 – 3½ mills per cigarette or $0.07 per pack of 20 cigarettes[11]

2010 - $0.0285 per cigarette or $0.57 per pack of 20 cigarettes[12]

As of the date of this publication, the tax on cigarettes remains at $0.0285 per cigarette[13] 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 that is still in place today.[14] Persons liable for the cigarette tax must file a return on or before the 20th of the month following the month in which the sale, distribution or disposition of the cigarettes occurred. Payment of the cigarette tax due must be remitted with each return.

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 to information as to the method of taxation and the tax rates imposed on certain tobacco products over the years.

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[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.

In 1923,[15] 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,[16] 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,[17] snuff and chewing tobacco were taxed at a rate of $0.01 for each 3 ounces or fraction thereof.

In 1927,[18] 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,[19] 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,[20] the tax rate 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,[21] these tax rates were made permanent.

In 1962,[22] the tax rate 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

[15] Act No. 11 of 1923.
[16] Act No. 733 of 1924.
[17] Act No. unknown.
[18] Act No. 73 of 1927.
[19] Act No. 643 of 1928.
[20] Act No. 140 of 1959.
[21] Act No. 802 of 1960.
[22] Act No. 872 of 1962.

In 1968,[23] 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.[24]

In 1969,[25] the tax rate on smoking tobacco was increased to 36% of the manufacturer's price to the wholesaler.

Finally, in 1996,[26] the tax rate on smoking tobacco and all other tobacco products was changed to 5% of the manufacturer's price to the wholesaler.[27] 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.

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[23] Act No. 1263 of 1968.
[24] Act No. 1311 of 1968.
[25] Act No. 349 of 1969.
[26] Act No. 239 of 1996.
[27] 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.

2

Cigarette Tax Imposition

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 first receiving the untaxed cigarettes for sale, distribution or other disposition in South Carolina[2] and upon any person first importing, receiving or acquiring untaxed cigarettes from outside South Carolina 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.

B. Definition of a Cigarette

A "cigarette" is defined under the cigarette tax law[4] 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.

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[1] South Carolina Code §12-21-610.
[2] South Carolina Code §12-21-735.
[3] South Carolina Code §§ 12-21-610 and 12-21-140. The definition of a "cigarette" as set forth in these two code sections became effective May 13, 2010. However, it has always applied to cigarettes made with "any substitute for tobacco" as well as cigarettes made of tobacco.
[4] South Carolina Code §§ 12-21-620(B) and 12-21-625(D).

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.

C. Tax Rate

The tax rate for cigarettes is $0.0285, on each cigarette.[5] 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 with respect 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.[6]

D. Examples of Persons Liable for the Cigarette Tax

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

(1) Wholesalers first receiving untaxed cigarettes from outside of South Carolina for sale or distribution in South Carolina.

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

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

While most retailers will not be liable for the cigarette tax since they are purchasing taxed cigarettes 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 cigarettes from outside of South Carolina.

(3) Manufacturers who bring untaxed cigarettes into South Carolina for give-away promotions.

These manufacturers are liable for the tax as a person importing, receiving or acquiring cigarettes from outside South Carolina for use or consumption.

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[5] 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.
[6] South Carolina Code §12-21-760.

(4) Manufacturer who employ sales representatives who bring untaxed cigarettes into South Carolina for promotional and other purposes. For example, manufacturers may send "car stock" to their sales representative in South Carolina for restocking or promotional purposes.

These manufacturers are liable for the tax as either as a person engaged in selling cigarettes in South Carolina or a person importing, receiving or acquiring cigarettes from outside South Carolina for use of consumption.

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

These persons are liable for the tax as either as a person engaged in selling cigarettes in South Carolina or a person importing, receiving or acquiring cigarettes from outside South Carolina for use of consumption.

(6) Individuals who bring untaxed cigarettes into South Carolina for their own use or consumption.

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

E. Examples of Persons Not Liable for the Cigarette Tax

The following are examples of persons who are <u>not</u> liable for the cigarette tax:

(1) Retailer only receiving taxed cigarettes from South Carolina wholesalers.

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 taxed cigarettes from South Carolina retailers.

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

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

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

3

Tobacco Products Imposition

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 products[1] 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, manufacturers, 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 Carolina[6] 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.

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[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 §12-21-780(A).
[4] South Carolina Code §12-21-780(B).
[5] South Carolina Code §12-21-780(C).
[6] South Carolina Code §12-21-780.
[7] South Carolina Code §§ 12-21-610 and 12-21-140.
[8] South Carolina Code §12-21-760.

B. Definition of Tobacco Products[9]

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 1 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.

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[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(2).
[12] South Carolina Code §12-21-620.
[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) Manufacturer 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 §12-21-780(A).
[17] South Carolina Code §12-21-780(C).
[18] South Carolina Code §12-21-780(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) Retailer 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 §12-21-780(A).
[21] South Carolina Code §12-21-780(A).
[22] South Carolina Code §12-21-780(A).

4

Exemptions and Refunds

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 Tax

The cigarette tax is not due on cigarettes shipped outside of South Carolina to a wholesaler, retailer or user or consumer by a wholesaler or retailer who is liable for the cigarette tax (*i.e.*, the wholesaler or retailer who first received the untaxed cigarettes in South Carolina).[1]

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

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]

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 provision[3] 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 dealer[4] 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 or tobacco products tax[5] and must be made by using Form L-1025 – Application for Tobacco Tax Refund.

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[1] South Carolina Code §12-21-735.
[2] South Carolina Code §12-21-780.
[3] South Carolina Code §12-21-90. While this provision still references tax stamps, the Department still allows refunds for damaged cigarettes and tobacco products.
[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).

B. Sales to the United States Government – Exemption

The following sales of cigarettes and tobacco products are exempt from the cigarette 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]

C. Sales to Other Licensed Wholesalers or Licensed Retailers

Sales of cigarettes and tobacco products are exempt when sold by a South Carolina wholesaler or retailer licensed to purchase, sell and distribute cigarettes and tobacco products to another South Carolina wholesaler or retailer licensed to purchase, sell and distribute cigarettes and tobacco products.[9]

D. 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.[10]

E. 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.[11]

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.

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[6] South Carolina Code §12-21-100.
[7] South Carolina Code §12-21-100.
[8] South Carolina Code §12-21-100.
[9] See the Monthly Tobacco Tax Return – Form L-922.
[10] South Carolina Code §12-21-100.
[11] South Carolina Code §§12-21-800 and 12-21-660.

F. Damaged Cigarettes and Tobacco Products - Refund

The cigarette tax and the tobacco products tax paid on cigarettes and 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.[12] However, the refund request must be filed with the department by the person legally liable for the cigarette tax[13] within three years of the time the tax return was filed[14] and must be made by using Form L-1025 – Application for Tobacco Tax Refund.

[12] South Carolina Code §12-21-110. While this provision still references tax stamps, the Department still allows refunds for damaged cigarettes and tobacco products.
[13] South Carolina Code §12-60-470(C).
[14] South Carolina Code §12-54-85(F)(1).

5

Catawba Indian Reservation

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 tax or the tobacco products tax.[3]

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

<u>Catawba Indian Tribe</u>

Sales by the Catawba Indian Tribe of cigarettes and tobacco products, whether on or off the Reservation, are subject to the cigarette and tobacco products taxes.

Sales to the Catawba Indian Tribe of cigarettes and tobacco products, whether on or off the Reservation, are subject to the cigarette and tobacco products taxes.

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[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.

Tribal Members

Sales by members of the Catawba Indian Tribe of cigarettes and tobacco products, whether on or off the Reservation, are subject to the cigarette and tobacco products taxes.

Sales to members of the Catawba Indian Tribe of cigarettes and tobacco products, whether on or off the Reservation, are subject to the cigarette and tobacco products taxes.

Businesses Located on the Reservation

Sales by businesses located on the Reservation of cigarettes and tobacco products (whether the sales are to the tribe, tribal members, other businesses or other individuals) are subject to the cigarette and tobacco products taxes.

Sales to businesses located on the Reservation of cigarettes and tobacco products are subject to the cigarette and tobacco products taxes.

Businesses Located off the Reservation, but Selling onto the Reservation

Sales by businesses located off the Reservation of cigarettes and tobacco products to persons (*e.g.*, the tribe, tribal members, other businesses or individuals) on the Reservation are subject to the cigarette and tobacco products taxes.

Note: See Chapter 2, "Cigarette Tax Imposition," and Chapter 3, "Tobacco Products Tax Imposition" for information as to the person liable for the tax.

6

Confiscation of Contraband Cigarettes

Chapter 6

Confiscation of Contraband Cigarettes

Cigarettes found at any point within South Carolina on which the tax has not been paid are subject to confiscation by the Department of Revenue, its employees and any peace officer of the State.[1] Any proceeding against cigarettes seized are considered a proceeding in rem.[2]

The confiscation of untaxed cigarettes applies to untaxed cigarettes in the possession of any wholesaler, retailer, or any other person, regardless of whether or not that person was the first person to receive the untaxed cigarettes into South Carolina. However, except for cigarettes being offered for sale, cigarettes must be in the possession of a wholesaler for more than 72 hours and in the possession of a retailer for more than 24 hours before they are subject to confiscation.[3]

Since the cigarettes tax is no longer a stamp tax but is paid via a reporting method,[4] it is not possible to determine whether the tax has been paid merely by inspecting the cigarettes themselves. Therefore, it must be determined by reviewing invoices and other records if the person in possession of the cigarettes (1) is registered to file and remit the cigarette tax or (2) has purchased the cigarettes from another person who is registered to file and remit the cigarette tax or (3) has otherwise purchased untaxed cigarettes.

A. Examples of Cigarettes Subject to Confiscation[5]

(1) Retailer A travels to another state, purchases cigarettes in that state, and returns to South Carolina to sell these cigarettes at his store. Retailer A is not registered to file and remit the cigarette tax. These cigarettes are contraband subject to confiscation.

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[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] South Carolina Code §12-21-2870.

[4] South Carolina Code §12-21-735.

[5] 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 jail and a $1,000 fine. 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.

(2) Retailer B orders cigarettes over the Internet for sale in her South Carolina store. Retailer B is not registered to file and remit the cigarette tax. These cigarettes are contraband subject to confiscation.

(3) Wholesaler C orders cigarettes from another wholesaler who is located outside of South Carolina. Wholesaler C receives the cigarettes via common carrier and will sell the cigarettes from his South Carolina wholesale distribution facility to retailers located inside and outside of South Carolina. Wholesaler C is not registered to file and remit the cigarette tax. These cigarettes are contraband subject to confiscation, whether in the possession of Wholesaler C or 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. If Mr. Smith does not remit the tax on these cigarettes upon his return to South Carolina, the cigarettes are contraband subject to confiscation.

B. Seizure and Confiscation of Untaxed Cigarettes

The General Assembly has established two procedures for the seizure and disposition of untaxed cigarettes found in South Carolina. The first procedure, noted in Section (A) below, requires a court case to determine the final disposition of the cigarettes seized. The second procedure, noted in Section (B) below, allows the Department to accept a compromise and return the seized cigarettes to the person from whom they were seized.

(A) Seizure and Prosecution to Secure Forfeiture of the Seized Cigarettes

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

(1) If untaxed cigarettes are found any place within South Carolina, the Department may seize those cigarettes without warrant. Untaxed cigarettes may also be seized by peace officer of the State.[6]

(2) Upon seizure of untaxed cigarettes, the cigarettes must be appraised if in the opinion of the person making the seizure the value of the cigarettes seized is $100.00 or more.[7]

[6] "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.
[7] South Carolina Code §12-21-2910.

(a) The appraisal must contain a list with a description of the cigarettes seized and must be prepared in duplicate.

(b) The appraisal must be made by 3 sworn appraisers selected by the person who seized the cigarettes. These 3 appraisers must be respected and disinterested citizens of South Carolina who reside in the county where the cigarettes were seized.

(c) The appraisal must be attested by the person seizing the cigarettes and the 3 selected appraisers.

(d) For their service, the 3 appraisers must be allowed a sum of $1 per day, not exceeding 2 days. These funds must be paid of the Department out of any revenue received from the sale of the confiscated cigarettes.

If in the opinion of the person seizing the cigarettes the value of the cigarettes seized is less than $100.00, then an appraisal is not required.[8]

(3) The person who seized the cigarettes must publish a written notice at 3 places within the county in which the cigarettes were seized.[9] The notice must:[10]

(a) describe the cigarettes seized,

(b) state the time, place and reason for the seizure, and

(c) state that any person claiming the seized cigarettes must make a claim in writing within 30 days of the first publication of the notice.

(4) If a person files a written claim within the 30 days specified in the notice stating an interest in the cigarettes seized, that person may execute a bond to the Department in a penal sum equal to twice the value of the cigarettes seized with sureties to be approved by the clerk of court in the county in which the cigarettes were seized. However, in no case may the bond be less that $100.00. This is conditioned that the obligors, in the case of condemnation of the cigarettes seized, must pay to the Department the full value of cigarettes seized, all costs and expenses of the proceedings (including reasonable attorney's fees).[11]

(5) When the Department receives the bond, it must send a duplicate list or description of the cigarettes to the solicitor of the circuit in which the cigarettes were seized. The solicitor must prosecute the case to secure forfeiture of the cigarettes.[12]

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[8] South Carolina Code §12-21-2910.
[9] South Carolina Code §12-21-2920.
[10] South Carolina Code §12-21-2920.
[11] South Carolina Code §12-21-2930.
[12] South Carolina Code §12-21-2930.

(6) The cigarettes must be delivered to the claimant pending the outcome of the case.[13]

(7) If a claim is not filed, or a bond is not given, within the 30 days specified in the notice, the cigarettes are forfeited without any further proceedings.[14]

(8) If the cigarettes are forfeited as set forth above, then the cigarettes must be donated by the Department to the SC Department of Mental Health for patient use.[15]

(B) Seizure and Acceptance of Compromise to Return the Seized Cigarettes

The following outlines the procedure for confiscating untaxed cigarettes found in South Carolina and accepting a compromise for the return of the seized cigarettes to the person from whom they were seized:

(1) If untaxed cigarettes are found any place within South Carolina, the Department may seize those cigarettes without warrant. Untaxed cigarettes may also be seized by peace officer of the State.

(2) Upon seizure of untaxed cigarettes, the cigarettes must be appraised if in the opinion of the person making the seizure the value of the cigarettes seized is $100.00 or more.[16]

(a) The appraisal must contain a list with a description of the cigarettes seized and must be prepared in duplicate.

(b) The appraisal must be made by 3 sworn appraisers selected by the person who seized the cigarettes. These 3 appraisers must be respected and disinterested citizens of South Carolina who reside in the county where the cigarettes were seized.

(c) The appraisal must be attested by the person seizing the cigarettes and the 3 selected appraisers.

(d) For their service, the 3 appraisers must be allowed a sum of $1 per day, not exceeding 2 days. These funds must be paid of the Department out of any revenue received from the sale of the confiscated cigarettes.

[13] South Carolina Code §12-21-2930.
[14] South Carolina Code §12-21-2940.
[15] South Carolina Code §12-21-2975.
[16] South Carolina Code §12-21-2910.

If in the opinion of the person seizing the cigarettes the value of the cigarettes seized is less than $100.00, then an appraisal is not required.[17]

(3) If the Department determines that the person in possession of the untaxed cigarettes did not intend to violate the cigarette tax law, then the Department may, at its discretion, return the seized cigarettes to the person from whom they were confiscated if the following conditions are met:[18]

(a) The person from whom the cigarettes were confiscated pays the Department an amount equal to the assessed value of the confiscated cigarettes.

(b) The person from whom the cigarettes were confiscated pays the tax and any applicable penalties due on the cigarettes.

[17] South Carolina Code §12-21-2910.
[18] South Carolina Code §12-21-2960.

7

Administrative Requirements

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.

(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.

(5) Church or school entertainments.

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[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.

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.

(4) The license is only valid for transacting business at the place designated on the license.

B. Bond Requirements

Cigarettes

Persons who are liable for the cigarette tax are required to post a surety bond or submit statements of financial stability satisfactory to the Department. These are required to cover possible losses from a taxpayer's failure to remit the cigarette tax due.[7]

Tobacco Products

A bond or statement of financial stability is not specifically required with respect to the tobacco products tax. However, tobacco products licensees who are not liable for the cigarette tax can be required to post a bond if the licensee fails to pay the tobacco products tax for as many as two filing periods in a 12 month period.[8]

C. Reporting Requirements

Persons liable for the cigarette or tobacco products tax must file a monthly return[9] and remits the taxes due. The return must be filed by the 20th of the month following the month in which the sale or disposition of the cigarettes or tobacco products occurred. The taxpayer must report and remit taxes with respect to all cigarettes and tobacco products sold, shipped, delivered or otherwise disposed of in South Carolina.[10]

[6] South Carolina Code §12-21-670.
[7] South Carolina Code §12-21-735.
[8] South Carolina Code §12-54-200.
[9] SC Department of Revenue Form L-915.
[10] South Carolina Code §§12-21-735 and 12-21-780.

Cigarettes

All licensed cigarette distributors elect to report and remit the cigarette tax using either of the following reporting methods:[11]

Sales Method: Licensed distributor who have elected the "sales method" report and remit the cigarette tax as cigarettes are sold or disposed of by the licensed distributor.

Receipt Method: Licensed distributors who have elected the "receipt method" report and remit the cigarette tax as cigarettes are received in South Carolina.

Tobacco Products (Cigars, Smoking or Chewing Tobacco, Snuff, Etc.)

All licensed distributors of tobacco products[12] must use the "receipt method" to report and remit the tax on "tobacco products" as such products are received in South Carolina.[13]

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

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

D. Returning a License[16]

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.[17]

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[11] See Form L-922.
[12] 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." See South Carolina Code §12-21-800.
[13] See Form L-922.
[14] South Carolina Code §12-21-785.
[15] South Carolina Code §§12-21-735 and 12-21-780.
[16] South Carolina Code §12-54-126. See also SC Regulation 117-300.6 for special rules regarding partnerships.
[17] South Carolina Code §12-54-90.

E. Recordkeeping

Every person subject to the cigarette and tobacco products taxes is required to keep "records, receipts, invoices and other pertinent papers in the form the commission requires."[18] This includes records in electronic format.[19]
Records must be kept for a period of **four years.**[20]

The penalty for failing to keep records as required by the Department is a maximum of $500 per return.[21]

F. Assessments

The Department may assess unpaid taxes within three years of the date the taxpayer's return was filed, or due to be filed, whichever occurs later.[22]

For example, if a taxpayer files the May 2008 cigarette and tobacco products tax return on the due date, June 20, 2008, the Department has until June 20, 2011, to determine if additional taxes are due and assess the taxpayer for those taxes. If the taxpayer filed the May 2008 return late on August 30, 2008, then the Department has until August 30, 2011, to determine if additional taxes are due and assess the taxpayer for those taxes.

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

> The taxpayer has consented in writing to extending the time period for assessing the tax.[23] This consent form must be completed before the three-year 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.
>
> The taxpayer understates 20% of total taxes. In this case, the Department has six years to assess the taxpayer for the unpaid taxes.[24]
>
> The taxpayer has failed to file the return.[25] In this case, the Department may go back as far as August of 1985.[26]

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[18] South Carolina Code §12-54-210; SC Regulation 117-200; and SC Regulation 117-200.1.
[19] SC Regulation 117-200.2.
[20] SC Regulation 117-200.1.
[21] South Carolina Code §12-54-210.
[22] South Carolina Code §12-54-85(A).
[23] South Carolina Code §12-54-85(C)(4).
[24] South Carolina Code §12-54-85(C)(3).
[25] South Carolina Code §12-54-85(C)(2).
[26] 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

The taxpayer has filed a fraudulent return with the intent to evade the tax.[27] In this case, the Department may go back as far as August of 1985.[28]

G. Refunds

Initial Process

A. A taxpayer may seek a refund of any state tax by filing a written claim for refund with the Department.

Only the taxpayer legally liable for the tax may claim or receive a refund.[29] In the case of the cigarette and tobacco products taxes, this is the person first receiving the untaxed cigarettes or tobacco products in South Carolina. In addition, this could also be a person receiving untaxed cigarettes as a result of having a license that allows the purchase of untaxed cigarettes in order to subsequently ship such cigarettes to retailers both in and out of South Carolina.[30]

Also, the taxpayer legally liable for the tax may assign in writing the refund to another person if the taxpayer legally liable for the tax has filed the claim for refund, the Department determines the claim is allowable, the amount of the refund is decided by the Department, and the Department has approved the refund.[31]

For special rules concerning foreign diplomats, see South Carolina Code §12-60-470(C)(3).

B. The refund claim must specify:[32]

(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;

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).

[27] South Carolina Code §12-54-85(C)(1).

[28] 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).

[29] South Carolina Code §12-60-470(C)(1).

[30] South Carolina Code §12-21-735.

[31] South Carolina Code §12-60-470(C)(2).

[32] South Carolina Code §12-60-470(B).

(4) the nature and kind of tax paid;

(5) the amount claimed as erroneously paid;

(6) a statement of facts supporting the taxpayer's positions; and

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

C. The refund claim must be filed within three years of the time the return was filed, or two years from date of payment, whichever is later. If no return was filed, the claim must be filed within two years from date of payment.[33]

D. The appropriate division of the Department will decide what refund is due, if any, and give a 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 in writing and must be filed within 90 days from the date of the denial. The protest must also provide any information that was previously omitted but required for a refund claim as listed above.

F. If a refund is due, it must be first applied against other cigarette and tobacco products taxes due by the claimant and then against other state taxes due by the claimant.[34]

Review by the Department

A. After the appeal, the taxpayer will be offered a conference with the person who denied the refund claim, and if requested, that person's supervisor. The purpose of the conference is to give the taxpayer a better understanding of the facts and issues and to also afford the taxpayer the opportunity to present additional information. At the Department's discretion, the conference may be conducted by telephone. After the conference, if the protest is not resolved, the file will be transferred to the Department's Office of General Counsel for Litigation.

B. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Determination, it will be mailed to the taxpayer.

Contested Case Hearing before the Administrative Law Court

A. A taxpayer may request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination.

[33] South Carolina Code §12-54-85(F).
[34] South Carolina Code §12-60-490.

B. The request for a contested case hearing must be made in writing within 30 days after the date the Determination was mailed or delivered.

C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.

D. A refund denial will become final if the taxpayer does not request a contested case hearing within 30 days.

H. Penalties and Interest

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

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 2008 return is filed on June 30, 2008, 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 23, 2008, 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 May 2008 return is filed on June 30, 2008, 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 this same return had not been filed until July 23, 2008, then the taxpayer would be subject to a penalty equal to 1% of the taxes shown as due on that 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.[35] 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.[36]

Other Penalties

Other penalties, such as those imposed with respect to negligence,[37] fraud[38] and operating without a license, can be found in Chapter 54 of Title 12 of the South Carolina Code of Laws.

Interest

The Department, by law, imposes interest if a taxpayer fails to pay any cigarette or tobacco products taxes due. Interest is imposed at the same rate as provided in the Internal Revenue Code. The interest rate changes quarterly and the applicable interest rate may be found on the Department's website (www.sctax.org).[39] These interest rates are also used by the Department in calculating the interest due a taxpayer if that taxpayer is issued a refund; however, two temporary provisos in the current budget directs the Department to reduce the rate of interest paid on eligible refunds by three percentage points for refunds paid from July 1st through June 30th.[40]

Waiver of Penalties

The Department has the authority to waive penalties imposed if there is reasonable cause to do so. 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.

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[35] South Carolina Code §12-21-2860.

[36] South Carolina Code §12-54-43(H) (a civil penalty of not less than $50 and not more than $500 for failure to comply with statutory provisions) or South Carolina Code §12-21-3080 (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).

[37] South Carolina Code §12-54-43(F)(1).

[38] South Carolina Code §12-54-44.

[39] Interest rate information is published quarterly in an information letter issued by the Department. To obtain a copy of such an information letter, click on "Dept. Advisory Opinions" on the website, then go to the "Alphabetical Index of Advisory Opinions" and then to the "Administrative" index.

[40] To determine if future fiscal years reduce the rate of interest for refunds, see the state budget for that fiscal year at http://www.scstatehouse.gov/.

I. Completion of an Audit

Initial Process

A. When a division of the Department determines a taxpayer owes additional taxes, it will mail or deliver a proposed assessment. The proposed assessment is the first written notice a taxpayer will receive that additional taxes, interest, or penalties are owed. The term "proposed assessment" does not include the auditor's work papers or draft audit reports. If the taxpayer disagrees with a proposed assessment, the taxpayer is entitled to appeal the findings using the following procedures.

B. If the taxpayer agrees with the proposed assessment, the amount due should be paid on or before the due date of the proposed assessment to avoid additional interest and penalties, if applicable.

   If the taxpayer cannot pay, the taxpayer may request to enter into an installment payment agreement. An installment payment agreement will allow the taxpayer to pay over an agreed period of time. The taxpayer may contact the district manager of the nearest Taxpayer Service Center for additional information about installment agreements.

C. A taxpayer may agree with portions of the proposed assessment and disagree with others. The portion of the assessment with which the taxpayer agrees may be paid to avoid additional interest and penalties, and the remainder can be appealed.

D. If the taxpayer disagrees with part or all of the proposed assessment, the taxpayer may appeal by sending a written protest within 90 days from the date on the proposed assessment to the address on the proposed assessment. The written protest must contain:

   (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 proposed;

   (4) the nature and kind of tax in dispute;

   (5) a statement of facts supporting the taxpayer's position; and

   (6) a statement outlining the reasons for the appeal. If the proposed assessment is $2,500 or more, the taxpayer should include any law or other authority upon which the taxpayer relies.

E. The Department may extend the time for filing a protest at any time before the period has expired.

Review by the Department

A. After a taxpayer files a protest, the taxpayer will be offered a conference with the person who issued the proposed assessment, and if requested, that person's supervisor. The purpose of the conference is to give the taxpayer a better understanding of the facts and issues and to also afford the taxpayer the opportunity to present additional information. At the Department's discretion, the conference may be conducted by telephone. After the conference, if the protest is not resolved, the taxpayer's file will be transferred to the Department's Office of General Counsel for Litigation.

B. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Department Determination, it will be mailed to the taxpayer.

Contested Case Hearing Before the Administrative Law Court

A. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination.

B. The request for a contested case hearing must be made in writing and filed with the Administrative Law Court within 30 days after the date the Department Determination was mailed or delivered.

C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.

D. A final assessment will be sent to the taxpayer for payment, if the taxpayer does not properly request a contested case hearing within 30 days.

License Revocation

A. The Department may deny or revoke any license issued by the Department for failure to pay taxes or certain regulatory violations.

B. Notice will be sent to the taxpayer if a division of the Department proposes to deny or revoke a license.

C. A taxpayer can appeal the denial or revocation by filing a written protest with the Department within 90 days of the notice. The written protest must contain:

(1) the taxpayer's name, address, and telephone number;

(2) the appropriate taxpayer identification number or numbers, if any;

(3) the kind of license in dispute;

(4) a statement of facts supporting the taxpayer's position; and

(5) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies.

D. If a protest involves a failure to pay taxes, a written protest should be filed with the Department's District Manager who signed the denial or revocation. The District Manager will transfer the matter to the Department's Office of the General Counsel for Litigation if it cannot be resolved. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Department Determination, it will be mailed to the taxpayer.

E. If a protest involves a regulatory violation of the alcoholic beverage laws, bingo laws, or other coin operated devices provisions, a written protest should be filed with the Department's Regulatory Division.

F. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination. The request for a contested case hearing must be made in writing and filed with the Administrative Law Court within 30 days after the date the Department Determination was mailed or delivered. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.

8

Frequently Asked Questions

Chapter 8

Frequently Asked Questions

The following are various frequently asked questions concerning the cigarettes tax, the tobacco products tax and several other issues related to cigarettes and tobacco products.

1. What is the definition of a cigarette?

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.

2. What is the definition of tobacco products?

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."

3. What is the tax rate on cigarettes?

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.

[1] 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.

4. What is the tax rate on tobacco products?

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."

5. What is the "established manufacturer's price" as used in the statute with respect to the tax on tobacco products?

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 1 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.

6. Who is required to be licensed?

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.

(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.

7. Do cigarette and tobacco products representatives have to be licensed by the department?

Yes.

8. What is the cost of a cigarette or tobacco products tax license?

There is no cost to obtain a cigarette or tobacco products tax license.

9. Are smoke shops required to obtain a tobacco products license if they purchase all tax paid products?

No. Retailers are only required to obtain a license if they purchase untaxed cigarettes or untaxed tobacco products.

10. Are cigarette and tobacco products licenses transferable?

No. A license is only valid for the person in whose name it is issued and only for the transaction of business at the place designated in the license.

11. What form is used to apply for a cigarette or tobacco products tax license?

Form L-915 is used to apply for a cigarette or tobacco products tax license.

12. Is a bond required in order to obtain a license?

Cigarettes

Person who are liable for the cigarettes tax are required to post a surety bond or submit statements of financial stability satisfactory to the Department. These are required to cover possible losses from a taxpayer's failure to remit the cigarette or tobacco products due.

Tobacco Products

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

13. Who is required to file a cigarette tax return and when is it due?

The cigarette tax is imposed upon:

(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 first receiving the untaxed cigarettes for sale, distribution or other disposition in South Carolina and upon any person first importing, receiving or acquiring untaxed cigarettes from outside South Carolina for use or consumption.

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.

Cigarette tax returns are due on or before the 20th of the month following the month in which the sale, distribution or disposition of the cigarettes occurred. Payment of the cigarette tax due must be remitted with each return.

Cigarette and tobacco products taxes are remitted using the same form - Form L-922.

14. Who is required to file a tobacco products tax return and when is it due?

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

(2) any person who makes, manufacturers, or fabricates tobacco products in South Carolina for sale in South Carolina; 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.

Essentially, the tax is imposed on the person first receiving the untaxed tobacco products for sale, distribution or other disposition in South Carolina 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.

The tobacco tax return is due on or before the 20th of the month following the month in which the sale, distribution or disposition of the tobacco products occurred. Payment of the tobacco products tax due must be remitted with each return.

Cigarette and tobacco products taxes are remitted using the same form - Form L-922.

15. What is a "gratis" cigarette or a "gratis" tobacco product?

A "gratis" cigarette or 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" cigarettes and "gratis" tobacco products.

16. Are tax stamps currently required to be on cigarette packages?

No. The law requiring stamps was repealed effective Jan. 1. 1996. The payment of license tax on cigarettes is by a reporting method rather than by tax stamps. That law eliminated stamps, but implemented a report to be completed that describes the number of cigarettes sold or disposed of.

17. Are cigarettes that do not contain tobacco, such as "clove" cigarettes, subject to the tax?

Yes. The tax is imposed "upon all cigarettes made of tobacco <u>or any substitute therefore</u>."

18. Are tobacco products substitutes subject to the tax?

Only substitutes for cigarettes are subject to the tax. The tax on tobacco products applies to forms of tobacco prepared in a manner suitable for chewing, smoking or other consumption.

19. What is the definition of a contraband cigarette?

Cigarettes found at any point within South Carolina on which the tax has not been paid are subject to confiscation by the Department, its employees and any peace officer of the State and are contraband cigarettes.

The confiscation of untaxed cigarettes applies to untaxed cigarettes in the possession of any wholesaler, retailer, or any other person, regardless of whether or not that person was the first person to receive the untaxed cigarettes into South Carolina. However, except for cigarettes being offered for sale, cigarettes must be in the possession of a wholesaler for more than 72 hours and in the possession of a retailer for more than 24 hours before they are subject to confiscation.

Since the cigarettes tax is no longer a stamp tax but is paid via a reporting method, it is not possible to determine whether the tax has been paid merely by inspecting the cigarettes themselves. Therefore, it must be determined by reviewing invoices and other records if the person in possession of the cigarettes (1) is registered to file and remit the cigarette tax or (2) has purchased the cigarettes from another person who is registered to file and remit the cigarette tax or (3) has otherwise purchased untaxed cigarettes.

20. Are contraband cigarettes subject to seizure?

Yes.

21. Are vehicles used to transport contraband cigarettes subject to seizure?

Yes.

22. Are cigarettes sold to the Federal Government taxable?

The following sales of cigarettes and tobacco products are exempt from the cigarettes or tobacco products tax:

(1) sales to the United States Government;

(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; 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.

23. Where do you report any evidence of possession of contraband cigarettes?

Contact the Collection Supervisor at the nearest Taxpayer Service Center of the South Carolina Department of Revenue to report any evidence of possession of contraband cigarettes. Locations and phone numbers for the Taxpayer Service Centers are:

Charleston Service Center:	1 Southpark Circle Suite 100 Charleston, S.C. 29407 Phone: 843-852-3600 Fax: 843-556-1780
Columbia Main Office:	301 Gervais Street P.O. Box 125 Columbia, S.C. 29214 Phone: 803-898-5000 Fax: 803-898-5822
Florence Service Center:	1452 West Evans Street P.O. Box 5418 Florence, S.C. 29502 Phone: 843-661-4850 Fax: 843-662-4876
Greenville Service Center:	545 North Pleasantburg Drive Greenville, SC 29607 Phone: 864-241-1200 Fax: 864-232-5008
Myrtle Beach Service Center:	1330 Howard Parkway P.O. Box 30427 Myrtle Beach, S.C. 29588 Phone: 843-839-2960 Fax: 843-839-2964
Rock Hill Service Center:	454 South Anderson Road Business and Technology Center Suite 202 P.O. Box 12099 Rock Hill, S.C. 29731 Phone: 803-324-7641 Fax: 803-324-8289

24. What penalties may be imposed for the sale and/or possession of untaxed cigarettes or tobacco products?

The penalty for the sale and/or possession of untaxed cigarettes or tobacco products is $50 to $500 for each violation.

25. Are tax refunds available for damaged cigarettes or damaged tobacco products which cannot be sold?

Yes. The cigarette tax and the tobacco products tax paid on cigarettes and 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.

26. Are cigarette and tobacco products sold on military installations within South Carolina subject to the tax?

Cigarettes and tobacco products sold to the U.S. Government for military use or resale to military personnel are exempt from the tax. However, anyone other than the federal government making sales of these products through a vending machine or other means on a military installation is subject to the tax.

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

A person must be at least 18 years old. It is unlawful for any person to sell, furnish, give or provide any minor under the age of eighteen years with cigarettes, tobacco, cigarette paper or any substitute therefor. Violating this section is punishable by a fine not exceeding $ 100 or by imprisonment for not more than one year or both in the discretion of the court. (See South Carolina Code §16-17-500 of the S.C. Code of Laws.)

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

Common sense dictates that a retailer selling cigarettes or tobacco products or an individual distributing gratis cigarettes should request a legal form of identification prior to the sale of the product, or face the penalties provided for in the Code.

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

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

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

Yes.

9

Other Department Of Revenue Responsibilities or Tax Compliance Laws Concerning Cigarette and Tobacco Products

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 concern the administration and collection of the cigarette tax. However, the General Assembly has entrusted the Department with certain other responsibilities involving cigarettes. 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 became effective June 5, 2008, that prohibits local governments from enacting any ordinance in conflict with, or preempting, the provisions of the Act.

This law becomes effective on January 1, 2010.

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

It is unlawful for a person to sell, furnish, give, or provide tobacco products, including tobacco product samples, cigarette paper, or a substitute for them, to a person under the age of eighteen years.[6] In addition, a person engaged in sampling must demand proof of age from a prospective recipient if an ordinary person would conclude on the basis of appearance that the prospective recipient may be under the age of 18 years.[7]

For violating these laws, the following penalties may be imposed:[8]

(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.

Proof that the defendant demanded, was shown, and reasonably relied upon proof of age is a defense to an action brought under this statute.

[4] South Carolina Code §23-51-60(G).
[5] South Carolina Code §23-51-40.
[6] South Carolina Code §§16-17-502(A) and 16-17-501(1).
[7] South Carolina Code §16-17-502(B).
[8] South Carolina Code §16-17-502(C).

The Department must enforce this law in a manner that reasonably may be expected to reduce the extent to which tobacco 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 are sold or distributed to ensure compliance and the Department must designate an enforcement officer to conduct the annual inspections.[9]

In addition, the Department must prepare and submit annually to the Secretary of the United States Department of Health and Human Services the report required by Section 1926 of the Federal Public Health Service Act (42 U.S.C. 300x-26).[10] The Department is also responsible for ensuring the State's compliance with this federal law and applicable regulations promulgated by the United States Department of Health and Human Services.[11]

Note: Currently, the South Carolina Department of Alcohol and Other Drug Abuse Services ("DAODAS") conducts routine inspections, gathers information and annually submits to the Secretary of the United States Department of Health and Human Services the report required by this section and by 42 U.S.C. 300X-26. This report is known as the "Synar Report." To review a copy of the most recent Synar Report, visit the DAODAS website at http://www.daodas.state.sc.us/.

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.[12]

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 section 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.[13] 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.[14] This is the Department's only duty with respect to this law.

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[9] South Carolina Code §16-17-503(A). See also the "Note" at the end of this section and footnote #13.
[10] South Carolina Code §16-17-503(B).
[11] South Carolina Code §16-17-503(B).
[12] Act No. 47 of 1999.
[13] South Carolina Code §11-47-30.
[14] South Carolina Code §11-47-20(j).

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.[15] Administration and enforcement of these provisions rests 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 nonparticipating manufacturer cigarettes and other information relied upon in reporting to the Attorney General for a period of five years.[16]

   The distributors must also provide this information and documentation to the Department and any other documentation requested by the Department. 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.[17]

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 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.[18]

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. In addition, employees of the Department of Revenue assist the Office of the South Carolina Attorney General by conducting inspections of cigarette inventories to ensure compliance with the Tobacco Escrow Fund Act.

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.

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[15] Chapter 48 of Title 11 of the South Carolina Code of Laws.
[16] South Carolina Code §11-48-50.
[17] South Carolina Code §11-48-50.
[18] South Carolina Code §11-48-90.

Effective June 29, 2010, federal law requires Internet and mail order sellers of cigarettes and smokeless tobacco, referred to as "delivery sellers"[19] 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.[20]

(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.[21]

(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.[22]

(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 information relating to specific customers must be organized by city, town or 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.[23]

(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.[24]

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[19] 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.

[20] 15 U.S.C. §§376a(a)(1) and 376a(b)(1).

[21] 15 U.S.C. §376a(b)(3).

[22] 15 U.S.C. §376a(b)(4).

[23] 15 U.S.C. §§376a(a)(2) and 376a(c). See 15 U.S.C. §376(A)(2).

[24] 15 U.S.C. §376a(a)(3).

(6) Tax Collection Requirements. The delivery seller must not sell or deliver to any consumer or common carrier or other delivery service any cigarettes or smokeless tobacco unless in advance of the sale, delivery or tender to the common carrier or delivery service (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 tax stamps or other indicia that the excise tax has been paid are properly affixed or applied to the cigarettes or smokeless tobacco.[25]

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.[26]

A delivery seller must also file a statement with the state tax agency setting forth specific information as outlined in the federal law.[27]

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 memo or invoice must include specific information as outlined in the federal law.[28]

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. Section 375 et. seq.

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[25] 15 U.S.C. §§376a(d). Note: South Carolina does not require tax stamps or indicia to be placed on cigarette packages. The cigarette tax in South Carolina is paid via a monthly reporting method. See Chapter 7, Section C of this manual.
[26] 15 U.S.C. §376a(d).
[27] 15 U.S.C. §376(a)(1).
[28] 15 U.S.C. §376(a)(2).

10

Cigarette and Tobacco Tax Forms

Chapter 10

Cigarette and Tobacco Tax Forms

Table of Contents

Form Number	Purpose of Form
L-915	Application for License to Purchase, Sell and Distribute Manufactured Tobacco
L-2167	State Tobacco Tax Bond
L-917	Manufacturer's Sales Representative License Application for Cigarette, Cigar and Tobacco Products
L-922	Monthly Tobacco Tax Return
L-1025	Application for Tobacco Tax Refund

Note: See Chapter 7 for information on who is, and is not, required to obtain a cigarette and tobacco license and for bond requirements.
See Chapter 4 and Chapter 7 for refund provisions and requirements.

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

APPLICATION FOR LICENSE TO PURCHASE, SELL AND DISTRIBUTE MANUFACTURED TOBACCO

Mail to: SC Department of Revenue Registration Unit Columbia, S.C. 29214-0140

L-915
(Rev. 4/20/10)
4060

PRINT OR TYPE ALL INFORMATION.
If assistance is needed, call (803) 896-1350
Upon Completion of Both Sides, Sign and Date.

Website: www.sctax.org

FOR OFFICE USE ONLY
SID _____
License No. _____

1. OWNER, PARTNERS OR CORPORATE NAME

2. TRADE NAME (DOING BUSINESS AS)

3. PHYSICAL LOCATION OF BUSINESS REQUIRED (NO P.O. BOX)

STREET

CITY COUNTY (Required) STATE ZIP

4. BUSINESS PHONE NUMBER | DAY TIME PHONE NUMBER

5. FEDERAL IDENTIFICATION NUMBER

6. MAILING ADDRESS (IF DIFFERENT)

IN CARE OF

STREET

CITY COUNTY STATE ZIP

7. TYPE OF BUSINESS

☐ MANUFACTURER

☐ WHOLESALE (May include a retailer purchasing tax free products)

☐ VENDING MACHINES

8. LOCATION OF RECORDS (No P.O. Box)

9. **LICENSE ISSUE DATE**

Month	Day	Year

10. TYPE OF OWNERSHIP

☐ SOLE PROPRIETOR
☐ PARTNERSHIP
☐ LLC-LLP
☐ UNINCORPORATED ASSOCIATION; ENTER LEGAL NAME _____
☐ CORPORATION; ENTER CHARTER NAME _____
☐ OTHER (EXPLAIN) _____

11. NAMES OF BUSINESS OWNER, PARTNERS OR OFFICERS:

SOCIAL SECURITY NUMBER	NAME/TITLE	ADDRESS	IF PARTNER, PERCENT OWNED

12. Total number warehouse facilities (business locations) in South Carolina _____

13 If through vending machines - Number of vending machines presently being operated _____

14. Does your company handle cigarettes? Yes ☐ No ☐ If yes, a completed Form L-2167, State Tobacco Bond, **must** accompany this application. (minimum bond requirement is $5,000).
Other tobacco products? Yes ☐ No ☐ If yes, name of company other tobacco products purchased from _____

15. Please check the appropriate filing method. ☐ Sales Method ☐ Net Total Receipts Method

16. Name of Product and Manufacturer _____

17. Responsible Party for Payment to Escrow under Master Settlement Agreement _____
Phone Number _____

(USE A SEPARATE FORM FOR EACH LOCATION)

I declare that the application, including the accompanying schedules, if any, has been examined by me and to the best of my knowledge and belief the information contained therein is true and correct.

SIGNATURE OWNER, PARTNERS OR CORPORATE OFFICER | TITLE | DATE

Notice: A tobacco license will not be issued to a person with any outstanding state tax liability.

40601015

Excerpts from Section 12-21-660 Code of Laws of South Carolina, 1976 as amended:

Each applicant who has two or more business locations is required to obtain a separate license for each place of business.
A separate application should be used for each location.

A person whose business is conducted through vending machines need obtain only one license but he shall maintain an up-to-date list of the location of each vending machine operated under his license.

Excerpts from Section 12-21-735 Code of Laws of South Carolina, 1976 as amended:

The department shall require bonds or statements of financial stability satisfactory to the department to cover possible losses resulting from failure to remit taxes due.

A completed State Tobacco Tax Bond, Form L-2167, must accompany this application if your company handles cigarettes. The minimum bond requirement is $5,000.00.

1. The license must be displayed at all times in some conspicuous place at or in the place of business where it may be easily seen by the public.

2. The license must be obtained before engaging in the business in this State and is only valid for the person in whose name it is issued and only for the transaction of business at the place designated in the license.

3. Returns shall be filed no later than the 20th day of the month following the end of the reporting period. A return must be filed even if no tax is due.

4. Line 15 - Once the filing method has been chosen, you must continue to file under this method on the monthly return, Form L-922, Monthly Tobacco Tax Return.

5. Line 9 - Date your business started puchasing Tobacco products tax - free.

   If you have questions about the filing method, please call 803-896-1970.

Social Security Privacy Act Disclosure
It is mandatory that you provide your social security number on this tax form, if you are an individual. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-1 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act
Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

STATE TOBACCO TAX BOND

L-2167
(Rev. 12/17/07)
4317

Mail to: South Carolina Department of Revenue, Miscellaneous Tax Section, Columbia, SC 29214-0139

Bond Number _____

THE STATE OF SOUTH CAROLINA
KNOW ALL MEN BY THESE PRESENTS

That _____
(Taxpayer)

Address _____

as principal and the _____
(Bond Company)

a corporation under the laws of the State of _____ duly authorized to transact business in the State of South Carolina as surety are held and firmly bound unto South Carolina Department of Revenue for and on behalf of the State of South Carolina in the penal sum of _____ Dollars, lawful money of the United States of America, for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Signed, sealed and dated this _____ day of _____, A. D., year of _____.

NOW THEREFORE, the condition of this obligation is such that if _____ shall pay all the taxes, penalties, and/or interest which may be due under the provisions of all Chapters 21 and 54, Title 12, Code of Laws of South Carolina, 1976 and Amendments thereto, providing for the requirement of bond for the payment of taxes, penalties and/or interest, then this obligation is to be void, otherwise to remain in full force and virtue.

THIS BOND IS EXECUTED BY THE SURETY COMPANY UPON THE FOLLOWING EXPRESS CONDITION.

Notice of noncompliance with the requirements and applicable provisions of Chapters 21 and 54, Title 12, Code of Laws of South Carolina, 1976, and amendments thereto, must be delivered to the _____ _____ Company at its home office _____ or its duly constituted agents within the city of _____, South Carolina.

THE LIABILITY OF THE SURETY HEREUNDER SHALL TERMINATE:

A. Sixty (60) days after receipt by the South Carolina Department of Revenue of written notice from the surety of its desire to terminate liability.

AND

B. Upon receipt of written notice by the surety from the South Carolina Department of Revenue terminating the same.

Witnesses as to Principal:

1. _____

2. _____

_____
Principal Signature

Witnesses as to Surety:

3. _____

4. _____

_____
Surety Signature

Affidavits on back must be completed.

43171024

WITNESS AS TO PRINCIPAL

STATE OF SOUTH CAROLINA,

_____ County.

Before me, the subscribing Notary Public, personally appeared _____
Witness number one (see front of bond)

and made oath that he/she saw the within named _____ Company
Business or Corporation

represented by _____ sign, seal, and deliver the within Bond, and that he/she with

_____ subscribed their names as witness thereto.
Witness number two (see front of bond)

Sworn to and subscribed before

me this _____ day of _____

A. D., year of _____.

_____
To be signed by witness one (see front of bond)

_____(L.S.)
Notary Public

WITNESS AS TO SURETY

STATE OF SOUTH CAROLINA,

_____ County.

Before me, the subscribing Notary Public, personally appeared _____
Witness number three (see front of bond)

and made oath that he/she saw the within named _____ Company
Name of Bond or Insurance Company

represented by _____ sign, seal, and deliver the within Bond, and that he/she with

_____ subscribed their names as witness thereto.
Witness number four (see front of bond)

Sworn to and subscribed before

me this _____ day of _____

A. D., year of _____.

_____
To be signed by witness three (see front of bond)

_____(L.S.)
Notary Public

Forward properly completed bond to:

South Carolina Department of Revenue
Miscellaneous Tax Section
P.O. Box 125
Columbia, SC 29214

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

MANUFACTURER'S SALES REPRESENTATIVES' LICENSE APPLICATION FOR CIGARETTE, CIGAR AND TOBACCO PRODUCTS

L-917
(Rev. 6/4/99)
4062

1. Applicant's Name _____ Social Security Number

Residence Address _____
Street or RFD City State Zip

Telephone Number _____

Vehicle: Personal ☐ Company ☐

Make	Model	License Number	State

2. Manufacturer's Name _____

Address _____
Street or Box Number City State Zip

NOTE: This office must be notified of any permanent vehicle change that takes place during the licensing period.

3. Applicant's Supervisor _____ Telephone Number _____

Address _____
Street or RFD City State Zip

4. List all tobacco products by brands handled by Representative:

_____

_____

5. Location of facilities used to store tobacco products if other than residence:

_____

_____

6. Representative's territory:
   1) Includes State other than S.C. Yes ☐ No ☐
      If Yes, list other States _____
   2) Includes all of S.C. Yes ☐ No ☐
      If No, list all S.C. Counties _____

Have you ever been charged with a violation of any type of tobacco tax? Yes ☐ No ☐
If yes, state nature of violation, date of violation and in which state violation occurred. _____

_____

I, _____ swear (or affirm) that the information contained herein is true and correct to the best of my knowledge and belief.

_____ Signature _____ Title _____ Date

Notice: A tobacco license will not be issued to a person with any outstanding state tax liability.

Mail to: South Carolina Department of Revenue, Registration, Columbia, SC 29214-0140.

1350

STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

MONTHLY TOBACCO TAX RETURN

Mail to: SC Department of Revenue, Tobacco Tax, Columbia SC 29214-0138

L-922
(Rev. 6/24/10)
4064

IMPORTANT: This return becomes DELINQUENT if it is postmarked after the 20th day (return and payment due on or before the 20th) following the close of the period.

Sales Method ☐

Receipt Method ☐

Office Use Only

SID

File Number

FEIN/SSN

Period Ended

If no preaddressed label attached, fill in name, address and FEI number.

SCHEDULE A	Cigarettes 20 ct Packs (A)	Cigarettes 25 ct Packs (B)	OTP Tobacco Products other than cigarettes ($ amount) (C)
1. Beginning inventory			
2. Purchases during month (Sch B, page 2)			
3. Total (line 1 & line 2)			
4. South Carolina tax exempt sales (Sch C, page 2)			
5. Ending inventory			
6. Total tax exempt (line 4 plus line 5)			
7. Taxable sales (*Sales method, subtract line 6 from line 3)*			
8. Total purchases from manufacturer (*Receipt method, subtract line 4 from line 2)*			
9. Tax rate	.57	.7125	.05
10. Tax due (*line 7 times line 9) (Receipt, line 8 times line 9)*			
11. Total tax due (add columns A and B)			
12. Less 3.5% Discount for timely pay			
13. Tax due: (line 11 minus 12) column C (line 10 minus 12) ▶	14-1401		14-1408 ◀
14. Add: Penalty ▶			◀
15. Add: Interest ▶			◀
16. TOTAL AMOUNT DUE (lines 13, 14, and 15.) (Check if payment is by EFT.) ☐			

For questions regarding this form call (803) 896-1970.

I hereby certify that the information contained in this report (including accompanying schedules and statements) has been examined by me and to the best of my knowledge is correct and complete.

Signature	Title	Internet/Email Address
Name(Print)	Date	Daytime Phone Number

40641029

SOUTH CAROLINA DISTRIBUTORS TRANSACTION REPORT
NON TAX PAID CIGARETTES/OTHER TOBACCO PRODUCTS

SCHEDULE B

NOTE: Cigarettes are recorded in packs and other tobacco products are recorded in dollars (purchase price).

NAME OF MANUFACTURER	CIGARETTES 20S	CIGARETTES 25S	NAME OF MANUFACTURER	OTHER TOBACCO PRODUCTS
				$
				$
				$
				$
				$
				$
				$
Total packs/product received from all sources. Carry to page 1, line 2, Columns A, B, and C.				$

SCHEDULE C

Cigarettes/other tobacco products distributed exempt from South Carolina excise tax (i.e. Federal Government, other states, other S.C. licensed distributors). List by total packs.

NAME, STATE	NAME OF MANUFACTURER	CIGARETTES 20S	CIGARETTES 25S	OTHER TOBACCO PRODUCTS
North Carolina				$
Georgia				$
Tennessee				$
Kentucky				$
Federal Government				$
Other (list)				
				$
				$
				$
Total of all packs/product invoiced exempt. Carry to page 1, line 4, Columns A, B, and C.				$

40642027

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SCHEDULE D - TOBACCO REPORT OF TAX PAID PRODUCTS OF NON-PARTICIPATING MANUFACTURERS
(see instructions on reverse)

File Number _____ Period Ended _____

A	B	C	D	E	F	G	H
Non-Participating Manufacturers Name & Address	Brand Name	Name, Address & File Number of the person whom each pack of Cigarettes was purchased	Number of packs Sold	Number of Cigarettes per pack	Total = **D x E**	Roll Your Own (Oz)	G Divided by .09
		TOTAL					

4064302S

South Carolina Department of Revenue
Instructions for Tobacco Report of Non-Participating Manufacturers

List on Schedule D the sales of cigarettes and roll-your-own tobacco products that were purchased from nonparticipating manufacturers. These products should be reported as taxable sales on the monthly tax return.

NOTE: Schedule D must be filed with the monthly Tobacco Return, even if there were no purchases made from non-participating manufacturers during the reporting period.

Instructions for Completing Reverse Side

Column A:
Enter the name and address of the nonparticipating manufacturer.

Column B:
Enter the **full brand name of the product sold (do not abbreviate).** Do not break down into subcategories, such as regular, menthol, light, etc. For example, for a cigarette named "Alpha Bravo Gold Menthol Lights," report only "Alpha Bravo Gold." Do not report as "A B Gold or A B Gold Menthol Lights."

Column C:
Enter the name, address & file number of the person from whom each pack of cigarettes was purchased. (File number refers to a South Carolina Licensed Distributor).

Column D:
Enter the number of packs of cigarettes sold in South Carolina that were reported tax paid on the South Carolina monthly tax return and were produced by nonparticipating manufacturers. Do not list cigarettes that were produced by nonparticipating manufacturers if the tax was paid at the time of purchase.

Column E:
Enter the pack size of cigarettes that you sold and were produced by nonparticipating manufacturers. (Example: packs of 20's; packs of 25's; etc.)

Column F:
Multiply column "D," Number of Packs, by column "E," Cigarettes per pack.

Column G:
Enter number of ounces of roll-your-own tobacco that you sold into South Carolina that was reported tax paid on your South Carolina monthly tax return and was produced by a nonparticipating manufacturer.

Column H:
Divide column "G," number of ounces of roll-your-own, by .09.

Social Security Privacy Act Disclosure
It is mandatory that you provide your social security number on this tax form, if you are an individual. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

The Family Privacy Protection Act
Under the Family Privacy Protection Act, the collection of personal information from citizens by the Department of Revenue is limited to the information necessary for the Department to fulfill its statutory duties. In most instances, once this information is collected by the Department, it is protected by law from public disclosure. In those situations where public disclosure is not prohibited, the Family Privacy Protection Act prevents such information from being used by third parties for commercial solicitation purposes.

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

APPLICATION FOR TOBACCO TAX REFUND

Mail to: South Carolina Department of Revenue, Tobacco Tax Refund, Columbia, SC 29214-0112.

L-1025
(Rev. 7/27/10)
4070

Note: Signature is required in order to process the refund (see reverse side).

Form must be filled out in ink or by a typewriter. Copy should be retained for your file.

Provide all information requested. For assistance call (803) 896-1970.

Name of Firm _____ Account Number _____

Address _____ FEIN/SSN _____

REASON FOR REQUESTING REFUND _____

CIGARETTES

*This portion to be completed for cigarettes only

Sales Method: tax paid cigarettes sold on or before June 30, 2010 only

Receipt Method: tax paid cigarettes purchased on or before June 30, 2010 only

Date Shipped	Manufacturer	Brand Name	Packs of 20s @ .07 each	Packs of 25s @ .0875 each	Total

1. Total gross refund requested	
2. Less purchase discount (.035 x line 1)	
3. Total net refund requested (subtract line 2 from line 1)	

14-1401

*This portion to be completed for cigarettes only

Sales Method: tax paid cigarettes sold on or after July 1, 2010 only

Receipt Method: tax paid cigarettes purchased on or after July 1, 2010 only

Date Shipped	Manufacturer	Brand Name	Packs of 20s @ .57 each	Packs of 25s @ .7125 each	Total

1. Total gross refund requested	
2. Less purchase discount (.035 x line 1)	
3. Total net refund requested (subtract line 2 from line 1)	

14-1401

OTHER TOBACCO PRODUCTS

*This portion to be completed for other tobacco products only

Date Shipped	Manufacturer	Brand Name	Gross Manufacturer's	Tax Rate of 5%	Total

A Manufacturers Returned Good(s) Affidavit and Credit Memorandum should accompany this form.

1. Total gross refund requested	
2. Less purchase discount (.035 x line 1)	
3. Total net refund requested (subtract line 2 from line 1)	

14-1408

40701013

In order for us to verify this refund request and allow us to accurately calculate the amount of the refund, a manufacturer's returned good(s) affidavit and credit memorandum should accompany this form.

When signing this form, it is important that the information contained in your report be correct and complete. To willfully furnish a false or fraudulent statement to the Department is a crime.

Taxpayer Name (printed)	Date	Daytime Phone Number
Taxpayer Signature	Internet/Email Address	

DO NOT USE THIS SPACE

AUDITED BY _____ APPROVED BY _____

DATE _____ DATE _____

Social Security Privacy Act Disclosure

It is mandatory that you provide your social security number on this tax form. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

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