

The Department of Taxation has issued an information release regarding roll-your-own tobacco machines, which provides guidance to taxpayers after the recent passage of federal legislation.

EXC 2012-01 – Excise Taxes: Roll Your Own Tobacco Machines: Issued July 2012

The purpose of this information release is to provide guidance to taxpayers following the recent federal legislation impacting roll-your-own tobacco machines, which was effective on July 6, 2012. The responsibilities identified in this release are in addition to the requirements of the federal government, the Ohio Attorney General’s Office, and the Ohio State Fire Marshal’s Office. The reports, schedules and tax returns referred to in this release must be filed with the Ohio Department of Taxation (“Department”), Excise Tax Division, P.O. Box 530, Columbus, Ohio 43216-0530.

Recently, federal legislation amended the definition of “manufacturer of tobacco products” in federal statutes to include “a person who for commercial purposes makes available for consumer use a machine capable of making cigarettes, cigars, or other tobacco products.” With the federal designation as a “manufacturer of tobacco products”, a retail establishment that makes a roll-your-own tobacco machine available for commercial purposes will incur several state responsibilities as a “manufacturer of cigarettes”. These retail establishments must first apply for a permit with the Alcohol & Tobacco Tax & Trade Bureau. Then, to continue to offer such machine, a retail establishment must register with the Ohio Department of Taxation (“Department”) for three licenses: (1) as an Ohio cigarette manufacturer; (2) as an Ohio stamping cigarette wholesaler; and (3) as an Ohio cigarette retailer. In addition, the retail establishment shall comply with all reporting, record keeping, and stamping requirements. Moreover, the retailer shall not operate as an Ohio stamping cigarette wholesaler and an Ohio cigarette retailer at the same place of business.

Licensing and Reporting Requirements for Cigarette Manufacturers

All manufacturers that sell cigarettes in Ohio must apply for and obtain a license from the Department. These licenses must be renewed annually on or before the fourth Monday of May. A list of all cigarette manufacturers is public information and will be posted on the Department’s website at tax.ohio.gov.

As part of the Ohio licensing requirement, all manufacturers will be required to prove that their product(s) are legal for sale in Ohio. Cigarette brands that are listed on the Ohio Attorney General’s website (www.ohioattorneygeneral.gov) will suffice as such proof. Any cigarette brands not listed on that site may only be sold to cigarette wholesalers for sale into another state (assuming those cigarettes are legal for sale in the other state).

Generally, licensed cigarette manufacturers may only sell to stamping cigarette wholesalers. Cigarette manufacturers may not sell to non-stamping cigarette wholesalers or cigarette retailers. In addition, licensed cigarette retailers may only purchase stamped cigarettes from Ohio licensed cigarette wholesalers.

The issuance of an Ohio license from the Department to a manufacturer does not excuse a manufacturer from the certification process required under Ohio Revised Code § (R.C.) 1346.05.

All Ohio licensed cigarette manufacturers must file monthly reports detailing the following information: brand and quantities of all cigarettes shipped in Ohio; the name and address of the recipient; and all invoice numbers and invoice dates. Any manufacturer that fails to file the required reports may have its Ohio license suspended or revoked and may no longer sell its products in Ohio.

Licensing and Reporting Requirements of Cigarette Wholesalers

Ohio cigarette wholesale licenses are issued by the Department and are renewed on or before the fourth Monday in May. A list of all cigarette wholesalers is public information and will be posted on the Department's website at tax.ohio.gov. A cigarette wholesaler may fall into one of the following categories:

- An *Ohio stamping cigarette wholesaler* is a cigarette wholesaler located in Ohio that only stamps cigarettes for sale in the State of Ohio. Such wholesaler must receive authority from the Department in order to purchase cigarette tax stamps.
- An *Ohio non-stamping cigarette wholesaler* is a cigarette wholesaler that purchases and distributes cigarettes on which the tax has already been paid. Such wholesaler has no authority to purchase and/or apply tax stamps.
- A *multi-state stamping cigarette wholesaler* is a cigarette wholesaler located in Ohio that stamps cigarettes for sale in Ohio as well as other states.
- An *out-of-state licensed wholesaler* is a cigarette wholesaler located outside Ohio that stamps cigarettes for sale into Ohio. Such wholesaler must receive authority from the Department in order to purchase cigarette tax stamps.

All Ohio licensed cigarette wholesalers have reporting requirements, which may differ depending on the classification of the license. However, an Ohio stamping cigarette wholesaler must file schedules reporting the following items: unstamped cigarette purchases received from licensed manufacturers; unstamped and stamped cigarette purchases from another licensed Ohio cigarette wholesaler; out-of-state sales of cigarettes; and cigarettes sold to another Ohio licensed wholesaler. Additionally, the wholesaler will file a cigarette tax return (form CIG-58) monthly or semi-annually (depending on the quantities reported). Finally, such person must file monthly or quarterly reports (form MSA-60) identifying the brand and quantities of all cigarettes sold in Ohio that are not covered by the Master Settlement Agreement (MSA). For additional information about cigarettes covered by the MSA, see the *Ohio Attorney General's Website* paragraph in the **Miscellaneous Items** section below.

Licensing Requirements of Cigarette Retailers

Ohio cigarette retail licenses are issued by the county auditors and are renewed on or before the fourth Monday in May. A license is required for each place of business where the applicant will be engaging in the business of trafficking cigarettes.

Separate Places of Business

No person shall sell cigarettes both as a cigarette retail dealer and as a cigarette wholesale dealer at the same place of business. Any person who violates this provision is subject to civil penalties, including revocation of its license or seizure of its product. Additionally, any person who violates this provision is subject to criminal penalties (misdemeanor of the fourth degree).

Record Keeping

Every wholesale and retail licensee shall maintain complete and accurate records of all purchases and sales of cigarettes and shall retain all invoices, bills of lading, and other documents relating to such purchases and sales. The invoices or documents shall be maintained for each place of business and shall show the name and address of the other party along with the quantity of cigarettes sold or purchased. The records and documents shall be made available, upon request, to the Tax Commissioner and shall be preserved for a period of three (3) years.

Cigarette Minimum Prices

The manufacturer's invoice price determines the minimum price that a wholesaler must charge a retailer. Additionally, the wholesaler's invoice will determine the minimum price that retailer must charge its customers for the cigarettes, not what the wholesaler pays for the cigarettes. The cost of cigarettes to the retailer is the price listed on its invoice plus any charge added to the invoice that is related to either the quantity or price of the cigarettes. Charges related to timely payment do not increase the retailer's cost when computing the retail minimum price. Additionally, any person licensed to sell cigarettes as both a wholesaler and a retailer must first compute the cost of cigarettes to the wholesaler before computing the cost of cigarettes to the retailer. Click here [Insert Application Link] to compute the correct minimum price.

[Click here](#) to compute the correct minimum price.

Enforcement Actions for Noncompliance

A retail establishment that fails to adhere to the licensing requirements set forth in this information release and Ohio's tobacco laws may incur several penalties, including but not limited to: confiscation of the cigarettes made with the roll-your-own tobacco machine; confiscation of the roll-your-own tobacco machine, itself; civil penalties; and criminal penalties. Additionally, if the Department obtains information regarding a violation, the Department will provide the appropriate information to the Alcohol & Tobacco Tax & Trade Bureau and the Ohio Attorney General's Office.

Miscellaneous Items

Cuyahoga County – Stamping cigarette wholesalers that sell to a retailer in Cuyahoga County are required to affix a stamp that signifies payment of an additional county excise tax.

Reduced Ignition Propensity Standards For Cigarettes – Before cigarettes may be sold in Ohio, a manufacturer must have the cigarettes tested in accordance with the specifications outlined in R.C. 3739.03 or the testing method approved by the Ohio State Fire Marshal. The cigarettes must meet the performance standard specified under R.C. 3739.03(B) or the performance standard approved by the Ohio State Fire Marshal. Additionally, a manufacturer must mark the packaging of the cigarettes as required in R.C. 3739.06, and must file a written certification with the Ohio State Fire Marshal in accordance with R.C. 3739.07.

Ohio Attorney General's Website – As part of Ohio's participation in the MSA, only brands of cigarettes and roll-your-own tobacco that have been certified by the Ohio Attorney General's Office as legal for sale in Ohio may be sold in Ohio. **A list of legal brands is published on the Ohio Attorney General's website at www.ohioattorneygeneral.gov. Any brand of cigarette or roll-your-own tobacco not listed on this site may not be sold in Ohio and is subject to confiscation.**¹ The Tobacco Enforcement Unit of the Ohio Attorney General's Office can be reached at 614-387-5600.

Any questions regarding this information release may be directed to:

Ohio Department of Taxation
Excise Tax Division
P.O. BOX 530
Columbus, OH 43216-0530
(855) 466-3921, Option 3
