

## 23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-10. Definitions.~~

~~The following words, terms and phrases are defined herein for the cigarette tax imposed by Chapter 10 of Title 58.1 of the Code of Virginia only:~~

~~"Carton" means ten packs of cigarettes, each containing 20 cigarettes or nine packs of cigarettes, each containing 25 cigarettes.~~

~~"Retail dealer" means every person, other than a wholesale dealer, as defined herein, who sells or offers for sale any cigarettes.~~

~~"Retail sale" means all sales except sales by wholesalers to retail dealers or other wholesalers for resale.~~

~~"Sale at retail" means all sales except sales by wholesalers to retail dealers or other wholesalers for resale.~~

~~"Stamps" means the stamp or stamps used to show the Virginia cigarette excise tax paid and shall be officially designated as Virginia revenue stamps. The Department of Taxation is authorized to provide for the use of any type of stamp or indicia which will accomplish the purpose of displaying evidence on each pack of cigarettes that the applicable tax has been paid. The stamps include, but are not limited to hand applied stamps, fusion type stamps and impressions of metering devices. The term stamp also includes "certificate of payment of tax" authenticated and signed by an authorized agent of the Department of Taxation. Such certificate may be issued in special enforcement cases.~~

23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~"Storage" means any keeping or retention in this state of cigarettes for any purpose except sale in the regular course of business or subsequent use solely outside this state.~~

~~"Use" means the exercise of any right or power over cigarettes incident to the ownership thereof or any transaction where possession is given, except that the term "use" shall not include the sale of cigarettes in the regular course of business.~~

~~"Wholesale dealer" means any person who sells cigarettes to retail dealers for the purpose of resale, or who sells to institutional, commercial or industrial users. The term "wholesale dealer" includes chain store distribution centers or houses which distribute cigarettes to their stores for sale at retail.~~

## 23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-30. Exemptions.~~

~~The Virginia cigarette excise tax shall not apply to: (1) sample cigarettes distributed free in packages containing five or fewer cigarettes or, (2) any package of cigarettes donated free of charge by cigarette manufacturers to employees in factories where cigarettes are manufactured in Virginia if such packages of cigarettes are not taxed by the federal government.~~

~~Example 1: Cigarette manufacturer ABC is participating in a marketing campaign and distributes promotional cigarette packs, each containing 20 cigarettes. The Virginia cigarette excise tax is applicable to the promotional cigarettes distributed since each pack contains more than five cigarettes.~~

23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-130. Duties of wholesale dealer on shipping, delivering or sending out cigarettes.~~

~~A. Generally. Every wholesale dealer who ships or delivers any cigarettes must make a duplicate invoice on such cigarettes showing the date, amount, and value of each class of cigarettes shipped or delivered. Such wholesaler shall retain the duplicate invoices.~~

~~B. Shipments to military reservations. Wholesale dealers in this State who ship, deliver, or send any cigarettes to the United States government for sale or distribution to any military, naval or marine reservation owned by the United States and located within the Commonwealth, shall be required to comply with the provisions in 23 VAC 10-370-110 on such shipments or deliveries.~~

## 23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-140. Penalty for failing to affix stamps; subsequent violations of article.~~

~~A. Generally. Any person who sells, stores or receives cigarettes subject to the tax for distribution within Virginia and fails to affix the proper cigarette stamp as required under 23 VAC 10-370-40.~~

~~B. Penalty for failing to affix Virginia revenue stamps. Any person failing to affix the proper Virginia revenue stamp to cigarettes distributed in Virginia is subject to a penalty of \$25. Such penalty is assessed and collected by the Department as other taxes are collected. Each pack of cigarettes not having the proper stamps affixed shall be deemed a separate offense.~~

~~1. The penalty for willful intent to defraud the State of the cigarette excise tax is \$250. Each pack of cigarettes not properly stamped shall be deemed a separate offense.~~

~~2. Possession of more than 30 packs of unstamped cigarettes is prima facie evidence of intent to defraud.~~

~~3. Any unstamped cigarettes, except as provided in regulation 23 VAC 10-370-110, located in the place of business of a person required to affix tobacco revenue stamps is prima facie evidence that the cigarettes are intended for sale.~~

~~C. Subsequent violations of failing to affix Virginia revenue stamps. Any person who has been found guilty of failing to properly affix Virginia revenue stamps and has received punishment on the first offense and is guilty of a subsequent violation of failing to affix such stamps, shall be subject to revocation of his permit to buy and stamp as a qualified wholesale dealer.~~

23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~After revocation of such stamping permit, no new permit may be issued to the offender for 1 year from the date such permit was revoked.~~

## 23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-160. Removal, reuse, unauthorized sale, etc., of stamps; counterfeit stamps; penalty.~~

~~A. Generally. It is unlawful to remove or reuse any Virginia revenue stamp or buy, sell, offer for sale, give away, or possess any such washed, removed, or restored Virginia revenue stamp. It is also unlawful to manufacture, buy, sell, offer for sale, or possess any reproduction or counterfeit Virginia revenue stamps. Any person possessing merchandise with stamps which are reused, restored, reproduced or counterfeit may be guilty of violating the provisions of the cigarette tax statutes. It is unlawful for anyone other than the Department of Taxation to sell any Virginia revenue stamps which are not affixed to the taxable cigarettes.~~

~~B. Penalty. Any person performing any of the unlawful acts as set out above shall be, upon conviction, guilty of a Class 5 felony.~~

23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-170. Administration and enforcement of tax.~~

~~A. Generally. The Department of Taxation shall administer and enforce the Virginia cigarette tax.~~

~~B. Examination of records. The Department shall have the power to enter the premises of any person to examine the books, records, invoices, etc. which relate to the cigarette tax. In addition, the Department may secure other information directly or indirectly concerning the enforcement of the cigarette tax provisions.~~



23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-190. Tax imposed on storage, use or consumption of cigarettes; exemption of products on which sales tax has been paid.~~

~~A. Generally. An excise tax, equal to the cigarette excise tax as regulated in 23 VAC 10-370-20, is imposed upon the storage, use or consumption in Virginia of cigarettes purchased at retail in or outside of Virginia not bearing Virginia revenue stamps.~~

~~B. Tax liability. Every person who stores, uses or otherwise consumes cigarettes in this State is liable for the cigarette tax. Liability for such cigarette use tax is relieved if the cigarette excise tax has been paid. The tax applies to the storage, use or consumption of cigarettes purchased at retail.~~

## 23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-200. Monthly returns and payment of tax.~~

~~A. Generally. Every person owning, possessing or having custody of cigarettes subject to the cigarette use tax must file a monthly report with the Department of Taxation. Such report shall be filed by the tenth of the month and must report the number and types of cigarettes purchased during the preceding month and which were subject to the cigarette use tax. The report must also disclose the name and address of the purchaser of such cigarettes and the name and address of the seller. The Department may require additional information deemed necessary in administration of the cigarette use tax.~~

~~B. Payment of tax. The tax due reported on the return must be paid when the return is filed.~~

23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-210. Assessment of tax by department.~~

~~A. Generally. If any person stores, uses or otherwise consumes cigarettes subject to the cigarette use tax and fails to file a return or files an incorrect return, the Department shall assess the cigarette use tax due from the best information available. Notice of such assessment shall be mailed to the taxpayer.~~

~~B. Collection of assessment. The Department of Taxation shall collect such assessment by legal process if necessary.~~

## 23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-220. Documents touching purchase, sale, etc., of cigarettes to be kept for three years, subject to inspection.~~

~~A. Generally. Every person, who stores, uses or otherwise consumes cigarettes subject to the cigarette use tax, must keep and preserve all invoices, books, cancelled checks or other memoranda dealing with the purchase, sale, exchange, receipt, ownership, storage, use or consumption of such cigarettes. The records must be maintained for three years.~~

~~B. Records subject to audit and inspection. All records pertaining to cigarettes subject to the cigarette use tax shall be subject to audit and inspection by the Department of Taxation.~~

~~C. Penalty for failure to maintain records or permit inspection. If any person fails or refuses to keep and preserve the required records, or fails or refuses to allow an audit or inspection of the records, such person shall be, upon conviction, guilty of a Class 2 misdemeanor.~~

23 VAC 10-370. CIGARETTE TAX REGULATIONS

~~23 VAC 10-370-230. Correction of erroneous assessments.~~

~~Erroneous assessments for the cigarette excise tax or the cigarette use tax may be corrected and refunds ordered under the provisions in 23 VAC 10-370-210 et seq.~~