

GUIDELINES FOR THE RETAIL SALES AND USE TAX EXEMPTION CERTIFICATE FOR STAMPED CIGARETTES PURCHASED FOR RESALE

August 21, 2017

The General Assembly recently enacted House Bill 1913 and Senate Bill 1390 (2017 *Acts of Assembly*, Chapters 112 and 453). The new law mandates the use of a new exemption certificate on and after January 1, 2018 for all purchases of cigarettes bearing Virginia revenue stamps for resale exempt from the Retail Sales and Use Tax. Retailers and other dealers who purchase stamped cigarettes for resale will be required to use the new exemption certificate, which will be issued by the Department of Taxation (“the Department”) to each qualifying business.

These guidelines are not rules or regulations subject to the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 *et seq.*) and are being published in accordance with the Tax Commissioner’s general authority to supervise the administration of the tax laws of the Commonwealth pursuant to *Va. Code* § 58.1-202.

These guidelines represent the Department’s interpretation of the relevant laws. They do not constitute formal rulemaking and hence do not have the force and effect of law or regulation. In the event that the final determination of any court holds that any provision of these guidelines is contrary to law, taxpayers who follow these guidelines will be treated as relying on erroneous written advice for purposes of waiving penalty and interest under *Va. Code* §§ 58.1-105, 58.1-1835, and 58.1-1845. To the extent there is a question regarding the application of these guidelines, taxpayers are encouraged to write to the Department and seek a written response to their question. As necessary, additional information will be published on the Department’s website, www.tax.virginia.gov.

Definitions

As used in these Guidelines, unless the context clearly shows otherwise, the term or phrase:

“Affiliate” means any entity that is a member of the same affiliated group, as such term is defined in *Va. Code* § 58.1-3700.1.

“Form ST-10” or “resale exemption certificate” means the exemption certificate for use by Virginia dealers to purchase tangible personal property for resale exempt from the Retail Sales and Use Tax. After December 31, 2017, this certificate is not valid for the purchase of cigarettes bearing Virginia revenue stamps.

“Form ST-10C” or “cigarette resale exemption certificate” means the exemption certificate for use by Virginia dealers to purchase cigarettes bearing Virginia revenue stamps for resale exempt from the Retail Sales and Use Tax on and after January 1, 2018.

Overview of the Sales Tax Resale Exemption Certificate

In general, all sales or leases of tangible personal property are subject to the Retail Sales and Use Tax until the contrary is established. The burden of proving that a sale, distribution, lease, or storage of tangible personal property is not taxable is upon the dealer unless he takes from the purchaser a certificate to the effect that the sale of the property is exempt. A completed and valid exemption certificate will relieve the dealer of liability for the payment or collection of the tax, except upon notice that the certificate is no longer acceptable. The certificate must be signed by and bear the name and address of the purchaser; indicate the number of the certificate of registration, if any, issued to the taxpayer; indicate the general character of the tangible personal property sold, distributed, leased, or stored, or to be sold, distributed, leased, or stored under a blanket exemption certificate; and must be substantially in such form as prescribed by the Department. Currently, retailers and wholesalers are permitted to use the resale exemption certificate, Form ST-10, to purchase stamped cigarettes and other tangible personal property for resale exempt of the Retail Sales and Use Tax. See *Va. Code* § 58.1-623.

New Sales Tax Resale Exemption Certificate for Cigarettes

All sales of cigarettes bearing Virginia revenue stamps are subject to the Retail Sales and Use Tax, unless such cigarettes are purchased for resale or other exempt purpose. Under the new law, for transactions on and after January 1, 2018, a dealer must use the new cigarette resale exemption certificate, Form ST-10C, to purchase stamped cigarettes exempt from the Retail Sales and Use Tax. On and after this date, the current resale exemption certificate, Form ST-10, will no longer be valid for purchases of stamped cigarettes. The new certificate is not valid for the purchase of cigarettes that will be taken out of Virginia. See *Va. Code* § 58.1-623.2.

Obtaining the New Exemption Certificate

The Department will issue the new cigarette resale exemption certificate, Form ST-10C, to qualifying dealers purchasing cigarettes for resale in Virginia, who apply for it and pass a background investigation. There will also be two expedited processes available to qualifying dealers.

Fast-Track Expedited Process

The first expedited process is the “fast-track process.” Dealers qualifying for the fast-track process will not need to apply for the new exemption certificate and will automatically receive a Department-issued certificate. The only dealers who qualify for this fast-track process are those that the Department is able to identify as meeting all of the following requirements: 1) current customers of a licensed stamping agent; 2) who pay for all cigarettes on a basis other than cash; and 3) with all such cigarettes being delivered to the dealer’s place of business by or on behalf of the stamping agent.

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The Department will provide each dealer qualifying under the fast-track process with a Form ST-10C cigarette resale exemption certificate. Qualifying dealers will not be required to file an application, pay an application fee, or be subject to the 30-day waiting period or the background investigation. If a dealer does not receive a Form ST-10C certificate by October 1, 2017, the dealer should complete an application for the cigarette resale exemption certificate as explained below under the “Expedited Process” and “Full Application Process” sections.

Expedited Process

A dealer qualifies for the expedited process to receive a Form ST-10C cigarette resale exemption certificate if it possesses (i) an active license, in good standing, issued by the Department of Alcoholic Beverage Control pursuant to Title 4.1 of the *Virginia Code*; (ii) an active tobacco products tax distributor’s license, in good standing, issued by the Department of Taxation; or (iii) an active Retail Sales and Use Tax registration for a fixed place of business in Virginia, issued by the Department and in good standing with the Department for five years or more.

Any dealer qualifying for the expedited process must apply for the cigarette resale exemption certificate using the application that will be available on the Department’s website, www.tax.virginia.gov, on October 1, 2017. The dealer will not be required to pay an application fee or be subject to a background check or waiting period. Any applicant who applies for a cigarette exemption certificate prior to December 1, 2017, will be issued or denied the cigarette exemption certificate prior to January 1, 2018.

Every dealer who purchases cigarettes for resale in Virginia must submit an application. A dealer who purchases cigarettes at only one location, but has multiple physical places of business where cigarettes are sold should only complete one application. However, all physical places of business in Virginia that sell cigarettes for the dealer must be listed on the application. The dealer will be issued a cigarette exemption certificate for each qualifying location and is authorized to purchase cigarettes and resell them only at the locations listed on the certificate.

Full Application Process

Any dealer that does not qualify for either the fast-track process or the expedited process may apply for the cigarette resale exemption certificate using the application that will be available on the Department’s website, www.tax.virginia.gov, on October 1, 2017. The dealer, or an authorized representative of the dealer, must submit a \$50 application fee with the application in order for the application to be processed. The application fee is non-refundable, even if the application is denied. The Department will not issue a cigarette resale exemption certificate to an applicant until at least 30 days after the date that the application was submitted. Any applicant who applies for a

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cigarette exemption certificate prior to December 1, 2017, will be issued or denied the cigarette exemption certificate prior to January 1, 2018.

Every dealer who purchases cigarettes for resale in Virginia must submit an application. A dealer who purchases cigarettes at only one location, but has multiple physical places of business where cigarettes are resold should only complete one application. However, all physical places of business in Virginia that sell cigarettes for the dealer must be listed on the application. The dealer will be issued a cigarette exemption certificate for each qualifying location and is authorized to purchase cigarettes and resell them only at the location listed on each certificate.

If the dealer intends to change any of the required information relating to the physical places of business contained in the application for the cigarette exemption certificate, the dealer must file an amendment to the application at least 30 days in advance of such change.

Applicants will be subject to background checks. Applicants must be registered as Retail Sales and Use Tax dealers or wholesale dealers and be in good standing with the Department. The Department, however, will not deny a cigarette resale exemption certificate solely because the applicant is 30 days or less delinquent in filing a Retail Sales and Use Tax return or remitting the tax, or has entered into an installment agreement.

The applicant must have a physical place of business in the Commonwealth. The Department will inspect each location listed in the application and verify that any location that purchases cigarettes for resale meets the following requirements:

1. Is where a substantial portion of the sales activity of the retail cigarette sales activity of the business is routinely conducted;
2. Satisfies all local zoning regulations;
3. Has sales and office space of at least 250 square feet in a permanent, enclosed building not used as a house, apartment, storage unit, garage, or other building other than a building zoned for retail business;
4. Houses all records required to be maintained regarding the purchase, sale, storage, handling, or transporting of cigarettes pursuant to *Va. Code* § 58.1-1007;
5. Is equipped with office equipment, including but not limited to, a desk, a chair, a point of sale system, filing space, a working telephone listed in the name of the taxpayer or his business, working utilities, including electricity and provisions for space heating, and an Internet connection and email address;

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6. Displays a sign and business hours and is open to the public during the listed business hours; and
7. Does not occupy the same physical place of business as any other taxpayer who has been issued a cigarette exemption certificate.

Additionally, the applicant must possess a local business license for each locality in which the applicant has a physical place of business, if one is required by the locality. The applicant must have a copy of its (i) corporate charter and articles of incorporation, in the case of a corporation, (ii) partnership agreement, in the case of a partnership, or (iii) organizational registration from the Virginia State Corporation Commission, in the case of a limited liability company. Such documents must be provided by the applicant to the Department upon request.

Cigarette Resale Exemption Certificate

A cigarette resale exemption certificate will be issued to each dealer for each physical place of business where cigarettes are purchased and sold and will bear the address of the place of business. The dealer will be authorized to purchase and resell cigarettes only at the locations listed on the application. A dealer is responsible for all purchases made using its Form ST-10C. The cigarette resale exemption certificate is non-transferable. If the dealer moves or closes its business, or if the exemption certificate is lost or stolen, the dealer must notify the Department's Tobacco Unit at (804) 371-0730 or tobaccounit@tax.virginia.gov.

The cigarette resale exemption certificate must not be displayed by any taxpayer in any physical place of business where a substantial portion of the retail cigarette sales activity of the business is routinely conducted.

Moving a Physical Place of Business

In the event that a dealer intends to move the physical place of business listed on a certificate to a new location, the dealer must file an amendment to the application at least 30 days in advance of the move. The Department will inspect the new physical place of business and, if such place of business meets all of the requirements, issue a new exemption certificate bearing the updated address. A dealer will not be required to pay a fee to the Department for the issuance of the new certificate. The certificate with the original address will become invalid upon the issuance of the new certificate, or 30 days after notice of the move is provided to the Department, whichever occurs sooner.

Authorized Representatives

The cigarette resale exemption certificate may be used by any authorized representative of the dealer. An authorized representative is an individual who has an ownership interest in or is a current employee of the dealer who possesses a valid

cigarette exemption certificate. The dealer may be held liable for any violation of the Retail Sales and Use Tax or Cigarette Tax statutes or related guidelines by such authorized representative.

Denial and Revocation of Exemption Certificates

The Department will deny an application for a cigarette resale exemption certificate and will suspend or revoke a cigarette resale exemption certificate previously issued to an applicant, if the Department determines that:

1. The taxpayer is a person who is not 18 years of age or older;
2. The taxpayer is a person who is physically unable to carry on the business or has been adjudicated incapacitated;
3. The taxpayer has not resided in the Commonwealth for at least one year immediately preceding the application, unless in the opinion of the Department, good cause exists for the dealer to have not resided in the Commonwealth for the immediately preceding year;
4. The taxpayer has not established a physical place of business in the Commonwealth;
5. A court or administrative agency has found that the taxpayer's physical place of business does not conform to the requirements of the Commonwealth or the local governing body in which the business is located;
6. The physical place of business occupied by the taxpayer is not constructed, arranged, or illuminated so as to allow access to and reasonable observation of any room or area in which cigarettes are to be sold;
7. The taxpayer is not an authorized representative of the business;
8. The taxpayer made a material misstatement or material omission in the application;
9. The taxpayer has defrauded, or attempted to defraud, the Department or any federal, state, or local government, by making, maintaining or filing reports, documents, tax returns or business records that are fraudulent or contain a false representation of material fact;
10. The Tax Commissioner has determined that the taxpayer has misused the certificate;

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11. The taxpayer has knowingly and willfully allowed any individual, other than an authorized representative, to use the certificate;
12. The taxpayer has failed to comply with the Retail Sales and Use Tax or Cigarette Tax statutes, regulations, rules, guidelines, forms, or other administrative guidance, or has been convicted under such statutes, however, no certificate will be denied or revoked on the basis of a failure to file a Retail Sales and Use Tax return or remit the tax unless the taxpayer is more than 30 days delinquent in any filing or payment and has not entered into an installment agreement; or
13. The taxpayer has been convicted under the laws of any state or of the United States of (i) any robbery, extortion, burglary, larceny, embezzlement, gambling, perjury, bribery, treason, racketeering, money laundering, a crime involving fraud under Chapter 6 of Title 18.2, possession of tax-paid cigarettes with the intent to distribute or possession of unstamped cigarettes for the purpose of evading the tax pursuant to *Va. Code* §§ 58.1-1017 and 58.1-1017.1 or any crime with similar elements, or (ii) a felony.

If a taxpayer has been denied a cigarette resale exemption certificate or has had a cigarette resale exemption certificate revoked, the taxpayer may not re-apply for a cigarette resale exemption certificate until 6 months after the date of the denial or revocation has passed.

Revocations

A list of all cigarette resale exemption certificates that have been revoked will be available on the Department's website. To determine if a particular cigarette resale exemption certificate is valid, stamping agents or dealers may contact the Department's Tobacco Unit at (804) 371-0370. Additionally, dealers registered for the Virginia Retail Sales and Use Tax may login to the Department's website and look up the account number listed on a purchaser's Form ST-10 or Form ST-10C to verify that the account is currently registered.

Renewal of Cigarette Exemption Certificate

The cigarette resale exemption certificate will be valid for five years from the date of issuance. At the end of the five-year period, the exemption certificate issued to a dealer who qualifies for the fast-track or expedited process will be automatically renewed and no fee will be required. Dealers receiving their exemption certificate through the application process must apply to the Department to renew the cigarette resale exemption certificate and pay the \$50 application fee. However, the 30-day waiting period is not applicable to exemption certificate renewals.

Authorized Holders

A person may not possess more than 25 cartons of stamped cigarettes with the intent to distribute unless such person is an “authorized holder.” Under the new law, retail dealers and wholesale dealers, or their affiliates, must possess a valid cigarette resale exemption certificate in order to be an authorized holder. See *Va. Code* §§ 58.1-1000 and 58.1-1017.1.

Penalties for Using a Forged or Invalid Exemption Certificate

Any person who purchases 5,000 or fewer cigarettes using a forged or invalid Cigarette Resale Exemption Certificate is guilty of a Class 1 misdemeanor for a first offense and a Class 6 felony for a second or subsequent offense. Any person purchasing more than 5,000 cigarettes is guilty of a Class 6 felony for a first offense and a Class 5 felony for a second or subsequent offense.

In addition, the use of a forged or invalid cigarette resale exemption certificate to purchase cigarettes is subject to civil penalties of i) \$2.50 per pack, but not less than \$5,000, for a first offense; ii) \$5 per pack, but not less than \$10,000, for a second offense committed within a 36-month period; and iii) \$10 per pack, but not less than \$50,000, for a third or subsequent offense committed within a 36-month period. The civil penalties will be assessed and collected by the Department of Taxation as other taxes are collected. See *Va. Code* § 58.1-1017.3.

Additional Information

These Guidelines are available online in the Laws, Rules & Decisions section of the Department’s website, located at www.tax.virginia.gov. For additional information, please contact the Department at (804) 367-8037.

Approved:



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Tax Commissioner