

# VIRGINIA CIGARETTE TAX RATE INCREASE GUIDELINES AND RULES

April 8, 2020

These guidelines and rules are published by the Department of Taxation (“the Department”) to provide guidance to cigarette wholesalers and retailers and to the public regarding the cigarette tax rate increase that will take effect on July 1, 2020. The cigarette tax rate increase is provided for in Item 3-5.21 of the 2020 Appropriation Act (House Bill 30). The 2020 Appropriation Act also increases the rates of the Tobacco Products Tax and imposes the tax on liquid nicotine effective July 1, 2020. The Department will issue separate guidelines and rules regarding the Tobacco Products Tax changes.

Item 3-5.21 of the 2020 Appropriation Act requires the Tax Commissioner to establish guidelines and rules for implementation of the cigarette tax rate increase. These guidelines and rules supplement the Department’s existing Cigarette Tax Regulations (23 Virginia Administrative Code 10-370-10 *et seq.*). To the extent that there is a conflict between the existing regulations and these guidelines and rules, these guidelines and rules govern the administration of the cigarette tax during the transition from the current tax rate to the new tax rate, including the months preceding and following July 1, 2020.

Item 3-5.21 (D) of House Bill 30 provides that the development and publication of these guidelines and rules is exempt from the provisions of the Administrative Process Act (*Va. Code § 2.2-4000 et seq.*). The Department has worked with cigarette wholesalers and retailers to develop these guidelines and rules. As necessary, additional guidelines and rules will be published and posted on the Department’s website at [www.tax.virginia.gov](http://www.tax.virginia.gov).

## **Cigarette Tax Increase**

Effective July 1, 2020, the state cigarette tax rate will increase from 1.5 cents per cigarette (30 cents per pack of 20 cigarettes) to 3.0 cents per cigarette (60 cents per pack of 20 cigarettes).

## **Allocation of Revenue Stamps**

During April, May, and June of 2020 (the “allocation months”), the Department will limit its sales of revenue stamps at the current tax rate (“old stamps”) based on each stamping agent’s usage of stamps during the same months in the previous year (the “base months”). The number of old stamps that each stamping agent may purchase during each of the allocation months will be limited to its usage during the base month increased by 20 percent in April, 15 percent in May, and 10 percent in June in order to accommodate increased customer demand prior to the tax increase. The purchase limit will be rounded up to the next full roll of stamps. The Department will apply the purchase limitations by stamping permit number, rather than consolidating the stamp purchases, stamping history, and inventory of affiliated stamping agents.

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Upon reaching the purchasing limit for each month in the period, orders (and payments) for old stamps will be returned unfilled. Beginning inventory of unaffixed stamps as of April 1, 2020 and stamp purchases made after April 1, 2020 will count against each stamping agent’s purchasing limits. Any stamping agent that exceeds its purchase limit must return any excess stamps to the Department.

In the event that a stamping agent does not purchase its entire allocation for the month of April, the unused April allocation will carry forward and may be used in May or June, or partly in both. Unused allocations from the month of May will not carry forward.

*Example of Monthly Purchase Allocations*

In 2019, the stamping agent used 85,000 stamps in April, 80,000 stamps in May, and 85,000 stamps in June. Increasing the stamping agent’s usage in the base months by the appropriate factors results in a monthly allocation of 120,000 (rounded up from 102,000) in April, 120,000 (rounded up from 92,000) in May, 120,000 (rounded up from 93,500) in June. Assume each roll is 30,000 stamps.

	<u>April</u>	<u>May</u>	<u>June</u>	<u>Total</u>
Monthly Allocation	120,000	120,000	120,000	360,000
Beginning Inventory 4/1/2020	35,000			
2020 Purchase Orders	120,000	90,000	120,000	330,000
2020 Orders to be filled by the Department	90,000 (a)	60,000	120,000 (b)	270,000

Notes:

- (a) As the stamping agent had an initial inventory of 35,000 stamps, the April order of 120,000 would cause the April monthly limit of 120,000 to be exceeded and therefore would not be filled. The stamping agent, however, would be permitted to submit a 90,000 April order (rounded up from 85,000) and still comply with the monthly limit.
- (b) Although the stamping agent purchased only 90,000 stamps in May, the unused 30,000 allocation from May does not carry forward to June.

The Department will apply the purchase limitations to each stamping permit, rather than consolidating the stamp purchases, stamping history, and inventory of affiliated stamping agents.

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*Code of Virginia* § 58.1-1009 provides that any person who sells revenue stamps not affixed to cigarettes is guilty of a Class 6 felony. Under its authority to issue transitional guidelines and rules, however, the Department will allow affiliated stamping agents to transfer stamps between each affiliate during April, May, and June 2020 after providing notice to the Department. Stamping agents should contact Larry Leach in the Department's Fiscal Office at (804) 367-6345 or [larry.leach@tax.virginia.gov](mailto:larry.leach@tax.virginia.gov).

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. For purposes of these guidelines, a person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

### **Exceptions to Purchase Limits and Appeals**

The Department may, upon application of a stamping agent, make exceptions to revenue stamp purchase limits in cases where purchase allocations based on prior stamp usage impose an undue hardship on a stamping agent operating in good faith under the guidelines and rules. For example, purchase limits for new stamping agents could be based on measures of more recent stamping activity. Requests must be made to the Department in writing. The Department will provide a verbal response to written requests within five business days, followed by a written response. Please contact Larry Leach in the Department's Fiscal Office at (804) 367-6345 or [larry.leach@tax.virginia.gov](mailto:larry.leach@tax.virginia.gov) for more information.

In order to avoid exceeding their allocations, each stamping agent should monitor its customers' purchases and limit customer purchases to quantities that will not deplete the stamping agent's allocations prior to the end of each month. The Department will not make exceptions to the purchase limits in cases where stamping agents fail to limit customer purchases.

### **Sales of New Stamps**

The Department will begin selling stamps reflecting the increased tax rate ("new stamps") on or before June 1, 2020. Purchase limits will not apply to sales of new stamps. No transitional stamps will be issued. A floor tax (see below) will apply in lieu of the use of transitional stamps.

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#### **Deadlines**

The following deadlines will apply to the transition:

- The Department will not sell old stamps after Friday, June 26, 2020. In the event of a hardship, stamping agents may petition the Department for an exemption from this deadline. Stamping agents should contact Larry Leach in the Department's Fiscal Office at (804) 367-6345 or [larry.leach@tax.virginia.gov](mailto:larry.leach@tax.virginia.gov).
- Stamping agents and persons operating on their behalf may not apply old stamps to cigarette packs after 11:59 P.M. on Tuesday, June 30, 2020.

#### **Filing of Floor Tax Returns by Stamping Agents**

Stamping agents shall pay a floor tax in lieu of the application of transitional stamps. No later than July 30, 2020, each stamping agent shall file a floor tax return with the Department setting forth the number of packs of cigarettes with an old stamp affixed to the pack in the agent's possession as of 12:01 A.M. on July 1, 2020. The floor tax return must be on a form specified by the Department. Accompanying the floor tax return, each stamping agent shall remit a payment to the Department in an amount equal to \$0.30 multiplied by the number of packs of 20 cigarettes and \$0.375 multiplied by the number of packs of 25 cigarettes in the agent's possession as of 12:01 A.M. on July 1, 2020.

The floor tax return for any stamping agent operating as both a wholesaler and a retailer shall set forth the number of packs with an old stamp affixed to the pack that are located in its distribution area or facility as of 12:01 A.M. on July 1, 2020 and the floor tax shall be an amount equal to \$0.30 multiplied by the number of packs of 20 cigarettes and \$0.375 multiplied by the number of packs of 25 cigarettes in the distribution area or facility.

Floor tax return forms will be mailed to stamping agents not later than Friday, June 12, 2020. They will also be available on the Department's web site, [www.tax.virginia.gov](http://www.tax.virginia.gov).

#### **Unapplied Stamps**

Unapplied old stamps must be returned to the Department at the stamping agent's expense. Stamps must be postmarked, shipped, or received by the Department no later than July 1, 2020. Each stamping agent is responsible for counting and reporting to the Department the number of stamps returned. The stamping agent will receive credit toward future stamp purchases only if the old stamps are postmarked, shipped, or received by the Department no later than July 1, 2020. Additionally, in order to be eligible for a return credit, the stamping agent must have filed a completed floor tax return, with the requisite payment, no later than July 30, 2020.

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Return credits may not be used for future stamp purchases until the floor tax return and remittance have been filed with the Department. Stamping agents may not use an anticipated return credit in calculating their floor tax remittance.

### **Bonds and Letters of Credit**

Stamping agents who purchase stamps on credit by posting a bond or letter of credit should review their bond or letter of credit to insure that it will cover the increased cost of stamps due to the rate increase. The bond or letter of credit must cover the amount of purchases by a stamping agent. Stamping agents cannot exceed the amount of their bond to buy stamps. Please contact Larry Leach in the Department's Fiscal Office at (804) 367-6345 or [larry.leach@tax.virginia.gov](mailto:larry.leach@tax.virginia.gov) for more information.

### **Penalties for Violating Cigarette Tax Law**

Under *Code of Virginia* § 58.1-1003, failure by a stamping agent to follow cigarette stamping procedures may result in the agent having its permit revoked.

In addition, under *Code of Virginia* § 58.1-1013, any stamping agent who fails to properly affix the required stamps will be required to pay a civil penalty of (i) \$2.50 per pack, up to \$500, for the first violation by a legal entity within a 36-month period; (ii) \$5.00 per pack, up to \$1,000, for the second violation by the legal entity within a 36-month period; and (iii) \$10 per pack, up to \$50,000, for the third and any subsequent violation by the legal entity within a 36-month period.

Where willful intent exists to defraud the Commonwealth, such person will be required to pay a civil penalty of \$25 per pack, up to \$250,000. It shall be prima facie evidence of intent to defraud when the number of unstamped cigarettes exceeds either 30 packs or five percent of the cigarettes in the place of business of such person, whichever is greater. Notwithstanding these threshold limits, if the number of unstamped packs exceeds 500 packs, it shall be prima facie evidence of intent to defraud. Any cigarettes in the place of business of any person required by the provisions of this chapter to stamp the same is prima facie evidence that they are intended for sale.

As the floor tax is in lieu of the application of transitional stamps, stamping agents attempting to shift product to their retail outlets, related entities, or customers, or receiving any benefit other than normal payment for cigarettes purchased from retailers for sending product to them during the transitional period to avoid the floor tax at the wholesale level, will be subject to the civil penalties set forth above. The failure by a stamping agent to follow these transitional guidelines and rules may also result in the agent having its permit revoked.

### **Purchasing Revenue Stamps**

Stamping agents may purchase cigarette stamps from the Department by completing Form TT-2, Order for Virginia Cigarette Tax Stamps. Present the completed form with

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your payment to the Department's Fiscal Office at 1957 Westmoreland Street, Richmond, VA 23230. Stamps are also available for purchase from the Office the Treasurer or Commissioner of the Revenue for the following localities:

City of Bristol  
City of Culpeper  
City of Danville  
City of Fairfax  
City of Lynchburg  
City of Roanoke  
City of Virginia Beach  
City of Waynesboro

Please contact Larry Leach in the Department's Fiscal Office at (804) 367-6345 or [larry.leach@tax.virginia.gov](mailto:larry.leach@tax.virginia.gov) for more information.

**Cigarette Tax Forms**

Revised cigarette tax forms will, not later than June 12, 2020, be available on the Department's web site, [www.tax.virginia.gov](http://www.tax.virginia.gov).

**Additional Information**

For additional information about purchasing stamps or posting a bond or letter of credit, please contact Larry Leach in the Department's Fiscal Office at (804) 367-6345 or [larry.leach@tax.virginia.gov](mailto:larry.leach@tax.virginia.gov).

If you have other questions regarding the Cigarette Tax, please contact the Department's Tobacco Unit at [tobaccounit@tax.virginia.gov](mailto:tobaccounit@tax.virginia.gov) or call (804) 371-0730.

These guidelines, along with other reference documents, are available in the Laws, Rules and Decisions section of the Department's website, located at [www.tax.virginia.gov](http://www.tax.virginia.gov).

**Approved:**



Craig M. Burns  
Tax Commissioner