

# **GUIDELINES AND RULES FOR THE TOBACCO PRODUCTS TAX**

**December 17, 2010**

Effective January 1, 2011, House Bill 626 and Senate Bill 478 (2010 *Acts of Assembly*, Chapters 191 and 804) impose the tobacco products tax on moist snuff and loose leaf tobacco at rates based on net weight. The Acts also require manufacturers shipping tobacco products into the Commonwealth to file a monthly report with TAX of the names and addresses of the persons receiving the shipments, and the type of product, brand, and quantities of tobacco products that were shipped. The Tax Commissioner may authorize a manufacturer to file such reports less frequently than monthly.

These guidelines and rules ("Guidelines") are issued by the Department of Taxation ("TAX") to provide guidance to taxpayers regarding the new law. These guidelines are exempt from the provisions of the Administrative Process Act (*Va. Code* § 2.2-4000 *et seq.*). Effective January 1, 2011, these Guidelines supersede the Tobacco Products Tax Guidelines and Rules issued by TAX on January 1, 2006 and any guidance issued that may be in conflict with these Guidelines. As necessary, additional Guidelines will be published and posted on TAX's website, [www.tax.virginia.gov](http://www.tax.virginia.gov).

## **Definitions**

"Affiliate" means an individual or entity that controls, is controlled by, or is under common control with another individual or entity. An individual or entity controls an entity if the individual or entity owns, directly or indirectly, more than 10 percent of the voting securities of the entity.

"Chewing tobacco" means any leaf tobacco not intended to be smoked.

"Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette).

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term "cigarette" includes "roll-your-own" tobacco, which means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 2**

"Distributor" means 1) any person engaged in the business of selling tobacco products in the Commonwealth who brings, or causes to be brought, into the Commonwealth from outside the Commonwealth any tobacco products for sale in the Commonwealth; 2) any person who makes, manufactures, fabricates, or stores tobacco products in the Commonwealth for sale in the Commonwealth; 3) any person engaged in the business of selling tobacco products outside the Commonwealth who ships or transports tobacco products to any person in the business of selling tobacco products in the Commonwealth; or 4) any retail dealer in possession of untaxed tobacco products in the Commonwealth.

"Dry snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked and is intended to be placed in the nasal cavity. "Dry snuff" may also be known as "nasal snuff."

"Loose leaf tobacco" means any leaf tobacco that is not intended to be smoked, but shall not include moist snuff.

"Manufacturer" means a person who manufactures or produces tobacco products and sells tobacco products to a distributor.

"Manufacturer's representative" means a person employed by a manufacturer to sell or distribute the manufacturer's tobacco products.

"Manufacturer's sales price" means the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

"Moist snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked but shall not include any finely cut, ground or powdered tobacco that is intended to be placed in the nasal cavity. "Moist snuff" includes items such as snus and dissolvable tobacco products.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Pipe tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

"Retail dealer" means any person who sells or offers any tobacco products for sale to consumers.

"Roll-your-own tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 3**

"Smokeless tobacco" means snuff and chewing tobacco.

"Snuff" means a tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked.

"Tobacco product" or "tobacco products" means (i) "cigar" as defined in § 5702(a) of the Internal Revenue Code, and as such section may be amended; (ii) "smokeless tobacco" as defined in § 5702(m) of the Internal Revenue Code, and as such section may be amended; or (iii) "pipe tobacco" as defined in § 5702(n) of the Internal Revenue Code, and as such section may be amended.

"Wholesale dealer" means any person who sells tobacco products at wholesale to retail dealers or institutional, commercial or industrial users.

### **Imposition of the Tax**

The Tobacco Products Tax is imposed on tobacco products a distributor 1) brings or causes to be brought into the Commonwealth for sale in the Commonwealth; 2) makes, manufactures, or fabricates in the Commonwealth for sale in the Commonwealth; or 3) ships or transports to retailer dealers in the Commonwealth to be sold by those retail dealers in the Commonwealth. The Tobacco Products Tax, however, is due when tobacco products are sold in the Commonwealth and not when the tobacco products are brought into the Commonwealth for sale. The tax is imposed once, and only once, on all tobacco products for sale in the Commonwealth.

Distributors may sell tobacco products, with proper documentation, to other licensed distributors and affiliates exempt from the Tobacco Products Tax. The purchasing distributor is liable for the Tobacco Products Tax for such tobacco products when he sells to a retailer within the Commonwealth. Licensed distributors will continue to be liable for the Tobacco Products Tax on sales of tobacco products to retailers in Virginia.

Each distributor who sells tobacco products to another licensed distributor or an affiliate must render with each sale itemized invoices showing the distributor's name and address, the purchaser's name and address, the date of sale, all prices, and the wording "Virginia Tobacco Products Tax NOT Paid." The seller must preserve legible copies of invoices for three years after the date of sale.

### **Example 1**

A distributor sells the tobacco products to a retailer in Virginia. The distributor pays the tobacco products tax on the products. The retailer subsequently ships the tobacco products to a store in North Carolina for sale in that state. The retailer asks for a refund of the tobacco products tax. As the tobacco products tax was imposed on the sale of the tobacco products by the distributor to the retailer, no refund would be owed to the retailer.

## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 4**

### Example 2

Distributor A sells tobacco products to another licensed distributor in Virginia, Distributor B. Distributor A does not pay the tobacco products tax on the products. Distributor B subsequently sells the tobacco products to a retailer in Virginia for sale in the Commonwealth. Distributor B pays the tobacco products tax on the products.

### Example 3

Distributor A sells tobacco products to another licensed distributor in Virginia, Distributor B. Distributor A does not pay the tobacco products tax on the products. Distributor B subsequently ships the tobacco products to a retailer in North Carolina for sale in that state. No tobacco products tax is owed on the transaction.

### **Transitional Rules**

All tobacco products offered for sale in the Commonwealth by a distributor prior to January 1, 2011 are subject to the tobacco products tax at the rate of 10% of the manufacturer's sales price.

Beginning January 1, 2011, moist snuff and loose leaf tobacco offered for sale in the Commonwealth by a distributor will be subject to the tobacco products tax at the new rate structures. (See "Moist Snuff" and "Loose Leaf Tobacco" below) All other tobacco products will continue to be subject to the tobacco products tax at the rate of 10% of the manufacturer's sales price.

### Example 4

A distributor brings moist snuff into the Commonwealth for sale on December 31, 2010. The distributor reports the tobacco products on the December return due January 20, 2011 and pays the tobacco products tax on the moist snuff at the rate of 10% of the manufacturer's sales price.

### Example 5

A distributor brings moist snuff into the Commonwealth for sale on January 1, 2011. The distributor reports the tobacco products on the January return due February 20, 2011 and pays the tobacco products tax on the moist snuff at the rate of \$0.18 per ounce based on net weight.

### **Moist Snuff**

Effective January 1, 2011, the tobacco products tax is imposed on moist snuff at a rate of \$0.18 per ounce based on net weight. Distributors should calculate the tax based on the net weight of each package of moist snuff. If the net weight is listed using a unit of

## Guidelines and Rules for the Tobacco Products Tax

December 17, 2010

Page 5

measurement other than ounces, the distributor must convert the net weight to ounces in order to determine the tax due. The distributor may round to the nearest hundredth of an ounce. A distributor who calculates and pays the tobacco products tax in good faith reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent determination that such weight information was incorrect.

Moist snuff is defined as any tobacco product consisting of finely cut, ground, or powdered tobacco that is not intended to be smoked but shall not include any finely cut, ground or powdered tobacco that is intended to be placed in the nasal cavity. Moist snuff includes items such as snus and dissolvable tobacco products. Dry snuff would continue to be subject to the tobacco products tax at the rate of 10% of the manufacturer's sales price.

### Example 6

A distributor brings a can of moist snuff into the Commonwealth for sale on January 1, 2011. The net weight listed by the manufacturer on the package is 1.2 ounces. The actual weight of the can of moist snuff is 1.3 ounces.

The tobacco products tax on the can of moist snuff is calculated by multiplying \$0.18 by the number of ounces listed on the package, 1.2. The distributor pays \$0.216 ( $\$0.18 * 1.2$ ) in tobacco products tax for the can of moist snuff. The distributor is not liable for the additional tax on the actual weight of the can or for interest or penalties solely because the weight information was incorrect.

### Example 7

On a two-for-one promotion, a manufacturer located outside of Virginia sells 10 1-ounce cans of moist snuff. The distributor resells the 10 packages to a retail dealer located in Virginia for the price of 5 cans. The distributor would pay the tobacco products tax on the 10 1-ounce cans. The distributor pays \$1.80 ( $\$0.18 * 10$ ) in tobacco products tax.

### Example 8

As a promotional offer, a manufacturer located outside of Virginia provides a free sample of a 1 ounce package of snus with the purchase of a 1 ounce can of moist snuff. The distributor resells the can of moist snuff to a retail dealer located in Virginia with the free sample of snus. The distributor would pay the tobacco products tax on the both the 1 ounce can of moist snuff and the 1 ounce package of snus. The distributor pays \$0.36 ( $\$0.18 * 2$ ) in tobacco products tax.

## Guidelines and Rules for the Tobacco Products Tax

December 17, 2010

Page 6

### Loose Leaf Tobacco

Effective January 1, 2011, the tobacco products tax is imposed on loose leaf tobacco at rates of \$0.21 for each unit that is less than 4 ounces, \$0.40 for each unit that is at least 4 ounces but not more than 8 ounces, \$0.70 for each unit more than 8 ounces but not more than 24 ounces. Units of loose leaf tobacco that exceed 24 ounces are subject to the Tobacco Products Tax at a rate of \$0.21 per unit plus \$0.21 for each 4 ounce increment that the unit exceeds 16 ounces. Distributors should calculate the tax based on the net weight of the consumer sized unit produced by the manufacturer to be sold to consumers as a single unit and containing one individual package. If the net weight is listed using a unit of measurement other than ounces, the distributor must convert the net weight to ounces in order to determine the tax due. The distributor may round to the nearest hundredth of an ounce.

A distributor who calculates and pays the tobacco products tax in good faith reliance on the net weight listed by the manufacturer on the package or on the manufacturer's invoice shall not be liable for additional tax, or for interest or penalties, solely by reason of a subsequent determination that such weight information was incorrect.

Loose leaf tobacco is defined as any leaf tobacco that is not intended to be smoked, but shall not include moist snuff. Loose leaf tobacco only includes tobacco solely consisting of leaf tobacco sold in loose form. Plug tobacco and other tobacco products containing fine tobacco or not sold in loose form would not be considered loose leaf tobacco. Such products would continue to be subject to the tobacco products tax at the rate of 10% of the manufacturer's sales price.

#### Example 9

A distributor brings one unit of loose leaf tobacco into the Commonwealth for sale on January 1, 2011. The net weight listed by the manufacturer on the unit is 3 ounces. The actual weight of the unit of loose leaf tobacco is 4 ounces.

The tobacco products tax on a 3 ounce unit of loose leaf tobacco is \$0.21. The distributor pays \$0.21 in tobacco products tax for the unit of loose leaf tobacco. The distributor is not liable for the additional tax on the actual weight of the unit or for interest or penalties solely because the weight information was incorrect.

#### Example 10

A distributor brings a case of 30 consumer sized units. The net weight listed by the manufacturer on the case is 90 ounces and the net weight listed on each unit is 3 ounces.

The distributor calculates the tobacco products tax based on the net weight of each consumer sized unit and not on the net weight of the case. The rate of tobacco products

## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 7**

tax on a 3 ounce unit of loose leaf tobacco is \$0.21. The distributor pays \$6.30 ( $30 * \$0.21$ ) in tobacco products tax for the loose leaf tobacco.

### Example 11

A distributor brings one unit of loose leaf tobacco into the Commonwealth for sale on January 1, 2011. The net weight listed by the manufacturer on the unit is 20 ounces.

The tobacco products tax on a 20 ounce unit of loose leaf tobacco is \$0.70. The distributor pays \$0.70 in tobacco products tax for the unit of loose leaf tobacco.

### Example 12

A distributor brings one unit of loose leaf tobacco into the Commonwealth for sale on January 1, 2011. The net weight listed by the manufacturer on the unit is 28 ounces.

The tobacco products tax on the unit of loose leaf tobacco is calculated by adding \$0.21 for each 4-ounce increment that the unit exceeds 16 ounces to \$0.21 for the unit. A unit of 28 ounces exceeds 16 ounces by 12 ounces ( $28-16$ ), or 3 4-ounce increments ( $12$  divided by  $4 = 3$ ). The distributor pays \$0.84 ( $\$0.21 + (3 * \$0.21)$ ) in tobacco products tax for the unit of loose leaf tobacco.

### Example 13

A distributor brings one unit of loose leaf tobacco into the Commonwealth for sale on January 1, 2011. The net weight listed by the manufacturer on the unit is 30 ounces.

The tobacco products tax on the unit of loose leaf tobacco is calculated by adding \$0.21 for each 4-ounce increment that the unit exceeds 16 ounces to \$0.21 for the unit. A unit of 30 ounces exceeds 16 ounces by 14 ounces ( $30-16$ ), or 4 4-ounce increments ( $14$  divided by  $4 = 3.5$ ). The distributor pays \$1.05 ( $\$0.21 + (4 * \$0.21)$ ) in tobacco products tax for the unit of loose leaf tobacco.

### Example 14

On a two-for-one promotion, a manufacturer located outside of Virginia sells 10 3-ounce units of loose leaf tobacco. The distributor resells the 10 units to a retail dealer located in Virginia for the price of 5 units. The distributor would pay the tobacco products tax on the 10 3-ounce units. The distributor pays \$2.10 ( $\$0.21 * 10$ ) in tobacco products tax.

### Example 15

As a promotional offer, a manufacturer located outside of Virginia provides a free sample of a 1 ounce package of snus with the purchase of a 3 ounce unit of loose leaf tobacco. The distributor resells the unit of loose leaf tobacco to a retail dealer located in

## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 8**

Virginia with the free sample of snus. The distributor would pay the tobacco products tax on the both the 3 ounce unit of loose leaf tobacco and the 1 ounce package of snus. The distributor pays \$0.21 in tobacco products tax for the unit of loose leaf tobacco and \$0.18 ( $\$0.18 * 1$ ) in tobacco products tax for the snus, for a total of \$0.39 ( $\$0.21 + \$0.18$ ).

### **Roll-Your-Own Tobacco**

For the purpose of distribution within the Commonwealth, every person within the Commonwealth who sells, stores, or receives roll-your-own tobacco shall pay a cigarette excise tax at the rate of 10% of the manufacturer's sales price. The cigarette excise tax due on roll-your-own tobacco is reported on Form TT-8, Virginia Tobacco Products Tax Return.

### **Other Tobacco Products**

Tobacco products, other than moist snuff and loose leaf tobacco, are subject to the tobacco products tax at the rate of 10% of the manufacturer's sales price. Plug tobacco, dry snuff and other tobacco products containing fine tobacco or not sold in loose form are not loose leaf tobacco or moist snuff and would continue to be subject to the tobacco products tax at the rate of 10% of the manufacturer's sales price. The manufacturer's sales price is the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor. If a distributor is unable to determine the manufacturer's sales price, he may use the purchase price of the tobacco products to compute the tax liability.

### **Manufacturer's Sales Price**

Manufacturer's sales price is the total amount for which tobacco products are sold, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the dealer, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, losses or any other expenses whatsoever, including federal excise taxes. Manufacturer's sales price does not include any cash discount allowed and taken or finance charges, carrying charges, service charges or interest from credit extended on sales of tobacco products. In the event that the buyer and seller are affiliates or TAX determines that the price established by the parties is not consistent with arms length transactions involving similar products, the manufacturer's sales price must be the greater of the sales price established by the parties or the manufacturer's list price for the tobacco products. If a distributor is unable to determine the manufacturer's sales price, he may use the purchase price of the tobacco products to compute the tax liability.



## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 9**

### Example 16

A distributor brings roll-your-own tobacco into the Commonwealth for sale on January 30, 2011. The manufacturer's sales price is \$10. The distributor pays \$1 ( $\$10 * 0.1$ ) in tobacco products tax for the roll-your-own tobacco.

### Example 17

A distributor brings a unit of plug tobacco into the Commonwealth for sale on January 30, 2011. The manufacturer's sales price is \$10. The distributor pays \$1 ( $\$10 * 0.1$ ) in tobacco products tax for the unit of plug tobacco.

### Example 18

A manufacturer located outside of Virginia sells 1,000 packages of tobacco products with a list price of \$1 each to a licensed distributor for \$1,000 in March. The distributor resells the 1,000 packages to a retail dealer located in Virginia for \$1,500 in March. The distributor reports the tobacco products on the March return due April 20 as having a manufacturer's sales price of \$1,000 and pays \$100 ( $\$1,000 * 0.10$ ) in tobacco products tax for the tobacco products.

### Example 19

On a two-for-one promotion, a manufacturer located outside of Virginia sells 2,000 packages of tobacco products with a list price of \$1 each to a licensed distributor for \$1,000 in March. The distributor resells the 2,000 packages to a retail dealer located in Virginia for \$1,500 in March. The distributor reports the tobacco products on the March return due April 20 as having a manufacturer's sales price of \$1,000 and pays \$100 ( $\$1,000 * 0.10$ ) in tobacco products tax for the tobacco products.

## **Exemptions**

The tax does not apply to any transactions in interstate or foreign commerce, or to the federal government, its agencies and instrumentalities that, under provisions of the United States Constitution, Virginia is prohibited from taxing.

## **Unlawful Possession**

No person may engage in the business of selling tobacco products as a distributor in the Commonwealth without first having received a separate license from TAX for each place of business. It is unlawful for any person who is not a licensed distributor to import, transport, or possess, for resale, any tobacco products in the Commonwealth, or under circumstances and conditions that indicate that tobacco products are being imported, transported, or possessed in a manner as to knowingly and intentionally evade or attempt to evade the tobacco products tax. Such tobacco products are subject

## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 10**

to seizure, forfeiture and destruction by TAX or any law-enforcement officer of the Commonwealth. All fixtures, equipment, materials and personal property used in substantial connection with the sale or possession of tobacco products involved in a knowing and intentional violation of the tobacco products tax are subject to seizure and forfeiture.

### **Licensing of Distributors**

Each application for a distributor's license must be accompanied by a non-refundable application fee, not to exceed \$750 for a three year permit. In the event that the applicant has more than one place of business, TAX may waive the application fee for its other places of business. In the event that the applicant has paid an application fee to obtain a cigarette stamping permit for a location, TAX may waive the tobacco products tax license application fee for that location.

Every application for a license must be made on a form prescribed by TAX and the following information must be provided:

1. The name and address of the applicant. If the applicant is a corporation, it must also provide the name and address of its principal officers. If the applicant is any other type of legal entity, it must also provide the name and address of each of its members;
2. The address of the applicant's principal place of business;
3. The location where the business to be licensed is to be conducted; and
4. Such other information as TAX may require.

Application forms are available on TAX's web site, [www.tax.virginia.gov](http://www.tax.virginia.gov).

The application fee will be applied to TAX's administrative and other costs of processing distributor's license applications, conducting background investigations and issuing distributor's licenses. Any amount collected in excess of such costs as of June 30 in even numbered years will be reported to the State Treasurer and deposited into the state treasury.

TAX will conduct a background investigation of the applicant and such of its officers and employees as deemed necessary by TAX. The background investigation may include a Virginia Criminal History Records search. TAX may also conduct a National Criminal Records search and fingerprinting as required by the Federal Bureau of Investigation. In addition to the background investigations required to obtain a license, TAX may conduct background investigations of officers and employees hired after the license is issued or renewed. TAX may also require distributors to notify TAX of personnel changes in positions requiring a background investigation.

## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 11**

TAX may refuse to issue a distributor's license or may suspend, revoke or refuse to renew a distributor's license if it determines that the applicant or any of its officers and employees have been 1) found guilty of any fraud or misrepresentation in any connection; 2) convicted of robbery, extortion, burglary, larceny, embezzlement, fraudulent conversion, gambling, perjury, bribery, treason, or racketeering; or 3) convicted of a felony. Any person who knowingly and willfully falsifies, conceals or misrepresents a material fact or knowingly and willfully makes a false, fictitious or fraudulent statement or representation in an application for a distributor's license is guilty of a Class 1 misdemeanor.

TAX may at any time revoke the license issued to any distributor who violates any of the provisions of the tobacco products tax, or of these guidelines and rules. No license may be transferred to another person.

Each distributor must prominently display its license, or a copy thereof, at the licensed premises and provide a copy to each wholesale or retail dealer located in the Commonwealth to whom it sells tobacco products. In the event that its license expires or is revoked, the distributor must immediately notify each wholesale or retail dealer located in the Commonwealth to whom it sells tobacco products.

TAX will compile and maintain a current list of licensed distributors that will be updated on a monthly basis and posted on TAX's website. Persons who purchase tobacco products for resale should check this list frequently to ensure that they are buying from licensed distributors.

### Example 20

A wholesale dealer located in Virginia and other states sells tobacco products to retail and wholesale dealers located in Virginia and other states. The wholesale dealer is a distributor and must 1) obtain a license from TAX; 2) provide a copy of its license to each of its customers located in Virginia; 3) file monthly returns concerning its purchases of tobacco products during the preceding month for its Virginia locations; and 4) pay the tax due regarding such purchases at the time the return is filed.

### Example 21

A retail dealer located in Virginia buys tobacco products exclusively from a wholesale dealer located in another state that has not obtained a tobacco products tax license from TAX. The retail dealer is a distributor and must 1) obtain a license from TAX; 2) file monthly returns concerning its purchases of tobacco products during the preceding month; and 3) pay the tax due on such purchases at the time the return is filed. In this example, the manufacturer's sales price would be the purchase price paid by the retail dealer.

## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 12**

### Example 22

A retail dealer located in Virginia buys tobacco products exclusively from a licensed distributor. The retail dealer 1) has obtained a copy of the distributor's license issued by TAX; 2) has not been notified by the distributor or TAX that the registration has been terminated; and 3) each invoice received from the distributor reflects that the tobacco products tax due regarding the products listed on the invoice will be paid by the distributor by the wording "Virginia Tobacco Products Tax Paid." Regardless of whether the distributor is located in Virginia or another state, the retail dealer is not a distributor and is not required to obtain a license with TAX, file a monthly return or to pay the tax regarding these purchases.

### Filing of Monthly Returns

Every distributor registered for the Tobacco Products Tax is required to file Form TT-8, Virginia Tobacco Products Tax Return, on or before the 20th day of the month following the reporting period. A return must be filed for each month even if no tax is due. At the time of filing Form TT-8, Virginia Tobacco Products Tax Return, the distributor must pay the amount of tax due. The return for each period becomes delinquent on the twenty-first day of the succeeding month if not paid.

Distributors are required by TAX to complete and retain detailed schedules supporting all entries on monthly returns, including but not limited to information on:

- Previously taxed tobacco products that have been returned to the manufacturer;
- Previously taxed tobacco products that have been exchanged for untaxed product;
- Previously taxed tobacco products sold in other states;
- Exempt sales; and
- Sales and purchases of previously taxed products.

### Dealer's Discount

Beginning with the June, 2010 return due July 20, 2010, the dealer discount for accounting for and remitting the Tobacco Products Tax was suspended. Prior to the June, 2010 return each distributor was allowed to deduct two percent of the tax otherwise due when filing its monthly return and paying the tax, if the amount due was not delinquent at the time of payment.

**Penalties and Interest**

Any distributor who fails to file a return or pay the full amount of the tax due will be subject to a penalty equal to five percent of the tax due if the failure is for not more than one month, with an additional two percent for each additional month, or fraction thereof, during which the failure continues, not to exceed 20 percent in the aggregate. In no case, however, will the penalty be less than \$10 and the minimum penalty will apply whether or not any tax is due for the period for which such return was required. TAX has, in its discretion, the authority to waive these penalties. Interest will accrue until the tax is paid.

Any distributor who files a false or fraudulent return with willful intent to defraud the Commonwealth, or willfully fails to file a return with the intent to defraud the Commonwealth, will be subject to a penalty equal to 50 percent of the tax due. It will be prima facie evidence of intent to defraud the Commonwealth when any distributor reports its tax liability at 50 percent or less of the actual amount.

**Credits and Refunds**

In the event that TAX determines that the amount paid regarding any monthly return was greater than the amount of tax due the Commonwealth, the excess may be taken as a credit by the distributor against a subsequent month's tobacco products tax liability.

If, however, the distributor requests a refund, such excess will be refunded to the distributor within 45 days of the request. The refund will include interest from the due date of the return to which such excess is attributable to or the date such excess was paid to TAX, whichever is later, and end on a date determined by TAX preceding the date of the refund check by not more than seven days.

**Records**

Each distributor must keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of: 1) tobacco products held, purchased, manufactured, brought in or caused to be brought in from outside the Commonwealth or shipped or transported to retailers in the Commonwealth; 2) all sales of tobacco products made; 3) all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor; and 4) any other records required by TAX. All such books, records and other papers and documents must be preserved for a period of at least three years, unless TAX authorizes, in writing, their destruction or disposal at an earlier date. At any time during usual business hours, duly authorized agents or employees of TAX may enter any place of business of a distributor and inspect the premises, the books, records and other papers and documents required to be kept and the tobacco products contained therein.

## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 14**

Each distributor who sells tobacco products to persons other than to another licensed distributor, an affiliate or an ultimate consumer must render with each sale itemized invoices showing the distributor's name and address, the purchaser's name and address, the date of sale, all prices, and the wording "Virginia Tobacco Products Tax Paid." In the event that items subject to the tobacco products tax are sold with items not subject to the tax, the invoice must show separate subtotals for taxable and nontaxable items or the seller must issue separate invoices for taxable and nontaxable items. The seller must preserve legible copies of invoices for three years after the date of sale.

Each distributor must procure itemized invoices of all tobacco products purchased. The invoices must show the name and address of the seller and the date of purchase. The distributor must preserve a legible copy of each invoice for three years after the date of purchase.

Persons failing to make records available for inspection by TAX during regular business hours are guilty of a Class 2 misdemeanor under Va. Code § 58.1-103.

### **Manufacturer's Report**

House Bill 626 and Senate Bill 478 (2010 *Acts of Assembly*, Chapters 191 and 804) provides that effective January 1, 2011, each manufacturer that ships tobacco products to any person located in the Commonwealth shall file a report with the Department no later than the twentieth of each month identifying all such shipments made by the manufacturer during the preceding month unless the Tax Commissioner authorizes the manufacturer to file such reports for a period less frequently than monthly when, in the opinion of the Tax Commissioner, doing so would improve the efficiency of the administration of the tax imposed by this article.

The Tax Commissioner has determined that allowing manufacturers to file this report on an annual basis would improve the efficiency of the administration of the tobacco products tax. Such report will be due no later than February 20 of each year for the preceding calendar year, beginning February 20, 2012. Each such report shall identify for the preceding calendar year the names and addresses of the persons within the Commonwealth to whom the shipments were made and the quantities of tobacco products shipped, by type of product and brand. For tobacco products taxed based on weight, such as moist snuff and loose leaf tobacco, the report must include both the units and weight of each tobacco product shipped. Manufacturers may use their own template for the report as long as the all of the information required is presented using a reasonable format. The Tax Commissioner reserves the right to convert a manufacturer back to filing the report on a monthly basis if the efficiency of the administration of the tobacco products tax would be improved.

## **Guidelines and Rules for the Tobacco Products Tax**

**December 17, 2010**

**Page 15**

Manufacturer reports should be mailed to:

**Tobacco Unit  
Department of Taxation  
P.O. Box 715  
Richmond, VA 23218-0715**

### **Appeals**

Any person may appeal issues related to the tobacco products tax to TAX using the administrative appeals process administered by TAX under *Va. Code* § 58.1-1820 *et seq.* and 23 *VAC* 10-20-165.

A third party may always provide information, testimony, or documentary evidence on behalf of a taxpayer who has been assessed tobacco products tax or penalties. However, a properly executed Power of Attorney is needed in order for a third party to file an administrative appeal on behalf of a taxpayer. The Power of Attorney must be signed and dated by both the taxpayer and the taxpayer's representative and must accompany the administrative appeal. Form PAR 101, Power of Attorney and Declaration of Representative can be found on TAX's website, [www.tax.virginia.gov](http://www.tax.virginia.gov). Any other Power of Attorney form containing the same information will also be accepted by TAX.

All appeals, along with supporting documentation, should be mailed to:

**Appeals and Rulings  
Department of Taxation  
P.O. Box 27203  
Richmond, VA 23261-7203**

### **Additional Information**

These Guidelines and rules are available on-line in the Tax Policy Library section of TAX's website, located at [www.tax.virginia.gov](http://www.tax.virginia.gov). If you have any questions, please contact the Tobacco Tax Unit at (804) 371-0730.

**Approved:**



---

Craig M. Burns  
Tax Commissioner