

ARTICLE III. CIGARETTE AND BEVERAGE TAXES

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Authority

The provisions of this Article III issued under the Pennsylvania Cigarette Tax Act (72 P. S. §§ 3169.101—3169.1203), unless otherwise noted.

Source

The provisions of this Article III adopted December 27, 1971, 2 Pa.B. 36, unless otherwise noted.

CHAPTER 71. GENERAL PROVISIONS

GENERAL

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MASTER SETTLEMENT AGREEMENT

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GENERAL**§ 71.1. [Reserved].****Source**

The provisions of this § 71.1 amended through March 9, 1984, effective January 21, 1984, 14 Pa.B. 851; reserved February 13, 1998, effective February 14, 1998, 28 Pa.B. 979. Immediately preceding text appears at serial pages (188583) to (188584) and (89251) to (89252).

§ 71.2. Reserved].**Source**

The provisions of this § 71.2 reserved July 1, 1983, effective July 2, 1983, 13 Pa.B. 2067. Immediately preceding text appears at serial page (35899).

§ 71.3. [Reserved].**Source**

The provisions of this § 71.3 reserved February 13, 1998, effective February 14, 1998, 28 Pa.B. 979. Immediately preceding text appears at serial page (89252).

§ 71.4. Definitions.

The following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

Act—The Cigarette Tax Act, Article XII of the TRC (72 P. S. §§ 8201—8297).

Basic cost of cigarettes—The gross price of cigarettes from the manufacturer to a dealer in the quantities stated including freight and handling charges and the full face value of any tax which may be required by law.

Cigarette stamping agent—A person who is licensed as such by the Department for the purpose of affixing cigarette tax stamps to packages of cigarettes and transmitting the proper tax to the Commonwealth.

Cigarettes—Any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and whether or not the tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, excepting tobacco. The term does not include cigars.

Cigarette vending machine—A mechanical or electrical device from which cigarettes are dispensed for a consideration.

Code—The Cigarette Sales and Licensing Act, Article II-A of the FC (72 P. S. §§ 201-A—230-A).

Cost of doing business—The dealer's aggregate costs for its previous 12-month reporting period, as determined by accounting principles regularly employed in the determination of costs for the purpose of Federal income tax reporting, including direct and indirect costs, such as product costs, freight

charges, labor costs, costs of equipment, rental and maintenance expenses, cigarette licenses, preopening expenses, management fees, rents, depreciation, selling costs, maintenance expenses, interest expenses, delivery costs, all types of license fees, all types of taxes, insurance, advertising costs and any central and regional administrative expenses.

Cost of the retailer—The basic cost of cigarettes to a retailer, which includes the cost of the wholesaler and cigarette stamping agent, plus a markup to cover the retailer's cost of doing business, which cost of doing business, in the absence of satisfactory proof of a lesser cost, is presumed to be 6% of the basic cost of cigarettes to the retailer.

Cost of the stamping agent—The basic cost of cigarettes to a cigarette stamping agent.

Cost of the wholesaler—The basic cost of cigarettes to a wholesaler, which includes the cost of the stamping agent, plus a markup to cover the wholesaler's cost of doing business, which cost of doing business, in the absence of satisfactory proof of a lesser cost, is presumed to be 4% of the basic cost of cigarettes to the wholesaler.

Dealer—A Pennsylvania-licensed cigarette stamping agent, wholesaler or retailer.

Operating expenses—A dealer's cost of doing business decreased by the dealer's cost of goods sold.

Promotional sales plan—The placement upon the premises of a dealer of literature, premiums, displays, goods, wares, merchandise or other material designed to stimulate, encourage or induce the purchase of cigarettes by the consumer, or a marketing plan that involves a price reduction or gift offered in conjunction with the sale of cigarettes that causes a dealer to be in violation of the code or act.

Retailer—

(i) A person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale to the ultimate consumer.

(ii) A person who, in the usual course of business, owns, leases or otherwise operates one or more vending machines for the purpose of sale of cigarettes to the ultimate consumer.

(iii) A person who buys, sells, transfers or deals in cigarettes for profit and is not licensed as a cigarette stamping agent or wholesaler.

Sale—A transfer for a consideration, in exchange, as barter, as a gift, as an offer for sale or in distribution, in any manner or by any means whatsoever.

Wholesaler—

(i) A person who, in the usual course of business, purchases cigarettes from a cigarette stamping agent or other wholesaler and receives, stores, sells and distributes within this Commonwealth at least 75% of all the cigarettes purchased by him to retail dealers or wholesale dealers or any combination who shall buy the cigarettes from him for the purpose of resale to the ultimate consumer, if the person maintains an established place of business for the receiving, storage and distribution of cigarettes.

(ii) A person who is engaged in the business of distributing cigarettes through vending machines to the ultimate consumer by means of placing the cigarette vending machines, owned or leased by him, in various outlets within this Commonwealth and who pays to the owner or lessee of the premises a commission or rental for the use of the premises, if the vending machine operator operates at least ten vending machines. In addition, the vending machine operator shall meet the other requirements for licensing of wholesalers under this article, including maintaining an established place of business for the receiving, storage and distribution of cigarettes.

(iii) A person, including a franchisee, who owns and operates at least five retail outlets in this Commonwealth, having 100% common ownership, who purchases cigarettes from a cigarette stamping agency or another wholesaler for resale to the ultimate consumer. In addition, the person shall maintain complete and accurate records of all purchases and sales in his main office and also in the retail outlet.

Authority

The provisions of this § 71.4 issued under section 6 of the Fiscal Code (72 P. S. § 6); section 1291 of the Tax Reform Code of 1971 (72 P. S. § 8291); and sections 209-A, 214-A, 215-A and 227-A of the act of April 9, 1929 (P. L. 343, No. 176) (72 P. S. §§ 209-A, 214-A, 215-A and 227-A).

Source

The provisions of this § 71.4 adopted February 13, 1998, effective February 14, 1998, 28 Pa.B. 979.

§ 71.5. Cigarette tax stamps.

(a) *Method of purchase.* A cigarette stamping agent shall purchase cigarette tax stamps by presenting to the Department or one of its authorized agents, Form Rev-1043, Cigarette Stamping Agency Purchase Order, listing the cigarette stamping agent's name, license number, address, telephone number and the amount of tax stamps desired for purchase.

(b) *Method of payment.* Cigarette stamping agents may pay for cigarette tax stamps in exchange for any combination of the following:

(1) Cash.

(2) Approved credit up to the face amount of the security filed with and approved by the Department as required by section 1215 of the act (72 P. S. § 8215).

(i) Payment for tax stamps purchased on credit is due by the 15th of the month following the month in which the cigarette stamping agent purchased the tax stamps.

(ii) If a licensed cigarette stamping agent who purchases cigarette tax stamps on credit fails to remit full payment for accumulated cigarette tax stamps purchased on credit by the due date, the credit privileges may be suspended or revoked by the Department.

(3) Cigarette tax credits issued by the Department under § 71.6 (relating to refunds or credits for cigarette tax stamps), which shall be presented to the Department at the time the purchase order for cigarette tax stamps is placed.

(c) *Affixation of tax stamps.*

(1) Tax stamps shall be affixed to each individual pack of cigarettes in an aggregate denomination equal to the amount of tax imposed upon the number of cigarettes contained therein.

(2) Tax stamps shall be affixed to the bottom of each pack of cigarettes so that they are clearly visible to subsequent purchasers. Stamps shall be canceled in ink with the licensed cigarette stamping agent's identification number.

(3) Improperly stamped cigarettes shall be treated as unstamped cigarettes and shall be subject to confiscation and forfeiture under the act. The Department will dispose of cigarettes forfeited under the act by either selling the cigarettes to a licensed cigarette stamping agent or a cigarette manufacturer, or by destroying the improperly stamped cigarettes.

Authority

The provisions of this § 71.5 issued under section 6 of the Fiscal Code (72 P. S. § 6); section 1291 of the Tax Reform Code of 1971 (72 P. S. § 8291); sections 209-A, 214-A, 215-A and 227-A of the act of April 9, 1929 (P. L. 343, No. 176) (72 P. S. §§ 209-A, 214-A, 215-A and 227-A).

Source

The provisions of this § 71.5 adopted February 13, 1998, effective February 14, 1998, 28 Pa.B. 979.

§ 71.6. Refunds or credits for cigarette tax stamps.

(a) *Affixed tax stamps.* A refund or credit for cigarette tax stamps purchased by a cigarette stamping agent which have been affixed to packages of cigarettes will be made to the agent upon satisfactory proof presented to the Department that the tax-stamped cigarettes have been withdrawn from the market because they are unsaleable, sold to persons exempt from the tax under the act, or lost or destroyed by fire, casualty or Act of God. A refund or credit will not be granted for cigarette tax paid upon stamped cigarettes that have been stolen.

(1) A cigarette stamping agent's refund or credit shall be based upon the face value of the stamps, less commissions allowed the cigarette stamping agent under the act.

(2) If the cigarettes are returned to the manufacturer, the cigarette stamping agent shall give to the Department a sworn statement by the manufacturer certifying receipt of the returned cigarettes.

(b) *Unaffixed tax stamps.* The Department may issue a refund or a credit to present or former cigarette stamping agents for previously-purchased, unaffixed tax stamps when the Department deems a refund or credit appropriate such as when a cigarette stamping agent is no longer qualified to affix tax stamps, when a cigarette stamping agent is in liquidation, when a cigarette stamping agent possesses damaged tax stamps that are unfit for use or when a cigarette stamping agent possesses stamps that have been superseded by stamps of a newer design or denomination.

(1) The Department will issue a refund or credit for unaffixed tax stamps for the actual amount of cigarette tax paid for the stamps if satisfactory proof is presented to the Department within the time permitted under section 1253 of the act (72 P. S. § 8253). A claim for a refund or credit may not be filed when

cigarette tax stamps have not been paid for in full. The Department will determine whether the cigarette stamping agent is entitled to either a refund or credit and the method of payment.

(2) Unaffixed stamps shall accompany the claim, which shall be sent to the Department by registered mail or other method approved by the Department.

Authority

The provisions of this § 71.6 issued under section 6 of the Fiscal Code (72 P. S. § 6); section 1291 of the Tax Reform Code of 1971 (72 P. S. § 8291); and sections 209-A, 214-A, 215-A and 227-A of the act of April 9, 1929 (P. L. 343, No. 176) (72 P. S. §§ 209-A, 214-A, 215-A and 227-A).

Source

The provisions of this § 71.6 adopted February 13, 1998, effective February 14, 1998, 28 Pa.B. 979.

Cross References

This section cited in 61 Pa. Code § 71.5 (relating to cigarette tax stamps).

§ 71.7. Exemptions from tax.

A cigarette stamping agent may sell cigarettes to purchasers who qualify for tax exempt status as enumerated in section 1209 of the act (72 P. S. § 8209) if the Department approves the purchaser's request for an exemption certificate. The Department will evaluate the request for an exemption certificate within 90 days of receipt. To obtain an exemption certificate, a purchaser shall file an application that shall state the purchaser's basis for exemption. Upon receipt and approval of the application by the Department, the Department will issue an exemption certificate to the purchaser. An exemption certificate shall be valid until surrendered by the purchaser or revoked by the Department for violating a provision listed in the act or the code.

Authority

The provisions of this § 71.7 issued under section 6 of the Fiscal Code (72 P. S. § 6); section 1291 of the Tax Reform Code of 1971 (72 P. S. § 8291); and sections 209-A, 214-A, 215-A and 227-A of the act of April 9, 1929 (P. L. 343, No. 176) (72 P. S. §§ 209-A, 214-A, 215-A and 227-A).

Source

The provisions of this § 71.7 adopted February 13, 1998, effective February 14, 1998, 28 Pa.B. 979.

§ 71.8. Sample cigarettes.

(a) Packages of sample cigarettes containing five or fewer cigarettes, which are to be furnished to consumers free of charge as provided in the act, shall be unstamped and prominently identified as "Sample Cigarettes Not for Sale—All Applicable State Taxes Paid."

(b) Packages of sample cigarettes containing six or more cigarettes shall be affixed with Pennsylvania cigarette tax stamps in accordance with the act and code.

Authority

The provisions of this § 71.8 issued under section 6 of the Fiscal Code (72 P. S. § 6); section 1291 of the Tax Reform Code of 1971 (72 P. S. § 8291); and sections 209-A, 214-A, 215-A and 227-A of the act of April 9, 1929 (P. L. 343, No. 176) (72 P. S. §§ 209-A, 214-A, 215-A and 227-A).

Source

The provisions of this § 71.8 adopted February 13, 1998, effective February 14, 1998, 28 Pa.B. 979.

§ 71.9. Cigarette stamping agent report requirements.

(a) *Report due date.* Every licensed cigarette stamping agent shall establish a fiscal or calendar monthly reporting period. The cigarette stamping agent shall file with the Department on or before the 20th day following the end of each fiscal or calendar month a cigarette tax report covering the preceding month on a form prescribed by the Department (see also § 71.32(a) (relating to additional cigarette stamping agent responsibilities) regarding additional reporting requirements).

(b) *Penalties.* A cigarette stamping agent who violates this section shall be subject to a \$100 fine for the first offense, a \$200 fine for the second offense and a \$300 fine for the third and any further offense.

Authority

The provisions of this § 71.9 issued under section 6 of the Fiscal Code (72 P. S. § 6); section 1291 of the Tax Reform Code of 1971 (72 P. S. § 8291); sections 209-A, 214-A, 215-A and 227-A of the act of April 9, 1929 (P. L. 343, No. 176) (72 P. S. §§ 209-A, 214-A, 215-A and 227-A); amended under section 3 of the Tobacco Settlement Agreement Act (35 P. S. § 5673); and section 6 of The Fiscal Code (72 P. S. § 6).

Source

The provisions of this § 71.9 adopted February 13, 1998, effective February 14, 1998, 28 Pa.B. 979; amended April 11, 2003, effective April 12, 2003, 33 Pa.B. 1842. Immediately preceding text appears at serial page (239999).

Cross References

This section cited in 61 Pa. Code § 71.32 (relating to additional cigarette stamping agent responsibilities).

§ 71.10. Cigarette dealer record requirements.

(a) Each dealer shall:

- (1) Obtain invoices covering all purchases of cigarettes whether tax stamped or unstamped.
- (2) Maintain receiving records of cigarettes which include the following:

- (i) The date.
 - (ii) The invoice number.
 - (iii) The quantity.
 - (iv) The brand.
 - (v) The supplier name.
- (3) Except for retailers, maintain records on the sale of cigarettes, including:
- (i) The name and address of the purchaser.
 - (ii) The amount of cigarettes sold.
 - (iii) The charge for cigarettes sold.
- (4) Retain invoices covering all purchases of Pennsylvania cigarette tax stamps.
- (5) Except for retailers, maintain a record of names and addresses of all other cigarette dealers to whom cigarettes are sold.
- (6) Prepare credit memoranda with the date the following transactions were completed:
- (i) For wholesalers, transactions involving cigarettes returned by customers to a wholesaler's stock.
 - (ii) For cigarette stamping agents, transactions involving unstamped and stamped cigarettes returned to manufacturers.
- (b) Dealers shall keep and maintain the records mentioned under subsection (a) for 4 years at the location for which the license is issued.
- (c) A dealer who violates subsection (b) shall be subject to a \$100 fine for the first offense, a \$200 fine for the second offense and a \$300 fine for the third and any further offense.

Authority

The provisions of this § 71.10 issued under section 6 of the Fiscal Code (72 P. S. § 6); section 1291 of the Tax Reform Code of 1971 (72 P. S. § 8291); and sections 209-A, 214-A, 215-A and 227-A of the act of April 9, 1929 (P. L. 343, No. 176) (72 P. S. §§ 209-A, 214-A, 215-A and 227-A).

Source

The provisions of this § 71.10 adopted February 13, 1998, effective February 14, 1998, 28 Pa.B. 979.

§ 71.11. Examination of records, equipment and premises.

- (a) Dealers shall provide the Department and its authorized agents the means, facilities and opportunity to examine the dealers' books, records, cigarette inventory, premises and equipment to determine compliance with the act and code.
- (b) A person who prevents or hinders the Department or designated agent from examining the items stated in subsection (a) shall be subject to a \$100 fine for the first offense, a \$200 fine for the second offense and a \$300 fine for the third and any further offense.

Authority

The provisions of this § 71.11 issued under section 6 of the Fiscal Code (72 P. S. § 6); section 1291 of the Tax Reform Code of 1971 (72 P. S. § 8291); and sections 209-A, 214-A, 215-A and 227-A of the act of April 9, 1929 (P. L. 343, No. 176) (72 P. S. §§ 209-A, 214-A, 215-A and 227-A).

Source

The provisions of this § 71.11 adopted February 13, 1998, effective February 14, 1998, 28 Pa.B. 979.

MASTER SETTLEMENT AGREEMENT**§ 71.31. Definitions.**

The following words and terms, when used in this section and § 71.32 (relating to additional cigarette stamping agent responsibilities), have the following meanings, unless the context clearly indicates otherwise:

Affiliate—A person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this definition, the terms “owns,” “is owned” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of 10% or more.

Cigarette—A product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

- (i) A 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.
- (iii) A 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 subparagraph (i).
- (iv) A roll-your-own, 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 subparagraph, 0.09 ounce of roll-your-own tobacco shall constitute one individual cigarette.

Nonparticipating tobacco product manufacturer—A tobacco product manufacturer who does not participate in the Master Settlement Agreement (published at 30 Pa.B. 5619 (October 28, 2000)) entered into on November 23, 1998, by the Commonwealth and leading United States tobacco product manu-

facturers in the action entitled *Commonwealth v. Philip Morris Inc., et al.*, Philadelphia County, April term, No. 97-2443, January 13, 1999, 40 Pa.D. & C. 4th 225 (1999).

Person—Any individual, unincorporated association, company, corporation, limited liability corporation, joint stock company, group committee, agency, syndicate, trust or trustee, receiver, fiduciary, partnership or conservator. Whenever used in this section or § 71.32 to establish or impose penalties, the word “person” when applied to a partnership, unincorporated association or other joint venture means the partners or members thereof and when applied to a corporation means all officers and directors thereof.

Tobacco product manufacturer—

(i) A person that after June 22, 2000, directly and not exclusively through any affiliate does one of the following:

(A) Manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where the importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to the cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of the cigarettes does not market or advertise the cigarettes in the United States).

(B) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

(C) Becomes a successor of a person described in clause (A) or (B).

(ii) The term does not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls under subparagraph (i)(A), (B) or (C).

Authority

The provisions of this § 71.31 issued under section 3 of the Tobacco Settlement Act (35 P. S. § 5673); and section 6 of The Fiscal Code (72 P. S. § 6).

Source

The provisions of this 71.31 adopted April 11, 2003, effective April 12, 2003, 33 Pa.B. 1842.

Cross References

This section cited in 61 Pa. Code § 71.9 (relating to cigarette stamping agent report requirements).

§ 71.32. Additional cigarette stamping agent responsibilities.

(a) The Tobacco Settlement Agreement Act (35 P. S. §§ 5671—5675), requires that the Department collect and maintain data relating to the number of Pennsylvania State Cigarette Excise Tax stamps affixed to packages of cigarettes.

As part of the monthly cigarette tax report required by § 71.9(a) (relating to cigarette stamping agent report requirements), every licensed cigarette stamping agent shall complete and attach to the report a schedule, in the form as is prescribed by the Department, to account for and reconcile the number of Pennsylvania Cigarette Excise Tax stamps affixed to packages of cigarettes by the agent during the monthly period covered by the associated cigarette tax report. The schedule shall contain the following information:

- (1) A listing of the name and address of each nonparticipating tobacco product manufacturer from which the cigarette stamping agent made direct purchases of packages of cigarettes that were actually manufactured by the manufacturer, and the number of Pennsylvania Cigarette Excise Tax stamps affixed to the packages of cigarettes purchased from each manufacturer.
- (2) A listing of the name and address of all suppliers from which the cigarette stamping agent made purchases of cigarettes, including cigarettes purchased from one tobacco product manufacturer that were actually manufactured by another manufacturer. This listing shall include all purchases of cigarettes made by the cigarette stamping agent during the month, other than directly from the actual manufacturer of the cigarettes.
- (3) For each individual supplier listed under paragraphs (1) and (2), a listing of all brands of cigarettes purchased from the supplier and the number of Pennsylvania Cigarette Excise Tax stamps affixed to cigarette packages by the cigarette stamping agent with respect to each brand.
- (4) For each brand of cigarettes listed for each supplier under paragraph (3), the following additional information, if known:
 - (i) The name and address of the tobacco product manufacturer of the cigarettes.
 - (ii) The name and address of the person or entity first responsible for the cigarettes being designated or identified for sale in the United States.
- (b) Every cigarette stamping agent shall keep complete and accurate records of cigarettes sold and shall preserve and keep for 4 years all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a report is required and other pertinent papers and documents relating to the manufacture, purchase, sale or disposition of cigarettes.
- (c) The books, records, other papers and documents that are required to be kept shall, at all times during the usual business hours of the day, be subject to inspection by the authorized agents and employees of the Office of Attorney General or the Department of Revenue.
- (d) A monthly report that is not accompanied by the schedule prescribed by this section shall be considered incomplete. Extensions of time for filing purposes may be granted at the discretion of the Department.
- (e) The failure of a licensed cigarette stamping agent to comply with this section by not furnishing the schedule required by subsection (a), or by not furnishing complete and accurate information as required by the schedule, shall be

deemed a violation of section 1276(a) of the TRC (72 P. S. § 8276(a)) and the agent's license shall be subject to suspension or revocation under section 1276(b) of the TRC.

Authority

The provisions of this § 71.32 issued under section 3 of the Tobacco Settlement Act (35 P. S. § 5673); and section 6 of The Fiscal Code (72 P. S. § 6).

Source

The provisions of this 71.32 adopted April 11, 2003, effective April 12, 2003, 33 Pa.B. 1842.

Cross References

This section cited in 61 Pa. Code § 71.9 (relating to cigarette stamping agent report requirements).

[Next page is 72-1.]