

Cigarette and Tobacco Products

Tax Information and Common Terminology

Date Issued: 11-29-16

Tax Types: Cigarette, Tobacco and Consumable Materials

WHOLESALE / DISTRIBUTOR TAX INFORMATION

Cigarette Tax Paid by Cigarette Wholesaler. Pursuant to K.S.A. 79-3310, cigarette tax is:

- a. A tax imposed upon all cigarettes sold, distributed or given away within the state of Kansas. The tax is paid by the wholesale dealer first receiving the cigarettes. The wholesale dealer purchases stamps and pays the tax at that time.

The tax rate paid by the distributor is:

- \$1.29 on each package of 20 cigarettes; or,
- \$1.61 on each package of 25 cigarettes.

Tobacco Tax Paid by Tobacco Distributor. Pursuant to K.S.A. 79-3371, tobacco tax is imposed upon the privilege of selling or dealing in tobacco products in this state by any person engaged in business as a distributor.

The tax rate for tobacco tax is calculated at the rate of 10 percent of the wholesale sales price of such tobacco products.

The tobacco tax is imposed at the time the tobacco distributor:

- a. Brings or causes to be brought into this state from without the state tobacco products for sale;
- b. Makes, manufactures or fabricates tobacco products in this state for sale in this state; or,
- c. Ships or transports tobacco products to retailers in this state to be sold by those retailers.

RETAILER TAX INFORMATION

Retail Cigarette - Electronic Cigarette Dealers. For the privilege of selling tangible personal property at retail in this state, retailers shall collect and remit the state tax and any applicable local tax. The state tax rate is 6.50 %.

Vending Machine Information. For the privilege of selling tangible personal property at retail in this state, vending machine operators shall collect and remit the state tax and any applicable local tax. The state tax rate is 6.50%.

ADDITIONAL INFORMATION

Please visit our website for additional information and to obtain the following:

- Cigarette License Application
- Cigarette Monthly Reporting Forms
- Tobacco License Application
- Tobacco Monthly Reporting Forms
- Consumable Material Application
- Consumable Material Reporting Forms

COMMON TERMINOLOGY

Cigarette Wholesaler or Tobacco Distributor. Pursuant to K.S.A. 79-3301(bb), a Cigarette Wholesaler is:

- a. Any person who sells cigarettes to other wholesale dealers, retail dealers, vending machine operators and manufacturer's salespersons for the purpose of resale in the state of Kansas.

Pursuant to K.S.A. 79-3301(h), a Tobacco Distributor is any person who:

1. Is engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;
2. Makes, manufactures, fabricates or stores tobacco products in this state for sale in this state; or,
3. Is engaged in the business of selling tobacco products without this state who ships or transports tobacco products to any person in the business of selling tobacco products in this state.

Pursuant to K.A.R. 92-57-1 (c), a Distributor of consumable material, for purposes of K.S.A. 79-3399, means:

1. any person engaged in the business of selling consumable material in Kansas who brings, or causes to be brought, into Kansas consumable material for sale, unless that person is a retail dealer who has purchased the consumable material on a

tax-paid basis from a distributor:

2. any person who makes, manufactures, or fabricates consumable material for sale in Kansas;
3. any person engaged in the business of selling consumable material outside of Kansas who ships or transports consumable material to any person in the business of selling electronic cigarettes and/or consumable material in Kansas; or
4. person who has one or more retail dealer establishments that do either of the following:
 - a. Bring or cause to be brought into Kansas consumable material for sale by any of those retail dealer establishments; or
 - b. Makes, manufactures, or fabricates consumable material in Kansas for sale in Kansas. However, each person who has a retail dealer establishment from which the consumable material is sold to the consumer shall be deemed a retail dealer.

Stamps. Tax indicia purchased from the Director of Taxation applied to packs of cigarettes by means of a heat process.

Tax Indicia. Visible evidence of tax payment in the form of stamps applied to packs of cigarettes.

Synar. This is the law known as the Synar Amendment that was named after Mike Synar who was once a Congressman from Oklahoma. Its implementing regulations require states and U.S. territories to enact and enforce youth tobacco access laws; conduct annual random, unannounced inspections of tobacco outlets; achieve negotiated annual retailer violation targets; and, attain a final goal of 20 percent or below for retailer non-compliance.

Synar Inspections. Synar Inspections are the random controlled buys performed by the Cigarette and Tobacco Enforcement (CATE) Agents and Underage Cooperating Individuals (UCIs) based upon the random selection received from an independent contractor.

The Synar inspections are used to measure the State's compliance rate.

It is important for cigarette/electronic cigarettes and tobacco licensees not to sell cigarette and tobacco products to minors. When these illegal sales are made, it decreases our compliance rates and it may reduce the amount of funding received by the Kansas Department for Children and Families for substance abuse and prevention programs.

Underage Cooperating Individual (UCI). UCIs are minors that are utilized in the execution of enforcement visits.

Master Settlement Agreement (MSA). This settlement agreement was entered into with the leading United States tobacco product manufacturers in 1998. The master settlement agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the state (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

It is important for cigarette and tobacco retailers to ensure that they have only received cigarettes from their distributor that have a Kansas cigarette tax stamp affixed to the package and that the brands families received from distributors are listed on the Kansas Attorney General's website www.ksag.org under M.S.A. Participating Manufacturers or Non-Participating manufacturers. Any cigarettes or roll-your-own tobacco, stamped or unstamped, that are not listed on these two Directories are deemed to be contraband and will be seized and forfeited. Roll your own tobacco does not have a tax stamp but it must be listed on the Attorney General's website if it is to be sold in Kansas. Wholesalers and Distributors can store these products in Kansas only if the cigarettes have affixed the tax indicia of the other state in which each package is to be sold. You may view the lists at www.ksag.org

Participating Manufacturer. A participating manufacturer is:

1. Any entity that manufactures cigarettes, including roll-your-own, anywhere that such manufacturer intends to be sold in the United States including cigarettes that are intended to be sold in the United States through an importer;
2. 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; or,
3. A successor of any entity described above.

Original Participating Manufacturer (OPM). OPMs are the four manufacturers that first signed the MSA. They are RJ Reynolds, Philip Morris, Lorillard and Brown & Williamson. Lorillard and Brown & Williamson have since merged.

Subsequent Participating Manufacturer (SPM). SPMs are all participating manufacturers excluding the four original manufacturers (OPMs).

Non-Participating Manufacturer (NPM). A Non-Participating Manufacturer is a manufacturer who has not signed onto the MSA.

Safe Harbor List. The list maintained by the Kansas Attorney General's office of Non-Participating Manufacturer brands which are approved to sell in Kansas.

Participating Manufacturer List. The list maintained by the National Association of Attorneys General of Participating Manufacturer brands which are approved to sell in all states.

Qualified Escrow Fund. An escrow arrangement between a non-participating manufacturer and a U.S. Federal or U.S. State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000.00.

Certificate of Compliance. Annual reporting to the Kansas Attorney General which any tobacco product manufacturer that (1) sells cigarettes within the state of Kansas (whether directly or through any distributor, retailer, or similar intermediary) and (2) has not become a participating manufacturer in the MSA must submit by April 30th of the year following the sales year.

PACT Act. The Prevent All Cigarette Trafficking Act of 2009, the PACT Act, became effective June 29, 2010. This Act amends: (1) the Jenkins Act, which governs the collection of taxes on and trafficking in cigarettes, roll-your-own tobacco and smokeless tobacco and requires registration, reporting and record-keeping; (2) the Contraband Cigarette Trafficking Act, granting the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) inspection authority; and, (3) the laws pertaining to the U.S. Postal Service, making cigarettes and smokeless tobacco a non-mailable product (the law does permit a few restricted exceptions under 18 U.S.C. 1716E).

Trafficking in Contraband Cigarettes and Smokeless Tobacco. The Contraband Cigarette Trafficking Act, 18 U.S.C. §2341, et seq., was enacted in 1978 to combat the transportation of contraband cigarette from no- or low-tax localities to high-tax jurisdictions. The Act was amended in 2006 with the re-authorization of the Patriot Act, and was retitled to the Trafficking in Contraband Cigarettes and Smokeless Tobacco Act. Under the amended Act, it is a crime to ship, transport, receive, possess, sell, distribute or purchase contraband cigarettes or contraband smokeless tobacco. 'Contraband cigarettes' is defined in the Act as a quantity in excess of 10,000 cigarettes which bear no evidence of payment of the state cigarette tax in which they are found. 'Contraband smokeless tobacco' is defined as a quantity in excess of 500 single-unit consumer-sized cans or packages of smokeless tobacco, or their equivalent. The Act was amended again in 2010 with the PACT Act and granted the ATF the authority to inspect records, information and cigarettes or smokeless tobacco.

Jenkins Act. The Jenkins Act requires every person, including cigarette manufacturers, wholesalers, distributors, and delivery sellers, who sell, transfer, or ship for profit cigarettes, roll-your-own (RYO) tobacco, and smokeless tobacco in interstate commerce to: 1) Register with the US Attorney General's Office and the state tobacco tax administrator of each state into which shipments are made, and 2) file monthly reports with the state tobacco tax administrator no later than the 10th of each month.

The Registration Form 5070.1 is located on the ATF website <http://www.atf.gov/alcohol-tobacco/>. The registration form and the monthly reporting, memorandum or a copy of the invoice covering each and every shipment of cigarettes, RYO and smokeless tobacco made during the previous calendar month into the state of Kansas can be submitted to the Kansas Department of Revenue in electronic form. All invoices or memorandum information relating to specific customers must be organized by city or town and by zip code.

Cigarette - Electronic Cigarette Sales over the Internet, Telephone or Mail Order. K.S.A. 79-3399 requires each person engaged in the business of selling cigarettes and/or electronic cigarettes to persons residing in Kansas to obtain a license as provided by the Kansas Cigarette and Tobacco Products Act. The Act requires all retail cigarette - electronic cigarette dealers, whether located in or outside the state of Kansas, to have a registration certificate as provided in K.S.A. 79-3608. All cigarettes (excluding electronic cigarettes) sold to a person in Kansas must have a valid Kansas cigarette tax stamp affixed to each package.

Consumable Material. K.S.A. 79-3399 imposes a tax of \$0.05 per milliliter on the consumable material for electronic cigarettes. Any person engaged in business as a distributor of such consumable material is responsible for remitting this consumable material tax. This includes retailers who sell consumable material on which the consumable material tax has not been paid.

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