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## Administrative Rules

Rules as of March 2016

### **810-7-1-.01. Tobacco Tax - Administration and Enforcement of the Provisions of the Alabama Tobacco Tax Act Insofar as It Relates to Damaged Cigarettes and other Damaged Tobacco Products while being Transported or while in the Custody of Warehousemen or Carriers, and Particularly as to How Such Damaged Products are to be Stamped and the Tax Thereon is to be Paid Where They are Sold or How Such Damaged Products Might Otherwise be Disposed of.**

- (1) By order of the Commissioner of Revenue on the 24th day of March, 1970, the following tobacco tax rule is effective. In all cases where cigarettes and other tobacco products as are described in Title 40-25-2, as amended, Code of Alabama 1975, are damaged while in the custody of any warehouseman or carrier and such damaged products, or the delivery thereof are refused by the wholesaler or consignee, the warehouseman or carrier, as the case might be, may sell such damaged products without first affixing the required tobacco tax stamps when such sales are made to a licensed wholesaler who has a stamping permit issued by the Department of Revenue under Title 40 - §§40-25-5 and 40-25-1, Code of Alabama 1975. Where such cigarettes and other tobacco products are damaged to such an extent that they are unfit for consumption then they shall be destroyed by the warehouseman or carrier involved, and the destruction of such products shall be accomplished in all such cases in the presence of an examiner or other agent of the State Department of Revenue, who shall make a full report to the Department concerning the same. Otherwise the tax on said products shall be due.
- (2) In all other instances, the warehouseman or carrier involved must immediately stamp and pay the tobacco tax on such products.
- (3) In cases where such damaged products are sold by the warehouseman or carrier to a licensed wholesaler as above referred to, then the warehouseman or carrier involved must immediately make a full report of same to the State Department of Revenue and shall furnish to the Department copies of all invoices or other records of such sales.
- (4) Any violation of the above and foregoing regulation or the laws of this State pertaining to such cases will subject those persons involved to the penalties as are provided by law.

### **810-7-1-.02. Tobacco Tax Refunds Applicable to all Wholesale Dealers of Tobacco Products.**

The following documentation is to be submitted to the Department of Revenue by any wholesale dealer of tobacco products in applying for a tobacco tax refund: (1) The original affidavit from the manufacturer certifying as to the tobacco products received, listing these in detail, and also certifying that the required Alabama stamps were fixed and that the stamps have been destroyed. (2) A copy of the credit memorandum from the manufacturer showing the merchandise returned. (3) A copy of the wholesale dealer's invoice to the manufacturer showing in detail the tobacco products returned and the tax value of these tobacco products.

(Statutory Authority §40-25-10)

### **810-7-1-.03. Tobacco Tax Rules Applicable to National Guard Canteens.**

This rule has been adopted by the State Department of Revenue and was promulgated by the Adjutant General with the approval of the Governor and if violated could result in the revocation of the canteen permit, making it necessary for the Department of Revenue to pick up the tax exemption certificates issued to such canteen.

- (a) **Purchases.** All untaxed tobacco products handled by a canteen must be purchased from and delivered by a wholesale tobacco distributor duly qualified with the State Department of Revenue. The delivery by the distributor to the canteen must be made by a common carrier or distributor owned/leased vehicle. An authorized officer or employee of the canteen must issue and cause to be delivered to such wholesaler a purchase order

showing in detail the total number of cartons of cigarettes, boxes of cigars, cases of smoking tobacco, etc. included in the purchase. The purchase order form has been mutually approved by both the national guard and the State Department of Revenue and will include a space for the canteen to insert the Alabama tobacco tax exemption certificate number which will be used by the canteen to receipt the distributor for the untaxed tobacco products at the time the distributor makes delivery of same to the canteen. A copy of the purchase order from the canteen must accompany the shipment by the distributor to the canteen. Only those tax exemption certificates issued for the purchase of tobacco products may be used. The original or white copy of the certificate is to be delivered to the wholesaler.

- (b) **Sales.** Sales of unstamped tobacco products shall be limited to the quantity covered in the regulations of the Adjutant General.
- (c) **Records.** Full and complete records covering each purchase of unstamped tobacco products must be kept by the canteen. The pink copy of the tax exemption certificate which remains in the book must be kept. Full and complete accounting for all sales for unstamped tobacco products must be made. All tax exemption certificates must be accounted for and any certificates mutilated and not used to purchase tobacco products must be marked "void" and sent to the Tobacco Tax Division of the Department of Revenue with the next monthly report. Both the white original and the yellow copy of these voided certificates are to be transmitted. The records of all canteens shall be subject to audit by duly authorized agents of the Department of Revenue at any time.
- (d) **Monthly Reports.** All canteens shall be required to file a monthly report on or before the 10th of the following month, whether such canteen made any purchases of unstamped tobacco products or not. This report shall show the date, invoice number, wholesale tobacco distributor, as well as the total number of cartons of cigarettes, boxes of cigars, etc. covered by each purchase. In addition, the State tax value of these tobacco products must be shown on this report as well as the strength of the unit. The report must be accompanied by the yellow duplicate copies of the tax exemption certificates issued to the wholesaler at the time of purchase. The monthly report forms are mailed periodically and additional tax exemption certificates will be furnished upon request as they are needed.

(Statutory Authority §40-25-15(e))

#### **810-7-1-.04. Policy as to Snuff Manufacturers - Merchandise that is to be Destroyed.**

The snuff manufacturer will furnish the Department of Revenue a copy of the packing slip on which is listed in detail by sizes, quantities, etc., all of the snuff to be destroyed, together with a copy of the credit memorandum issued by the manufacturer covering the merchandise, and the affidavit from the representative to the effect that he has actually destroyed this merchandise setting out the value of the stamps affixed, and the Department will refund to the wholesaler the value of the stamps that were affixed to the destroyed merchandise. Procedures and practices by wholesalers which are strictly prohibited by tobacco tax law.

- (a) Borrowing unstamped tobacco from another wholesaler.
- (b) Pick up or exchange of unstamped tobacco from a bonded warehouse or freight terminal.
- (c) Intrastate shipment of unstamped tobacco to another wholesaler.
- (d) Sale, borrowing or lending of State stamps and State administered county stamps.
- (e) Failing to stamp tobacco within 36 hours of receipt.
- (f) Transporting unstamped tobacco to a national guard unit without a completed purchase order.
- (g) Delivery within Alabama of tobacco destined for other states. Such products must be delivered by the wholesaler in their vehicle or shipped by common carrier to the out-of-state location.

(Statutory Authority §§40-25-10 & 40-25-15(e))

#### **810-7-1-.05. Tobacco Administration Concerning Manufacturers and Their Salesmen.**

Salesmen should be informed of the illegality of transferring unstamped tobacco between wholesalers and transporting unstamped products in their automobiles. Manufacturers should be advised against sending unstamped samples to their salesmen by UPS, etc. Gratis cigarettes containing more than 4 cigarettes in a pack must be stamped with the State and applicable County stamps.

(Statutory Authority §40-25-10)

#### **810-7-1-.06. Gummed Cigarette Rolling Paper Tax.**

- (1) In cases where the gummed cigarette rolling papers are furnished by certain manufacturers in the same package with their tobacco product, the wholesale distributors purchasing said products are not liable for the tax on the papers when they are included in a package with a related tobacco product. The inclusion of gummed cigarette rolling papers in a container of tobacco is merely incidental to the sale of tobacco. The gummed cigarette papers are more of a convenience and an inducement to the purchase of the tobacco product.
- (2) Under Section 2 of Act 80-700, the tax is levied on gummed cigarette papers sold at wholesale in this State or imported into the State for use, consumption, or sale at retail.

(Statutory Authority §40-25A-16)

#### **810-7-1-.07. Computing Tobacco Tax on Give-Away Sample Cigarettes and Tobacco Products Other than Cigarettes.**

All cigarettes and other tobacco products distributed as samples, gratis or for promotional reasons shall be taxed in accordance with the provisions of §40-25-2(a)(8) and §40-25-2.1, Code of Alabama 1975. The appropriate tax shall be paid by affixing tax stamps to packages of cigarettes, or by filing the appropriate monthly tobacco tax return for tobacco products other than cigarettes.

(Statutory Authority §40-2A-7(a)(5), §40-25-2.1(i) and §40-25-10, Code of Alabama 1975. Adopted: October 24, 1983. Amended: Filed July 26, 2013, effective August 30, 2013.)

#### **810-7-1-.08. Procedure for Reporting and Payment of Tobacco Taxes on Tobacco Products Other Than Cigarettes.**

- (1) The license or privilege tax specified in Code Section 40-25-2 on all tobacco products other than cigarettes shall be paid on all purchases or receipts by any qualified wholesale distributor or retailer and any other person, firm, corporation, club or association within the State of Alabama when received for the purpose of selling, storing or distributing the tobacco products.
- (2) Payment of the tax due, if any, and a report, on a form prescribed by the Department, shall be filed with the Department on or before the twentieth day of each calendar month showing all receipts of tobacco products for the preceding calendar month. A copy of the report shall be maintained by the taxpayer, along with proper documentation which adequately differentiates and substantiates the amount of tax paid and all deductions, exemptions or credits claimed for each reporting period. Failure to receive a report form does not relieve the taxpayer from filing a report on or before the due date.
- (3) Payments may be by cash, check, electronic funds transfer (subject to the electronic funds transfer provisions), or any other legal tender.
- (4) The full amount of tax due shall be paid to the State Department of Revenue in the manner and time allowed above without any discount or offset being allowed, except for tobacco products returned to the manufacturer for credit as described herein.
- (5) Qualified wholesalers whose tobacco products are returned to the manufacturer or destroyed by the manufacturer's representative due to such products becoming unfit for use or consumption or unsaleable, before or after distribution, shall be allowed a credit on their monthly tax report only in the month in which proper documentation is received from the manufacturer. The following documents are required to substantiate credits: an original affidavit from the manufacturer, credit memorandum and a copy of the qualified wholesaler's invoice to the manufacturer, and such other documentation as the Department of Revenue may require.
- (6) Sales exempted from tobacco tax by law are to be excluded from the taxable measure in the month that the sales occur.
- (7) Every manufacturer, distributor, and importer shall file with the Department of Revenue a report concerning all sales, releases and deliveries of tobacco products to qualified wholesalers and retailers of

this state made or authorized by such manufacturer, distributor or importer during the preceding calendar month. Such manufacturer, distributor or importer shall also file a report each month showing all shipments of tobacco products from a point outside this state into this state during the preceding calendar month.

(a) The report required from manufacturers, distributors or importers shall provide the following information concerning each sale, release or delivery:

1. Name and address of purchaser.
2. Invoice or document number and invoice date.
3. Information pertaining to cancellation of invoices.
4. Gross billing appearing on the invoice.

(b) Each manufacturer, distributor or importer shall file the monthly report with the Department of Revenue by the last day of each calendar month.

(8) The regulations relating to the taxation and reporting for tobacco products other than cigarettes shall pertain to county taxation of tobacco products other than cigarettes with the following exceptions:

(a) The tax prescribed by a county shall be paid on all sales of tobacco products other than cigarettes by any qualified wholesaler or retailer or any other person, firm, corporation, club or association by the twentieth of the next calendar month following the month in which such sales occur.

(b) Any tobacco products returned to the manufacturer as provided in subparagraph (5) above. In addition to the documents enumerated in subparagraph (5), an authentic credit invoice or memorandum initiated by the qualified wholesaler to the purchaser of said products shall be provided.

(Statutory Authority §§ 40-25-2(a), 40-25-2(g), and 40-25-7, et al.) (Effective May 26, 1989; amended effective March 28, 2003)

### **810-7-1-.09. Procedure for Reporting and Payment of County Tobacco Taxes on Cigarettes and Submission of Tobacco Reports and Registration Requirements.**

(1) The license or privilege tax specified in all legislative acts, heretofore or hereafter enacted, regarding county tobacco taxes on cigarettes, which are to be administered and collected by the Alabama Department of Revenue, shall be paid on all sales by any qualified wholesale distributor or retailer and any other person, firm, corporation, club or association within the State of Alabama, when such sales of cigarettes are made into said counties.

(2) State-administered county cigarette tax shall be paid by affixing stamps. To ascertain state-administered county revenue stamps, each wholesaler or distributor shall complete and submit to the Department of Revenue an order for county cigarette stamps on a form prescribed by the Department. Orders shall be on the cash basis only. Each order shall be accompanied by payment in one of the following methods:

- (a) Cash.
- (b) Certified funds (cashier's check, money order, etc.).
- (c) Electronic Funds Transfer (EFT) subject to the electronic funds transfer provisions.

(3) A discount, in the amount of that allowed on the purchase of state stamps, will be allowed on county stamp purchases made by qualified wholesalers with a tobacco stamping permit ONLY.

(4) A report, on a form prescribed by the Department, shall be filed with the Department on or before the twentieth (20th) day of each calendar month showing all sales of cigarettes into said counties, stamp purchases, and inventories for the preceding calendar month. A copy of the report shall be maintained by the taxpayer, along with proper documentation which adequately differentiates and substantiates the amount of tax paid and all deductions, exemptions, or credits claimed for each reporting period by county. Failure to receive a report form does not relieve the taxpayer from filing a report on or before the due date.

(5) The full amount of tax due and the required report shall be paid and filed with the Alabama Department

of Revenue, in the manner and time allowed above without any offset being allowed, except for tobacco products returned to the manufacturer for credit as described herein. Insufficient tax payments and monthly filing requirements shall result in the loss of discount previously allowed and imposition of applicable penalties and interest.

(6) Qualified wholesalers whose tobacco products are returned to the manufacturer, or destroyed by the manufacturer's representative, due to such products becoming unfit for use or consumption after distribution, shall be allowed a refund. The following documents are required to substantiate refunds: an original affidavit from the manufacturer, a credit memorandum, an authentic credit invoice or memorandum initiated by the qualified wholesaler to the purchaser of said products, and a copy of the qualified wholesaler's invoice to the manufacturer, and such other documentation as the Department of Revenue may require.

(7) Sales exempted from tobacco tax by law are to be excluded from the taxable measure in the month that the sales occur.

(8) Every manufacturer, distributor (including a delivery seller), and importer shall file with the Alabama Department of Revenue reports concerning all sales, releases, and deliveries of tobacco products to qualified wholesalers, retailers, and consumers of this state made or authorized by such manufacturer, distributor (including a delivery seller), or importer during the preceding calendar month. Such manufacturer, distributor (including a delivery seller), or importer shall also file reports each month showing all shipments of tobacco products from a point outside this state into this state during the preceding calendar month.

(a) Entities required to file a monthly manufacturer's report shall provide the following information concerning each sale, release, or delivery:

- (1) Name and address of purchaser.
- (2) Invoice date.
- (3) Invoice or document number.
- (4) Quantity of cigarettes purchased per the invoice.
- (5) Information pertaining to cancellation of invoices.
- (6) Gross billing appearing on the invoice.
- (7) The distributor's permit or registration number issued by the Alabama Department of Revenue.
- (8) Any additional information as required by the Alabama Department of Revenue.

(b) Entities required to file a monthly Jenkins Act report shall provide the following information concerning each sale, release, or delivery:

- (1) Name and address of purchaser.
- (2) Invoice date.
- (3) Invoice or document number.
- (4) Brand of cigarettes, including roll-your-own (r-y-o), or smokeless tobacco purchased.
- (5) Number of cigarettes purchased.
- (6) Quantity (weight) of r-y-o tobacco purchased.
- (7) Quantity (weight) of smokeless tobacco (snuff or chewing tobacco) purchased.
- (8) Shipper's name.
- (9) Shipper's address.
- (10) Shipper's phone number.
- (11) Any additional information required by the Alabama Department of Revenue relating to the federal Jenkins Act, as amended.

(c) Each manufacturer, distributor (including a delivery seller), or importer shall file the monthly reports with the Department of Revenue no later than the 10th day of the month, covering each and every shipment of cigarettes or smokeless tobacco made during the previous calendar month.

(d) The report data submitted shall be in the format prescribed in the attached forms. Manufacturers, distributors (including delivery sellers), and importers may submit the data via physical form or

electronically.

(9) Any person who sells, transfers, or ships for profit cigarettes or smokeless tobacco in interstate commerce, whereby such cigarettes or smokeless tobacco are shipped into a State, locality, or Indian country of an Indian tribe taxing the sale or use of cigarettes or smokeless tobacco, or who advertises or offers for such a sale, transfer, or shipment shall register to distribute cigarettes or smokeless tobacco products into Alabama, and obtain a registered agent for service of process if located outside the State of Alabama. The information included on the registration document shall be in the format prescribed in the attached registration form.

(Statutory Authority §§40-2A-7(a)(5), 40-25-1, 40-25-2(a), 40-25-2, 40-25-7(a) (5), et al., Code of Alabama 1975, applicable County Tobacco Tax Acts Act 2005-315, 40-2A-11, 40-1-44, and the Jenkins Act, as amended by the PACT Act of 2009) (Effective September 19, 1989; amended effective March 28, 2003, Emergency Rule filed January 19, 2006, expires May 18, 2006. Permanent rule filed April 27, 2006, effective May 30, 2006; amended effective October, 1, 2010)

#### **810-7-1-10. Procedure Pertaining to the Exemption of Certain Organizations from State Tobacco and Playing Card Taxes.**

(1) With respect to tobacco and playing card taxes which are required by law to be added to the price of the tobacco products and playing cards and which are paid over to the State Department of Revenue by the qualified permitted distributor and not by the consumer, those organizations exempt from such tax under provisions of Article 1, Chapter 9, Title 40, Code of Alabama 1975, shall pay the appropriate tax at the time of purchase and the amount of such tax shall be refunded to such organization on a quarterly basis.

(2) Request for such refund shall be made on forms furnished by the Department of Revenue, properly attested to, and containing such information as the Department may deem necessary. Said information shall include but not be limited to the following:

- (a) Name and address of organization.
- (b) Qualified permit holder from whom product was received.
- (c) Invoice number and invoice date.
- (d) Type and number of each product purchased.
- (e) Amount of tax paid.

(Statutory Authority §40-9-12) (Effective September 18, 1992)

#### **810-7-1-11. Procedures Pertaining to the Escrow Provisions and Tobacco Master Settlement Agreement Complementary Legislation Concerning Tobacco Manufacturers.**

(1) The tobacco Escrow Provisions and Tobacco Master Settlement Agreement Complementary Legislation are codified in Title 6, Chapters 12 and 12A. These provisions obligate tobacco manufacturers and distributors to adhere to certain requirements.

(2) In addition to information currently reported, each qualified wholesaler; distributor; retailer; manufacturer; delivery seller (as defined by the PACT Act which amended the Jenkins Act) who sales any cigarettes or smokeless tobacco to a consumer in Alabama if the consumer submits the order via telephone or other method of voice transmission, mail orders, Internet, or other online service where the seller is not in the buyer's physical presence; or any other person; firm; corporation; club or association selling, receiving, distributing, storing or using tobacco products in the State of Alabama shall report the excise tax on cigarettes and roll-your-own tobacco.

(3) The wholesaler, distributor, retailer, manufacturer, delivery seller, etc. shall report the information to the Alabama Department of Revenue, on forms prescribed by the Department, no later than the twentieth day of each calendar month for the preceding calendar month's activity. The following information must be reported:

- (a) The month of activity.

- (b) The name of the manufacturer from whom the Alabama taxed cigarettes or roll-your-own tobacco originated.
- (c) The brand code.
- (d) The brand name.
- (e) The number of Alabama taxed cigarettes and roll-your-own tobacco units sold. (Units Sold is the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or roll-your-own tobacco containers) bearing the excise tax stamp of the state.)

1. For the purpose of roll-your-own tobacco, this product is taxed under the heading of “smoking tobacco” in Alabama tobacco tax statutes Title 40, Chapter 25, Section 2(a)(9), and the excise tax is paid by monthly report. The term “cigarette” includes roll-your-own tobacco. Roll-your-own is 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. Roll-your-own tobacco in the amount of 0.09 ounces shall constitute one individual cigarette.

(f) The conversion of roll-your-own tobacco ounces to cigarettes. For the purpose of computing roll-your-own tobacco to units sold, the tobacco must be converted to individual cigarettes by dividing total ounces of roll-your-own tobacco by 0.09

(4) A manufacturing company whose cigarettes and/or roll-your-own tobacco is distributed into Alabama and that manufacturing company elects not to participate in the Master Settlement Agreement is required to do the following:

(a) Establish an escrow fund in a federally or state chartered financial institution by April 15, 2000. The manufacturer may choose the institution; however, the following conditions must be met:

- 1. The institution must not be affiliated with any tobacco product manufacturer.
- 2. The institution must have assets of at least one billion dollars.
- 3. The escrow arrangement must require that the financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds’ principal inconsistent with Act 99-395, Section 3(2)
- 4. The tobacco products manufacturer may receive the interest or other appreciation on the escrow fund.

(b) Certify to the Commissioner of the Department of Revenue, no later than April 30, 2000 or April 30 following the year of activity, that an escrow fund was established and provide the Commissioner with a copy of the escrow agreement signed by the tobacco product manufacturer and financial institution.

(c) Place into a qualified escrow fund by April 15 of the year or by the last day of the month following the end of the quarter if required to make quarterly deposits, following the below year, the following amounts:

- 1. 1999: \$.0094241 per unit sold June 9, 1999 through December 31, 1999;
- 2. 2000: \$.0104712 per unit sold;
- 3. 2001 and 2002: \$.0136125 per unit sold;
- 4. 2003 through 2006: \$.0167539 per unit sold;
- 5. 2007 and each year thereafter: \$.0188482 per unit sold.

(d) Certify to the Commissioner of the Department of Revenue by April 30 of each year or no later than ten (10) days after each quarterly deposit date if required to make quarterly certifications, stating the number of units sold in Alabama and the amount deposited into the escrow fund. Verification of the deposit must be evidenced by a statement from the financial institution.

(Statutory Authority §§ 40-2A-7(a)(5), 6-12-2(10), 6-12A5(d), and 6-12A-7(d), Code of Alabama 1975,) (Emergency rule effective September 1, 1999, expires December 29, 1999. Permanent rule filed

December 1, 1999, effective January 5, 2000, amended June 30, 2000, effective August 4, 2000, amended June 15, 2011)

**810-7-1-13. Procedures for Taxing Snuff, Moist Snuff (Roll Snuff) and Smokeless Tobacco (Tobacco Similar in Composition to Snuff).**

- (1) Effective upon the adoption of this revenue rule, the following terms shall be defined as follows:
  - (a) The term "smokeless tobacco" refers to any tobacco products not intended to be smoked. For purposes of calculating the state tobacco taxes applicable under Section 40-25-2, Code of Alabama 1975, as well as all county tobacco taxes administered by the Alabama Department of Revenue, all smokeless tobacco shall be classified as either chewing tobacco or snuff.
  - (b) The term "snuff," means any finely cut, ground, or powdered tobacco that is not intended to be smoked. The term snuff includes "moist snuff" sometimes referred to as "roll snuff" including the long cut and fine cut varieties. Any smokeless tobacco product similar in composition and makeup to snuff shall be taxed at the rates applicable to snuff.
  - (c) The term "chewing tobacco" means any leaf tobacco that is not intended to be smoked and is not defined as snuff above. It includes both plug and scrap varieties.
- (2) The applicable State of Alabama tobacco taxes on snuff as defined above are to be levied in accordance with the tax rates on snuff found in Code of Alabama 1975, Section 40-25-2(11).
- (3) State-administered county tobacco taxes on products classified as snuff shall be calculated according to the snuff tax rates levied by each county Act.

(Statutory Authority §§ 40-2A-7(a)(5) and 40-25-2, Code of Alabama 1975, and applicable County Tobacco Tax Acts. Adopted November 11, 2002, Amended June 8, 2007)

**810-7-1-14. Tobacco Product Manufacturers Certificate of Compliance.**

- (1) As used in this rule, the following terms shall have these meanings:
  - (a) "Brand Family" means all styles of cigarettes sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, menthol, lights, kings, and 100s, and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.
  - (b) "Cigarette" has the same meaning as in Section 6-12-2(4), Code of Alabama 1975.
  - (c) "Directory" means the listing of all Tobacco Product Manufacturers that have provided current and accurate certifications conforming to the requirements of Title 6, Chapter 12A, Code of Alabama 1975, and all Brand Families that are listed in such certifications; except as provided by Section 6-12A-3(b), Code of Alabama 1975.
  - (d) "Distributor" is a person, wherever resident or located, who purchases non-tax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes.
  - (e) "Master Settlement Agreement" means the settlement agreement, and related documents, entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.
  - (f) "Nonparticipating Manufacturer" means any Tobacco Product Manufacturer that is not a Participating Manufacturer.
  - (g) "Participating Manufacturer" has the meaning given that term in Section II(jj) of the Master Settlement Agreement and all amendments thereto.
  - (h) "Qualified Escrow Fund" has the same meaning as in Section 6-12-2(6), Code of Alabama 1975.
  - (i) "Tobacco Product Manufacturer" has the same meaning as in Section 6-12-2(9), Code of Alabama 1975.
  - (j) "Units Sold" has the same meaning as in Section 6-12-2(10), Code of Alabama 1975.
  - (k) "Wholesaler" means a person, firm, corporation, club, or association that is authorized to affix tax stamps to packages or other containers of cigarettes under the provisions of Title 40, Chapter 25, Code of Alabama 1975.

- (2) Any tobacco product manufacturer that sells or intends to sell cigarettes within the state of Alabama, whether directly or through any distributor, retailer, or similar intermediary must file a Tobacco Product Manufacturers Certificate (TPM Certificate) on the forms prescribed, with the Department of Revenue. This TPM Certificate is in addition to any Certificate of Compliance that may be required of Nonparticipating Tobacco Product Manufacturers pursuant to Title 6, Chapter 12, Code of Alabama 1975.
- (3) In 2003 only, the TPM Certificate must be received on or before September 15, 2003. In future years, the TPM Certificate must be received on or before April 30th for the previous sales year.
- (4) On the TPM Certificate, the Manufacturer's identification must include the name, address, telephone number, fax number and electronic mail address. The Manufacturer must also identify the sales year, identify by Brands and/or Brand Families all of the cigarettes that the Tobacco Product Manufacturer intends to sell in this State whether directly or through any distributor, retailer, or similar intermediary, and seeks to have included in the Directory. Only the brands identified may be included in the Directory.
- (5) A Participating Manufacturer shall include a list of its Brand Families on the TPM Certificate. The Participating Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Department.
- (6) A Nonparticipating Manufacturer shall include in its TPM Certificate: (i) a list of all of its Brand Families and the number of Units Sold for each Brand Family that were sold in the State during the preceding calendar year, (ii) a list of all of its Brand Families that have been sold in the State at any time during the current calendar year, (iii) indicating, by an asterisk, any Brand Family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of such certification, and (iv) identifying by name and address any other manufacturer of such Brand Families in the preceding or current calendar year. The Nonparticipating Manufacturer shall update such list thirty calendar days prior to any addition to or modification of its Brand Families by executing and delivering a supplemental certification to the Department.
- (7) The Nonparticipating Manufacturer must verify that it is registered to do business in Alabama or has appointed an agent for service of process and provided notice thereof as required by Title 6, Chapter 12A, Code of Alabama 1975. Identify (i) the name, address and telephone number of the financial institution where the Nonparticipating Manufacturer has established a Qualified Escrow Fund pursuant to Title 6, Chapter 12, Code of Alabama 1975 and all regulations promulgated thereto; (ii) the account number of such Qualified Escrow Fund and any sub-account number for Alabama; and identify (i) the amount such Nonparticipating Manufacturer placed in such fund for Cigarettes sold in the State during the preceding calendar year, the date and amount of each such deposit; and (ii) the amount and date of any withdrawal or transfer of funds the Nonparticipating Manufacturer made at any time from such fund or from any other Qualified Escrow Fund.
- (8) The person executing the TPM Certificate must be an authorized representative for the Tobacco Product Manufacturer. The authorized representative's name and title must be printed and the TPM Certificate must be executed in the presence of an authorized notary.
- (9) On or about October 31, 2003, the Department of Revenue will release a Directory of those tobacco product manufacturers that are fully compliant with Alabama statutes. The Directory will set forth the names of the compliant tobacco product manufacturers, together with the names of those brands and/or brand families of the respective manufacturers that have been certified by the Department as being fully compliant with Alabama law. Updates to the directory will be made as necessary to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the Directory in conformity with its requirements. The Directory will be distributed to licensed stamping agents and will be made available to those stamping agents and the general public on an ongoing basis on the Department's website. Only those brands and brand families listed in the Directory will be permitted to be stamped for sale, offered for sale, possessed for sale or sold in the State of Alabama. Brands or brand families not listed in the Directory are contraband and subject to seizure by any law enforcement officer.
- (10) Any Nonparticipating Tobacco Manufacturer that has not complied with Alabama Statutes by submitting its escrow payments and Certificates of Compliance will not be listed in the Directory until all past escrow payments are made, proof of payment is submitted to the State, all outstanding judgments are satisfied, and all other obligations are met.

(Statutory Authority §§ 40-2A-7(a)(5) and 6-12A-7, Code of Alabama 1975, effective September 17, 2004.)

#### **810-7-1-15. Directory of Cigarettes Approved For Stamping and Sale in Alabama.**

- (1) In accordance with the provisions of the Tobacco Master Settlement Complementary Legislation Act, the Commissioner shall compile and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications and all brand families that are listed in the certifications.
- (2) The Commissioner shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails or has failed to provide the required certification or whose certification the Commissioner determines is not in compliance with Section 6-12A-3(a)(2) and (3), Code of Alabama 1975.
- (3) The Commissioner may request any additional information deemed necessary to establish to his satisfaction that the manufacturer is in compliance with all applicable federal statutes.
- (4) Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the Commissioner concludes either of the following:
  - (a) Any escrow payment required pursuant to Section 6-12-3, Code of Alabama 1975, for any period for any brand family, whether or not listed by the non-participating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Commissioner.
  - (b) Any outstanding final judgment, including interest thereon, for a violation of Section 6-12-3, Code of Alabama 1975, has not been fully satisfied for the brand family or the manufacturer.
  - (c) Failure to submit additional information requested by the Commissioner to ensure the manufacturer is in compliance with Title 6, Chapter 12A, or with federal statutes.
- (5) The Commissioner shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of Title 6, Chapter 12A.
- (6) The Commissioner shall transmit by E-mail or other practicable means to each wholesaler, stamping agent or distributor notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family. The wholesaler, stamping agent, or distributor shall have 30 days from receipt of notice from the Department regarding the change in the directory to sell the brand family that is delisted. No delisted brand family may be sold after the 30 day period.
- (7) The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory.

(Statutory Authority §§ 40-2A-7(a)(5), 6-12A-3 and 6-12A-7(d), Code of Alabama 1975, effective September 17, 2004.)

#### **810-7-1-16. Updates and Changes to the Directory of Cigarettes Approved for Stamping and Sale and Appeals Therefrom.**

- (1) Upon a determination that a manufacturer or brand family should not be listed in or removed from the Directory of Cigarettes Approved for Stamping and Sale, the manufacturer who requested its brand(s) to be listed in the directory will be so notified. The notice will be sent via U.S. mail and will list the specific violations, omissions, or other reasons for the determination not to list or to remove the manufacturer or brand family.
- (2) Each wholesaler, stamping agent or other distributor which is permitted or registered with the Department shall be sent notice of any addition to or removal from the directory, in accordance with Section 6-12A-3(b)(3), Code of Alabama 1975. Those wholesalers, stamping agents, or other distributors having provided a valid electronic mail address in accordance with Section 6-12A-3(b)(4), Code of Alabama 1975, shall be sent notices via electronic mail. Those wholesalers, stamping agents, or other distributors for whom no electronic mail addresses are on file will be sent notices via U.S. mail. The

Department will also post any pending additions to or deletions from the directory on its website.

(3) Tobacco product brand families which are facing impending deletion from the directory may continue to be sold until the date stated in the notice to wholesalers, stamping agents and other distributors discussed in paragraph (2), above, of this rule, which shall be no less than thirty days from the date of distribution of the notice. After the expiration of thirty days from the date of distribution of the notice, an affected tobacco product manufacturer and/or brand family will be removed from the directory. No such delisted tobacco brand family may be sold after this thirty-day period, regardless of whether any particular tobacco wholesaler, stamping agent, or other distributor has a valid electronic mail address on file. Neither the refusal or other failure of the wholesaler, stamping agent or other distributor to furnish a valid electronic mail address as required by Section 6-12A-3(b)(4), Code of Alabama 1975, nor the delayed receipt of notices sent by alternate means, will extend the period for sale of a delisted brand family.

(4) If a manufacturer disagrees with a determination issued by the Department, the manufacturer may file a written petition for review with the Department in accordance with Section 6-12A-7(a), Code of Alabama 1975, within thirty (30) days from the date of the determination.

(a) For purposes of this regulation, the term "written petition for review" shall mean any written response to a determination. The petition should include the following:

1. a statement that the manufacturer wants a review of the determination,
2. specific objections to the determination,
3. the manufacturer's name and address,
4. a copy of the determination letter,
5. a statement of facts supporting the manufacturer's position regarding any factual issue, and
6. a statement outlining the law or authority relied upon.

(b) If a petition for review is timely filed, the Department shall, upon written request of the manufacturer or if the Department otherwise deems it necessary, schedule a conference with the manufacturer for the purpose of allowing the manufacturer and the Department to present their respective positions, discuss any omissions or errors, and attempt to reach an agreement. The manufacturer will be notified by first class U.S. mail of the conference date. All notices shall include the conference time, the address where the conference is to be held and, if the conference is not at the request of the manufacturer, the items in dispute which will be discussed during the conference.

(5) Upon review of the manufacturer's petition, the determination to exclude or remove a manufacturer or brand family from the directory may be rescinded provided the specific violations, omissions, or other reasons for the determination not to list or to remove the manufacturer or brand family have been cured. If notice of the determination as described in paragraph (2), above, of this rule, has been provided to wholesalers, stamping agents, or other distributors, then notice of the rescission will be provided in a like manner.

(6) If a requested review of a manufacturer's petition has not occurred prior to the last sales date stated in the notice to wholesalers, stamping agents and other distributors, the determination to exclude or remove a manufacturer or brand family will not be rescinded, and no further sales of a delisted brand family may be made after the stated date.

(7) If a review of a petition is completed after the last sales date stated in the notice to wholesalers, stamping agents and other distributors and the specific violations, omissions, or other reasons for the determination not to list or to remove the manufacturer or brand family are determined to be cured, the affected manufacturer or brand family will be returned to the directory, and wholesalers, stamping agents, or other distributors will be notified of the date when sales of the previously delisted brand family may be resumed.

(8) If after review of a petition, a final determination is made to exclude or remove a manufacturer or brand family, the manufacturer will be so notified along with the specific violations or omissions, which remain uncured. The manufacturers shall have the right to appeal the Final Determination to the Department's Administrative Law Division.

(Statutory Authority §§ 40-2A-7(a)(5) and 6-12A-7, Code of Alabama 1975, effective September 17, 2004.)

### **810-7-1-17. Quarterly Certifications and Escrow Deposits.**

(1) To promote compliance with Title 6, Chapter 12A, the Commissioner may require nonparticipating manufacturers to certify their compliance quarterly with the Alabama tobacco master settlement agreement act. The Commissioner may also require nonparticipating manufacturers to make the escrow payments required by Section 6-12-3, Code of Alabama 1975, at quarterly intervals during the year in which the sales covered by such payments are made. This rule applies to nonparticipating manufacturers who meet any of the following criteria:

- (a) **No Previous Escrow Deposit.** Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Alabama.
- (b) **No Escrow Deposit for More Than One Year.** Nonparticipating manufacturers that have not made any escrow deposits for more than one (1) year.
- (c) **Untimely or Incomplete Deposits.** Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year.
- (d) **Outstanding Judgments.** Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty.
- (e) **Large Sales Volume.** Nonparticipating manufacturers that have more than 1,600,000 of their cigarettes sold during a quarter.
- (f) **Other Reasonable Cause.** In addition to the reasons specified above, the Commissioner may require quarterly escrow deposits from a nonparticipating manufacturer if the Commissioner has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarette sales were made.

(2) Nonparticipating manufacturers, who are required to make quarterly escrow deposits, must provide the Commissioner with bank verification of the quarterly escrow deposit no later than ten (10) days after each quarterly deposit date. Nonparticipating manufacturers must also provide their quarterly certifications of sales activity and required deposits within the same deadline. For example, the deadline for certifying and providing bank verification to the Commissioner of a quarterly escrow deposit for sales of cigarettes that occurred in February is May 10 of the same year.

(3) For purposes of this rule, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. The quarterly deposit date shall be the last day of the month following the end of the quarter.

(4) If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Commissioner, or the Commissioner does not receive timely bank verification of the quarterly escrow deposit, the delinquent nonparticipating manufacturer and its brand families may be removed from the directory.

(Statutory Authority §§ 40-2A-7(a)(5), 6-12A-3 and 6-12A-7(d), Code of Alabama 1975, effective September 17, 2004.)

### **810-7-1-18. Disclosures of Information.**

(1) Section 6-12A-5(a), Code of Alabama 1975, requires all tobacco wholesalers and distributors to file, no later than 20 days after the end of the month, all information as required by the Commissioner to facilitate compliance with Title 6, Chapter 12A, which includes, but is not limited to a list by brand family of the total number of cigarettes or in the case of roll your own, the equivalent stick count for which the wholesalers and distributors affixed stamps during the previous month or otherwise paid the tax due for any cigarettes. The wholesaler or distributor shall maintain, and make available to the Commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Commissioner for a period of five years.

(2) This information shall be reported on form TOB:SCH D, otherwise known as Schedule D, to the

Department. The Department will compile the information reported on all the Schedule D's as submitted by the wholesalers and distributors. The compilation by manufacturer will be compared to the certification and escrow deposit filed as required quarterly or annually by the manufacturer. If the required quarterly or annual escrow deposit is not timely made in full, or an incomplete certificate is filed, the nonparticipating manufacturer and its brand families may be removed from the Directory.

(3) In the event the manufacturer does not agree with the Schedule D compilation, he/she may request in writing to the Department to determine the sales of each of the manufacturer's brands as reported by individual wholesaler(s) and/or distributor(s). Upon receipt of the written request, the Department is authorized to disclose to the non-participating manufacturer the quarterly or annual compilation by individual wholesaler or distributor.

(Statutory Authority §§ 40-2A-7(a)(5), 6-12A-5 and 6-12A-7(d), Code of Alabama 1975, effective September 17, 2004.)

### **810-7-1-20. Procedures for Reporting and Remitting Solid Waste Disposal Fees.**

(1) Beginning on October 1, 2008, pursuant to Act No. 2008-151, disposal fees on solid waste received for disposal at solid waste management facilities permitted by the Alabama Department of Environmental Management (ADEM) are to be remitted as follows:

- (a) One dollar (\$1) per ton for all waste disposed of in a municipal solid waste landfill, regulated solid waste that may be approved by ADEM as alternate cover materials in landfills and regulated solid waste received from out-of-state for disposal at permitted public solid waste facilities.
- (b) One dollar (\$1) per ton or twenty-five cents (\$0.25) per cubic yard for all waste disposed of in public industrial landfills, construction and demolition landfills, non-municipal solid waste incinerators, or composting facilities, which receive waste not generated by the permittee; regulated solid waste that may be approved by ADEM as alternate cover materials in landfills; and regulated solid waste received from out-of-state for disposal at permitted public solid waste facilities.
- (c) Twenty-five cents (\$0.25) per cubic yard for all waste disposed of in a private solid waste management facility, not to exceed one thousand dollars (\$1,000) per calendar year.

(2) All owners and operators collecting the solid waste fee may retain four percent (4%) of the total solid waste fees collected at their facilities as an administrative collection allowance. Private solid waste management facilities not collecting the fees from third party generators are not eligible for the 4% allowance. Owners and operators failing to file timely and/or remit the fee timely shall be subject to penalties according to the provisions of Title 40, Chapter 2A, Section 11. Interest will be charged according to Title 40, Chapter 1, Section 44.

(3) The operators of permitted solid waste disposal facilities shall collect the above disposal fees on generators of all waste delivered to the solid waste facilities. On a quarterly basis not later than the 20th day of January, April, July, and October, the operators shall remit the disposal fees and file a report for each quarter on forms provided by the Alabama Department of Revenue. A report must be filed with the Department of Revenue even if no fee is due. Failure to receive a report form does not relieve the owner or operator from the obligation of making a report on or before the due date.

(4) The following persons are exempt from payment of fees required by Act 2008-151 (Note: References to the word "department" below pertains to the Alabama Department of Environmental Management):

- (a) Operators of industrial boilers, furnaces, and other processing equipment that burn solid waste generated on site for the purpose of fuel replacement or energy recovery and which are permitted by the department or by a local air pollution control agency.
- (b) Operators of composting facilities which are owned by the Alabama Department of Corrections and which receive only wastes generated by Alabama Department of Corrections facilities and institutions or those composting facilities otherwise exempt from permitting as provided in rules promulgated by the department.
- (c) Operators of industrial boilers, furnaces, and other processing equipment that burn scrap tires for the

purpose of fuel replacement or energy recovery and are registered with the department as provided in rules promulgated by the department.

(d) Scrap tire processors who receive and process scrap tires and who are permitted by or registered with the department as provided in rules promulgated by the department, except that a solid waste disposal facility permitted as a scrap tire processor shall collect the fee on all waste disposed of in its landfill.

(Statutory Authority §§ 40-2A-7(a)(5) and 22-27-17(g), Code of Alabama 1975, effective February 10, 2009.)

### **810-7-1-21. Electronic Filing and Payment of the Alabama Underground and Aboveground Storage Tank Trust Fund Charge.**

(1) Code of Alabama 1975, Section 22-35-5(b), requires operators of motor fuels bulk facilities from which a first withdrawal from bulk is made and importers of motor fuels into the State of Alabama to report storage tank trust fund charges on a form prescribed by the Department of Revenue and to remit the fee required to be retained or collected during the preceding month to the Department of Revenue. Pursuant to chapter 30 of Title 40, Code of Alabama 1975, the Department is authorized to accept tax returns reported on an electronic form filed electronically.

(2) Electronic filing of the Underground and Aboveground Storage Tank Trust Fund Charge return will become available on January 3, 2011. However, effective July 1, 2011, the monthly Underground and Aboveground Storage Tank Trust Fund Charge return will be required to be filed electronically.

(3) Under certain circumstances a taxpayer may request a waiver from the Commissioner of Revenue to file in another department approved manner. These circumstances include:

- (a) No Computer,
- (b) No Internet Access,
- (c) Incompatible Computer Hardware,
- (d) Any special circumstance (i.e. physical disability) deemed worthy of a waiver by the Commissioner of Revenue

1. A request for waiver must be submitted in writing and include the business name and address, account number and reason(s) why a method other than the prescribed method is necessary.

(4) The storage tank trust fund charge return will be considered timely filed when due if filed electronically by the last day before the return is considered delinquent. The amount due with the return will be considered timely paid if paid in accordance with the rules of the electronic funds transfer provider.

(Statutory Authority §§ 40-2A-7(a)(5), 22-35-5(b)5, and Title 40, Chapter 30, Code of Alabama 1975,) (Effective June 15, 2011)

### **810-7-1-22. Procedures Pertaining to Manufacturers of Tobacco Products Relating to Commercial Cigarette-Making or Rolling Machines.**

(1) A cigarette-rolling machine is any type of machine that is made available to the public for use in a retail store to roll loose tobacco and tubes into cigarettes. Any person maintaining, or offering it for use to others, a cigarette-making or rolling machine in their place of business, or offering it for use to others, in this state, shall be considered a manufacturer of tobacco products. These procedures shall apply to any person maintaining a commercial cigarette-making or rolling machine in their place of business, in this state, whether the proprietor of the business makes the cigarettes or facilitates the making of cigarettes by or for others with the use of said machine. Persons maintaining a cigarette-making or rolling machine in their place of business, or offering it for use to others, for commercial purposes are required to:

- (a) Register with the Alabama Department of Revenue (ADOR) and report and pay the appropriate cigarette excise tax through the use of tax stamps for all products processed or manufactured on the machine.
- (b) Comply with the Escrow Fund for Certain Tobacco Product Manufacturers provisions codified at Title

6, Chapter 12, and the Tobacco Master Settlement Complementary Legislation codified at Title 6, Chapter 12A for all products processed or manufactured on the machine to include:

1. Filing the tobacco products manufacturer (TPM) certification in order for the manufacturer and brand to be approved for listing on ADOR's Directory.
2. Establishing an escrow fund account with a qualified banking institution and providing ADOR with a copy of the escrow agreement, if elected to be a manufacturer not participating (NPM) in the tobacco Master Settlement Agreement.
3. Depositing required monies into escrow and providing verification of the deposit, if a NPM.
4. Filing the required non-participating manufacturer (NPM) certification, if a NPM.
5. Filing the applicable monthly tobacco reports.

(c) Affix the applicable state and state-administered county tax stamp to the cigarette packaging for all products processed or manufactured on the machine.

(2) This regulation will be effective for taxable transactions occurring after February 28, 2012 to allow time for manufacturers of tobacco products to comply with its provisions.

(Statutory Authority §§ 40-2A-7(a)(5) and 6-12A-7, Code of Alabama 1975, effective January 11, 2012.)

### **810-7-1-23. Electronic Filing and Payment of State and State-administered County Tobacco Taxes.**

(1) Code of Alabama 1975, Title 40, Chapter 25; various local tobacco tax Acts and Revenue Rules 810-7-1-.08 and 810-7-1-.09, require qualified wholesale distributors, retailers and any other person, firm, corporation, club or association to file the appropriate monthly tobacco tax returns and to remit the appropriate state and state-administered county tobacco taxes on tobacco sales made in this State during the preceding month to the Alabama Department of Revenue. Pursuant to Chapter 30 of Title 40, Code of Alabama 1975, the Department is authorized to accept tax returns reported on an electronic form filed electronically.

(2) Electronic filing of the Monthly State Tobacco Tax Return by Tobacco Distributors (TOB: OTP) and the Monthly County Tobacco Tax Return (TOB: TTCO-A) will become available February 2012. However, effective July 1, 2012, the above returns will be required to be filed electronically.

(3) Under certain circumstances a taxpayer may request a waiver from the Commissioner of Revenue to file in another department approved manner. These circumstances include:

- (a) No Computer,
- (b) No Internet Access,
- (c) Incompatible Computer Hardware,
- (d) Any special circumstance (i.e. physical disability) deemed worthy of a waiver by the Commissioner of Revenue.

(4) A request for waiver must be submitted in writing and include the business name and address, account number and reason(s) why a method other than the prescribed method is necessary.

(5) The above returns will be considered timely filed when due if filed electronically by the last day before the return is considered delinquent. The amount due with the return will be considered timely paid if paid in accordance with the rules of the electronic funds transfer provider.

(Statutory Authority §§ 40-2A-7(a)(5); Title 40, Chapter 25; Title 40, Chapter 30, Code of Alabama 1975, effective May 25, 2012.)

### **810-7-1-24. Electronic Filing of Hazardous Waste Fee, Solid Waste Fee, Pari-Mutuel Pool Tax and State Horse Wagering Fee Returns.**

(1) The reports listed below will be required to be filed electronically pursuant to Chapter 30 of Title 40, Code of Alabama 1975:

- (a) The Hazardous Waste Fee Report (TOB: HWST),
- (b) The Quarterly Solid Waste Fee Report (TOB: SWST),
- (c) The Pari-Mutuel Pool Privilege Tax Report (TOB: PPPT-1), and
- (d) The State Horse Wagering Fee Report (TOB: HWF).

(2) Electronic filing of the above reports will be required effective September 2012 (August monthly return which is due September 2012, and any quarterly return which is due after September 2012). A complete return filed via the Internet will consist of data transmitted electronically and shall contain the same information as the corresponding return which is being filed entirely on paper.

(3) Under certain circumstances a taxpayer may request a waiver from the Commissioner of Revenue to file in another department approved manner. These circumstances include taxpayer situations where:

- (a) No Computer,
- (b) No Internet Access,
- (c) Incompatible Computer Hardware,
- (d) Or, any special circumstance (i.e. physical disability) deemed worthy of a waiver by the Commissioner of Revenue.

1. A request for waiver must be submitted in writing and include the business name and address, account number and reason(s) why a method other than the prescribed method is necessary.
2. Waivers are valid for the current fiscal year only. A separate waiver request must be submitted for each fiscal year
3. The taxpayer will be notified of the Department's decision whether to grant the waiver request and if applicable, the reason for the denial.

(4) The above reports will be considered timely filed if filed electronically by the last day before the report is considered delinquent. The amount due with the return will be considered timely paid if paid in accordance with the rules of the electronic funds transfer provider.

(Statutory Authority §§ 40-2A-7(a)(5) and Title 40, Chapter 30, Code of Alabama 1975, effective September 26, 2012.)

#### **810-7-1-.25. Electronic Filing of Monthly Wholesaler Reports, Schedule D Reports, Manufacturer Reports, Manufacturer Certifications, and Any New Tobacco Returns/Reports**

(1) Code of Alabama 1975, Title 40, Chapter 25; Title 6, Chapters 12 and 12A; various local tobacco tax Acts and Revenue Rules 810-7-1-.08, 810-7-1-.09 and 810-7-1-.11, require qualified wholesale distributors, retailers and any other person, firm, corporation, club or association to file the appropriate tobacco reports on tobacco sales made in this State during the preceding month/quarter/year to the Alabama Department of Revenue. Pursuant to Chapter 30 of Title 40, Code of Alabama 1975, the Department is authorized to accept electronically filed tax returns and other documents. The returns and reports listed below will be required to be filed electronically:

- (a) The Monthly Report by Resident Wholesale Dealers in Cigarette Products (TOB: T-WHSLE),
- (b) The Monthly Report by Nonresident Wholesale Dealers in Cigarette Products (TOB: WHSLE-NR),
- (c) Wholesaler's Monthly Report of State-Administered County Cigarette Products (TOB: T-WHSLE-CO),
- (d) Manufacturers Not Participating and Participating in the Tobacco Master Settlement Agreement (TOB: SCH D),
- (e) Monthly Manufacturers Report (TOB: MANUF),
- (f) Certificate of Compliance by Non-Participating Manufacturer Regarding Escrow Payment (TOB: NPM-ESC CERT), and
- (g) Any new return/report required to be filed in the future relating to tobacco products.

(2) Electronic filing of the above monthly, quarterly or yearly reports shall become mandatory thirty (30) days following the effective date of this rule. If the electronic filing system becomes available prior to this date, taxpayers may choose to file electronically. If the electronic filing system for a specific report is not available thirty (30) days following the effective date of this rule, mandatory filing shall become effective upon department notification to the taxpayers. A complete return filed via the Internet will consist of data transmitted electronically and shall contain the same information as the corresponding report which is being filed entirely on paper.

(3) Under certain circumstances a taxpayer may request a waiver from the Commissioner of Revenue to file in another department approved manner. These circumstances include taxpayer situations where:

- (a) No Computer,
- (b) No Internet Access,
- (c) Incompatible Computer Hardware,
- (d) Or, any special circumstance (i.e. physical disability) deemed worthy of a waiver by the Commissioner of Revenue.

1. A request for waiver must be submitted in writing and include the business name and address, account number and reason(s) why a method other than the prescribed method is necessary.

2. Waivers are valid for the current fiscal year only. A separate waiver request must be submitted for each fiscal year.

3. The taxpayer will be notified of the Department's decision whether to grant the waiver request and if applicable, the reason for the denial.

(4) The above reports will be considered timely filed if filed electronically by the last day before the report is considered delinquent. Any amount due with the return will be considered timely paid if paid in accordance with the rules of the electronic funds transfer provider.

(Statutory Authority Section 40-2A-7(a) (5) and Title 40, Chapter 30, Code of Alabama 1975, effective March 29, 2013.)

#### **810-7-1-26. Procedures for Reporting Sales of Tobacco Products for Resale in this State.**

(1) Pursuant to Act No. 2014-262, Section 40-25-16.1, Code of Alabama 1975, each wholesaler, jobber, semijobber, registered retailer, importer or any other person selling, receiving, or distributing tobacco products in this state for resale is required to file a monthly report of activity with the Alabama Department of Revenue.

(2) The report shall include, but not limited to:

- (a) The customer's name.
- (b) Address.
- (c) Invoice number.
- (d) Invoice date.
- (e) A description of the tobacco products.
- (f) The itemized tax.

(3) The report shall be due no later than the twentieth of the each month for the preceding calendar month's sales for resale activity. The first report is due November 20, 2014 showing October 2014 activity.

(4) Failure to timely file the report shall result in the levy of penalties according to the provisions of Title 40, Chapter 2A, Section 11(a), Code of Alabama 1975.

(5) Retailers who only sell to end-users (consumers) and who make no sales for resale are not required to file this report.

(6) This report shall be filed electronically according to Revenue Rule 810-7-1-.25.

(Statutory Authority Section 40-2A-7(a)(5), 40-25-16.1 and Title 40, Chapter 30, Code of Alabama 1975, effective October 1, 2014)

**810-7-1-.27. Non-participating Manufacturer's Bond (including Importers, if Applicable)**

- (1) Pursuant to Act No. 2014-341, which amends Title 6, Chapters 12 and 12A, Code of Alabama 1975, any non-participating manufacturer (or importer, if applicable) wishing to be considered for listing on Alabama's Directory of Cigarettes Approved for Stamping and Sale shall first obtain and provide the required bond each quarter to the Alabama Department of Revenue.
- (2) The bond must be a good and sufficient bond executed by a surety company licensed and authorized to do business in Alabama and shall be conditioned to pay the escrow requirement as well as any penalties or other charges under Title 6, Chapters 12 and 12A.
- (3) The non-participating manufacturer's bond shall be posted for the benefit of the Commissioner, in accordance with the provisions of Section 6-12A-5(f), and it shall be conditioned that the non-participating manufacturer shall fully comply with the escrow obligations.
- (4) A bond is due for each calendar quarter. The bond shall be posted or otherwise due at least 10 days in advance of each calendar quarter as a condition to the non-participating manufacturer (or importer, if applicable) and its brand families being included in Alabama's Directory of Cigarettes Approved for Stamping and Sale for that quarter. The first bond is due by December 20, 2014 for the first quarter of 2015.
- (5) The amount of the bond shall be the greater of:
  - (a) the greatest required escrow amount due from the non-participating manufacturer or its predecessor for any of the 12 preceding calendar quarters or
  - (b) \$25,000.
- (6) Failure to timely provide the bond in strict compliance with subsection (f) of Section 6-12A-5 and the regulations relating thereto, shall result in the non-participating manufacturer's (or importer, if applicable) name and brand(s) not being included in, or deleted from, Alabama's Directory of Cigarettes Approved for Stamping and Sale.
- (7) If a non-participating manufacturer that posted a bond has failed to make or have made on its behalf deposits equal to the full amount owed for a quarter within 15 days following the due date for the quarter under subsection (e) of Section 6-12A-5, the Commissioner may execute a claim upon the bond in the amount equal to any remaining amount of the escrow due including any applicable penalties or other charges allowable by law.
- (8) Amounts the Commissioner or the State collects on a bond shall be deposited into the General Fund for the benefit of the State and shall reduce the amount of escrow due from that non-participating manufacturer. Escrow obligations above the amount collected on the bond remain due from that non-participating manufacturer and any importer liable as provided in Subsection (b) of Section 6-12-3.
- (9) The bond executed by the surety company on behalf of the non-participating manufacturer (or importer, if applicable) shall provide the following information:
  - (a) The true legal name of the party for whom a bond is being sought.
  - (b) The company name on the bond must match the name on the non-participating manufacturer's Escrow

certification and Tobacco Products Manufacturer's (TPM) certification.

- (c) The city, state, zip/country code and country in which the non-participating manufacturer (or importer, if applicable) is located.
- (d) The name and address of the surety company providing the coverage.
- (e) The original signatures of the principal (company), agent of the surety company, and Alabama resident agent.
- (f) The bond must be accompanied by an original power of attorney, indicating that the agent is authorized to execute the bond on behalf of the surety company.
- (g) The bond and power of attorney must have the same issue date.
- (h) The telephone number of the surety company,
- (i) The bond number assigned by the surety company.

(Statutory Authority Section 40-2A-7(a)(5), 6-12A-3, 6-12A-5 and 6-12A-7(d), Code of Alabama 1975, effective October 1, 2014)

**810-7-1-28. Wholesaler's and Distributor's Schedule D Reporting of Cigarette Sales to Federally-Recognized Indian Tribes Relating to the Escrow Provisions and MSA Complementary Legislation.**

- (1) Act 2014-341 amends the tobacco escrow provisions and Master Settlement Agreement Complementary Legislation and became effective April 8, 2014. The Act Further provides that the term "units sold" shall also include the number of individual cigarettes sold in the state by the tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as to which the state had power to under federal law, but did not, impose and/or collect excise tax. Without limiting the foregoing, this term specifically includes the following cigarettes, provided such cigarettes were not sold in a transaction that is exempted from Alabama taxation by federal statute or constitution:
  - (a) Cigarettes sold to a consumer without payment of the cigarette excise tax on the reservation lands of a federally-recognized Native American tribe,
  - (b) Cigarettes sold for retail sale in Alabama which were exempted from taxation pursuant to Chapter 9, Article 1 of Title 40 and/or any rule or regulation promulgated pursuant thereto, and
  - (c) Cigarettes sold by a seller located outside of Alabama directly to a consumer in this state, without payment of the cigarette excise tax, via mail order, telephone, internet, or other remote means.
- (2) Tobacco wholesalers and distributors are required to report all cigarette and roll-your-own sales made to federally-recognized Indian Tribes on the Schedule D form according to Non-Participating Manufacturers' brands and Participating Manufacturers' brands.
- (3) Solely for purposes of determining the amount of escrow required to be deposited by a Non-Participating Manufacturer pursuant to Ala. Code § 6-12-3, there shall be a rebuttable presumption that all cigarettes and roll-your-own tobacco distributed to Indian Tribes were ultimately sold to consumers in transactions not exempted from state taxation under federal law. Upon satisfactory proof that specific quantities of specific brands of cigarettes and/or roll-your-own were sold to consumers in transactions that were exempted from state taxation under federal law, the applicable Non-Participating Manufacturer may take a credit in the form of a reduction in the amount of escrow required to be deposited by the Non-Participating Manufacturer pursuant to Ala. Code § 6-12-3, in the amount of escrow corresponding to the quantity of exempt sales established by the applicable Non-Participating Manufacturer. The reduction is applicable only for sales made to documented tribal members of the federally-recognized Indian Tribe and which are consumed on reservation tribal land by the documented federally-recognized tribal member.
- (4) Acceptable documentation to substantiate a credit provided for in (3) above includes copies of cigarette sales invoices, receipts, or other records establishing sales of specific quantities of specific brands of cigarettes and/or roll-your-own tobacco made on specific dates to federally-recognized tribal documented members where the tribal member resides on reservation land.

- (5) Documentation must be maintained by the applicable Indian Tribe and/or Non-Participating Manufacturer to substantiate the credit or reductions and provided to the Department upon request; otherwise, the credit will be disallowed by the Department.

(Statutory Authority Section 40-25A-7(a)(5) and 6-12-2, Code of Alabama 1975, effective October 1, 2014)

**810-7-1-.29 Procedures for Retail Dealers and Semijobbers Providing Electronic Duplicate Invoices for Tobacco Products Purchased from Without the State.**

- (1) Pursuant to Section 40-25-7, Code of Alabama 1975, any retail dealer or semijobber purchasing or receiving tobacco products from without this state, shall within 12 hours of receipt of such tobacco products, provide electronically, a true and duplicate invoice of all such purchases or receipts to the Department of Revenue.
- (2) The duplicate invoice must be provided within 12 business hours after receipt of the imported tobacco products. Business hours are Monday through Friday 8:00 a.m. – 5:00 p.m.
- (3) The duplicate invoice must contain at a minimum the name of the person or firm from whom or through whom such purchases were received and the kinds and quantities of tobacco products.
- (4) Invoices must be scanned and attached to an email addressed to Tobacco.Account@revenue.alabama.gov or submitted via other electronic means as required by the Department.
- (5) Retail dealers and semijobbers purchasing or receiving tobacco products from without this state that are subject to the duplicate invoice provisions of Section 40-25-7 include the following:
  - (a) Tobacco products purchased from non-permitted wholesalers from outside of this state.
  - (b) Tobacco products imported by the retail dealer or semijobber using their own vehicles.
  - (c) Tobacco products imported by the retail dealer or semijobber delivered by common carrier, United States Postal Service or any other delivery method.
- (6) Invoices for tobacco purchases from Alabama permitted wholesalers in which the permitted wholesaler delivers the tobacco products are not required to have the invoices electronically submitted to the department. These sales must be included on the monthly reports filed with the Department by the permitted wholesaler.
- (7) Tobacco products imported by retail dealers and semijobbers in which a true and duplicate invoice has not been received by the Department within 12 business hours are considered contraband and subject to confiscation as provided for in Title 40, Chapter 25.
- (8) Failure or refusal to submit true duplicate invoices for imports of tobacco purchases, as required, may subject the retail dealer or semijobber to a Department imposed penalty of not less the one thousand dollars (\$1,000) nor more than five thousand dollars.

(Statutory Authority Sections 40-2A-7(a)(5) and 40-25-7, Code of Alabama 1975, Filed March 25, 2015, effective April 29, 2015.

**810-7-1-.30. Suspension of the Playing Cards Tax.**

- (1) Act 2014-331 was signed into law on April 7, 2014 and became effective on July 1, 2014. In accordance with Section 40-1-49, Code of Alabama 1975, as created by this Act, the Department of Revenue, by administrative rule, shall suspend the collection of a tax or fee when the cost of administering the collection of the tax exceeds the total amount of the tax collected for each of the previous three fiscal

years.

- (a) Title 40, Chapter 12, Article 2, Section 144 provides for a privilege license tax on playing cards sold within Alabama.
- (b) Based upon a review of the collections of the Playing Cards Tax for fiscal years 2011-2013, the annual estimated administrative costs exceed the collection cost for this tax. Therefore, this tax meets the suspension requirements established in the Act.

(2)(a) The Department of Revenue is prohibited in suspending the tax in the following cases:

- (i) If the tax is mandated by a federal law or administrative rule.
  - (ii) If discontinuing the collection of such tax will result in reduced federal funding.
  - (iii) If discontinuing the collection of the tax will result in reduced state and local revenues that exceed the costs of administering the tax.
  - (iv) If suspending this tax will negatively affect the health, safety or welfare of the state.
- (b) Suspension of the playing cards tax collections do not fall within these restrictions.

(3) Through the adoption of this rule, the Department of Revenue exercises its authority to suspend the collection of the Playing Cards Tax levied in Title 40, Chapter 12, Article 2, Section 144.

- (a) The effective date of this suspension shall be May 1, 2015.
- (b) April 30, 2015 shall be the final date for taxpayers to purchase playing cards tax stamps to be affixed to decks of playing cards.
- (c) Upon Implementation of this rule, the Department shall notify all affected parties in writing.

(4) Persons in possession of playing cards stamps on or after May 1, 2015 who wish to apply for a refund may do so under the following conditions:

- (a) Complete form B & L:RP - Petition for Refund and return it along with the proper documentation to the Tobacco Tax Section.
- (b) Return unused playing cards stamps in their original condition.
- (c) Provide copy of purchase invoice for stamps purchased.
- (d) Per the provisions of Section 40-2A-7(c), the refund must be for playing cards stamps obtained directly from the Alabama Department of Revenue within two years from the date of purchase.
- (e) Refund requests which are unable to be verified within the office are subject to a field review.

(5) Refunds will only be allowed to those entities who purchased the playing cards tax stamps from the Alabama Department of Revenue and when sufficient documentation is provided to substantiate payment of all required taxes.

(6) The provisions of this rule shall become operative on May 1, 2015.

(Statutory Authority Section 40-2A-7(a)(5) and 40-1-49, Code of Alabama 1975, effective April 20, 2015)

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