

DEPARTMENT OF TREASURY

BUREAU OF REVENUE

TOBACCO PRODUCTS TAX

(By authority conferred on the revenue commissioner by section 13(2) Act No.327 of the Public Acts of 1993, as amended, being §205.433(2) of the Michigan Compiled Laws)

R 205.451 Definitions.

Rule 1. As used in these rules:

(a) "Act" means Act No. 327 of the Public Acts of 1993, as amended, being §205.421 et seq. of the Michigan Compiled Laws.

(b) "Licensed wholesaler or unclassified acquirer" means a wholesaler or unclassified acquirer who possesses such license issued under the act by the department during the current licensing year and whose license is not suspended or revoked by the department.

History: 1998 - 2000 AACSL.

R 205.452 Prescribed markings on cigarette boxes and shipping cases; resale and refund of returned cigarettes.

Rule 2. (1) Licensed wholesalers and unclassified acquirers shall submit stamp orders on the form prescribed by the department. The department shall establish guidelines for ordering and the timing of shipments, and shall determine the mode of shipment of an order. On the day of shipment, the department shall fax notice of shipment to the wholesaler or unclassified acquirer.

(2) Stamps given to a wholesaler or unclassified acquirer are on assignment from the department to the specific wholesaler or unclassified acquirer.

(3) A licensed wholesaler of cigarettes who receives cigarettes from the manufacturer at a Michigan location from which deliveries to other states will be made will report all cigarettes received into its unstamped Michigan inventory. When cigarettes destined for another state are pulled from inventory for stamping and export, the cigarettes will be reported as a deduction on schedule C of the multiple schedule. Such licensed wholesaler may have in its possession stamps from other states as needed to perform its multistate stamping duties. The stamps for other states are to be segregated from Michigan stamps, and the wholesaler must be able to provide documentation to the department and its representatives of the unaffixed stamps that are in the wholesaler's possession.

(4) A wholesaler or unclassified acquirer who possesses unaffixed stamps at the time its license is revoked or expired or at the time it discontinues the business of selling cigarettes shall return all unaffixed stamps to the department within 14 calendar days of the date of license revocation, license expiration, or discontinuance of its business.

(5) Beginning September 1, 1998, the refund to wholesalers and unclassified acquirers of the tax on cigarettes returned to manufacturers is allowed if all of the following conditions are met:

(a) A cigarette pack returned to a wholesaler or unclassified acquirer by a secondary wholesaler, retailer, or vending machine operator before September 1, 1998, for return to a manufacturer shall be kept separate from cigarettes returned to wholesalers on or after September 1, 1998.

(b) A cigarette pack returned to a wholesaler or unclassified acquirer by a secondary wholesaler, retailer, or vending machine operator on or after September 1, 1998, for return to the manufacturer must bear the stamp prescribed by the department in order to qualify for refund or credit of the tax paid.

(c) A refund claim for cigarettes held for return as of September 1, 1998, shall be submitted separately from any claims for cigarettes received for return on or after September 1, 1998.

(6) A wholesaler or unclassified acquirer is liable for the amount of the face value of any stamps which are lost through negligence, theft, or mysterious disappearance or which are not otherwise accounted for in the records of the wholesaler or unclassified acquirer. The tax due shall be less the percentage

compensation under section 7(3) of the act. The tax due shall be assessed in accordance with the provisions of Act No. 122 of the Public Acts of 1941, as amended, being §205.1 et seq. of the Michigan Compiled Laws. If identifiable stamps that have been lost through negligence, theft, or mysterious disappearance are recovered within 4 years of the date of mailing by the department, then credit will be given against the tax due, less the percentage compensation under section 7(3) of the act, if adequate proofs are submitted to the department.

(7) Relating to the tax liability described under item (6) above, credit may be given against the tax due, less the percentage compensation, for the denominated value of stamps affixed to packs that have been destroyed by fire, flood, or other casualty before distribution. The wholesaler or unclassified acquirer must establish by clear and convincing evidence that the cigarettes were destroyed by fire, flood, or other casualty before distribution and must establish the denominated value of the affixed stamps. "Destroyed," as used in this subrule, refers to unaffixed stamps which can no longer be identified and affixed to cigarette packs, or stamps which are affixed to cigarette packs that no longer qualify for return to the manufacturer.

History: 1998 - 2000 AACS.

R 205.453 Manufacturers' representatives; permissions; limitations.

Rule 3. Manufacturers' representatives may legally possess individual packs of cigarettes if the application is submitted to Tobacco Products Tax Division, Michigan Department of Treasury, Lansing, MI 48922, all of the permissions are obtained, and all of the following are met:

- (a) The application shall contain all of the following information:
 - (i) The representative's name, address, and telephone number.
 - (ii) Make, model, and license number of the representative's vehicle.
 - (iii) Counties in Michigan in which the representative will be working.
 - (iv) States other than Michigan in which the representative will be working.
- (b) A manufacturer shall promptly notify the commissioner if the manufacturer's representative is no longer employed by the manufacturer or if there is any change in any representative's territory in the state of Michigan, name, address, telephone number, or vehicle make, model, or license number.

History: 1998 - 2000 AACS.

R 205.454 Stamping agents; permissions; limitations.

Rule 4. (1) To be a stamping agent, a person shall comply with all of the following provisions:

- (a) Receive written authorization from the department.
 - (b) Be licensed by the department as a wholesaler or unclassified acquirer.
 - (c) Be appointed as an agent of 1 or more wholesalers or unclassified acquirers for the purpose of affixing stamps prescribed by the department to individual packs of cigarettes.
 - (d) Submit to the department a current list of all persons for whom he or she acts as a stamping agent as these persons change.
 - (e) Submit proof of insurance to indemnify the state for any lost or stolen stamps.
- (2) Each stamping agent shall keep separate records, by denomination, of stamps received, affixed, and in inventory at the end of each month for each wholesaler or unclassified acquirer, or both, for whom the agent acts as a stamping agent.
- (3) Upon the written request of a wholesaler or unclassified acquirer, the department may, at its discretion, ship stamps directly to the wholesaler's or unclassified acquirer's authorized stamping agent or allow the stamping agent to pick up a stamp order on behalf of the wholesaler or unclassified acquirer.
- (4) A stamping agent shall not give, sell, or lend an unaffixed stamp to another person and shall not accept, purchase, or borrow an unaffixed stamp from another person for whom the agent has not been authorized by the department to act as a stamping agent.
- (5) A stamping agent shall not affix a stamp received from a wholesaler or unclassified acquirer to another person's individual cigarette pack.

(6) Upon notice from the department for proper administration of the act, a stamping agent shall not affix stamps for any wholesaler or unclassified acquirer whose license has been revoked or not renewed by the department and shall return any related unaffixed stamps to the department.

(7) A stamping agent who discontinues acting as a stamping agent or discontinues business shall return any unaffixed stamps to the respective wholesaler or unclassified acquirer from whom the stamps were received within 14 calendar days of the date of discontinuance. The department must be provided with written notification of the date of return, the denomination of the stamps, and the respective numbers of stamps returned. The wholesaler or unclassified acquirer must certify receipt of the stamps in writing. If the wholesaler or unclassified acquirer has a revoked or expired license or has discontinued business, then the stamping agent shall return any unaffixed stamps to the department within 14 calendar days of the date of his or her license revocation, expiration, or discontinuance and identify the related wholesaler or unclassified acquirer.

History: 1998 - 2000 AACS.

R 205.455 Rescission.

Rule 5. R 205.411 of the Michigan Administrative Code, appearing on page 32 of the 1980 Annual Supplement to the 1979 Michigan Administrative Code, is rescinded.

History: 1998 - 2000 AACS.