

**280-RICR-20-15-1**

## **TITLE 280 – DEPARTMENT OF REVENUE**

### **CHAPTER 20 – DIVISION OF TAXATION**

#### **SUBCHAPTER 15 – CIGARETTE TAX / OTHER TOBACCO PRODUCTS**

Part 1 – Cigarette Tax

##### **1.1 Purpose**

The purpose of this regulation is to implement R.I. Gen. Laws Chapters 44-20 and 44-20.2 which provides for Tax on Cigarettes and Little Cigars sold, held for sale, or stored in the State of Rhode Island.

##### **1.2 Authority**

These rules and regulations are promulgated pursuant to R.I. Gen. Laws §§ 44-1-4 and 44-20-50. The rules and regulations have been prepared in accordance with the requirements of R.I. Gen. Laws §§ 42-35-1 et seq. of the Rhode Island Administrative Procedures Act.

##### **1.3 Application**

These rules and regulations shall be liberally construed so as to permit the Division of Taxation the authority to effectuate the purpose of R.I. Gen. Laws Chapter 44-20 and other applicable state laws and regulations.

##### **1.4 Severability**

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be impaired or affected thereby.

##### **1.5 Definitions**

- A. “Administrator” or “Tax Administrator” means the Tax Administrator of the State of Rhode Island, and head of the Rhode Island Division of Taxation.
- B. “Base Cost of Cigarettes” means the invoice cost of the cigarettes to the licensee or the replacement cost of the cigarettes to the licensee within thirty (30) days prior to the date of sale in the quantity last purchased whichever is lower, less all trade discounts except customary discounts for cash. The cigarette excise tax imposed by R.I. Gen. Laws Chapter 44- 20 shall be added to the invoice cost of the cigarettes to the licensee.

- C. "Cartage Cost to the Retail Outlet" means three-fourths of one percent (0.75%) of the base cost of the cigarettes to the licensee or a lower cost as claimed and proved by the licensee.
- D. "Cigarettes" means and includes any cigarettes suitable for smoking in cigarette form, and each sheet of cigarette rolling paper, including but not limited to paper made into a hollow cylinder with or without a filter for use in making cigarettes.
- E. "Dealer" means any person whether located within or outside of this state, who sells or distributes cigarettes to a consumer in this state.
- F. "Distributor" means any person:
1. Whether located within or outside of this state, other than a dealer, who sells or distributes cigarettes within or into this state. Such term shall not include any cigarette manufacturer, export warehouse proprietor, or importer with a valid permit under 26 U.S.C. § 5712, if such person sells or distributes cigarettes in this state only to licensed distributors, or to an export warehouse proprietor or another manufacturer with a valid permit under 26 U.S.C. § 5712;
  2. Selling cigarettes directly to consumers in this state by means of at least twenty-five (25) cigarette vending machines;
  3. Engaged in this state in the business of manufacturing cigarettes or any person engaged in the business of selling cigarettes to dealers, or to other persons, for the purpose of resale only; provided, that seventy-five percent (75%) of all cigarettes sold by that person in this state are sold to dealers or other persons for resale and selling cigarettes directly to at least forty (40) dealers or other persons for resale; or
  4. Maintaining one or more regular places of business in this state for that purpose; provided, that seventy-five percent (75%) of the sold cigarettes are purchased directly from the manufacturer and selling cigarettes directly to at least forty (40) dealers or other persons for resale;
  5. Selling little cigars directly to consumers in this state by means of at least twenty-five (25) little cigar vending machines.
- G. "Importer" means any person who imports into the United States, either directly or indirectly, a finished cigarette and/or other tobacco products for sale or distribution.

- H. "Licensed," when used with reference to a Manufacturer, Importer, Distributor or Dealer, means only those persons who hold a valid and current license from the State of Rhode Island issued under R.I. Gen. Laws § 44-20-2 for the type of business being engaged in. When the term "Licensed" is used before a list of entities, such as "Licensed Manufacturer, Importer, wholesale Dealer, or retailer Dealer," such term shall be deemed to apply to each entity in such list.
- I. "Little cigars" means and includes any roll, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of tobacco wrapped in leaf tobacco or any substance containing tobacco paper or any other material and where such roll has an integrated filter, except where such wrapper is wholly or in greater part made of tobacco and where such roll has an integrated filter and weighs over four (4) per thousand (1,000).
- J. "Manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigarette, little cigar and/or other tobacco products;
- K. "Notice of Deficiency Determination" means a written statement of a tentative determination of tax liability, including any interest and penalties due, which does not become due, final, and payable until thirty (30) days have transpired from the date the notice was issued without a request for hearing.
- L. "Person" means any individual, including an employee or agent, firm, fiduciary, partnership, corporation, trust, or association, however formed;
- M. "Place of Business" means and includes any location where cigarettes and/or other tobacco products are sold, stored or kept, including but not limited to any storage room, attic, basement, garage, or other facility immediately adjacent to the location. It also includes any receptacle, hide, vessel, airplane, train, or vending machine; locked storage safe and/or containers.
- N. "Retailer/Dealer" means every person, co-partnership, corporation or association engaged in the business of making sales of cigarettes at retail within this state; provided, that in the case of a retailer/dealer making sales both at retail and at wholesale, such term shall be applied only to the retail portion of such business.
- O. "Retail Sale" means any transfer of title to cigarettes for a valuable consideration made, in the ordinary course of trade, or in the usual prosecution of the seller's business, to the purchaser for consumption or use other than resale of further processing or manufacturing. This term

includes any such transfer of cigarettes where title is retained by the seller as security for the payment of the purchase price.

- P. "Retailer/Dealer's Actual Cost of Selling Cigarettes" means the base cost of the cigarettes to the retailer/dealer plus the retailer/dealer's overhead costs and expenses.
- Q. "Retailer/Dealer's Overhead Costs and Expenses" means the amounts attributable to the sale of cigarettes, as evidenced by the standards and methods of accounting regularly employed by the retailer/dealer in the allocation of overhead costs and expenses, paid or incurred, including, without limitation, labor, salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of license fees, taxes, insurance and advertising.
- R. "Retailer/Dealer's Presumptive Cost of Selling Cigarettes" means one hundred and six percent (106%) of the base cost of the cigarettes to the retailer plus freight charges not otherwise included in the base cost of the cigarettes plus cartage cost to the retail outlet if performed or paid for by the retailer/dealer.
- S. "Sale" or "Sell" includes and applies to gifts, exchanges, and barter of cigarettes and/or other tobacco products. The act of holding, storing, or keeping cigarettes and/or other tobacco products at a place of business for any purpose shall be presumed to be holding the cigarettes and/or other tobacco products for sale.
- T. "Sales by Wholesalers/Distributors to Other Wholesalers/Distributors" means when one wholesaler/distributor sells cigarettes to any wholesaler/distributor, the former shall not be required to include in his selling price to the latter, wholesaler/distributor presumptive cost of selling cigarettes except that no such sale shall be made at a price less than the "base cost of cigarettes," but the latter wholesaler/distributor upon resale to a retailer/dealer or for consumption or use, shall be deemed to be the wholesaler/distributor governed by the definitions of this regulation. In the case of sales at retail by a wholesaler, the cost to the wholesaler with respect to such sales shall be presumed to be the same as the cost to the retailer.
- U. "Stamp" means the impression, device, stamp, label, or print manufactured, printed, or made as prescribed by the administrator to be affixed to packages of cigarettes, as evidence of the payment of the tax provided by R.I. Gen. Laws Chapter 44-20 or to indicate that the cigarettes are intended for a sale or distribution in this state that is exempt from state tax under the provisions of state law; and also includes impressions made by metering machines authorized to be used under the provisions of R.I. Gen. Laws Chapter 44-20.

- V. "Wholesaler/Distributor" means every person, co-partnership, corporation or association engaged in the business of making sales of cigarettes at wholesale within this state; provided, that in the case of a wholesaler engaged in the business of making sales both at wholesale and at retail, such term shall be applied only to the wholesale portion of such business.
- W. "Wholesaler/Distributor's Actual Cost of Selling Cigarettes" means the base cost of the cigarettes to the wholesaler/distributor plus the wholesaler/distributor's overhead costs and expenses.
- X. "Wholesaler/Distributor's Overhead Costs and Expenses" means the amounts attributable to the sale of cigarettes as evidenced by the standards and methods of accounting regularly employed by the wholesaler/distributor in the allocation of overhead costs and expenses paid or incurred, including, without limitation, labor, salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of license fees, taxes, insurance and advertising.
- Y. "Wholesaler/Distributor's Presumptive Cost of Selling Cigarettes" means one hundred and two percent (102%) of the base cost of the cigarettes to the wholesaler/distributor plus freight charges not otherwise included in the cost of the cigarettes plus cartage cost to the retail outlet if performed or paid for by the wholesaler/distributor.

## **1.6 Dealers' and Distributors' Reports and Records**

- A. Reports:
  - 1. Distributors: on or before the tenth day of each month, distributors must file a report with the Division of Taxation. The report covers the prior month and should also contain any information on cigarette transactions that the Division of Taxation may require. Distributor report forms are available at the Division of Taxation's website - [www.tax.ri.gov](http://www.tax.ri.gov)
  - 2. Dealers: monthly reports are required from persons who have received unstamped cigarettes or from dealers who have purchased tax indicia during that month. However, if the Tax Administrator determines that additional information is necessary for proper enforcement, he/she may require any dealer to file a special or regular monthly report. All regular monthly reports must be filed and received by the Division of Taxation on or before the tenth (10th) of the month for which the report is being made.
- B. Records: Every distributor and dealer must keep complete and accurate records of all cigarettes purchased and sold. These records must be in the form and of the kind the Tax Administrator may require and must be kept

safely for three (3) years in a manner to insure permanency and accessibility for inspection by the Tax Administrator or his agents. The books, papers and records of any distributor or dealer in the State may be examined to determine whether the cigarette tax has been paid in full. The Division of Taxation may also investigate and examine the cigarette stock in or on any premises where cigarettes are possessed, stored or sold to determine whether the provisions of Title 44, Chapter 20 are being met and/or whether the minimum prices established under the Unfair Practices Act (6-13) are being complied with.

## **1.7 Licenses**

### **A. Licensing requirements:**

1. Each person engaging in the business of selling cigarette and/or other tobacco products in this state, including any distributor or dealer, shall secure a license from the Tax Administrator before engaging in that business or continuing to engage therein. A separate application and license is required for each place of business operated by a distributor or dealer; provided, that an operator of vending machines for cigarette products is not required to obtain a distributor's license for each machine. If the applicant for a license does not have a place of business in this state, the license shall be issued for such applicant's principal place of business, wherever located. A licensee shall notify the administrator within thirty (30) days in the event that it changes its principal place of business. A separate license is required for each class of business if the applicant is engaged in more than one of the activities required to be licensed by R.I. Gen. Laws § 44-20-2. No person shall maintain or operate or cause to be operated a vending machine for cigarette products without procuring a dealer's license for each machine.
2. The Tax Administrator may grant a distributor's license to any person located outside Rhode Island who ships cigarettes into Rhode Island if the Tax Administrator determines that the collection of the cigarette tax will be facilitated. The nonresident must qualify under R.I. Gen. Laws § 44-20-1 as a distributor.
3. All licenses are issued by the Tax Administrator on application setting forth in forms prescribed by the Tax Administrator such information as he/she may require for the proper administration of R.I. Gen. Laws Chapter 44-20.
4. No exception is made in the law for persons operating temporary stands or other places where cigarettes are sold only for a limited time. Persons operating such places must first obtain a license from

the Tax Administrator before selling cigarettes therein. A license used for the regular place of business cannot cover a temporary stand located at a place apart from the regular place of business.

- B. Suspension or Revocation of Licenses: The Tax Administrator may suspend or revoke any cigarette license if the licensee fails to comply with any law or ordinance concerning cigarette and/or other tobacco products sales. The Tax Administrator may also suspend or revoke a license if the licensee does not comply with Title 6, Chapter 13 ("Unfair Sales Practices"). The Tax Administrator and Division of Taxation agents are empowered to examine the books, records and papers of any licensee to determine proper compliance.

## **1.8 License Availability**

- A. No license may be granted, maintained or renewed if the applicant, or any combination of persons owning directly or indirectly any interests in the applicant:
1. Owes five hundred dollars (\$500) or more in delinquent cigarette taxes;
  2. Is delinquent in any tax filings for one month or more;
  3. Had a license under R.I. Gen. Laws Chapter 44-20 revoked by the Tax Administrator within the past two (2) years;
  4. Has been convicted of a crime relating to cigarettes stolen or counterfeit cigarettes;
  5. Is a cigarette manufacturer or importer that is neither: (i) a participating manufacturer as defined in subsection II (jj) of the "Master Settlement Agreement" as defined in R.I. Gen. Laws § 23-71-2; nor (ii) in full compliance with R.I. Gen. Laws Chapter 44-20.2 and R.I. Gen. Laws § 23-71-3;
  6. Has imported, or caused to be imported, into the United States any cigarette in violation of 19 U.S.C. § 1681a; or
  7. Has imported, or caused to be imported into the United States, or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1331, et seq.)
- B. No person shall apply for a new license or permit (as defined in § 44-19-1) or renewal of a license or permit, and no license or permit shall be issued or renewed for any person, unless:

1. All outstanding fines, fees or other charges relating to any license or permit held by that person have been paid.
2. No license or permit shall be issued relating to a business at any specific location until all prior licenses or permits relating to that location have been officially terminated and all fines, fees or charges relating to the prior licenses have been paid or otherwise resolved or the Tax Administrator has found that the person applying for the new license or permit is not acting as an agent for the prior licensee or permit holder who is subject to any such related fines, fees or charges that are still due. Evidence of such agency status includes, but is not limited to, a direct familial relationship and/or an employment, contractual or other formal financial or business relationship with the prior licensee or permit holder.
3. No person shall apply for a new license or permit pertaining to a specific location in order to evade payment of any fines, fees or other charges relating to a prior license or permit for that location.
4. No new license or permit shall be issued for a business at a specific location for which a license or permit already has been issued unless there is a bona fide, good faith change in ownership of the business at that location.
5. No license or permit shall be issued, renewed or maintained for any person, including the owners of the business being licensed or having applied and received a permit, that has been convicted of violating any criminal law relating to tobacco products, the payment of taxes or fraud or has been ordered to pay civil fines of more than twenty-five thousand dollars (\$25,000) dollars for violations of any civil law relating to tobacco products, the payment of taxes or fraud.

## **1.9 Suspension or Revocation of License**

The Tax Administrator may suspend or revoke any license under R.I. Gen. Laws Chapter 44-20 or with any provision of any other law or ordinance relative to the sale of cigarettes and/or other tobacco products; and the Tax Administrator may also suspend or revoke any license for failure of the licensee to comply with any provision of R.I. Gen. Laws Chapter 6-13, and, for the purpose of determining whether the licensee is complying with any provision of chapter 13 of title 6, the Tax Administrator and his or her authorized agents are empowered, in addition to authority conferred by R.I. Gen. Laws § 44-20-40, to examine the books, papers, and records of any licensee. The Tax Administrator shall revoke the license of any person who would be ineligible to obtain a new or renew a license by reason of any of the conditions for licensure provided in R.I. Gen. Laws § 44-20-4.1. Any person aggrieved by the suspension or revocation may apply to the Administrator



for a hearing as provided in R.I. Gen. Laws § 44-20-47, and may further appeal to the district court as provided in R.I. Gen. Laws § 44-20-48.

## **1.10 Purchasing and Applying Indicia**

- A. By Licensed Distributors or Dealers: Payment for indicia must be made at the time of purchase. However, if the purchaser wishes to use the provision for thirty (30) days' credit as provided by law, he or she must file a satisfactory surety bond with the Division of Taxation. The bond must be in an amount not less than the sale price of the indicia averaged over six (6) months' purchases and the bond must be written by a surety company authorized to do business in Rhode Island. A bond form will be supplied on request.
- B. By a Nonresident:
  - 1. The licensed nonresident cigarette distributor is required to affix all indicia to the individual packages of cigarettes at the location for which the license is issued. The indicia must be affixed before the packages of cigarettes are shipped into Rhode Island. The licensed nonresident must also agree to comply with all other parts of the Rhode Island cigarette tax law. The nonresident distributors must also file a bond in the amount of one thousand dollars (\$1,000) to the Tax Administrator in accordance with all provisions of the law and regulations. The bond must be issued by a surety company licensed to do business in Rhode Island and must be in full force and effect for a period of one year and a day after the expiration of the bond unless a certificate is issued by the Tax Administrator to the effect that all taxes due the State have been paid. Cash will be accepted in lieu of a surety bond.
  - 2. The licensed nonresident distributor must also agree in writing to submit his or her books, accounts and records to examination during reasonable business hours as well as appointing, in writing, the Secretary of State of the State of Rhode Island as his or her agent upon whom service of process may be made in any proceeding involving the administration of the cigarette tax law.
- C. Returned Checks: In the event of returned check payments, or electronic payment reversals, the Tax Administrator reserves the right to revoke the license of the distributor or dealer or to require that future payments must be made by certified check or money order.
- D. Affixing Indicia: Each distributor must affix, or cause to be affixed, indicia to each individual package of cigarettes in the proper denomination. This process shall be in the manner the Tax Administrator may specify in accordance with the provisions of R.I. Gen. Laws 44-20. The indicia must

be applied to each package of cigarettes sold or distributed and the indicia may be applied by the distributor at any time before the cigarettes are transferred out of the distributor's possession.

### **1.11 Redemptions and Refunds**

- A. **Redemption of Unused Cigarette Tax:** No person shall sell or transfer any stamps under the provisions of this regulation. The Tax Administrator will redeem any unused or un-cancelled indicia presented in unbroken sheets or packages by any licensed distributor within six (6) months of the date of purchase, at a price equal to ninety-eight percent (98%) of their face value.
- B. **Reimbursement for Torn, Mutilated and Other Stamps:** The law also provides for the reimbursement at ninety-eight and three-quarter percent (98.75%) of their face value of indicia affixed to packages which have become unfit for use and consumption or unsalable.
- C. **Filing Claims for Refund:** Claims for refunds of cigarette tax must be made on Form T-29 (Application for Refund of Cigarette Tax). This application must be supported by an affidavit of destruction (Form T-22) executed by authorized agents of the Division of Taxation or, in the case of cigarettes returned to the manufacturer, an affidavit from the cigarette manufacturer receiving the stamped cigarettes.

### **1.12 Physical Inventories of Cigarettes and Indicia**

- A. Authorized representatives of the Division of Taxation may at unannounced times, secure inventories of cigarettes, and of indicia as the first step to conducting a complete audit to the dealer's or distributor's cigarette transactions and compliance with the cigarette tax laws by all licensees.
- B. A representative of the dealer or distributor must be present with the Division of Taxation representative during the physical inventory, and upon completion of the inventory, the representative of the dealer or distributor must sign the inventory sheets and the report form attesting to their accuracy.
- C. **Loans and Transfers of Cigarette Tax Indicia:** All licensed distributors purchasing indicia must maintain custody of the indicia. Indicia cannot be loaned, sold, or transferred to another licensee under any conditions whatsoever.
- D. **Loans and Transfers of Unstamped Cigarettes:** Loans and transfers of unstamped cigarettes must be supported by invoices and must be made on an in-out basis. The recipient must show the cigarettes received on

Schedule A of the distributor's monthly report and the transferring licensee must show the transaction on Schedule D of its distributor's monthly report. This procedure is mandatory even though the entire transaction is completed in one day.

### **1.13 Reports and Records of Carriers, Bailers and Warehousemen**

The Tax Administrator may require reports from any common or contract carrier who transports cigarettes to any point or points in Rhode Island and from any bonded warehouseman or bailee who has any cigarette in his or her possession. These reports are to contain information about shipments of cigarettes or other data the Division of Taxation may require. All common and contract carriers, bailers and warehousemen shall allow agents of the Division of Taxation to examine any records relating to the shipment or receipt of cigarettes.

### **1.14 Distribution of Sample Packages of Cigarettes**

- A. All sample packages of cigarettes are subject to the provisions of the law and regulations pertaining thereto.
- B. Distribution by Licensed Distributors:
  - 1. Licensed distributors in this state may receive and distribute sample packages under the following procedures:
    - a. The sample cigarettes must be delivered by the manufacturer directly to the distributor and an invoice rendered to the distributor showing the number of cigarettes shipped. The distributor will retain such invoice for inspection by the Tax Administrator.
    - b. The distributor will see that stamps of the proper denominations are affixed as hereinafter provided before the cigarettes leave his or her possession.
    - c. Stamps of the proper denomination shall be affixed to packages containing twenty (20) or more cigarettes. Stamps of the proper denomination shall be affixed to the carton containing packs of less than twenty (20) cigarettes. These packs shall be kept in the original stamped carton until distributed and the carton shall then be destroyed.
  - 2. The distributor will be held strictly liable for any sample packages of cigarettes charged to the distributor's account either by themselves or their agents.

C. Distribution by Manufacturers:

1. Representatives of manufacturers may, when permission has been specifically granted by the Tax Administrator, distribute sample packs of cigarettes containing more than one, but not more than five cigarettes per pack without affixing Rhode Island tax stamps. All packages of cigarettes must bear an inscription to the effect that all applicable state taxes have been paid and cigarettes so distributed are not for sale.
2. Packages containing twenty (20) cigarettes may be distributed to stockholders of the cigarette manufacturer or brought into this state for testing purposes provided the Tax Administrator is notified of the names and addresses of the recipients.
3. Each manufacturer who has been granted such special permission to distribute unstamped cigarettes must certify each month the number of sample cigarettes imported into Rhode Island and pay the tax due at the time of filing such certification.

### **1.15 Tax Exempt Cigarette Sales**

- A. Cigarettes sold to the following instrumentalities of the United States are not required to be stamped:
1. Post Exchanges, Ships' Service Stores and Commissaries of the U.S. Army, Navy, Marine Corps and Coast Guard;
  2. Officers, noncommissioned and warrant officers' clubs;
  3. Bristol Soldiers' Home;
  4. The American Red Cross;
  5. Canteens of the United States Veterans Administration.
- B. Untaxed sales by licensed distributors shall be made only to the above organizations and not to individual military or civilian personnel.

### **1.16 Minimum Pricing of Cigarettes**

- A. Pursuant to R.I. Gen. Laws § 44-20-8, the Tax Administrator may suspend or revoke any license under R.I. Gen. Laws Chapter 44-20 for failure of the licensee to comply with any provision of R.I. Gen. Laws Chapter 6-13 entitled "Unfair Sales Practices."
- B. No licensee shall advertise, offer to sell, or sell cigarettes at a price that is less than the applicable presumptive cost without obtaining the Tax

Administrator's prior written approval. The Tax Administrator may periodically announce the retailers' and wholesalers' presumptive cost. The Tax Administrator may suspend or revoke any license if the licensee advertises, offers to sell, or sells cigarettes at less than the applicable presumptive cost without the Tax Administrator's prior written approval.

C. Example:

The cost of a carton of cigarettes to a licensed cigarette distributor is \$100.00. This includes the cost from the manufacturer, and cigarette tax paid per R.I. Gen. Laws § 44-20-12, for the carton of cigarettes. The wholesaler/distributor's presumptive cost of selling cigarettes, or the minimum price from a distributor to a dealer, without a delivery cost, is \$102.00 ( $\$100 \times 102\%$ ). The cartage cost to the retail outlet, or the minimum price including delivery cost, from a distributor to a dealer, is \$102.77 ( $\$102 \times 100.75\%$ ). The retailer/dealer's presumptive cost of selling cigarettes, or the dealer's minimum price to the consumer, is \$108.96 ( $\$102.77 \times 106\%$ ) per carton.

## 1.17 Vending Machines Operators

A. Licensing:

1. Each vending machine is considered a retail outlet. Each vending machine owner must file an application with the Division of Taxation and shall pay the fee for each machine. A numbered license will be furnished for each individual machine.
2. No person shall cause or allow a cigarette vending machine to be operated unless a Division of Taxation marker tab is attached showing that the machine has been licensed by the Division of Taxation. The fee for each license is twenty-five dollars (\$25.00). Any licensed machine may be moved from one place to another. Any person who operates machines in violation of these provisions is subject to the same penalties in R.I. Gen. Laws § 44-20-3 for the sale of cigarettes without a license. When a machine is in use or service (i.e., on location, accessible to cigarette purchasers and containing or ready to contain cigarettes) it must have a vending machine tab affixed.
3. In addition to affixing a Division of Taxation tab to each machine owned and operated, each operator must have his or her name and address plainly marked on each vending machine in use.
4. Vending machine dealer's licenses and pre-numbered decal tabs (indicating proper licensing of cigarette vending machines) are furnished by the Division of Taxation to each licensed operator.

Licenses must be kept in the operator's files and the decal tabs must be affixed to the inner panel of the vending machine (inside the glass) or any other place on the machine where the tax is visible for inspection by agents of the Division of Taxation.

5. If the machine is sold or otherwise disposed of, the license must be returned to the Division of Taxation and the tab must be removed from the machine. Licenses and tabs are not transferable.
  6. As of May 31 of each year, enough pre-numbered decal tabs for the current year will be issued to vending machine operators to indicate proper licensing of cigarette vending machines controlled as of that date. Prior year tabs must be removed from the vending machines and current year tabs must be affixed by July 15 of the current year.
- B. Reports:
1. Periodic reports on the number of vending machines in operation, their location and other pertinent information shall be required from operators of vending machines.
  2. Monthly Report of Vending Machine Operators: On or before the tenth of the month, each vending machine operator must file a report (Form T-302). The report covers the prior month and indicates the following:
    - a. the number of machines controlled by the operator at the end of the prior month;
    - b. the number of machines acquired during the month including the model number(s) of machines, manufacturer's name and address and from whom the machine was purchased;
    - c. the number of machines sold or disposed of including the model number(s), manufacturer's name and address and to whom the machine was sold, and;
    - d. the inventory of machines controlled at the end of the month.
  3. If an operator has vending machines purchased outside Rhode Island, he or she must prove that the use tax has been paid as a condition of getting vending machine licenses.
  4. Vending Machine Operators Annual Inventory & Report: Each May 31, operators of five or more cigarette vending machines must report the following information to the Division of Taxation on Form T-5A:

- a. location of each machine by street and number;
  - b. name of each location;
  - c. city or town where vending machines are located;
  - d. number of the license affixed to each machine, and;
  - e. any machines not on location but in inventory.
5. Inventories of vending machines listed on Form T-5A will be audited against the license files at the Division of Taxation and the information and forms are subject to field verification.
  6. Vending machine tabs are issued in accordance with the list of locations reported to the Division of Taxation prior to June 1 of the current year. A Form T-5A must be prepared and filed with each new application for any additional vending machine licenses.

C. Physical Requirements for Cigarettes Sold

1. Sealed Packages: Cigarettes, if sold in vending machines, must be in sealed packages which bear the Rhode Island tax indicia in the proper denomination. The sale of individual cigarettes is prohibited.
2. Visibility of Indicia: In all machines constructed with windows in front or top of the case, cigarettes must be loaded so that the Rhode Island tax indicia are clearly visible from the outside. The use of paper or other materials to blank out windows in cigarette vending machines is prohibited.

### **1.18 Tax Rate on Cigarettes and Little Cigars**

Under R.I. Gen. Laws § 44-20-12 a tax is imposed on all cigarettes and little cigars sold or held for sale in the state. The payment of the tax is to be evidenced by stamps, which may be affixed only by licensed distributors to the packages containing such cigarettes and/or little cigars. Any cigarettes and/or little cigars on which the proper amount of tax has been paid, payment being evidenced by the stamp, is not subject to a further tax.

### **1.19 Inspections**

- A. The Tax Administrator and his or her agents is authorized under R.I. Gen. Laws § 44-20-40.1 to conduct unannounced inspections to insure compliance with all provisions of R.I. Gen. Laws Chapter 44-20. Accordingly, the Tax Administrator and his or her agents shall be permitted to inspect the Place of Business of any person selling any and all tobacco products within the State. Inspections of Licensed Distributors

or Dealers shall be conducted during normal business hours without a warrant and without prior notice.

- B. The Tax Administrator and his or her duly authorized agents shall be permitted to inspect the books, papers, reports and records of any Manufacturer, Importer, Distributor, or Dealer in this state for the purpose of determining whether taxes imposed by R.I. Gen. Laws Chapter 44-20 have been fully paid, and may investigate the stock of cigarettes and other tobacco products in or upon the Place of Business for the purpose of determining whether the provisions of R.I. Gen. Laws Chapter 44-20 are being obeyed.
- C. Failure to allow such inspection(s) of the Place of Business and/or records may result in civil penalties and/or suspension or revocation of a Cigarette Dealer's or Distributor's License.

## **1.20 Seizures**

All cigarettes and/or other tobacco products which are possessed, stored, retained, or otherwise brought into the state in contradiction to R.I. Gen. Laws § 44-20-13.2 and these Regulations shall be considered untaxed contraband by the Tax Administrator and his or her agents. The cigarettes and/or other tobacco products may be seized by the Tax Administrator or his or her agents or employees or by any sheriff or his or her deputy or any police officer when directed by the Tax Administrator to do so, without a warrant.

## **1.21 Billings and Penalties**

- A. Whoever omits, neglects, or refuses to comply with any duty imposed upon him/her by R.I. Gen. Laws Chapter 44-20, or does, or cause to be done, any of the things required by R.I. Gen. Laws Chapter 44-20, or does anything prohibited R.I. Gen. Laws Chapter 44-20, shall, in addition to any other penalty provided in R.I. Gen. Laws Chapter 44-20, be liable as follows:
  - 1. For a first offense in a twenty-four month (24) period, a penalty of not more than one thousand dollars (\$1,000), or not more than five (5) times the retail value of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil action;
  - 2. For a second or subsequent offense in a twenty-four-month (24) period, a penalty of not more than five thousand dollars (\$5,000), or not more than twenty-five (25) times the retail value of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil action.



- B. Whoever fails to pay any tax imposed by R.I. Gen. Laws Chapter 44-20 at the time prescribed by law or regulations, shall, in addition to any other penalty provided in R.I. Gen. Laws Chapter 44-20, be liable for a penalty of not more than five (5) times the tax due but unpaid.
- C. When determining the amount of a penalty sought or imposed under R.I. Gen. Laws § 44-20-51.1, evidence of mitigating or aggravating factors, including history, severity, and intent, shall be considered.
- D. In addition to the civil penalties listed above, the Tax Administrator, in his or her sole discretion, may suspend or revoke a cigarette Dealer's or Distributor's license for any violation of these Regulations.

## **1.22 Seizure and Destruction of Unstamped Cigarettes**

Any cigarettes found at any place in this state without stamps affixed as required R.I. Gen. Laws Chapter 44-20 are declared to be contraband goods and may be seized by the Tax Administrator, his or her agents, or employees, or by any deputy sheriff, or police officer when directed by the Tax Administrator to do so, without a warrant. Any cigarettes seized under the provisions of R.I. Gen. Laws Chapter 44-20 shall be destroyed. The seizure and/or destruction of any cigarettes under the provisions of this R.I. Gen. Laws § 44-20-37 does not relieve any person from a fine or other penalty for violation of R.I. Gen. Laws Chapter 44-20.

## **1.23 Appeals**

- A. Any person aggrieved by a Notice of Deficiency issued by the Tax Administrator is entitled to an administrative hearing. In order to request this hearing, the taxpayer must notify the Tax Administrator in writing within thirty (30) days from the date of the Notice of Deficiency. The Tax Administrator shall, as soon as is practicable, set a time and place for hearing, and shall render a final decision. The administrative hearing is the taxpayer's opportunity to present valid records/invoices, as detailed above in Sub-part 8 of this regulation, evidencing tax paid on the seized items.
- B. Appeals from a final decision of the Tax Administrator shall be to the Rhode Island Sixth (6th) Division District Court pursuant to R.I. Gen. Laws § 8-8-1 et seq. The taxpayer's right to appeal to the district court is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer files a timely motion for exemption from prepayment with the district court in accordance with the requirements imposed pursuant to R.I. Gen. Laws § 8-8-26.

## **1.24 Effective Date**

This regulation is identified by ERLID#: 8517 and shall take effect May 15, 2017.

Neena S. Savage

Tax Administrator