

## Part 2 Cigarettes

### **59-14-201 License -- Application of part -- Fee -- Bond -- Exceptions.**

- (1) It is unlawful for any person in this state to manufacture, import, distribute, barter, sell, exchange, or offer cigarettes for sale without first having obtained a license issued by the commission under Section 59-14-202.
- (2) Except for the tax rates described in Subsection 59-14-204(2), this part does not apply to a cigarette produced from a cigarette rolling machine.
- (3)
  - (a) A license may not be issued for the sale of cigarettes until the applicant has paid a license fee of \$30 or a license renewal fee of \$20, as appropriate.
  - (b) The fee for reinstatement of a license that has been revoked, suspended, or allowed to expire is \$30.
  - (c) Notwithstanding Subsections (3)(a) and (b), the commission may not charge a fee for a license under this section for a retailer, as defined in Section 59-14-102.
- (4)
  - (a) A license may not be issued until the applicant files a bond with the commission. The commission shall determine the form and the amount of the bond, the minimum amount of which shall be \$500. The bond shall be executed by the applicant as principal, with a corporate surety, payable to the state and conditioned upon the faithful performance of all the requirements of this chapter, including the payment of all taxes, penalties, and other obligations.
  - (b) An applicant is not required to post a bond if the applicant:
    - (i) purchases during the license year only products that have the proper state stamp affixed as required by this chapter; and
    - (ii) files an affidavit with the applicant's application attesting to this fact.

Amended by Chapter 231, 2018 General Session

### **59-14-202 Issuance of licenses -- Common carrier licenses -- Contents -- Valid for three years -- Revocation -- Distribution requirements.**

- (1) Cigarette licenses may be issued only to a person owning or operating the place or cigarette vending machine from which the cigarette sales are made.
- (2)
  - (a) A license is required for each separate place of business.
  - (b) A licensee shall notify the commission within 30 days in the event that it changes the location of the business.
- (3) Applications for a license under this chapter shall be submitted on a form authorized by the commission. Each application shall state:
  - (a) the name and address of the applicant;
  - (b) the address of each place of business where the applicant's business will be conducted within this state; and
  - (c) any other information the commission may require relevant to license qualification.
- (4) A common carrier is not required to obtain more than one license for sales on conveyances operated by that carrier within the state. All conveyances owned by a common carrier are considered as one place of business for the purpose of this chapter.

- (5) No license may be granted, maintained, or renewed:
  - (a) if any combination of people owning directly or indirectly, in the aggregate, more than 10% of the ownership interests in the applicant:
    - (i) has been convicted of knowingly:
      - (A) selling stolen or counterfeit cigarettes;
      - (B) receiving stolen or counterfeit cigarettes; or
      - (C) being involved in the smuggling or counterfeiting of cigarettes;
    - (ii) is a cigarette manufacturer or importer that is not a:
      - (A) participating manufacturer as defined in subsection II(jj) of the "Master Settlement Agreement"; or
      - (B) in full compliance with the provisions of this chapter dealing with nonparticipating manufacturers;
    - (iii) has imported, or caused to be imported, into the United States any cigarette in violation of 19 U.S.C. 1681a; or
    - (iv) 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.; and
  - (b) until the applicant:
    - (i) has paid any delinquent cigarette taxes; and
    - (ii) has served the period of suspension resulting from any prior revoked license.
- (6) Each license shall be numbered, show the residence and place of business of the licensee, and is nontransferable.
- (7)
  - (a) Each license is in effect for three years from the date of issuance, unless the license is earlier revoked by the commission.
  - (b) The license expires on the expiration date shown on the license, unless the licensee renews it in accordance with commission rules.
  - (c) The commission shall by rule establish procedures for the renewal and reinstatement of licenses.
- (8)
  - (a) In addition to any civil or criminal penalty provided by law, the commission shall, after providing notice and a hearing, revoke the license of any person:
    - (i) found to have violated this title; or
    - (ii) who no longer qualifies for licensure under Subsection (5).
  - (b) In the case of a revocation under Subsection (8)(a)(i), a license may not be issued to that person within a period of two years after the violation.
- (9) A licensee may not barter, sell, exchange, or offer for sale:
  - (a) cigarettes in an individual package or container that contains less than 20 cigarettes; or
  - (b) roll-your-own cigarettes in an individual package or container that contains less than 0.6 ounces of tobacco.
- (10)
  - (a) The commission shall maintain a list that includes the identity of all people licensed under this section.
  - (b) The list shall:
    - (i) include the type of license possessed; and
    - (ii) be updated by the commission at least once per quarter.

Amended by Chapter 217, 2004 General Session

**59-14-203 Failure to obtain a license -- Penalty.**

Any person engaging in the business of manufacturing, importing, distributing, or selling or offering to sell cigarettes without holding a valid license that is currently not suspended or revoked is guilty of a class B misdemeanor for each offense.

Amended by Chapter 217, 2004 General Session

**59-14-204 Tax basis -- Rate -- Future increase -- Cigarette Tax Restricted Account -- Appropriation and expenditure of revenues.**

- (1) Except for cigarettes described under Subsection 59-14-210(3), there is levied a tax upon the sale, use, storage, or distribution of cigarettes in the state.
- (2) The rates of the tax levied under Subsection (1) are, beginning on July 1, 2010:
  - (a) 8.5 cents on each cigarette, for all cigarettes weighing not more than three pounds per thousand cigarettes; and
  - (b) 9.963 cents on each cigarette, for all cigarettes weighing in excess of three pounds per thousand cigarettes.
- (3) Except as otherwise provided under this chapter, the tax levied under Subsection (1) shall be paid by any person who is the manufacturer, jobber, importer, distributor, wholesaler, retailer, user, or consumer.
- (4) The tax rates specified in this section shall be increased by the commission by the same amount as any future reduction in the federal excise tax on cigarettes.
- (5)
  - (a) There is created within the General Fund a restricted account known as the "Cigarette Tax Restricted Account."
  - (b) The Cigarette Tax Restricted Account consists of:
    - (i) the first \$7,950,000 of the revenues collected from a tax under this section; and
    - (ii) any other appropriations the Legislature makes to the Cigarette Tax Restricted Account.
  - (c) For each fiscal year beginning with fiscal year 2011-12 and subject to appropriation by the Legislature, the Division of Finance shall distribute money from the Cigarette Tax Restricted Account as follows:
    - (i) \$250,000 to the Department of Health to be expended for a tobacco prevention and control media campaign targeted towards children;
    - (ii) \$2,900,000 to the Department of Health to be expended for tobacco prevention, reduction, cessation, and control programs;
    - (iii) \$2,000,000 to the University of Utah Health Sciences Center for the Huntsman Cancer Institute to be expended for cancer research; and
    - (iv) \$2,800,000 to the University of Utah Health Sciences Center to be expended for medical education at the University of Utah School of Medicine.
  - (d) In determining how to appropriate revenue deposited into the Cigarette Tax Restricted Account that is not otherwise appropriated under Subsection (5)(c), the Legislature shall give particular consideration to enhancing Medicaid provider reimbursement rates and medical coverage for the uninsured.

Amended by Chapter 168, 2016 General Session

**59-14-204.5 Application of excise tax on tribal lands.**

- (1)

- (a) Cigarettes sold to or received by members of a federally recognized Indian tribe that are purchased or received on the tribal lands are not subject to the tax imposed by Section 59-14-204.
  - (b) Cigarettes exempt from tax under Section 5704, Internal Revenue Code, and distributed in accordance with federal regulations are not subject to the tax imposed by Section 59-14-204.
- (2)
- (a)
    - (i) The tax applicable to cigarettes sold to or received by nontribal members on tribal lands is equal to the state tax imposed by Section 59-14-204, minus any tribal tax actually paid.
    - (ii) For purposes of this section, nontribal members includes any person who is not a member of the Indian tribe that is selling the cigarettes.
  - (b) If the application of the tax offset for tribal taxes permitted in Subsection (2)(a) results in a negative balance, the taxes owed to the state are zero.
  - (c)
    - (i) Cigarettes taxed pursuant to this Subsection (2) shall bear a tax stamp as required by Section 59-14-205 in an amount equal to the tax imposed by Section 59-14-204.
    - (ii) The commission shall at least semi-annually rebate to an Indian tribal entity that is in compliance with this chapter the lesser of:
      - (A) an amount equal to the tribal tax imposed on sales under this Subsection (2); or
      - (B) the face value of the tax stamps affixed to cigarettes sold under this Subsection (2).

Amended by Chapter 317, 2010 General Session

**59-14-205 Stamping procedure -- Rules -- Exceptions -- Penalty -- Collection procedure.**

- (1) In the case of manufacturers, jobbers, importers, distributors, wholesalers, and retailers, the taxes imposed on cigarettes by this chapter shall be paid by affixing stamps in the manner and at the time prescribed in this section.
- (2) All manufacturers, importers, distributors, wholesalers, and retailers shall securely affix the stamps to each individual package or container of cigarettes sold in the state, and may not sell or provide cigarette stamps to any other person.
- (3)
  - (a) Stamps shall be securely affixed to each individual package of cigarettes within 72 hours after the cigarettes are received within the state.
  - (b) All cigarettes shall be stamped before sale within the state.
  - (c) Cigarettes manufactured within the state shall be stamped by the manufacturer when and as sold.
- (4) The commission may, if it is practical and reasonable for the enforcement of the collection of taxes, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to permit cigarettes to remain unstamped until the original case or crate is broken, unpacked, or sold.
- (5) The commission may permit a person to sell and export cigarettes to a regular dealer in cigarettes outside the state without affixing stamps.
- (6)
  - (a) If cigarettes are allowed to remain unstamped under Subsection (4) or (5), the commission may require the person holding the unstamped cigarettes to secure a surety bond from a surety company authorized to do business in this state.
  - (b) The surety bond described in Subsection (6)(a) shall be conditioned to secure the payment of all taxes and penalties provided in this chapter.

- (7) A manufacturer, jobber, importer, distributor, wholesaler, or retailer may not remove, conceal, or obscure a cigarette package:
  - (a) notice described under Subsection 59-14-210(1)(a)(i); or
  - (b) warning label that is placed on the package in compliance with the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1333.
- (8)
  - (a) Any person failing to properly affix and cancel stamps to the cigarettes, under this section and rules promulgated by the commission, may be required by the commission to pay as part of the tax, and in addition to any other penalty provided in this chapter, a penalty of \$25 for each offense, to be assessed and collected by the commission in accordance with Chapter 1, Part 14, Assessment, Collections, and Refunds Act.
  - (b) Each article, package, or container found not having proper stamps affixed to the article, package, or container is a separate offense.
  - (c) The presence of any package or container in a place of business conducting retail sales shall be prima facie evidence that it is intended for sale and subject to taxes under this chapter.

Amended by Chapter 212, 2009 General Session

**59-14-206 Sales of stamps -- Deposit of revenues -- Redemption of unused stamps -- Discount on lump purchases of stamps -- Unlawful acts.**

- (1) The commission may prepare stamps for use on packages and containers of cigarettes according to its specifications, designs, and denominations and shall keep an accurate record of all stamps for which the commission is responsible. The cost of the stamps shall be charged to any appropriation made to defray the costs of administering this chapter.
- (2) The commission shall sell stamps only to persons holding licenses issued as provided in this chapter.
  - (a) The money received from the sale of the stamps, and all other money received from penalties, fees, and taxes provided by this chapter shall be deposited in the General Fund.
  - (b) The commission may deliver stamps in face value not to exceed 90% of the penal sum of the licensee's bond to any licensee without payment. The licensee shall pay for stamps within 60 days of the date the stamps were delivered on credit to the licensee.
  - (c) Unused stamps may be redeemed within three years of their purchase by presentation to the commission of a claim by the person to whom they were originally sold. The redemption claim shall be accompanied by the unused stamps.
  - (d) The commission shall certify a redemption claim with its approval to the state auditor, who shall draw a warrant upon the state treasurer for the payment of the claim.
- (3) The commission shall allow a discount of 4% upon the entire amount to each licensee for each single purchase of stamps amounting to \$25 or more.
- (4) It is unlawful for any person to sell or dispose of stamps to any other person. However, stamps may be distributed to the various places of sale by the main office whenever a person owns or operates more than one place of sale. Each place of sale shall have a separate license and cancellation stamp.

Amended by Chapter 330, 1997 General Session

**59-14-207.5 Transactions only with licensed manufacturers, importers, distributors, and retailers.**

- (1) A manufacturer or importer may sell or distribute cigarettes to a licensee if that person is located or doing business in the state, including on any tribal lands located in the state.
- (2) An importer may obtain cigarettes only from a licensed manufacturer.
- (3)
  - (a) A distributor may obtain cigarettes only from a licensed manufacturer, importer, or distributor.
  - (b) A distributor may sell or distribute cigarettes to a person who is a licensed distributor or retailer, if that person is located or doing business in the state, including on any tribal lands in the state.
- (4) A retailer may obtain cigarettes only from a properly licensed person.

Enacted by Chapter 217, 2004 General Session

**59-14-207.6 Unstamped cigarettes.**

- (1) A person who ships unstamped cigarette packages into the state, other than to a licensed manufacturer, importer, distributor, or retailer who is authorized to affix stamps, shall first file with the commission a notice of shipment.
- (2) Subsection (1) does not apply to a common or contract carrier that is transporting cigarettes through this state to another location under a proper bill of lading or freight bill, which states the quantity, source, and destination of the cigarettes.

Enacted by Chapter 217, 2004 General Session

**59-14-208 Rules for stamping and packaging procedures -- Penalty.**

- (1) The commission may by rule provide for the method of breaking packages, the forms and kinds of containers, and the method of affixing or cancelling stamps. These rules shall allow for the enforcement of payment by inspection.
- (2) A person is guilty of a class B misdemeanor who:
  - (a) engages in or permits any practice which is prohibited by law and makes it difficult to enforce the provisions of this chapter by inspection;
  - (b) refuses to allow full inspection of his premises by any peace officer or of any agent of the commission upon demand; or
  - (c) hinders or in any way delays or prevents inspection when the demand is made.

Amended by Chapter 305, 2008 General Session

**59-14-208.5 Payment of cigarette tax by consumers.**

- (1) Except as provided in Subsection (4), in the case of consumers, the taxes imposed on cigarettes by this part shall be paid in the manner and at the time prescribed in this section.
- (2) The payment shall be accompanied by a form prescribed by the commission.
- (3) The payment shall be paid on or before the last day of the month immediately following the month during which the cigarettes were purchased.
- (4) A consumer is not required to pay a cigarette tax under this section:
  - (a) on cigarettes that are stamped pursuant to Section 59-14-205; or
  - (b) if the consumer is a tourist who imports cigarettes for the tourist's own use or consumption while in the state.
- (5) A consumer shall maintain records necessary to determine the amount of tax the consumer is liable to pay under this part for a period of three years following the date the return required by this part was filed.

- (6) In addition to the tax required by this part, a consumer shall pay a penalty as provided in Section 59-1-401, plus interest at the rate and in the manner prescribed in Section 59-1-402, if a consumer subject to this section fails to:
- (a) pay the tax prescribed by this part;
  - (b) pay the tax on time; or
  - (c) file a return required by this part.
- (7) An overpayment of a tax imposed by this part shall accrue interest at the rate and in the manner prescribed in Section 59-1-402.

Enacted by Chapter 6, 2007 General Session

**59-14-209 Penalty for willful violation -- Counterfeit cigarettes.**

- (1) A person is guilty of a third degree felony if the person:
- (a) knowingly, or with intent to defraud the state violates Subsection 59-14-211(4);
  - (b) knowingly or willfully removes or otherwise prepares any adhesive stamp with the intent to use or cause to be used after it has already been used;
  - (c) knowingly or willfully buys, sells, offers for sale, or gives away any washed or restored stamp to any person;
  - (d) knowingly or willfully uses or has in his possession any washed or restored stamp that has been removed from the package or container to which it had been previously affixed;
  - (e) reuses any stamp that has already been used to pay a tax provided in this chapter, in order to indicate that person's payment of any tax; or
  - (f) buys, sells, or offers for sale or has in his possession any counterfeit stamp.
- (2) In addition to any other provision of law, the sale or possession for sale of counterfeit cigarettes, as they are defined in Section 59-14-102, by a manufacturer, importer, distributor, or retailer shall result:
- (a) in the seizure by the commission or law enforcement agency of the manufacturer's, importer's, distributor's, or retailer's:
    - (i) counterfeit cigarettes; and
    - (ii) any personal property used in direct connection with the sale or possession for sale of counterfeit cigarettes; and
  - (b) the forfeiture of the seized assets to the state.

Amended by Chapter 217, 2004 General Session

**59-14-210 Prohibited sales of cigarettes.**

- (1) Except as provided in Subsection (3), a person licensed under Section 59-14-202 may not barter, sell, exchange, or offer for sale cigarettes:
- (a) in a package which:
    - (i) bears a statement, label, stamp, sticker, or other notice that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including the following and similar notices:
      - (A) "For Export Only";
      - (B) "U.S. Tax-Exempt"; and
      - (C) "For Use Outside the U.S."; or
    - (ii) does not comply with federal law, including 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information;
  - (b) imported to the United States in violation of 26 U.S.C. 5754;

- (c) the licensee knows or has reason to know were not manufactured for sale, distribution, or use in the United States;
  - (d) for which a list of added ingredients has not been submitted to the federal Department of Health and Human Services pursuant to 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act; or
  - (e) known by the licensee to be otherwise in violation of other related federal law.
- (2) A person licensed under Section 59-14-202 may not barter, sell, exchange, or offer for sale cigarettes of a tobacco product manufacturer that is prohibited from selling cigarettes to consumers within the state under Subsection 59-22-203(3)(c).
- (3) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations unless the cigarettes are brought back into the customs territory for resale within the customs territory.

Amended by Chapter 52, 2002 General Session

**59-14-211 Penalties for dealing with prohibited cigarettes -- Private right of action.**

- (1) A person, regardless of whether the person is a licensee under Section 59-14-202, is guilty of a class B misdemeanor for each instance in which the person knowingly or with reason to know:
- (a) sells or distributes cigarettes described under Section 59-14-210;
  - (b) acquires, holds, owns, possesses, transports, imports, or causes to be imported cigarettes:
    - (i) described under Section 59-14-210; and
    - (ii) intended for distribution or sale in the state;
  - (c) alters the package of any cigarettes prior to their sale or distribution to the ultimate consumer to remove, conceal, or obscure a notice, warning label, or other package information described in Subsection 59-14-210(1)(a); or
  - (d) affixes a stamp used to pay the tax imposed under Section 59-14-204, Part 3, Tobacco Products, or Part 4, Cigarettes and Tobacco Products, to a package or container of cigarettes:
    - (i) described under Section 59-14-210;
    - (ii) known by the person affixing the stamp to be altered as described under Subsection (1)(c);or
    - (iii) in violation of Section 59-14-604.
- (2) If a person knowingly or with reason to know commits an act described in Subsections (1)(a) through (d), the commission shall:
- (a) suspend or revoke a license issued to the person under Section 59-14-202; and
  - (b) regardless of whether the person is licensed under Section 59-14-202, impose a civil penalty in an amount not to exceed the greater of:
    - (i) 500% of the retail value of the cigarettes; or
    - (ii) \$5,000.
- (3) Any person whose commercial interests have been adversely affected as a result of a violation of this section may bring an action for injunctive relief, damages, or both.
- (4)
- (a) The sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, or retailer is punishable by a court of law as follows:
    - (i) a first violation involving a total quantity of less than 100 cartons of cigarettes is punishable by a fine in an amount the greater of \$500 or five times the retail value of the cigarettes;

- (ii) a subsequent violation involving a total quantity of less than 100 cartons of cigarettes is punishable by:
    - (A) the greater of a fine of \$2,000 or five times the retail value of the cigarettes;
    - (B) imprisonment not to exceed one year; or
    - (C) both imprisonment and a fine imposed by this Subsection (4)(a)(ii); and
    - (D) the revocation by the commission of the manufacturer, importer, distributor, or retailer license for a period of up to two years;
  - (iii) a first violation involving a total quantity of 100 cartons of cigarettes or more is punishable by:
    - (A) the greater of a fine of \$2,500 or five times the retail value of the cigarettes;
    - (B) imprisonment not to exceed five years; or
    - (C) both the fine and imprisonment imposed by this Subsection (4)(a)(iii);
  - (iv) a second violation involving a quantity of 100 cartons of cigarettes or more is punishable by:
    - (A) the greater of a fine of \$10,000 or five times the retail value of the cigarettes;
    - (B) imprisonment not to exceed five years; or
    - (C) both the fine and imprisonment imposed by this Subsection (4)(a)(iv); and
    - (D) the revocation by the commission of the manufacturer, importer, distributor, or retailer license for a period of up to five years; and
  - (v) a third and subsequent violation involving a quantity of 100 cartons of cigarettes or more is punishable by:
    - (A) the greater of a fine of \$25,000 or five times the retail value of the cigarettes;
    - (B) imprisonment not to exceed five years; or
    - (C) both the fine and imprisonment imposed by this Subsection (4)(a)(v); and
    - (D) the revocation by the commission of the manufacturer, importer, distributor, or retailer license for a period of up to five years; and
- (b) any counterfeit cigarette seized by the commission shall be destroyed.

Amended by Chapter 204, 2005 General Session

**59-14-212 Reporting of imported cigarettes -- Penalty.**

- (1) Except as provided under Subsection (2), any manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to an individual package or container of cigarettes imported to the United States shall provide to the commission the following as they pertain to the imported cigarettes:
- (a) a copy of the importer's federal import permit;
  - (b) the customs form showing the tax information required by federal law;
  - (c) a statement signed under penalty of perjury by the manufacturer or importer that the manufacturer or importer has complied with:
    - (i) 15 U.S.C. 1333 of the Federal Cigarette Labeling and Advertising Act, regarding warning labels and other package information; and
    - (ii) 15 U.S.C. 1335a of the Federal Cigarette Labeling and Advertising Act, regarding reporting of added ingredients;
  - (d) the name of the person from whom the person affixing the stamp received the cigarettes;
  - (e) the name of the person to whom the person affixing the stamp delivered the cigarettes, unless the person receiving the cigarettes was the ultimate consumer;
  - (f) the quantity of cigarettes in the package or container; and
  - (g) the brand and brand style of the cigarettes.

- (2) Subsection (1) does not apply to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations unless the cigarettes are brought back into the customs territory for resale within the customs territory.
- (3) The information under Subsection (1) shall be provided on a quarterly basis on forms specified by the agency.
- (4) A person who fails to comply with the reporting requirement or provides false or misleading information under Subsection (1):
  - (a) is guilty of a class B misdemeanor; and
  - (b) may be subject to:
    - (i) revocation or suspension of a license issued under Section 59-14-202; and
    - (ii) a civil penalty imposed by the commission in an amount not to exceed the greater of:
      - (A) 500% of the retail value of the cigarettes for which a report was not properly made; or
      - (B) \$5,000.
- (5) The information under Subsection (1) may be disclosed by the commission as provided under Subsection 59-1-403(4)(g).

Amended by Chapter 367, 2021 General Session

**59-14-213 Contraband goods.**

- (1) Any cigarettes in violation of the requirements of this chapter or of any state or federal law, including Sections 59-14-203, 59-14-205, 59-14-209, 59-14-211, Subsection 59-14-212(1), or Section 59-14-214 are contraband goods and may be seized without a warrant by the commission, its employees, or any peace officer of the state or its political subdivisions.
- (2) Any goods seized pursuant to Subsection (1) shall be delivered to the commission and destroyed.
- (3) Any cigarettes, as defined in Subsection 59-22-202(4), in violation of Section 59-14-604 are contraband goods and may be seized in accordance with Subsections (1) and (2).

Amended by Chapter 204, 2005 General Session

**59-14-214 Nonparticipating manufacturer equity assessment.**

- (1) As used in this section, "nonparticipating manufacturer" means a tobacco product manufacturer, as defined in Section 59-22-202, that is not a participating manufacturer within the meaning of Subsection II(jj) of the Master Settlement Agreement, as defined in Section 59-22-202.
- (2)
  - (a) There is levied an equity assessment, at the rate of 1.75 cents on each cigarette, for all cigarette packages of nonparticipating manufacturers to which a stamp is affixed as required under Section 59-14-205.
  - (b) The equity assessment imposed by this section is in addition to all other assessments, fees, and taxes levied under existing law.
  - (c) The equity assessment imposed by this section shall be paid by affixing a stamp in the manner and at the time described in Section 59-14-205.
  - (d) Except as otherwise provided in this section, the equity assessment shall be collected, paid, administered, and enforced in the same manner as the tax on cigarettes levied by Section 59-14-204.
- (3) The purposes of this equity assessment are:

- (a) to recover health care costs to the state imposed by nonparticipating manufacturers;
  - (b) to prevent nonparticipating manufacturers from undermining the state's policy of reducing underage smoking by offering cigarettes for sale substantially below the prices of cigarettes of other manufacturers;
  - (c) to protect funding, which is reduced as a result of the growth of nonparticipating manufacturer cigarette sales, for programs funded in whole or in part by payments to the state under the Master Settlement Agreement, as defined in Section 59-22-202;
  - (d) to recoup settlement-payment revenue lost to the state as a result of nonparticipating manufacturer cigarette sales; and
  - (e) to fund enforcement and administration of:
    - (i) Chapter 14, Part 6, Tobacco Manufacturer Stamping Enforcement Provisions;
    - (ii) Sections 59-22-201 through 59-22-203, related to nonparticipating manufacturers; and
    - (iii) the equity assessment imposed by this section.
- (4) Each manufacturer, distributor, wholesaler, or retail dealer who under Section 59-14-205 affixes a stamp to a package of cigarettes, shall report quarterly to the commission for each place of business, the number and denominations of stamps affixed to individual packages of nonparticipating manufacturer cigarettes sold by the manufacturer, distributor, wholesaler, or retail dealer in the preceding quarter, including the manufacturer and brand family.
- (5) A person required to file a report under this section who fails to timely file the report, or who provides false or misleading information on, or in relation to, the report:
- (a) is guilty of a class B misdemeanor; and
  - (b) is subject to:
    - (i) revocation or suspension of a license under Part 2, Cigarettes; and
    - (ii) a civil penalty, imposed by the commission, in an amount that does not exceed the greater of:
      - (A) 500% of the retail value of the cigarettes for which an accurate report was not filed; or
      - (B) \$5,000.

Amended by Chapter 148, 2013 General Session

**59-14-215 Transitional inventory tax on cigarettes -- Penalties and interest for failure to comply -- Credit or refund for outdated, unaffixed stamps.**

- (1) In addition to the tax described in Section 59-14-204, there is imposed, beginning on July 1, 2010, an inventory tax on all cigarettes subject to the tax described in Section 59-14-204, upon the sale, use, storage, or distribution of those cigarettes in the state, as follows:
- (a) the tax imposed in this section applies only to cigarettes sold, used, stored, or distributed in the state on or after July 1, 2010:
    - (i) that have a stamp that reflects that the tax paid on those cigarettes was paid at the tax rate imposed under Section 59-14-204 that was applicable on June 30, 2010; and
    - (ii) for which the tax imposed in this section has not been paid; and
  - (b) the tax imposed in this section is equal to the difference between:
    - (i) the tax imposed on those cigarettes under Section 59-14-204, beginning on July 1, 2010; and
    - (ii) the tax imposed on those cigarettes under Section 59-14-204 on or before June 30, 2010.
- (2) Except as otherwise provided under this chapter, the tax imposed under this section shall be paid by any person who is the manufacturer, jobber, importer, distributor, wholesaler, or retailer.
- (3) A person described in Subsection (2) shall remit the tax imposed in this section, on a return prescribed by the commission, on or before July 31, 2010.

- (4) Failure of a person to comply with the requirements of this section subjects the person to the penalties and interest described in Sections 59-1-401 and 59-1-402.
- (5) The commission may not waive the interest or penalties imposed on a person for failure to comply with the requirements of this section.
- (6)
  - (a) Beginning on July 1, 2010, it is unlawful to affix a stamp to cigarettes that reflects payment of the tax imposed under Section 59-14-204 at the rate that was applicable on or before June 30, 2010.
  - (b) A person who violates Subsection (6)(a) may be required by the commission to pay as part of the tax, and in addition to any other penalty provided in this chapter, a penalty of \$25 for each offense, to be assessed and collected by the commission in accordance with Chapter 1, Part 14, Assessment, Collections, and Refunds Act.
  - (c) A person who, on or after July 1, 2010, possesses tax stamps described in Subsection (6)(a) may return the stamps to the commission for a credit or refund.

Amended by Chapter 407, 2010 General Session, (Coordination Clause)

Enacted by Chapter 415, 2010 General Session