

STATE OF ALASKA

DEPARTMENT OF REVENUE

Tax Division

FRANK MURKOWSKI, GOVERNOR

☐ State Office Building
PO Box 110420
Juneau, AK 99811-0420
907.465.2320

☒ 550 W Seventh, Suite 500
Anchorage, AK 99501-3566
907.269.6620

www.tax.state.ak.us

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IMPORTANT NOTICE TO CIGARETTE LICENSEES REGARDING CHANGES IN ALASKA'S CIGARETTE TAX ACT

On July 24, 2004, Senate Bill 1001 became law. SB 1001, Ch 1 FSSLA 04, makes significant changes to Alaska's Cigarette Tax Act. Those changes are as follows:

I. Tax Rate Increase – Effective January 1, 2005, Alaska's tax on cigarettes will increase from \$.05 per cigarette (\$1.00 per pack of twenty) to \$.08 per cigarette (\$1.60 per pack of twenty). The tax increase legislation did not include a floor stock tax. Therefore, cigarettes physically in the state on or before December 31, 2004 will be taxed at the old rate of \$.05 per cigarette. Cigarettes imported into the state after December 31, 2004 will be taxed at the new rate of \$.08 per cigarette.

II. Additional Tax on NPM Product – Beginning January 1, 2005, cigarettes manufactured by a nonparticipating manufacturer (NPM) will be taxed at the rate of \$.0925 per cigarette (\$1.85 per pack of twenty). Nonparticipating manufacturers are those manufacturers that did not sign the tobacco Master Settlement Agreement. It is the responsibility of the person affixing the tax stamp and the person selling the cigarettes to know which brands of cigarettes are manufactured by NPMs and that the proper amount of tax has been paid. The Tax Division maintains a list of cigarette brands that are approved for sale in Alaska. This list is known as the Directory of Compliant Tobacco Product Manufacturers. Only cigarettes on this list are allowed to be sold in the state and may be affixed with an Alaska cigarette tax stamp. This list also indicates whether an approved brand is manufactured by an NPM or PM. A PM, or participating manufacturer, is a manufacturer that signed the tobacco Master Settlement Agreement. PM cigarettes will be taxed at the rate of \$.08 per cigarette (\$1.60 per pack of twenty). You can access this list on our website at www.tax.state.ak.us/programs/tobacco/reports/CompliantTPMBrandListings.pdf.

III. Cigarette Shipping Restrictions – Effective July 1, 2004, the cigarette shipping restrictions have been changed to allow individuals to receive cigarettes through the mail. However, individuals may only receive cigarettes from businesses that hold a current cigarette and tobacco products license issued by the Alaska Department of Revenue and must provide either the shipping company or the cigarette seller with an affidavit stating they are at least 19 years old

and the cigarettes are for personal consumption only. Businesses that hold a business license and tobacco endorsement issued by the Department of Community and Economic Development, (now known as the Department of Commerce, Community and Economic Development), but not a cigarette and tobacco products license issued by the Department of Revenue, may not ship cigarettes to customers through the mail. An updated cigarette shipping restriction table is attached reflecting this change to the cigarette shipping restriction statutes. In addition to criminal penalties, a fine of \$5,000 per shipment can be levied against anyone who violates the cigarette shipping statutes.

IV. Forfeiture of Property – Effective January 1, 2005, the State may seize assets used by a person when the person commits, or the state has probable cause to believe that the person has committed, the felony of misconduct involving unstamped cigarettes or stamps in the first degree. A person commits the crime of misconduct involving unstamped cigarettes or stamps in the first degree if the person sells or distributes 5,000 (25 cartons) or more unstamped cigarettes in a single transaction; owns or possesses 5,000 or more unstamped cigarettes with the intent to sell; acquires, holds, transports, imports, or possesses 10,000 (50 cartons) or more unstamped cigarettes; affixes a previously used stamp to a cigarette package; or possesses, sells, or distributes a previously used stamp.

V. Minimum Pricing – Under previous legislation effective January 1, 2004, cigarettes may not be sold below cost. The Department of Revenue is required to calculate and post the presumptive actual wholesale and presumptive actual retail cost of cigarettes (also known as Cigarette Presumptive Minimum Price) on its website. The Department has been posting the Cigarette Presumptive Minimum Price since January 1, 2004 and has updated it periodically to reflect manufacturers' promotions. Wholesalers and retailers may sell cigarettes below the Presumptive Minimum Price posted by the Department if the wholesaler's or retailer's actual cost is less than the cost as posted by the Department. Effective January 1, 2005, SB 1001 includes language that requires wholesalers or retailers that wish to sell cigarettes below the price posted by the Department to obtain approval from the Department before selling at a lower price. Failure to obtain prior approval from the Department before selling cigarettes below the posted price can result in fines and penalties. You can access the Cigarette Presumptive Minimum Price on our website at www.tax.state.ak.us/programs/tobacco/index.asp by clicking on "Cigarette Presumptive Minimum Price" highlighted in blue in the body of the text on this page.

Cigarette Tax Stamps

The Alaska cigarette excise tax must be paid through the use of tax stamps. Cigarettes sold or possessed in the state that do not bear a tax stamp are contraband and subject to immediate seizure. Only persons licensed with the Department of Revenue as a Cigarette and Tobacco Products Licensee may purchase tax stamps from the Tax Division. To distinguish between cigarettes taxed at the old and new tax rates, the Department of Revenue will be changing the color of the cigarette tax stamps. Currently, Alaska's tax stamps are yellow with blue writing (yellow) for cigarettes sold in packs of twenty and green with black writing (green) for cigarettes sold in packs of twenty-five. Each yellow stamp sells for \$1.00 and each green stamp sells for \$1.25. The new cigarette tax stamps will be pink with black writing (pink) for cigarettes sold in packs of twenty and orange with black writing (orange) for cigarettes sold in packs of twenty-

five. Each pink stamp will sell for \$1.60 and each orange stamp will sell for \$2.00. The Department will also sell a new stamp for NPM cigarettes. This stamp is light purple with dark purple writing (purple) and will only be sold for cigarettes in packs of twenty. Each purple stamp will sell for \$1.85.

It is the responsibility of the person affixing the tax stamp to know which stamp is the proper stamp for each pack of cigarettes. In addition, Alaska law requires that 80% of the tax stamp be affixed to the cigarette package to be properly stamped. We are instructing retailers to reject any cigarettes that are not affixed with the proper tax stamp or if less than 80% of the stamp is affixed. Cigarettes that are affixed with less than 80% of the tax stamp or affixed with a tax stamp in a denomination less than the tax due on the cigarettes are contraband and subject to immediate confiscation. For example, if a yellow (\$1.00) stamp is affixed to a pack of cigarettes that contains twenty-five cigarettes, that pack of cigarettes is contraband as the current tax on a pack of twenty-five cigarettes is \$1.25. Or, if after December 31, 2004, a pink (\$1.60) stamp is affixed to a pack of cigarettes manufactured by an NPM, that pack of cigarettes would also be contraband as the tax rate for an NPM product will be \$1.85.

Despite the fact that cigarette taxes are paid through the use of tax stamps, the cigarette tax is levied when cigarettes are imported into the state. Therefore, cigarettes must physically be in the state on or before December 31, 2004 to be taxed at the old tax rate. Since the cigarette tax is levied on importation, you may not simply stockpile cigarette tax stamps in order to obtain the lower tax rate. The Department will be conducting audits of all licensees that affix cigarette tax stamps to ensure that cigarettes affixed with the yellow and green stamps were indeed physically in the state on or before December 31, 2004. For cigarettes ordered during December 2004 licensees will be required to provide proof, such as bills of lading or other shipping documents, to substantiate the date that cigarettes were imported into the state. If a licensee is unable to produce documentation, the Department will assume the cigarettes were physically in the state after December 31, 2004 and the cigarettes will be taxed at the new rate. Cigarettes imported into the state after December 31, 2004 that are affixed with a yellow or green tax stamp are contraband and subject to immediate seizure.

In anticipation of cigarette stockpiling, the Department has ordered extra yellow (\$1.00) tax stamps. The Department has done its best to anticipate the level of stockpiling that may occur. If you have cigarettes that are imported into the state before December 31, 2004, but the Department has exhausted its supply of yellow stamps, you may still purchase yellow stamps. Keep in mind, however, that it takes a minimum of six weeks from the time an order is placed with the stamp manufacturer before the Department receives the stamps. Therefore, you may have to wait for as long as six weeks before the Department can fill an order for the yellow stamps. To alleviate this wait, please order yellow tax stamps as soon as possible. However, do not order yellow tax stamps unless you know you will use them. This way the Department will not needlessly run out of stamps or order more stamps that it cannot sell.

If the Department believes that you are ordering tax stamps and do not have cigarettes in sufficient quantity to use those stamps, the Department may limit the number of yellow stamps you will be allowed to purchase. In this case, the Department may require you to produce invoices and shipping documents verifying the number of cigarettes imported into the state

before allowing you to buy additional yellow or green tax stamps. If you do have unused yellow or green tax stamps, you may return those stamps to the Department for a full refund.

In conjunction with the cigarette tax increase, the Department of Revenue will begin a campaign to educate the public on the new tax law and will also increase its enforcement of the Cigarette Tax Act through increased stamp inspections. A description of those efforts is as follows:

Consumer Education

When the tax rate on cigarettes increased in 1997, a significant number of retailers stockpiled large amounts of cigarettes prior to the increase. On October 1, 1997, the effective date of the increase, instead of passing the tax savings on to the consumer, most retailers increased their prices to reflect the increased tax rate, a tax they never paid to the State. Retailers then blamed their price increase on the tax rate increase. The Department of Revenue received many complaints from consumers who realized that these retailers were, in essence, pocketing state revenues. In an attempt to avoid this similar occurrence, the Department of Revenue will conduct a campaign to educate consumers about the tax rate increase. Specifically, the Department will inform consumers that, despite what they may hear otherwise, the new tax rate was only paid on cigarettes affixed with a pink, purple, or orange stamp. Cigarettes affixed with the yellow or green tax stamp were taxed at the old rate. Therefore, any increased price on cigarette packs affixed with a yellow or green stamp is profit to the retailer and not increased taxes paid to the State.

Attached is a Public Notice regarding cigarette tax stamps and cigarette shipping restrictions. Although it is not required, please encourage your retail customers to post this notice in their stores.

Inspections

Beginning July 1, 2004, the Department of Revenue began conducting inspections of retail locations where cigarettes are sold to insure that cigarette tax stamps are properly affixed to all packages of cigarettes in the denomination required by law. Cigarette packs that are unstamped or improperly stamped have been and will continue to be confiscated. In addition, the Department of Revenue will issue an assessment for the cigarette taxes due on the product as well as all applicable civil penalties allowed by law. Again, we have instructed all retailers to immediately inspect all cigarettes and refuse to accept any that do not have a tax stamp or are improperly stamped.

If you have any questions regarding this notice, please contact Johanna Bales at (907) 269-6628, Janis Hales at (907) 269-6627, or Terri Doyle at (907) 269-6924.

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TAX DIVISION