

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-09(3)M
Miscellaneous Tax
September 24, 2009

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M090630A

Petitioner [REDACTED] asks what is the Department of Taxation and Finance's policy with respect to the sale of cigarettes and tobacco products to the Department of Correctional Services for resale to inmates confined in correctional facilities. We conclude that under the Tax Law inmates receive no exemptions from the imposition of cigarette and tobacco products excise taxes.

Facts

Petitioner is an inmate within an institution under the jurisdiction of the New York State Department of Correctional Services (DCS) and purchases cigarettes and tobacco products from the institution's commissary. The cigarettes bear a New York State cigarette tax stamp evidencing payment of the applicable taxes. Petitioner asserts that the tobacco products bear a stamp also, but tobacco products sold in New York State do not bear a New York State tax stamp. It is presumed that Petitioner meant the tobacco products were sold to him at a price including the applicable tobacco products excise taxes.

Analysis

Article 20 imposes an excise tax on both cigarettes and tobacco products which are possessed by any person for sale in New York State. (Tax Law sections 471 and 471-b) Cigarettes bear a New York State cigarette tax stamp as evidence of payment of the tax. (Tax Law section 471). The cigarette tax is ultimately imposed on and paid by the consumer. (Tax Law section 471). Tobacco products are any cigar or tobacco, other than cigarettes, intended to be smoked, chewed or used as snuff. (Tax Law section 470). Tobacco products do not bear a stamp as evidence that the taxes have been collected. The tobacco products tax is generally paid by the distributor and the Tax Law does not place the final imposition on the consumer. There are no exemptions from the excise tax on cigarette and tobacco products under Article 20 on purchases made by inmates of correctional facilities.

Article 20-A (Cigarette Marketing Standards Act, or CMSA) of the New York State Tax Law mandates that cigarettes be sold within this State at a minimum price, or any price in excess of the minimum. CMSA does not apply to tobacco products. Section 484(6)(d) of Article 20-A provides that minimum cigarette prices do not apply to any sales made to the New York State Department of Correctional Services for resale to or use by inmates in institutions within the supervision of DCS. However, this section does not affect the actual imposition of the cigarette

