

Cigarette Stamping Agents Must Certify Compliance With Tax Law Article 20 Beginning September 1, 2010

As provided by Tax Law section 471(4) and 20 NYCRR, section 74.7, a cigarette manufacturer (supplier) may not sell unstamped packages of cigarettes to a licensed cigarette stamping agent (agent) unless the supplier has received a certification from the agent that the cigarettes will not be resold in violation of Article 20 of the Tax Law. This TSB-M explains how the Tax Department will administer these provisions.

Agent certifications

Requirements for agents

Section 74.7 of the regulations (20 NYCRR) provides that every agent that purchases unstamped packages of cigarettes from any person, including, but not limited to, a cigarette manufacturer, that are intended for resale in or into New York State, will provide the supplier and the Tax Department with a certification on an annual basis under penalty of perjury that the cigarettes will not be resold in violation of Tax Law Article 20 or in violation of any rule or regulation adopted pursuant to Article 20. The certification (Form CG-213, *Cigarette Stamping Agent Certification of Compliance with Tax Law Article 20*) must be provided to the Tax Department and the supplier prior to the first purchase made on or after September 1, 2010, from the supplier. The agent must submit both pages of Form CG-213 to the Tax Department and provide a copy of the first page to the supplier. This initial certification remains in effect through August 31, 2011.

On Form CG-213, each agent must certify, in good faith and under penalty of perjury, that:

- The agent will not resell unstamped packages of cigarettes in or into New York State, except as specifically authorized by law;
- The agent will not affix stamps to packages of cigarettes unless the agent has received a Form CG-30, *Certification of Tobacco Master Settlement Agreement Status*, from the manufacturer of such cigarettes for the current Tobacco Master Settlement Agreement certification period;
- The agent will not affix stamps to packages of cigarettes that have not been certified or marked as fire safe;
- The certification applies to each of the agent's purchases for the entire period covered by the certification;

- The agent will only make tax-exempt sales of stamped packages of cigarettes to Indian nations or tribes or to reservation cigarette sellers to the extent the agent has received either Indian tax exemption coupons or prior approval from the Tax Department. (See TSB-M-10(6)M, *Amendments to the Tax Law Related to Sales of Cigarettes on Indian Reservations Beginning September 1, 2010*, and 20 NYCRR, section 74.6.)

Additionally, certifications filed with the Tax Department must include a list of suppliers from whom the agent will purchase or otherwise acquire unstamped packages of cigarettes.

Prior to the first purchase of unstamped cigarettes from a supplier not listed on Form CG-213 currently on file with the Tax Department, the agent must provide a certification to the new supplier and amend the Form CG-213 filed with the Tax Department to provide an updated list that includes the new supplier.

On or before September 1, 2011, and before each subsequent year, the agent must execute a new certification that must be provided to the Tax Department and to each supplier from whom the agent purchases unstamped packages of cigarettes. If an agent is required to amend a currently filed certification, the amended certification will expire on the same date as the original (i.e., August 31).

Requirements for suppliers

Pursuant to Tax Law section 471(4)(a), a supplier may not sell unstamped packages of cigarettes to any agent if the agent has not provided the supplier with a copy of Form CG-213 for the current certification period. Suppliers must keep copies of certifications on file for three years after the end of the certification period.

A supplier that has not received Form CG-213 in good faith and who sells unstamped packages of cigarettes to an agent may be subject to criminal sanctions.

Lawful sales of unstamped cigarettes

The sale of packages of cigarettes without New York State or joint New York State/New York City tax stamps affixed when stamps are required is a violation of Article 20.

Except as set forth below, all cigarettes sold by an agent in New York State are required to have proper cigarette stamps affixed to individual packages of cigarettes. Agents may only sell unstamped cigarettes in New York when those cigarettes are sold tax-exempt to the United States, the State of New York, out-of-state purchasers, diplomatic missions, diplomatic personnel and the United Nations (20 NYCRR, Part 76).

Stamped tax-exempt cigarettes sold to Indian nations and tribes and their members

Exempt sales also include cigarettes purchased by Indian nations and tribes and their members for their own use or consumption. Agents may only make sales of tax-exempt stamped packages of cigarettes to Indian nations or tribes or to reservation cigarette sellers to the extent agents have received either Indian tax exemption coupons or prior approval from the Tax Department. Where an Indian nation or tribe enters into an agreement with New York State pursuant to Tax Law section 471(6) regarding the sale and distribution of cigarettes on the nation's or tribe's qualified reservation, agents must make sales of tax-exempt cigarettes in accordance with the provisions of the agreement. (See TSB-M-10(6)M, *Amendments to the Tax Law Related to Sales of Cigarettes on Indian Reservations Beginning September 1, 2010*, and 20 NYCRR, section 74.6 for more information.)

Enforcement provisions

Cancellation or suspension of agent's license

The Tax Department may cancel or suspend an agent's license for the agent's failure to comply with any of the provisions of Article 20 or any rule or regulation adopted pursuant to Article 20 including the requirement to affix tax stamps when required and provide certifications as described above.

Other violations of Article 20 include, but are not limited to, affixing stamps to cigarettes if the agent has not received a Form CG-30, *Certification of Tobacco Master Settlement Agreement Status*, from the manufacturer of the cigarettes for the current Master Settlement Agreement certification period; affixing stamps to cigarettes when the cigarettes have not been certified or marked as fire safe; and custom stamping without the prior written authorization of the Tax Department.

Criminal penalties

Under Article 37, agents and other persons may also be subject to criminal penalties for engaging in tax fraud acts including acting with intent to defraud, intent to evade the payment of taxes or intent to avoid a requirement of the Tax Law, a lawful requirement of the Commissioner, or a known legal duty.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.