

## **PACT Act Expands Jenkins Act Reporting Requirements**

Effective June 29, 2010, the federal Prevent All Cigarette Trafficking Act (PACT Act) amended provisions of the Jenkins Act (15 U.S.C. §§ 375 - 378) regarding the shipment and packaging of tobacco, compliance with state tax and licensing requirements relating to tobacco, and the filing of certain reports to state tax administrators. This technical memorandum describes the new and expanded reporting requirements concerning reporting to the Department of Taxation and Finance under the Jenkins Act, as amended by the PACT Act.

As amended, the Jenkins Act now imposes two reporting requirements on all persons, including manufacturers, who sell, transfer, ship, advertise, or offer to sell cigarettes or smokeless tobacco in interstate commerce. The first requirement concerns initial registration. The second is a monthly reporting requirement. Both the registration and the monthly reports must be filed with the New York State Department of Taxation and Finance.

For purposes of the Jenkins Act, the definition of cigarette now includes roll-your-own tobacco. Interstate commerce is defined as commerce between a state and any place outside the state, commerce between a state and any Indian country in the state, or commerce between points in the same state but through any place outside the state or through any Indian country. A sale, shipment, or transfer of cigarettes or smokeless tobacco that is made in interstate commerce is considered to have been made into the state, place, or locality in which the cigarettes or smokeless tobacco was delivered.

### **Registration**

Section 2 of the Jenkins Act (15 U.S.C. § 376), as amended by the PACT Act, provides that any person who sells, transfers, ships, advertises, or offers for sale cigarettes or smokeless tobacco in interstate commerce must first file a statement with the Attorney General of the United States and the tobacco tax administrators of the state and place into which the shipment is made or in which the advertisement or offer is disseminated. The statement must provide:

- the person's name, and trade name, if any;
- the address of the person's principal place of business and of any other place of business;
- the telephone numbers for each place of business;
- a principal electronic mail address;
- any website addresses; and
- the name, address, and telephone number of an agent in New York State authorized to accept service on the person's behalf.

The New York State Department of Taxation and Finance will accept a copy of the statement required to be filed with the Attorney General of the United States providing all the above-required information. The registration information should be sent to:

NYS TAX DEPARTMENT  
TDAB/FACCTS – CIGARETTE TAX  
W A HARRIMAN CAMPUS  
ALBANY, NY 12227

### **Monthly reporting requirements**

On or before the 10<sup>th</sup> day of each calendar month, any person who sells, transfers, ships, advertises, or offers for sale cigarettes or smokeless tobacco in interstate commerce must file with the tobacco tax administrator of the state into which the shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes or smokeless tobacco made during the previous calendar month into the state. The memorandum or invoice information must be organized by customer's city or town, and by ZIP code, and include:

- the name and address of the person to whom the shipment was made;
- the brand and quantity of cigarettes or smokeless tobacco; and
- the name, address, and telephone number of the person delivering the shipment to the recipient on behalf of the delivery seller.

A delivery seller is a person who makes a delivery sale. A delivery sale is a sale of cigarettes or smokeless tobacco to a consumer where (i) the seller is not in the physical presence of the buyer when the request for purchase or order is made or (ii) the cigarettes or smokeless tobacco is delivered by common carrier, private delivery service or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco.

Note: Shipments of cigarettes to consumers in New York State are generally prohibited by Public Health Law section 1399-ll. In addition, the PACT Act generally prohibits the use of the United States Postal Service to mail cigarettes and smokeless tobacco.

The monthly filings for shipments into New York State as described above should be sent to:

NYS TAX DEPARTMENT  
TDAB/FACCTS – CIGARETTE TAX  
W A HARRIMAN CAMPUS  
ALBANY, NY 12227

The department suggests using electronic media (such as CD, DVD, or floppy disk) to submit the data. Standard file formats such as Database file (.dbf), Delimited/Plain text file (.txt) or Spreadsheet file (.xlsx) are recommended.

The first monthly report under the new provisions, covering the month of June 2010, was due July 10, 2010. All persons required to file this report who have not yet done so should file that report immediately.

### **Penalties**

Violators of the Jenkins Act, as amended by the PACT Act, are subject to criminal and civil penalties.

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.