



## **Crack Down on Cigarette Tax Evasion in New York State**

Starting December 4, 1996, as a result of recent legislation (Chapter 629, Laws of 1996), new tough penalties and substantially increased fines will be imposed on vendors who sell cigarettes at retail in violation of the New York State Cigarette Tax Law. These retailers will also run the risk of having their alcoholic beverage and/or New York State Lottery licenses or permits canceled or suspended.

This legislation also adds new, higher standards of responsibility that must be met by applicants for cigarette wholesale dealer licenses.

### **Changes Affecting Retail Dealers**

The civil penalties imposed on vendors selling cigarettes and/or tobacco products at retail who fail to annually register with the department will be increased from \$200 to \$1,000 for a first violation, and from \$500 to \$2,500 for a second or subsequent violation within three years.

A retail dealer possessing or selling unstamped or unlawfully stamped packages of cigarettes will be subject to the following civil penalties in addition to existing possible civil/criminal penalties:

- For a first offense, the retail dealer's retail registration will be suspended for a period of not more than six months.
- For a second offense within five years of the first offense, the retail dealer's retail registration will be suspended for a period of up to thirty-six months.
- For a third offense within five years of the first offense, the retail dealer's retail registration will be cancelled for a period of up to five years.

*"Unstamped packages of cigarettes"* are cigarettes which bear no tax stamp, or which bear a tax stamp of another state or taxing jurisdiction. *"Unlawfully stamped cigarettes"* are cigarettes bearing a counterfeit New York State or a counterfeit joint State and New York City tax stamp.

The suspension or cancellation of a retail dealer registration will be effective **immediately** upon the dealer's receipt of written notice of suspension or cancellation from the commissioner. If a retail dealer sells cigarettes through more than one place of business in this state, only the certificate of registration issued to the place of business where the unstamped or unlawfully stamped cigarettes were found will be suspended or canceled. The dealer's other business locations will not be affected. However, if unstamped or unlawfully stamped cigarettes are

found in a retail dealer's warehouse, the retail dealer's registration for **all business locations** will be suspended or canceled.

A retail dealer who is notified of a suspension or cancellation of its registration has the right to have the decision reviewed by the commissioner or by a person designated by the commissioner. If a review is desired, the Tax Department must be contacted at the telephone number or address shown in the *Notice of Suspension or Cancellation* within 10 days of the dealer's receipt of the notice.

The retail dealer may present written evidence or argument to support its defense to the suspension or cancellation, or may appear at a scheduled conference to present oral arguments and written evidence in support of this defense. If a conference is requested, the commissioner or his designee is authorized to delay the effective date of a suspension or cancellation to give the retail dealer time to present further evidence or arguments.

If, after reviewing all of the information presented, the commissioner or his designee is not satisfied by a preponderance of the evidence that the retail dealer actually possessed or sold unstamped or unlawfully stamped cigarettes, the suspension or cancellation will be canceled.

Although the suspension or cancellation of a retail dealer registration is not reviewable by the Division of Tax Appeals, a retail dealer has the right to have the action of the Department reviewed by commencing a proceeding under Article 78 of the Civil Practice Law and Rules in Supreme Court within four months of the suspension or cancellation.

Once a suspension or cancellation of registration becomes final, notice of the suspension or cancellation will be given to the Division of the Lottery and to the Division of Alcoholic Beverage Control. This notice may result in the cancellation or suspension of any license or permit issued to the retail dealer by those Divisions.

### **Changes to Wholesale Dealer Licensing Requirements**

Effective December 4, 1996, in addition to the information currently required to be submitted with a properly completed Form CG-80.5, *Application for License as a Wholesale Dealer of Cigarettes*, the application must be accompanied by the following:

- A certified check for the nonrefundable \$1,500 application fee. No other form of payment will be accepted.
- Proof of a minimum net worth of \$25,000 for any individual or business entity applying for a license. This proof must consist of the three following documents:
  - A profit and loss statement for a 12-month period of time ended not more than 18 months prior to the date of the application. (A copy of the most recent Federal income tax return may be substituted for the profit and loss statement.) If the

profit and loss statement is for a period ended more than 6 months prior to the date of submission, an interim financial statement (on a monthly or quarterly basis) must be submitted for a period of time ending within such 6-month period.

- A balance sheet as of the last day of the profit and loss statement. (If the applicant is an individual, a statement of financial condition may be substituted for the balance sheet.)
- A statement of cash flow covering the same period as the profit and loss statement. ( If the applicant is an individual, a statement of changes in net worth may be substituted for the cash flow statement.)

All financial statements submitted must reflect the individual activities of the applicant. Where an applicant is a member of a consolidated group, the financial statements must contain an analysis of all intercompany transactions.

All financial statements must be prepared in accordance with generally accepted accounting principals and certified by the applicant **under penalty of perjury** to be true and complete and must be signed and dated.

- A bond in the amount of \$10,000 issued by a surety company approved by the Superintendent of Insurance as to solvency and responsibility and authorized to transact business in the state. This bond is required to secure payment of any sums due for any violation of the cigarette and tobacco products tax law and regulations or of the Cigarette Marketing Standards Act (CMSA) or its regulations.
- Satisfactory proof that the applicant will maintain a secure separate warehousing facility for the purpose of receiving and distributing cigarettes or tobacco products and conducting its wholesale business. This proof **must** consist of a copy of a deed, or a copy of an executed lease for a minimum period of two years, to a separate secure warehouse. The warehouse must have a separate entrance to the street and the inventory must be kept under lock and key. If the applicant carries on another business in conjunction with the warehouse facility, the other business must be identified.
- Proof that the applicant will provide disability and workers' compensation insurance for its employees. This proof must consist of a copy of the Certificate of Insurance issued by the applicant's insurance carrier.
- Proof of the applicant's United States citizenship or eligibility to obtain employment within the United States if not a citizen. If the applicant is not an individual, the proof must be submitted for all officers, partners, directors, shareholders and employees who are responsible for any of the following:
  - Signing checks on the company's bank account
  - Paying creditors
  - Making the final decision on which bills are to be paid
  - Conducting the business's general financial affairs
  - Signing the business's tax returns

A copy of the U.S. Department of Justice *Employment Eligibility Verification Form I-9* for each person described above, will be considered satisfactory proof. U.S. citizenship may be proven by submitting a copy of a birth certificate or a passport.

- In addition to the above, an applicant purchasing an existing business of a licensee must submit a copy of the contract of sale and any related documents.

**Note:** The proof of financial responsibility provision, the bonding provision and the \$1,500 application fee do not apply to a person applying for license as a wholesale dealer who:

- is engaged solely in the ownership, operation or maintenance of one or more cigarette or tobacco products vending machines, in, at or upon premises owned or occupied by another person; or,
- is engaged solely in the sale of tobacco products for resale; or,
- is engaged solely in both of the above.