



Federal Court Allows Tax Department to Proceed with the Collection of Taxes on Cigarettes Sold on Indian Reservations

This TSB-M provides updated information to help wholesale dealers (including stamping agents) comply with the Tax Law in relation to sales of cigarettes to Indian nations and tribes and reservation cigarette sellers.

On May 9, 2011, the United States Court of Appeals for the Second Circuit in the *Oneida Nation of Indians of New York v. Cuomo* issued a ruling vacating the preliminary injunction and lifting all stays, thus, allowing the implementation of Tax Law provisions related to the collection of taxes on cigarettes sold on Indian reservations.

Accordingly, the prior approval system or the Indian tax exemption coupon system will be used to allow Indian nations and tribes and their members to obtain tax-exempt packs of cigarettes for their own use or consumption. The quantity of tax-exempt cigarettes will be based on the probable demand of the qualified Indians on the Indian nation's or tribe's qualified reservation, plus an amount for official nation or tribal use. For information regarding the coupon system and the prior approval system, see TSB-M-10(6)M, *Amendments to the Tax Law Related to Sales of Cigarettes on Indian Reservations Beginning September 1, 2010*.

Wholesale dealers are required to collect the cigarette excise tax and prepaid sales tax on all cigarettes sold for resale on an Indian reservation to non-Indians and non-members of an Indian nation or tribe. All packs of cigarettes sold by wholesale dealers (including agents) to Indian nations and tribes and reservation cigarette sellers are required to have New York tax stamps affixed to them.

In addition, the following changes and transition rules apply:

Prior approval system

The prior approval system will be activated immediately. Wholesale dealers must obtain prior approval from the Tax Department before making any tax-exempt sales of cigarettes to an Indian nation or tribe or reservation cigarette seller. Wholesale dealers must have an Online Services account and use the *View/Report Indian Tax-Exempt Cigarette Sales* system on the Tax Department's Web site (www.tax.ny.gov) to obtain prior approvals. The system will make available the quarterly amounts for each Indian nation or tribe.

Indian tax exemption coupon system

Based on amendments to the Cigarette Tax Regulations adopted in October 2010¹, the Tax Department will allow the recognized governing body of an Indian nation or tribe to elect to participate in the Indian tax exemption coupon system at any time.

The governing body must make the election to use the coupon system in writing as described in TSB-M-10(6)M. When making the election, the governing body of the Indian nation or tribe must contact the Tax Department to make arrangements for the delivery of Indian tax exemption coupons either by including instructions with the written election or by calling (518) 862-6015, Monday – Friday, between the hours of 9:00 AM and 5:00 PM. The election may be faxed to (518) 435-8539.

Agent certification - reminder

Licensed stamping agents are required to annually certify to the Tax Department and their suppliers that 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. Form CG-213, *Cigarette Stamping Agent Certification of Compliance with Tax Law Article 20*, must be provided annually to the Tax Department and the agent's supplier(s) prior to September 1 each year. In addition, an agent must file an amended certification before purchasing unstamped packs of cigarettes from a supplier not listed on the certification for the current period beginning September 1 and ending August 31.

Manufacturers and other suppliers may not sell unstamped cigarettes to any agent if Form CG-213 has not been received from that agent for the current period beginning September 1, 2010, and ending August 31, 2011. For more information, see TSB-M-10(5)M, *Cigarette Stamping Agents Must Certify Compliance With Tax Law Article 20 Beginning September 1, 2010*.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or 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.

¹ 20 NYCRR, section 74.6(b)(1)(ii).