



Prepayment of Sales Tax on Cigarettes

Introduction

Cigarette tax agents must prepay the sales tax on cigarettes possessed for sale or use in New York. The prepaid sales tax the agent pays must be passed through to each successive purchaser until the cigarettes are sold at retail to a consumer. When cigarettes are sold at retail, the seller collects the combined rate of state and local sales tax from the customer. The seller will then take a credit for any prepaid tax that it previously paid when filing its sales tax return.

Computation of the prepaid sales tax

The prepaid tax equals the:

- base retail price of cigarettes, multiplied by
- the 8% prepaid sales tax rate.

The Tax Department adjusts the base retail price of cigarettes each year by a factor based on the manufacturers' list price for a carton of standard brand cigarettes. The Tax Department issues guidance each year regarding any change in the base retail price of cigarettes and the resulting prepaid sales tax rate. For information, see [Important notices](#) on our Web site.

Certification of prepayment and pass through

Cigarette agents must give the purchaser a completed [Form ST-133](#), *Certificate of Prepayment of Sales Tax on Cigarettes*, with each delivery of cigarettes. This states that the seller:

- has paid the prepaid sales tax, and
- is passing the prepaid sales tax through to the purchaser.

The purchaser must keep records of the amount of prepaid sales tax paid to its suppliers for a minimum of three years to substantiate any prepaid tax credits the purchaser later claims. Failure to obtain [Form ST-133](#) from a supplier will subject the purchaser to liability for the prepaid tax.

Credit or refund of the prepaid sales tax

A credit or refund of the prepaid sales tax is allowed in any of the following situations:

- A retailer sells cigarettes to a consumer and collects the retail sales tax due on the sale.
- A vendor sells cigarettes to an exempt purchaser.
- A wholesale or retail vendor takes cigarettes out of inventory for self-use and pays the required use tax.
- The vendor exports cigarettes for sale or use outside New York State.
- The cigarettes have been destroyed, or have become unfit for sale or use.
- The prepaid tax was paid in error.

- The cigarettes are sold to the United States government, its agencies or instrumentalities, or to a voluntary unincorporated organization of the armed forces of the United States operating a post exchange.

A seller may claim a credit for the prepaid sales tax on cigarettes sold at retail when filing its sales and use tax return using [Sales Tax Web File](#). To apply for a refund, use [Form AU 11](#), *Application for Credit or Refund*, or [Form CG-114](#), *Claim for Redemption/Refund of Cigarette Tax Stamps and Prepaid Sales Tax*.

Sales on Indian reservations

Except for sales to the Oneida Nation of New York, 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. The prepaid sales tax must be collected on all packs of cigarettes that will be resold to:

- non-Indians, or
- non-members of an Indian nation or tribe.

The prepaid sales tax does not need to be collected on packs of cigarettes sold to Indian nations, tribes, or reservation cigarette sellers if:

- Indian tax exemption coupons are provided, or
- prior approval for the sale is received from the Tax Department.

An expedited refund can be issued to the wholesale dealer (including agents) using [Form CG-114-E](#), *Expedited Claim for Refund for Indian Tax-Exempt Cigarette Sales*. See also [View/Report Indian Tax-Exempt Cigarette Sales](#) on our Web site.

Note: A Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.

References and other useful information

Tax Law: Sections 1103 ,1111(j) , and 1121

Memoranda:

[TSB-M-10\(8\)S](#), *Amendments to the Tax Law Related to Sales of Cigarettes on Indian Reservations Beginning September 1, 2010*

[TSB-M-11\(7\)S](#), *Federal Court Allows Tax Department to Proceed with the Collection of Taxes on Cigarettes Sold on Indian Reservations*

[TSB-M-11\(7.1\)S](#), *State Court Rulings Allow Implementation of Tax Law Provisions Related to the Cigarettes Sold on Indian Reservations Except as to the Seneca Nation of Indians*

[TSB-M-11\(7.2\)S](#), *State Court Ruling Allows Implementation of Tax Law Provisions Related to Cigarettes Sold on Indian Reservations to Go Forward*

[TSB-M-14\(1\)M. \(4\)S](#), *Federal Court Ratifies Settlement Agreement by the Oneida Nation, the State of New York, the County of Madison and the County of Oneida*