



Pete Ricketts, Governor

July 2017

Dear Nebraska Licensed Cigarette Wholesale Dealer,

The Nebraska Department of Revenue (Department) is responsible for monitoring compliance with Nebraska's cigarette and tobacco laws, including diligent enforcement as required by the Master Settlement Agreement pursuant to Neb. Rev. Stat. §§ 69-2702 to 69-2711, 77-2702 to 77-2720, and 77-4001 to 77-4024. The Department's diligent enforcement efforts include compliance checks of cigarette and tobacco retailers. This letter replaces the March 2017 letter and includes the standard as to what constitutes a complete readable stamp and a penalty schedule.

As part of the compliance checks, the Department inspects for contraband cigarettes. Contraband cigarettes include any:

- Cigarettes on point of sale displays or in the retailer's inventory that are not properly stamped with a Nebraska cigarette tax stamp, cigarettes that do not have a Nebraska cigarette tax stamp, or do not have a complete and readable tax stamp; and
- Cigarettes and roll-your-own (RYO) tobacco products that are not listed on the Nebraska Directory of Certified Tobacco Product Manufacturers and Brands (Directory). The Directory can be viewed on the Department's website at revenue.nebraska.gov by clicking on "Cigarettes/Other Tobacco Products," and "Nebraska Directory of Certified Tobacco Product Manufacturers and Brands."

A complete and readable tax stamp is a stamp that can be identified as a Nebraska cigarette tax stamp, including one or more letters in the word "Nebraska" and the legible 5-digit stamp number. The 5-digit stamp number is legible if it can be read or recognized even where there is some flaking of the stamp on or around the 5-digit number. A complete and readable stamp is required by Cigarette Tax Regulation 57-006.01.

Contraband cigarettes discovered during retail inspections will be confiscated under Neb. Rev. Stat. § 77-2620. Further, the wholesale dealer and retailer could be subject to civil and criminal penalties. In addition, any retailer licensed under Neb. Rev. Stat. §§ 28-1420 to 28-1429 or wholesale dealer licensed under Neb. Rev. Stat. §§ 77-2601 to 77-2622 could have their license suspended or revoked.

**This guidance document is advisory in nature but is binding on the Nebraska Department of Revenue (Department) until amended. A guidance document does not include internal procedural documents that only affect the internal operations of the Department and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.*

To ensure compliance with the cigarette and tobacco products tax laws of Nebraska, every resident and nonresident licensed wholesale dealer that sells cigarettes and RYO tobacco to retailers in Nebraska should:

- Verify that all cigarettes and RYO tobacco products that are delivered to a Nebraska retailer are listed on the Directory. Cigarettes and RYO tobacco products that are not listed on the Directory should not be delivered to a Nebraska retailer.
- Inspect all cigarettes to ensure that the cigarettes are properly stamped (see above) with a Nebraska cigarette tax stamp. Cigarettes that do not have a Nebraska cigarette tax stamp, do not have a complete and readable Nebraska cigarette tax stamp, or cigarettes with a cigarette tax stamp from another jurisdiction should not be delivered to a Nebraska retailer.
- Maintain complete and accurate books, records, papers, receipts, invoices, bills of lading, and any other documentation which pertain to the purchase and sale of cigarettes and tobacco products sold in Nebraska or into other states.

The Department encourages you to work with your retail customers to avoid issues with cigarettes and RYO tobacco products delivered to the customer’s retail store.

The Department will not issue a credit or refund of the value of the tax stamps on contraband cigarettes that are confiscated by the Department. In addition, if a retailer identifies an incomplete stamp affixed to a pack of cigarettes and returns the pack to the wholesale dealer, the wholesale dealer will not receive a credit or refund for the incomplete stamp, unless the pack is returned to the manufacturer.

In conjunction with this letter, the Department will be using the following penalty schedule for stamping violations and non-directory cigarettes and RYO tobacco products. Offenders are subject to the penalties described in the penalty schedule within a three-year time frame. This penalty schedule will also be posted on the Department’s website.

Cigarettes Lacking a Complete Readable Stamp*		Non-directory Product*	
Wholesalers	Retailers	Wholesalers	Retailers
1 st Incident: \$25 per package, capped at a total of \$500	1 st Incident: \$5 per package, capped at a total of \$100	1 st Incident: \$500 penalty	1 st Incident: \$500 penalty
2 nd and Subsequent Incidents: \$500 penalty plus \$25 per package, capped at a total of \$1,000	2 nd Incident: \$150 penalty plus \$5 per package, capped at a total of \$250	2 nd Incident: \$1,000 penalty	2 nd Incident: \$1,000 penalty
	3 rd Incident: \$400 penalty plus \$5 per package, capped at \$500	3 rd Incident: \$5,000 penalty	3 rd Incident: \$1,000 penalty

*The Department is not precluded from commencing revocation proceedings or recommending a case for criminal prosecution when the facts of any incident rise to a level warranting such action. Also, the retailer or wholesaler may attempt to resolve the penalty informally by filing a Request for Abatement of Penalty, Form 21.

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The Department is in the process of developing an information guide that will contain more detailed information regarding wholesale dealer and retailer responsibilities under the Nebraska cigarette and tobacco tax laws. Once completed, the information guide will be posted on the Department's website. In the meantime, sign up for the subscription service at revenue.nebraska.gov to get email updates on your topics of interest. Also, Department Regulations regarding the cigarette tax may be found by clicking on "Legal Information," then "Regulations," and "Title 316, Chapter 57 - Cigarette Tax."

If you have any follow-up questions, please contact Cliff Thomas at 402-471-5676 or cliff.thomas@nebraska.gov; or Kara Parga at 402-471-5781 or kara.parga@nebraska.gov.

For the Tax Commissioner

A handwritten signature in black ink that reads "Clifford W. Thomas". The signature is written in a cursive style with a horizontal line above the name.

Clifford W. Thomas
Tax Specialist Senior

CWT:ct