



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms
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UNLAWFUL TRANSPORTATION, SHIPMENT, OR SALE OF CIGARETTES AND DOMESTIC SALE OF CIGARETTES LABELED FOR EXPORT

**Manufacturers of Cigarettes, Importers, Export Warehouse Proprietors and Other Persons
Who Purchase and Sell Cigarettes**

PURPOSE. The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this circular to remind all persons of the Federal laws (and penalties) applying to the shipment, sale or possession of cigarettes and to the domestic sales of cigarettes marked for export. Additionally, this circular briefly addresses the sale of cigarettes on Native American tribal reservations.

BACKGROUND. Every State imposes some tax on the sale of cigarettes. The liability for these taxes generally arises once the cigarettes enter the jurisdiction of the State. The vast majority of States requires a "tax stamp or imprint" to be placed on packages of cigarettes to demonstrate that the State tax has been paid. Wholesale distributors in the various States are generally responsible for the payment of the State tax and for affixing the tax stamp or imprint.

Recognizing that the range in State cigarette taxes creates a potential for interstate trafficking in cigarettes to avoid State tax, Congress has enacted Federal laws to help ensure the State cigarette taxes are paid. These Federal laws make it unlawful to traffic in cigarettes to avoid State cigarette taxes. Moreover, these laws impose certain record keeping and reporting requirements on persons who ship cigarettes in interstate commerce. Violations of these Federal laws can result in the imposition of a prison term, a monetary fine, or both. These laws are discussed in detail below to ensure that people who are engaged in the interstate sale or shipment of cigarettes are familiar with these requirements. ATF has encountered a number of situations in which cigarettes are being sold or shipped in violation of these Federal laws.

In addition, ATF has received several inquiries regarding the legality of the domestic sale of cigarettes bearing the export mark "U.S. tax exempt for use outside the U.S." Such sales are governed by Federal law. Violations of these Federal laws can result in the imposition of a Federal prison term, a mandatory fine, or both. These laws are discussed in detail below to ensure that people who engage in the domestic sale of cigarettes marked for export are familiar with these requirements.

CONTRABAND CIGARETTE TRAFFICKING ACT

The Contraband Cigarette Trafficking Act, which can be found at title 18, United States Code, chapter 114, makes it unlawful for any person, other than an "exempt person," to ship, transport, receive, possess, sell, distribute, or purchase "contraband cigarettes." "Contraband cigarettes" are defined as a quantity of more than 60,000 cigarettes that bear no evidence of the payment of any State cigarette tax imposed by the State where such cigarettes are found. The Contraband Cigarette Trafficking Act applies only to cigarettes found in States that require a stamp or other indicia to be placed on cigarette packages to evidence payment of the tax.

The following persons are "exempt persons" under the Contraband Cigarette Trafficking Act:

- Any person who holds a Federal permit as a manufacturer of tobacco products or as an export warehouse proprietor.
- Any person operating a customs bonded warehouse under the authority of Federal law.

- Any person who is an agent of a tobacco product manufacturer, an export warehouse proprietor, or a customs bonded warehouse.
- Any person who is a common or contract carrier transporting cigarettes under a proper bill of lading or freight bills which states the quantity, source, and destination of the cigarettes.
- Any person licensed or otherwise authorized by the State in which the person possesses the cigarettes, to account for and pay the cigarette taxes imposed by that State, so long as that person is complying with the accounting and payment requirements relating to his or her license or authorization.
- Any person who is an agent of the United States, an individual State, or a political subdivision of a State who possesses, ships or receives the cigarettes in connection with the performance of his or her official duties.
- Any person operating within a foreign trade zone, established under Federal law, when the cigarettes in question have entered the zone under zone-restricted status. The same exemption applies with respect to foreign imported cigarettes that have been admitted into the zone but have not entered the United States.

The Contraband Cigarette Trafficking Act also requires persons who ship, sell, or distribute more than 60,000 cigarettes in a single transaction to keep certain records about the shipment, receipt, sale, and distribution of such cigarettes. Any person who distributes more than 60,000 cigarettes in a single transaction is required to keep copies of invoices, bills of lading, or other suitable commercial records relating to each distribution of 60,000 cigarettes or more. Dividing a single agreement for the disposition of more than 60,000 cigarettes into multiple deliveries or shipments of smaller components of 60,000 cigarettes or less does not exempt the person from keeping these records.

When an **exempt person/distributor** distributes more than 60,000 cigarettes to another exempt person, **OR**

When an **exempt person/distributor** distributes more than 60,000 cigarettes to a non-exempt person, but **only** where the exempt person/distributor delivers the cigarettes to the non-exempt person's place of business, the distributor's dated commercial records must contain the following information:

- The full name of the purchaser (or recipient if there is no purchaser)
- The street address (including city and state) where the cigarettes are destined
- The quantity of cigarettes distributed

In all other cases where a distributor (exempt or non-exempt person) distributes more than 60,000 cigarettes, the distributor's dated commercial records must show the following:

- The full name of the purchaser (if any)
- The name, address (including city and state), and signature of the person receiving the cigarettes
- The street address (including city and state) where the cigarettes are destined
- The quantity of cigarettes distributed
- The driver's license number of the individual receiving the cigarettes
- The license number of the vehicle in which the cigarettes are removed from the distributor's business premises
- A declaration by the individual receiving the cigarettes of the specific purpose of receipt (such as personal use, resale, delivery to another person, etc.)

- A declaration by the person receiving the cigarettes of the name and address of his or her principal when acting as an agent

These dated commercial records must be kept on the business premises of the distributor. Generally, distributors must keep these records for three years following the close of the year in which the records were made. The ATF regulations on the Contraband Cigarette Trafficking Act are found at title 27, Code of Federal Regulations, sections 296.141 to 296.155.

A violation of the Contraband Cigarette Trafficking Act, including failure to keep the required records, is a Federal felony. Conviction of these crimes can result in a Federal prison term, a monetary fine, or both. Moreover, persons who aid and abet violations of the Contraband Cigarette Trafficking Act, or persons who conspire with others to violate the Contraband Cigarette Trafficking Act can be imprisoned and/or fined as well. The Federal aiding and abetting statute can be found at title 18, United States Code, section 2 and the Federal conspiracy statute can be found at title 18, United States Code, section 371.

JENKINS ACT

The Jenkins Act, which can be found at title 15, United States Code, section 375, applies to certain persons who sell cigarettes or advertise the sale of cigarettes in interstate commerce, including mail order sales and advertisements for such sales. Any person who advertises cigarettes for sale (including on the Internet) or who ships cigarettes into a State to any person other than a cigarette distributor licensed by the State must file a statement with the tobacco tax administrator of that State. The statement must list the seller's name, trade name (if any), and address of all business locations.

The Jenkins Act also requires a person who ships cigarettes into a State to any person (other than a person licensed by that State as a wholesale or retail distributor) to report these sales to the tobacco tax administrator. This report must be filed no later than the 10th calendar day of the month and must contain the following information for shipments made into that State during the previous month:

- The name and address of the person to whom the shipments were made
- The brand of cigarettes shipped
- The quantity of cigarettes shipped

Copies of commercial records can be utilized for this report, so long as the commercial record contains all of the necessary information. This report is not required if the shipment is made to a person who is a licensed wholesale or retail distributor in the State into which the cigarettes are shipped.

A violation of the Jenkins Act can result in a Federal prison term, a monetary fine, or both.

DOMESTIC SALE OF CIGARETTES MARKED FOR EXPORT

The Internal Revenue Code of 1986, title 26, United States Code, section 5701 imposes a Federal excise tax on tobacco products manufactured or imported into the United States. This tax does not apply to exported products. Packages of exported products must be marked for export to differentiate them from packages intended for domestic sale. ATF regulations currently permit the re-importation and sale of packages of products marked for export so long as the Federal excise tax and applicable Customs duties are paid when the cigarettes are re-imported.

The Internal Revenue Code has been amended to restrict the re-importation of exported tobacco products. These amendments only permit the re-importation of tobacco products to a Federally licensed manufacturer or a Federally licensed export warehouse proprietor. Tobacco products re-imported to a manufacturer will have to be repackaged to remove the exportation markings before being sold on the domestic market. Tobacco products re-imported to an export warehouse proprietor can only be exported again or transferred to a tobacco product manufacturer. As a result these amendments will make it unlawful to sell tobacco products marked for export on the U.S. domestic market. These amendments become effective January 1, 2000.

Violations of these provisions can be prosecuted as Federal felonies. Convictions can result in a Federal prison term, a monetary fine, or both. In addition, persons who possess Federally untaxed tobacco products can be assessed the full amount of tax due, plus applicable interest and penalties.

SALES/PURCHASES INVOLVING NATIVE AMERICAN RESERVATIONS

ATF has recently received several inquiries about cigarette sales and purchases that involve Native American reservations. Sales or shipments of cigarettes from Native American Reservations are *not* exempt from the requirements of the Contraband Cigarette Trafficking Act and the Jenkins Act. Additionally, the application of State taxes and regulatory requirements to sales made on Native American reservations varies depending on the transaction. Accordingly, anytime you engage in transactions involving a Native American Reservation, ATF recommends that you contact your State tobacco tax administrator to determine the extent of your liability for State tobacco tax.

STATE TOBACCO TAX ADMINISTRATORS

Enclosed with this circular is a listing of State tobacco tax contacts. ATF encourages you to contact those offices if you have any question relating to potential liability for State cigarette taxes, record keeping or reporting requirements.

Alabama (334) 242-9600	Louisiana (504) 925-7652	Oklahoma (405) 521-4104
Alaska (907) 465-3691	Maine (207) 287-4755	Ontario (905) 433-6335
Arizona (602) 542-4023	Maryland (410) 974-5388	Oregon (503) 945-8117
Arkansas (501) 682-7187	Massachusetts (617) 887-5090	Pennsylvania (717) 783-4649
California (916) 327-3276	Michigan (517) 322-6303	Rhode Island (401) 277-6260
Colorado (303) 866-2381	Minnesota (800) 657-3618	South Carolina (803) 737-4867
Connecticut (860) 297-5891	Mississippi (601) 359-1137	South Dakota (605) 773-3311
Delaware (302) 577-3300	Missouri (573) 751-3804	Tennessee (615) 741-2679
District of Columbia (202) 727-6070	Montana (406) 444-1930	Texas (512) 463-3869
Florida (904) 488-3227	Nebraska (402) 471-5676	Utah (801) 297-4671
Georgia (404) 656-4252	Nevada (702) 687-6483	Vermont (802) 828-2310
Hawaii (808) 587-1622	New Hampshire (603) 271-3701	Virginia (703) 591-9222
Idaho (208) 334-7602	New Jersey (609) 984-1225	Washington (360) 753-3226
Illinois	New Mexico	West Virginia

Illinois
(312) 814-1750

New Mexico
(505) 827-0762

West Virginia
(304) 558-8516

Indiana
(317) 232-2199

New York
(518) 457-0432

Wisconsin
(608) 266-2479

Iowa
(515) 281-8023

North Carolina
(919) 733-1352

Wyoming
(307) 777-5293

Kansas
(913) 296-2461

North Dakota
(701) 328-3471

Kentucky
(502) 564-5440

Ohio
(614) 466-6939

QUESTIONS. If you have any questions or comments in connection with this industry circular, please do not hesitate to contact ATF's Diversion Branch at 202-927-3580.

/s/
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