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ARIZONA LUXURY TAX NOTICE LTN 12-1

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On July 6, President Obama signed into law H.R. 4348, a bill that amends the federal Internal Revenue Code to include, within the definition of a “manufacturer of tobacco products,” anyone who “for commercial purposes makes available for consumer use . . . a machine capable of making cigarettes, cigars, or other tobacco products.” The new definition would include a person making such machines available for consumer use to produce tobacco products for the consumer’s personal consumption. Nevertheless, a manufacturer of tobacco products would not include a person who limited business activity to selling “a machine directly to a consumer at retail for a consumer’s personal home use . . . if such machine is not used at a retail premises and is designed to produce tobacco products only in personal use quantities.” Merely selling such machines at retail would not be considered making the machines available “for commercial purposes.”

The Arizona Department of Revenue has devised this notice to provide tobacco retailers with information, organized in an “FAQ” format below, on how the change in federal law affects their businesses’ responsibilities under Arizona law. Please note that this notice does not provide advice on retailers’ duties for purposes of federal law or the federal excise tax on tobacco products; businesses should contact the U.S. Department of Treasury’s Alcohol and Tobacco Tax and Trade Bureau or visit its website at <http://www.ttb.gov> for the latest compliance information.

I do not operate the cigarette rolling machines I have on premises—my customers do. Does that make me a manufacturer under Arizona law?

Yes. As the new federal definition for manufacturer of tobacco products provides, a business that merely has a cigarette rolling machine on premises for use by its customers will be deemed the manufacturer for any cigarettes made and taken away from the business. The level of involvement by employees or agents of the business is irrelevant in making this determination. Rather, the fact that providing the machines for the convenience of customers aids in the production of cigarettes onsite is sufficient to deem the business to hold itself out as a producer or manufacturer of the cigarettes.

What steps do I, as a cigarette manufacturer, have to take to comply with Arizona law?

There are several steps that a business operating as a cigarette manufacturer must take:

1. *Before allowing any cigarettes to be produced on premises, a business must comply with state escrow and cigarette directory laws for cigarette manufacturers. The laws*

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require, among other things, that the business enter into an escrow agreement with the Attorney General's Office as a "nonparticipating manufacturer" ("NPM") and have the Attorney General list the business and brand families for cigarettes produced on premises included in the Directory. All cigarette and roll-your-own tobacco manufacturers are subject to an escrow agreement and certification process before they can make sales of their products in this state; moreover, the products themselves must be listed on an official directory maintained by the Attorney General's Office. A manufacturer cannot produce cigarettes on premises before it takes steps to comply with the escrow statute and lists its business and brand families on the official directory; thereafter, NPMs are subject to additional monthly and annual reporting and certification requirements. For additional details on the process, contact the Attorney General's Tobacco Enforcement Unit or visit its website at <http://www.azag.gov/consumer/Tobacco>.

2. *The business must obtain approval from the State Fire Marshal that cigarettes produced on premises meet the reduced cigarette ignition propensity ("fire-safe") standards mandated under state law. All cigarettes produced on premises must first be tested and certified by the Office of the State Fire Marshal to meet current fire-safe performance standards. Noncomplying cigarettes are subject to seizure and destruction by the Department of Revenue. Additional information and forms may be found on the State Fire Marshal's website at <http://www.dfbls.az.gov/ofm/fsc.aspx>.*
3. *The business must obtain a distributor's license from the Department of Revenue as a cigarette manufacturer. Generally, any manufacturer producing cigarettes for sale, use, or consumption in Arizona must hold a valid and current distributor's license issued by the Department of Revenue. A business cannot allow customers to remove cigarettes produced on premises from the location before the business obtains a valid distributor's license. Distributors are subject to monthly reporting requirements with the Department of Revenue after becoming licensed. To obtain a license application, contact the Department of Revenue's Tobacco Tax Section at (602) 716-7808.*
4. *Once the business holds a distributor's license, it must purchase and affix cigarette tax stamps for cigarettes produced on the premises. Cigarette distributors are liable for paying the tax on cigarettes they distribute by affixing tax stamps to the cigarette packs before someone other than a licensed distributor (e.g., a retail customer) obtains them. Distributors purchase rolls of tax stamps in person from the Department of Revenue's Licensing and Registration Section.*
5. *Before affixing a tax stamp, the business must properly package the cigarettes produced on premises in quantities of 20 or more cigarettes per pack, with labeling that complies with federal and state law. With few exceptions, it is illegal to sell cigarettes in quantities of less than 20 cigarettes per pack. Moreover, the packs themselves must show the label warnings and information required under the federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1331 et seq.). State law requires the Department of Revenue to seize and destroy any packs of noncomplying cigarettes, and the business may thereafter have its distributor's license revoked and face additional criminal charges.*

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I have a Transaction Privilege Tax (“TPT”) license issued by the Department of Revenue. Isn’t that enough?

Although both are issued by the Department of Revenue, a distributor’s license is wholly separate from a TPT license. Moreover, if a business has multiple business locations at which it produces cigarettes on premises, the business will need to apply for a distributor’s license for each separate location.

My store sells and rents cigarette rolling machines to customers. Will this activity make me a manufacturer?

Renting or selling rolling machines designed for home use (*i.e.*, designed to produce cigarettes only in personal use quantities) will not make a business a manufacturer under Arizona law, so long as the business does not otherwise allow customers to make cigarettes on the premises.

As can be seen above, compliance with state law is multi-staged and can be complex. The information provided above is intended as general guidance and is not an exhaustive list of questions or answers applicable to every business. It is recommended that a business seek the advice of a tax professional or contact the appropriate state agency to resolve specific questions.

For additional information:

- Department of Revenue Tobacco Tax Section (602) 716-7808
- Tobacco Tax Fraud Hotline(855) CIGTAX1 [244-8291]
- Department of Revenue <http://www.azdor.gov>
- Attorney General’s Office <http://www.azag.gov>
- State Fire Marshal..... <http://www.dfbis.az.gov>