



ARIZONA LUXURY TAX NOTICE LTN 04-5

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FOLLOW-UP TO ALL ARIZONA LICENSED TOBACCO DISTRIBUTORS

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This notice is a follow-up to the notice dated September 21, 2004, regarding tobacco enforcement. Aside from disseminating this notice to affected parties, we are contacting tobacco distributors to present and discuss its contents.

Ignorance of the law is no excuse. Consequently, the Department encourages all taxpayers to learn about the laws that affect them. Sections of the Arizona Revised Statutes ("A.R.S.") that this notice references are available online at www.azleg.state.az.us/ArizonaRevisedStatutes.asp, and the Cigarette Directory is on the website of the Arizona Attorney General at www.azag.gov/consumer/Tobacco/azcig.html. Additionally, the Department's website at www.azdor.gov provides further information on tobacco tax requirements and enforcement.

Before explaining the specific laws that affect tobacco distributors, something should be said about the importance of keeping good information. A.R.S. § 42-1105 requires all taxpayers to keep adequate books, records, and accounts so that the Department can properly determine tax liability. What this means for tobacco distributors is this: Distributors need to retain tobacco invoices for **at least** two years, they need to keep them **at their place of business**, and they need to **make them available** for the Department's review upon request.

GENERAL STAMPING REQUIREMENT. A.R.S. § 42-1124.

This is the main law that allows the Department to seize cigarettes. A.R.S. § 42-1124(A) provides that:

A. If the department or its authorized agents or representatives discover any luxury subject to tax under chapter 3 of this title to which official stamps have not been affixed as required or on which the tax has not been paid or accounted for, the department or its agent or representative may seize and take possession of the luxury, and it is deemed forfeited to this state.

This law is limited by the 48 hour law (see below), but it generally provides that cigarettes found within the State of Arizona must be properly stamped or they may be seized by the Department. Cigarettes seized by the Department are forfeited to the state.

The Department interprets the stamping requirement to mean that all packs of cigarettes sold in Arizona must bear a complete, legible tax stamp. Partial stamps or half stamps are not acceptable, and the Department has policies for making a refund to any distributor that can show

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the Department that the stamps are not attaching properly to the cigarette packs.

If your stamping machine is not placing complete stamps on the cigarette packs, it is your responsibility to correct the problem in order to remain in compliance. This applies to distributors in Arizona and those located out-of-state. Distributors must adhere to strict quality control standards to remain in compliance.

PAYMENT OF TAX REQUIRED FOR TOBACCO SALE. A.R.S. § 42-3202.

Distributors must be aware that they cannot sell cigarettes to anyone in Arizona, including other distributors, unless the cigarettes have been properly stamped and the tax actually paid. An Arizona licensed distributor may not sell unstamped cigarettes in Arizona.

48 HOUR LAW. A.R.S. § 42-3204.

The 48 hour law is a limitation on the General Stamping Requirement (see above). It says that cigarettes brought into Arizona must be stamped within 48 hours of receipt by a distributor. If the Department, in its investigations, discovers cigarettes that have been in Arizona for more than 48 hours without being stamped, the General Stamping Rule allows the Department to seize them, and they are forfeited to the state.

If, as a distributor, you believe that you are unable to properly stamp your inventory within 48 hours of receipt, due to events beyond your control, you must contact the Department immediately. You should contact the Department if you believe you are holding or acquiring unstamped cigarettes that are either: (1) "passing through" Arizona in transit to another state or (2) temporarily in Arizona in fulfillment of a preexisting sale or transfer to another state. Otherwise, your unstamped inventory in Arizona for at least 48 hours may be subject to seizure.

UNLAWFUL USE OF STAMPS. A.R.S. § 42-3210.

This section of the law says that it is illegal to stamp and offer for sale certain types of cigarettes. This law deals with cigarettes that have not been labeled properly, cigarettes that are supposed to be sold only outside the United States, cigarettes with altered labels, cigarettes imported improperly, and cigarettes violating federal trademark or copyright laws.

CIGARETTES NOT ON THE CIGARETTE DIRECTORY. A.R.S. § 44-7111.

Section 3, Subsection (c) provides:

(c) Prohibition against stamping or sale of cigarettes not in the directory. It shall be unlawful for any person (1) to affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or (2) to sell, offer or possess for sale, in this state, cigarettes of a tobacco

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product manufacturer or brand family not included in the directory.

Please consult the Cigarette Directory located on the Arizona Attorney General's website (the link is provided above). You may not stamp or sell any cigarettes that are not on the directory. The law allows the Department to seize cigarettes not on the directory. If seized, these are forfeited to the state as contraband and will be destroyed. The law also allows for license revocation, as well as civil and criminal penalties.

GENERAL REMINDER.

Failure to comply with Arizona tobacco tax laws may result in the seizure of your tobacco products and revocation of your license. In addition, civil penalties may be imposed and criminal charges may be brought against you.

ANY QUESTIONS?

Taxpayers are encouraged to ask questions. If you have any questions regarding this notice, you may ask the Tobacco Investigator who presented the notice to you. In addition, you may call the Luxury Tax Section at (602) 716-7808, or Civil and Criminal Investigations at (602) 716-6952.