

STATE OF ARIZONA

Department of Revenue



Douglas A. Ducey
Governor

David Raber
Director

February 2, 2015

Attached please find a copy of a proposed Arizona Luxury Tax Procedure providing guidance on what a person whose tobacco distributor's license has been revoked must do with unaffixed tax stamps and untaxed tobacco products in its possession, once the Department's revocation of its license is final. In an ongoing effort to interact with and inform the public on issues relating to taxation, the Department would appreciate your written comments on this draft.

Please be advised that the deadline for comments is **Wednesday, March 4, 2015**. Any request for an extension of time for review must be made by this date. This office will review all comments that are received through this date and make any appropriate revisions before the Department issues the final ruling.

Please address your comments to:

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Thank you for your continuing efforts in maintaining an ongoing line of communication with our agency.

Sincerely,

/s/ Hsin Pai
Tobacco Tax Counsel
Tax Research & Analysis

Attachment



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ARIZONA LUXURY TAX PROCEDURE LTP 15-__

Procedure for a Tobacco Distributor's Post-Revocation
Disposition of Tax Stamps and Untaxed Tobacco Products

****DRAFT 2/2/15****

ISSUE:

This procedure provides guidance on what a person whose tobacco distributor's license has been revoked must do with unaffixed tax stamps and untaxed tobacco products in its possession once the Department's revocation of its license becomes final.

PROCEDURE:

When the Department revokes a tobacco distributor's license, it will issue a notice of revocation in writing. The distributor has 30 days after receipt of the notice to file an appeal of the revocation with the Department, requesting a hearing before the Office of Administrative Hearings ("OAH"). If the distributor chooses to file such an appeal, the revocation is stayed (*i.e.*, the distributor may conduct normal business activities as a tobacco distributor) for the period between the request for appeal and the final order of the Department has been issued.

If a distributor fails to file a timely appeal of the Department's license revocation, or chooses not to appeal a determination by OAH upholding the revocation, within 30 days of receiving written notice, the revocation becomes final; if OAH orders the dismissal of a distributor's appeal with prejudice (*e.g.*, because the distributor files an appeal but withdraws it), the revocation becomes final immediately. Once the revocation is final, it prevents the now former licensee from purchasing additional tax stamps from the Department and purchasing or receiving more untaxed tobacco products (*i.e.*, unstamped cigarettes and untaxed other tobacco products ("OTP")) from any party.

Once the Department's revocation becomes final, the Department will issue a Final Disposition Notice in writing to the former licensee. The notice will provide a date within which the former licensee may redeem unused tax stamps, dispose of all remaining untaxed tobacco products in its inventory, file final returns and reports with the Department, and remit any applicable tax. But for the scope of permissible activities and timeframe provided within the Department's Final Disposition Notice, the former licensee should construe no additional rights or privileges ordinarily afforded to licensed distributors under Arizona law over its unstamped cigarettes and untaxed OTP.

The Final Disposition Notice will provide for all of the following:

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1. A date after the which the former licensee can no longer hold unused tax stamps, affix tax stamps or possess untaxed tobacco products (“Stated Date”). This date will generally be ten business days after the date that the Department’s revocation becomes final.
2. An explanation that, before the Stated Date, the former licensee can redeem all unaffixed, unused tax stamps in its possession with the Department by turning over possession of the stamps to the Department. Pursuant to A.R.S. § 42-3209(A), the former licensee will still need to prove that it purchased the stamps within 2 years of the date the former licensee presents the unused stamps for redemption. After the Stated Date, the unaffixed stamps will be considered cancelled under A.R.S. § 42-3006(D) and no longer valid for redemption. At no point can the former licensee sell or otherwise transfer possession of the stamps to another person.
3. An explanation that, before the Stated Date, the former licensee must deplete its inventory of unstamped cigarettes and untaxed other tobacco products through any of the following methods:¹
 - a. Sell and transfer its unstamped cigarettes or untaxed OTP to a distributor holding a valid Arizona distributor’s license, provided that the former licensee document all such sales and transfers in the final filings of its Arizona Forms 800 and 819. The Final Disposition Notice constitutes a written waiver authorizing both the transfer of the tobacco products by the former licensee and the receipt of the tobacco products by the licensed distributor. All licensed distributors receiving any unstamped cigarettes or untaxed OTP from the former licensee should retain a copy of the Final Disposition Notice in its books and records, in addition to any invoice or similar documentation issued for the transfer.
 - b. Sell and transfer its unstamped cigarettes or untaxed OTP to a distributor located outside of Arizona, provided that the former licensee document all such sales and transfers in the final filings of its Arizona Forms 800 and 819.
 - c. For unstamped cigarettes, use any unaffixed, unused tax stamps in its possession to stamp its unstamped cigarettes and document all such stamping activity in the final filings of its Arizona Forms 800 and 819. If the former licensee depletes its entire inventory of unaffixed, unused tax stamps on hand and still holds unstamped cigarettes, it must use either of the methods described above to deplete its remaining inventory of unstamped cigarettes; no additional tax stamps can be sold to the former licensee after the license revocation is final, pursuant to A.R.S. § 42-3202.03(B).

¹ Note that the Final Disposition Notice does not authorize the former licensee to dispose of cigarettes that are not listed on the directory maintained by the Attorney General’s Office pursuant to A.R.S. § 44-7111, listing cigarettes approved for stamping and sale within Arizona.

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- d. For untaxed OTP, file its final Arizona Form 819 and remit all applicable tobacco taxes by the 20th day of the month immediately following the month of the Stated Date.

Any unstamped cigarettes and untaxed other tobacco products remaining in the former licensee's possession or otherwise unaccounted for after the Stated Date are subject to seizure and forfeiture to the Department.

4. A requirement that, to avail itself of the stamp redemption and untaxed inventory authorizations provided by the Final Disposition Notice, the former licensee must make final filings of its Arizona Form 800 and 819 with the Department on or before the 20th day of the month immediately following the month of the Stated Date. The failure to timely file the returns and reports, failure to timely remit any applicable tax, or filing of a false or fraudulent Final Disposition Notice may subject the former licensee to civil and criminal penalties, including but not limited to:
 - \$100 for each month or fraction of a month (not to exceed \$500) during which the failure to file or provide an information return, unless the former licensee provides proof that the failure is due to reasonable cause and not wilful neglect. [A.R.S. § 42-1125(K).]
 - \$1,000 for knowing and intentional noncompliance with tobacco tax requirements under statute. [A.R.S. § 42-1125(U).]
 - A class 5 felony for knowingly failing to pay tobacco tax due or believed due from the former licensee with intent to evade the tax. [A.R.S. § 42-1127(B)(1).]
 - A class 5 felony for knowingly preparing, presenting or aiding, procuring, or advising in preparing or presenting a return that is fraudulent or false as to any material matter, regardless of whether the falsity or fraud is with the knowledge or consent of the former licensee. [A.R.S. § 42-1127(B)(2).]
 - A class 5 felony for knowingly failing to file a return or supply required information, or falsify or conceal a material fact, document, or record, making a false, fictitious, or fraudulent statement or representation, or making or using a false writing or document knowing it to contain a false, fictitious, or fraudulent statement or entry, with intent that the Department rely on the statement or entry in determining the former licensee's tax liability. [A.R.S. § 42-1127(B)(4).]

APPLICABLE LAW:

Arizona Revised Statutes ("A.R.S.") § 41-1092.03(B) provides that a party may request a hearing on an appealable agency action or contested case by filing a notice of appeal or request for hearing with the agency within thirty days after receiving notice.

A.R.S. § 41-1092.11(B) provides that license revocations and suspensions are unlawful unless, before the action, an agency provides the licensee with "notice and an opportunity

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for a hearing” in accordance with A.R.S. Title 41, Chapter 6, Article 10, except that an agency can order a summary suspension pending proceedings for revocation or other action if it states a finding in its order that “public health, safety or welfare imperatively requires emergency action.”

A.R.S. § 42-1124(A) permits the Department to seize and take possession of any unstamped cigarettes which are required to be stamped, with the seized products deemed forfeited to the state.

A.R.S. § 42-1125 and 1127 list various penalties (civil and criminal respectively) available to the Department..

A.R.S. § 42-3003 provides that the Department and its agents and representatives have

1. The powers, duties and authority of police officers within this state.
2. The powers and authority of appraisal, valuation, assessment, correction, computation, estimation, supervision, direction, investigation, inspection, collection and enforcement that are vested in the department by any law of this state relating to public revenue and taxation and applicable to the administration of this chapter.

A.R.S. § 42-3006(D) provides that the Department will prescribe by rule or procedure the method and manner in which stamps are to be affixed to cigarettes and may provide for the cancellation of stamps.

A.R.S. § 42-3201(D) provides that a person generally may not hold, store, or transport unstamped cigarettes or other untaxed tobacco products for sale or distribution in Arizona in any vehicle, pursuant to A.R.S. § 36-798.06.

A.R.S. § 42-3201(F) provides that an individual must be a licensed distributor if it acquires or possesses unstamped cigarettes in this state for sale, barter, or exchange, or for any other purpose besides or in addition to that individual’s own use or consumption.

A.R.S. § 42-3201.01(D) provides that a distributor can only obtain cigarettes from a licensed cigarette manufacturer, cigarette importer, or cigarette distributor.

A.R.S. § 42-3201.02(A) provides that a retailer cannot acquire or possess unstamped cigarettes or other tobacco products on which taxes have not be paid, unless the retailer holds a valid Arizona distributor’s license.

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A.R.S. § 42-3202.03(A) provides that each roll or sheet of Arizona tax stamps will have a unique serial number and that the Department will use the serial number printed on each roll or sheet of tax stamps to record which distributor purchased the roll or sheet.

A.R.S. § 42-3202.03(B) provides that only licensed distributors can purchase, obtain, or affix tax stamps, and that distributors cannot sell or provide stamps to any other distributor or person.

A.R.S. § 42-3203(G) provides that distributors may only stamp cigarettes that it directly received from a licensed cigarette distributor, licensed cigarette manufacturer, or licensed cigarette importer.

A.R.S. § 42-3209(A) provides that the Department will redeem unused Arizona tax stamps that a distributor presents for redemption, if the stamps are unaffixed and purchased within 2 years of the date of the request for redemption.

Arizona Administrative Code ("A.A.C.") R15-3-308(E) provides that a licensee must request a hearing in writing with the Department within 30 days after receipt of a notice to appeal its license revocation.

A.A.C. R15-3-308(F) provides that the Department's revocation becomes final if the licensee does not file an appeal within 30 days. If a licensee files a timely appeal, however, the Department will request a hearing by OAH.

A.A.C. R15-3-308(G) provides that if a licensee appeals a license revocation, the Department will suspend action until the final order of the Department has been issued under A.A.C. R15-10-131.

Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.