

Administrative Release

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TT-10

July 15, 2005

To: All Wholesalers and Retailers of Other Tobacco Products

Subject: Registration Requirement for Certain Retailers of Other Tobacco Products

This administrative release is to notify you of an amendment to COMAR 03.02.02.08 re: Other Tobacco Products (OTP), copy attached.

Effective August 1, 2005, any retailer who receives OTP from a non-registered wholesaler, will need to register with the Alcohol and Tobacco Tax Bureau before receiving the first shipment of OTP. Previously, the regulation allowed for up to 30 days to register with this office.

Also effective August 1, 2005, it shall be the policy of the Comptroller that any OTP found at a retailer's premise located in this state, that is not in compliance with the registration provisions found in COMAR 03.02.02.08, will be considered contraband and subject to confiscation.

Any retailer of OTP already registered with this office need take no action. However, should you have any questions regarding this administrative release or desire to confirm that your business is currently registered, please contact Mrs. Lynda Saxon at 410-260-7818.

Larry W. Tolliver
Director

Regulation

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Title 03

Comptroller of the Treasury Subtitle 02 Alcohol and Tobacco Tax Chapter 02 Tobacco Tax

Authority: Tax-General Article, §2-103 and 12-303; Annotated Code of Maryland

08. Other Tobacco Product

A. Definitions. In this regulation, the following terms have the meanings indicated:

(1) “Consumer” means an individual domiciled in the State who purchases other tobacco products (OTP) for personal use and not for resale.

(2) “Other tobacco products (OTP)” means:

(a) Any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco; or

(b) Any other tobacco or product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing or as snuff.

(3) “Retailer” means a person located in the State, who holds for sale or sells OTP to a consumer in the State.

(4) “Wholesale price” or “wholesale cost” means the price exclusive of any discount, trade allowance, rebate, or other reduction for which a wholesaler buys OTP from a supplier or manufacturer, or in the case of a manufacturer also acting as a wholesaler, the cost of producing OTP.

(5) Wholesaler.

(a) “Wholesaler” means a person, whether located in or out of the State, who holds for sale or sells

OTP to a retailer in the State.

(b) “Wholesaler”, for the purposes of this regulation, includes a person who sells OTP to both a retailer and a consumer in the State.

B. Responsibility to Remit Tax.

(1) The person primarily responsible for remitting the OTP tax is the wholesaler.

(2) If the wholesaler does not remit the tax, then it is the responsibility of the retailer to remit the tax.

(3) If neither the wholesaler nor the retailer remits the tax, then it is the responsibility of the consumer to remit the tax.

C. Proof of Evidence of Tax Payment.

(1) In order for a retailer to be relieved of any tax liability, the retailer shall have received from the wholesaler a:

(a) Letter certifying that the wholesaler is registered with the Alcohol and Tobacco Tax Division as required by §D of this regulation and is filing OTP tax returns; or

(b) Similar statement individually printed on each invoice received.

(2) If a consumer purchases OTP from a retailer located in the State, it is presumed that the OTP tax has been or will be remitted by the wholesaler or retailer.

(3) If a consumer purchases OTP from a retailer located outside of the State, it is presumed that the OTP tax has not been remitted by the wholesaler or retailer, and the consumer is responsible for obtaining documentation similar to that described in §C(1) of this regulation in order to be relieved of any tax liability.

(4) If a retailer or consumer is notified in writing by the Alcohol and Tobacco Tax Division that a given wholesaler or retailer is not properly registered and remitting the OTP tax, then the retailer or consumer is responsible for the tax notwithstanding any certification received to the contrary.

D. Registration

(1) A wholesaler who sells OTP in the State shall register with the Alcohol and Tobacco Tax Division on forms provided by the Division before making any sales of OTP to retailers.

(2) A retailer in the State who receives OTP from a non-registered wholesaler shall register with the Alcohol and Tobacco Tax Division on forms provided by the Division before receiving the first shipment.

(3) Consumers who receive non-tax paid OTP need not register with the Alcohol and Tobacco Tax Division but shall file the tax return as provided by §E of this regulation.

E. Tax Returns.

(1) Wholesaler Returns.

(a) A wholesaler shall file a monthly tax return and any required supporting schedules, on forms provided by the Alcohol and Tobacco Tax Division, not later than the 21st day of each month following the report month, and shall file a return even if there was no taxable activity in the report month.

(b) A wholesaler return shall include all sales of OTP to retailers and consumers during the report month.

(2) Retailer and Consumer Returns.

(a) A retailer or consumer who is responsible for remitting the OTP tax shall file a quarterly tax return, with any supporting schedules, on

forms provided by the Alcohol and Tobacco Tax Division, on the following dates covering tax liabilities in the preceding quarter:

January 21, April 21, July 21, and October 21.

(b) A retailer or consumer return is based upon purchases of OTP during the preceding quarter.

F. Tax Rates and Factors.

(1) When filed by a wholesaler, the tax rate for OTP is 15 percent of the wholesale price of the OTP.

(2) When filed by a retailer or consumer, a tax factor shall be applied to the purchase price of OTP to establish the OTP tax rate.

(3) The tax factors for retailers and consumers shall be established by the Alcohol and Tobacco Tax Division by December 1 of each year for the following calendar year.

(4) The tax factors shall be determined on the basis of an analysis of average markups of OTP at the wholesale and retail levels so as to approximate the same tax liability as if the OTP tax were remitted by the wholesaler.

G. Records. Wholesalers and retailers shall keep on their premises and have available for inspection during normal business hours all records necessary to support their OTP tax returns. These returns shall be kept until the Comptroller has completed an audit of the OTP returns or for 2 years after the filing of the returns, whichever occurs first.

Effective date: August 1, 2005