

Bulletin

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TT-69

February 9, 2011

To: OTHER TOBACCO PRODUCTS (“OTP”) MANUFACTURERS AND WHOLESALERS

Subject: HOUSE BILL 88 - OTHER TOBACCO PRODUCTS LICENSES

House Bill 88, Chapter 388 of the Laws of Maryland – **Other Tobacco Products Licenses** – passed the Maryland General Assembly, and was signed by the Governor on May 4, 2010.

This bill creates a new Title 16.5 in the Business Regulation Article, Annotated Code of Maryland, establishing other tobacco products (“OTP”) licenses for a manufacturer, wholesaler, storage warehouse, and retailer. The Comptroller will issue and administer the OTP manufacturer, storage warehouse, and wholesaler licenses, and the Clerks of the Court will issue and administer the OTP retailer licenses and tobacconist licenses. For information about the new OTP retailer licenses, see bulletin: *TT-68 – OTP Retailer Licenses – January 26, 2011*, found on the Comptroller’s website.

The current OTP registration for wholesalers and retailers administered by the Comptroller will terminate on April 30, 2011.

Under the new law, effective May 1, 2011, any person manufacturing or otherwise producing OTP in Maryland, including importing, with the intent to sell OTP in the State must have an OTP manufacturer license. If the OTP manufacturer is not located in Maryland, there is no requirement to obtain an OTP manufacturer license. OTP wholesalers are required to obtain a license. And, a facility located in Maryland used to store OTP on behalf of an OTP manufacturer, and on which the tobacco tax has not paid, must obtain a storage warehouse license.

The new OTP licenses are substantially similar to the cigarette manufacturer, storage warehouse, and wholesaler licenses issued under Title 16 of the Business Regulation Article.

This bulletin provides information about the new OTP manufacturer, storage warehouse, and wholesaler licenses.

A. Definitions.

Under Business Regulation Article, § 16.5-101, the following definitions apply:

(1) **OTP** is defined as “any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco; or 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.”

(2) A **Licensed OTP Manufacturer** is a person who manufacturers or otherwise produces OTP in Maryland, including imports, with the intent to sell OTP in the State. A Licensed OTP Manufacturer is located in Maryland.

(3) An **OTP Manufacturer** is a person who manufactures or otherwise produces OTP intended for sale in Maryland, including imports. An OTP manufacturer is not located in Maryland, and is not required to obtain a license.

(4) An **OTP Storage Warehouse** is a facility located in Maryland where OTP is stored on behalf of an OTP manufacturer, and on which the tobacco tax has not been paid.

(5) An **OTP Wholesaler** is a person who holds or sells OTP to another person for resale.

B. Requirements.

(1) The following applies to the Licensed OTP manufacturer, storage warehouse, and wholesaler:

- (a) The licenses are “annual” licenses expiring on April 30th following the effective date.
- (b) There are no application or renewal fees.
- (c) The Licensed OTP manufacturer license and the storage warehouse license each have an annual license fee of \$25, and the OTP wholesaler license has an annual fee of \$250. If an OTP wholesaler applicant has a cigarette wholesaler license, the license fee of \$250 is waived.
- (d) The sale or shipment of OTP ordered by mail or over the internet is prohibited.

(2) The following applies to the OTP manufacturer and Licensed OTP manufacturer:

The definition of an OTP manufacturer (located outside of Maryland) includes a Licensed OTP manufacturer (located in Maryland), so that any reference in Title 16.5 to OTP manufacturer includes all manufacturers, whether located in Maryland or out-of-state.

An **OTP manufacturer** is authorized to:

- (a) Sell OTP on which the tobacco tax has not been paid to a licensed OTP wholesaler located in Maryland.
- (b) Sell OTP that may be lawfully sold in Maryland, and on which the tobacco tax has not been paid, to a licensed OTP wholesaler located out-of-state.
- (c) Store OTP in a warehouse for subsequent shipment to licensed OTP wholesalers, federal reservations, or persons out-of-state.
- (d) Sell “premium cigars” or “pipe tobacco” to a licensed OTP retailer, and sell all OTP to a licensed tobacconist in Maryland without paying the tobacco tax. The licensed OTP retailer and licensed tobacconist must file a quarterly tax return and pay the tobacco tax at the rate of 15% on the invoice amount, exclusive of discounts, trade allowance, rebates, or any other reduction.
- (e) Distribute samples of OTP to consumers in Maryland.

An **OTP manufacturer:**

- (a) Shall file a monthly information return with the Comptroller. The information return and instructions can be found at: <http://compnet.comp.state.md.us>.
- (b) Shall not have a financial interest in a licensed OTP wholesaler or the business of an OTP wholesaler.

(3) The following applies to the OTP storage warehouse license:

An **OTP storage warehouse** is authorized to:

- (a) Operate a facility in Maryland for storage of OTP on which the tobacco tax has not been paid on behalf of an OTP manufacturer.
- (b) Operate a facility in Maryland for storage of OTP on which the tobacco tax has been paid to Maryland or to another state if the OTP storage licensee has an OTP wholesaler license.

An OTP storage warehouse licensee shall file a monthly information return with the Comptroller. The information return and instructions can be found at: <http://compnet.comp.state.md.us>.

(4) The following applies to the OTP wholesaler license:

An **OTP wholesaler** is authorized to:

- (a) Buy OTP on which the tobacco tax has not been paid from an OTP manufacturer.
- (b) Hold OTP on which the tobacco tax has not been paid.
- (c) Transport OTP on which the tobacco tax has not been paid in the State.
- (d) Sell OTP on which the tobacco tax has not been paid to another licensed OTP wholesaler if the Comptroller specifically approves.
- (e) Store OTP on which the tobacco tax has not been paid at a licensed storage warehouse.

An **OTP wholesaler shall:**

- (a) Get an invoice for each purchase of OTP.
- (b) Keep daily records of all OTP received, including invoice number, date of receipt, quantity, brand, manufacturer, and name of person from whom OTP was received.
- (c) Keep records of each sale to a licensed OTP retailer and a licensed tobacconist, including name and address, and on the invoice, the political subdivision where the OTP retailer and tobacconist is located.
- (d) Keep complete and accurate records of each sale of OTP to an out-of-state person for resale to an out-of-state consumer.
- (e) Make a monthly inventory record of all OTP on the premises, except OTP transferred to retail stock by a written memorandum.
- (f) Keep all records required under the license for 6 years.
- (g) Obtain a tax bond in the minimum amount of \$5,000.
- (h) File a monthly tax return with the Comptroller on the 21st of the month following the month in which the OTP wholesaler possesses OTP on which the tobacco tax has not been paid, and pay the tobacco tax at the rate of 15% of the wholesale price. The tax return and instructions can be found at: <http://compnet.comp.state.md.us>.

An OTP wholesaler licensee shall not have a financial interest in an OTP manufacturer or the business of an OTP manufacturer.

Questions about this bulletin should be directed to Licensing and Registration at (410) 260-7131.

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