

## DEPARTMENT OF STATE REVENUE

Revenue Ruling #2013-03 ST  
January 6, 2015

**NOTICE:** Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the department's official position concerning a specific issue.

**ISSUE**

Other Tobacco Products Tax--Applicability

A company ("Taxpayer") is seeking an opinion as to whether it is subject to other tobacco products (OTP) tax on products that it sells to other distributors.

Authority: [IC 6-7-2-7](#); [IC 6-7-2-14](#); Rev. Rul. 2009-07ST (October 25, 2009).

**STATEMENT OF FACTS**

Taxpayer provides the following facts regarding its request for a revenue ruling. Taxpayer, which is located in Indiana, is a purchaser of products subject to OTP. Taxpayer purchases from manufacturers and wholesalers and then sells the products to other wholesalers or distributors.

In certain cases, Taxpayer will sell products to other Indiana distributors ("Other Distributors"). Taxpayer does not know if the Other Distributors will ultimately distribute the product within Indiana or outside Indiana. Taxpayer requests a determination on whether it is subject to tax on the sales to the Other Distributors.

**DISCUSSION**

Taxpayer requests that the department rule whether Taxpayer is required to remit OTP tax on its sales to Other Distributors. Taxpayer argues that the Other Distributors should be required to remit OTP tax on the sales to the Other Distributors, as opposed to Taxpayer remitting the OTP tax.

[IC 6-7-2-7\(a\)](#) provides:

A tax is imposed on the distribution of tobacco products in Indiana at the rate of:

- (1) twenty-four percent (24%) of the wholesale price of tobacco products other than moist snuff; or
- (2) for moist snuff, forty cents (\$0.40) per ounce, and a proportionate tax at the same rate on all fractional parts of an ounce. If the tax calculated for a fractional part of an ounce carried to the third decimal place results in the numeral in the third decimal place being greater than four (4), the amount of the tax shall be rounded to the next additional cent.

[IC 6-7-2-7\(b\)](#) provides the OTP tax is when a distributor:

- (1) brings or causes tobacco products to be brought into Indiana for distribution;
- (2) manufactures tobacco products in Indiana for distribution; or
- (3) transports tobacco products to retail dealers in Indiana for resale by those retail dealers.

[IC 6-7-2-14](#) provides that:

The department shall credit or refund to a distributor the tax paid under this chapter on tobacco products that are:

- (1) shipped outside Indiana;
- (2) returned to the manufacturer; or
- (3) destroyed by the distributor in the presence of an employee or agent of the department.

Taxpayer argues that it sells products to the Other Distributors, and the Other Distributors then distribute the products outside Indiana, then Taxpayer would be unable to avail itself of the credit procedures set forth in [IC 6-7-2-14](#). Furthermore, Taxpayer argues that the Other Distributors would receive a windfall because the Other

Distributors would be able to claim a credit based on the products shipped outside Indiana.

Taxpayer asserts that Revenue Ruling 2009-07ST (October 25, 2009) permits the treatment that it is seeking. Taxpayer is correct in this regard.

However, in reviewing the OTP tax law, it appears that the treatment sought by Taxpayer would not be permitted. [IC 6-7-2-7](#)(b) contemplates three scenarios in which the tax may be imposed. Each of the scenarios ties to the first time that covered products are brought into Indiana. At this point the tax is incurred, with further transactions—such as sales to resellers or to other distributors—not subject to OTP tax. Thus, Taxpayer is subject to OTP tax on the transactions when the covered products are first brought into Indiana.

Further, the credit available under [IC 6-7-2-14](#) is available in specific situations. Those situations are limited by statute. In this case, Taxpayer would not be able to claim the credit because it did not ship the products outside Indiana. If (and to the extent) the Other Distributors may receive the credit instead of Taxpayer, Taxpayer is entitled to seek contractual relief in its transactions with the Other Distributors.

In this case, the current ruling is in contradiction to another ruling. To the extent inconsistent with this ruling, Revenue Ruling 2009-07ST is superseded effective as of the date the current ruling is published in the Indiana Register. However, taxpayers who have relied on the previous ruling in good faith are entitled to such reliance in the event of Department audit.

### **RULING**

Taxpayer is subject to OTP tax on products sold to Other Distributors, regardless of the ultimate distribution by the Other Distributors. Taxpayer is not entitled to claim a credit under [IC 6-7-2-14](#) for products distributed by the Other Distributors outside Indiana.

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

*Posted: 01/28/2015 by Legislative Services Agency*  
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