

TITLE 45 DEPARTMENT OF STATE REVENUE

Proposed Rule
LSA Document #14-146

DIGEST

Amends 45 IAC 8.1-1-1 to update covered transactions. Amends 45 IAC 8.1-1-2 to clarify tax on sample packages. Amends 45 IAC 8.1-1-3 to clarify sales to the United States Government. Amends 45 IAC 8.1-1-16 concerning evidence of tax payment. Amends 45 IAC 8.1-1-18 to delete superfluous language. Amends 45 IAC 8.1-1-19 to delete superfluous language. Amends 45 IAC 8.1-1-20 to clarify what packages must have tax stamps affixed. Amends 45 IAC 8.1-1-23 to clarify name and address of owner and operator on vending machines. Amends 45 IAC 8.1-1-25 to include a suit upon a bond under limited circumstances. Amends 45 IAC 8.1-1-26 to clarify who the Department will sell tax stamps to. Amends 45 IAC 8.1-1-27 to delete superfluous language. Amends 45 IAC 8.1-1-28 to clarify the burden of proof concerning the exception to the stamping requirements. Amends 45 IAC 8.1-1-29 to state when books, records, and papers are subject to inspection. Amends 45 IAC 8.1-1-30 to update the requirement for filing a return. Amends 45 IAC 8.1-1-31 to delete superfluous language. Amends 45 IAC 8.1-1-40 to delete superfluous language. Repeals 45 IAC 8.1-1-4, 45 IAC 8.1-1-5, 45 IAC 8.1-1-6, 45 IAC 8.1-1-7, 45 IAC 8.1-1-8, 45 IAC 8.1-1-9, 45 IAC 8.1-1-10, 45 IAC 8.1-1-11, 45 IAC 8.1-1-12, 45 IAC 8.1-1-13, 45 IAC 8.1-1-14, 45 IAC 8.1-1-15, 45 IAC 8.1-1-17, 45 IAC 8.1-1-21, 45 IAC 8.1-1-22, 45 IAC 8.1-1-24, 45 IAC 8.1-1-32, 45 IAC 8.1-1-33, 45 IAC 8.1-1-34, 45 IAC 8.1-1-35, 45 IAC 8.1-1-36, 45 IAC 8.1-1-37, 45 IAC 8.1-1-38, 45 IAC 8.1-1-39, 45 IAC 8.1-1-41, and 45 IAC 8.1-1-42. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

45 IAC 8.1-1-1; 45 IAC 8.1-1-2; 45 IAC 8.1-1-3; 45 IAC 8.1-1-4; 45 IAC 8.1-1-5; 45 IAC 8.1-1-6; 45 IAC 8.1-1-7; 45 IAC 8.1-1-8; 45 IAC 8.1-1-9; 45 IAC 8.1-1-10; 45 IAC 8.1-1-11; 45 IAC 8.1-1-12; 45 IAC 8.1-1-13; 45 IAC 8.1-1-14; 45 IAC 8.1-1-15; 45 IAC 8.1-1-16; 45 IAC 8.1-1-17; 45 IAC 8.1-1-18; 45 IAC 8.1-1-19; 45 IAC 8.1-1-20; 45 IAC 8.1-1-21; 45 IAC 8.1-1-22; 45 IAC 8.1-1-23; 45 IAC 8.1-1-24; 45 IAC 8.1-1-25; 45 IAC 8.1-1-26; 45 IAC 8.1-1-27; 45 IAC 8.1-1-28; 45 IAC 8.1-1-29; 45 IAC 8.1-1-30; 45 IAC 8.1-1-31; 45 IAC 8.1-1-32; 45 IAC 8.1-1-33; 45 IAC 8.1-1-34; 45 IAC 8.1-1-35; 45 IAC 8.1-1-36; 45 IAC 8.1-1-37; 45 IAC 8.1-1-38; 45 IAC 8.1-1-39; 45 IAC 8.1-1-40; 45 IAC 8.1-1-41; 45 IAC 8.1-1-42

SECTION 1. 45 IAC 8.1-1-1 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-1 Covered transactions; intent of act

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 6-7-1-1

Sec. 1. The cigarette tax imposed by ~~this act~~ IC 6-7-1 is ~~on~~ **collected from** the person or company who first sells, uses, consumes, handles, or distributes cigarettes within Indiana. It is ~~therefore a tax upon the sale or use of cigarettes and~~ **The tax** must be initially collected by the person or company engaged in the business of selling or purchasing cigarettes in Indiana as a distributor.

(Department of State Revenue; Reg. 6-7-1-1(010); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1800)

SECTION 2. 45 IAC 8.1-1-2 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-2 Distribution of sample packages; collection of tax by manufacturer

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 6-7-1-1

Sec. 2. Sample packages of cigarettes may not be distributed in this state without Indiana cigarette tax stamps of the proper denomination affixed to the package. ~~The tax on sample packages of 4 or less cigarettes may with authorization from the Department be paid by the manufacturer once a month on a reporting basis.~~

(Department of State Revenue; Reg. 6-7-1-1(020); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1800)

SECTION 3. 45 IAC 8.1-1-3 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-3 Exemption; sales to United States government

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 6-7-1

Sec. 3. (a) A distributor ~~making~~ **does not incur tax liability with respect to sales** or other dispositions of cigarettes to the United States Government, its agencies and instrumentalities ~~does not incur tax liability with respect to such sales or other disposition of cigarettes~~, and need not affix tax stamps to individual packages of cigarettes so sold or otherwise disposed of.

(b) Distributors ~~making~~ **do incur tax liability with respect to sales** or other dispositions of cigarettes in this state to individuals, private stores, or concessionaires located upon federal areas and engaged in the business of selling cigarettes. ~~do incur tax liability and~~ **In these situations, the distributor** must affix tax stamps of proper denomination to each individual package of cigarettes before delivery thereof pursuant to a sale or other disposition.

(Department of State Revenue; Reg. 6-7-1-1(030); filed Aug. 4, 1982, 3:02 p.m.: 5 IR 1800)

SECTION 4. 45 IAC 8.1-1-16 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-16 Stamp; evidence of tax payment

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 6-7-1-14

Sec. 16. (a) Payment of the tax imposed by ~~the Act~~ IC 6-7-1 shall be evidenced by a stamp ~~or meter impression~~ affixed to or on individual cigarette packages.

(b) Payment of the tax ~~imposed by the Act (IC 6-7-1)~~ on books, and sets of cigarette papers, wrappers, or tubes, made or prepared for the purpose of making cigarettes, shall be evidenced by the proper denomination of stamps affixed to the package containing such books, sets, wrappers, or tubes.

(Department of State Revenue; Reg. 6-7-1-14(010); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1801)

SECTION 5. 45 IAC 8.1-1-18 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-18 Distributor's registration certificate; revocation or suspension

Authority: IC 6-8.1-3-3

Affected: IC 6-7-1-15

Sec. 18. (a) After notice and a hearing, the department may revoke, cancel, or suspend the registration certificate of any distributor for any violation of, **or noncompliance with**, the provisions of ~~the Act or for noncompliance with the provisions thereof~~, IC 6-7-1, or for noncompliance with any lawful rule or regulation promulgated by the department. ~~The Any such~~ **Any such** action of the Department ~~taken in any such case~~ shall be subject to judicial review.

(b) In the event a certificate is revoked or suspended, no refund of registration fees will be allowed.

(c) In the event a distributor's certificate is suspended, such suspension shall mean the loss of all rights under the license for the period of the suspension.

(d) The length of revocation or suspension will be at the department's discretion.

(Department of State Revenue; Reg. 6-7-1-15(b)(020); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1801)

SECTION 6. 45 IAC 8.1-1-19 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-19 Conduct of hearings; investigations

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 4-21.5; IC 6-7-1; IC 6-8.1-5-4

Sec. 19. (a) Hearings shall be held at such place as the department may designate.

(b) Hearings may be held by the department or any officer or employee of the department designated by the commissioner of the ~~Indiana~~ department of ~~state~~ revenue. For this purpose, the department ~~or such officer or employee of the Department~~ may examine books, papers, or memoranda bearing upon the sale or other disposition of cigarettes by such distributor, and may require the attendance of such registered distributor, or any officer or employee of such distributor, or any person having knowledge of the facts, and may take testimony and require proof. ~~for the information of the Department.~~

(c) In the conduct of any investigation, or hearing, under ~~the Act IC 6-7-1~~ or this regulation, article, neither the department nor any officer or employee thereof, shall be bound by the technical rules of evidence, and no informality in the proceedings, or in the manner of taking testimony, shall invalidate ~~any rule, the department's order or decision. or regulation made, approved or confirmed by the Department.~~

For additional information in regards to the Department's administrative procedures see IC 6 8.4 4.

(d) The department's administrative procedures are otherwise governed by IC 6-8.1-3.

(Department of State Revenue; Reg. 6-7-1-15(b)(030); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1802)

SECTION 7. 45 IAC 8.1-1-20 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-20 Display of tax stamps on individual packages of cigarettes

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 6-7-1-14

Sec. 20. (a) Approved tax stamps furnished and sold by the department must be physically affixed to individual packages of cigarettes. Provision is also made in the Act so that stamps may be "affixed" by tax meters. **cigarette papers, cigarette tubes, and cigarette wrappers.**

(b) Tax stamps shall be securely attached to each individual package of cigarettes so as to be clearly visible.

(c) Tax stamps must be placed on each individual package originally sold to consumers as distinguished from the carton or larger containers of cigarettes.

(Department of State Revenue; Reg. 6-7-1-15(d)(010); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1802)

SECTION 8. 45 IAC 8.1-1-23 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-23 Requirement to display stamps in vending machines

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 6-7-1

Sec. 23. (a) Owners and operators of cigarette vending machines shall load all packages of cigarettes so that if any packages are visible while in the machine, the stamps affixed thereto are clearly visible.

(b) Vending machines shall have the name and address of the owner and of the operator, if **they are** not the same, conspicuously displayed on the front of the machine.

(Department of State Revenue; Reg. 6-7-1-15(d)(040); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1802)

SECTION 9. 45 IAC 8.1-1-25 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-25 Bonding of registrant

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 6-7-1-16

Sec. 25. (a) Upon application for a registration certificate, a distributor must file a bond in a form and with a surety therefor approved by the department of state revenue.

(b) **The department may institute a suit upon such bond for the entire amount of the liability and costs under any of the following circumstances:**

If (1) A registrant ~~shall be~~ is convicted of a violation of any of the provisions of the Act ~~or if his~~ IC 6-7-1.

(2) **The registrant's certificate shall be** is revoked and no review is ~~had~~ **requested** of the order of the revocation. ~~or~~

(3) If on review ~~thereof~~ of a **revocation**, the decision is adverse to the registrant, and the registrant refuses to pay any taxes, damages, fines, penalties, or costs adjudged against him ~~or her~~ by reason of a violation of any of the provisions of the Act. ~~the Department may institute a suit upon such bond in the name of the State of Indiana for the entire amount of such liability and costs. Said~~ IC 6-7-1.

Any suit upon the bond shall be in addition to any other remedy provided for in the Act. IC 6-7-1.

(Department of State Revenue; Reg. 6-7-1-16(010); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1803)

SECTION 10. 45 IAC 8.1-1-26 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-26 Purchase of tax stamps

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 6-7-1-17

Sec. 26. (a) The department will not sell tax stamps to ~~any but registered~~ **anyone except** distributors **holding active and valid registration certificates** and such others who established their need ~~therefor~~ **for tax stamps** by written statement satisfactory to the department.

(b) Registered distributors shall be agents of the department to affix stamps.

(c) Sales of tax stamps ~~and/or meter units~~ shall be made by the department to registered distributors, subject to the discount prescribed by law. ~~Which~~ **The** discount shall be allowed at the time of purchase of the stamps. ~~or meter units.~~ All other purchasers must pay full face value.

~~Distributors~~ (d) After meeting the department's requirements for a credit bond **or credit bond release** and after authorization from the department, **distributors** will pay for the tax stamps ~~or meter units~~ within **thirty (30)** calendar days from the date of the purchase.

~~The payment date will be determined by a legible U. S. Postmark applied by the U.S. Postal Services, or a payment made in person at the Office of the Indiana Cigarette Tax Division.~~

(e) **Payment must be made by electronic funds transfer. If payment is not received by the due date, the discount will be disallowed and penalty and interest will be charged. Additionally, no further stamps will be sold to the distributor until full payment is made.**

(Department of State Revenue; Reg. 6-7-1-17(010); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1803)

SECTION 11. 45 IAC 8.1-1-27 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-27 Responsibilities of distributor and retailer to affix stamps

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Sec. 27. (a) Registered distributors must affix the proper stamp or stamps to each individual package of cigarettes, ~~before delivering such cigarettes pursuant to a sale of other disposition.~~ **cigarette papers, cigarette wrappers, and cigarette tubes upon receipt of such cigarettes, except for those cigarettes exempted from the stamping requirement by IC 6-7-1.**

(b) Retailers who ~~may~~ receive unstamped cigarettes have the duty to make certain that stamps are affixed immediately on each individual package.

(Department of State Revenue; Reg. 6-7-1-18(010); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1803)

SECTION 12. 45 IAC 8.1-1-28 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-28 Exception to stamping requirements for items in interstate commerce

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 6-7-1-18; IC 6-7-1-19.5

Sec. 28. The tax imposed by ~~the Act~~ IC 6-7-1 upon distributors of cigarettes within this state does not apply to cigarettes which are shipped from within this state to a point outside the state, not to be returned to this state. Distributors ~~need do not need to~~ affix tax stamps to the individual packages of cigarettes that are sold and shipped outside the state. The burden of proof, however, is at all times upon the Indiana distributor to show that such cigarettes actually ~~went into interstate commerce.~~ **were sold and shipped outside the state, and did not return to the state.**

(Department of State Revenue; Reg. 6-7-1-18(020); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1803)

SECTION 13. 45 IAC 8.1-1-29 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-29 Distributor's records

Authority: IC 6-7-1-15; IC 6-8.1-3-3

Affected: IC 6-7-1-19

Sec. 29. Every registered distributor of cigarettes shall keep complete and accurate records of cigarettes held, purchased, manufactured, brought in, or caused to be brought in from without the state, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, copies of bills of sale, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. Such books, records, papers, and documents shall be kept at the location of the registered certificate unless approval is given by the department in writing to have such records kept at another location. ~~and at all times during the usual business hours of the day,~~ **Such books, records, and papers must** be subject to inspection by the department or its duly authorized agents and employees **at all times during the usual business hours of the day.** Such books, records, papers, and documents shall be preserved for a period of at least three (3) years after the date of said documents, or the date of the entries thereof appearing in such records.

(Department of State Revenue; Reg. 6-7-1-19(010); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1803)

SECTION 14. 45 IAC 8.1-1-30 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-30 Distributor's reports

Authority: IC 6-8.1-3-3

Affected: IC 6-7-1-19

Sec. 30. Every **Indiana registered** distributor ~~in Indiana~~ shall, on or before the ~~45th~~ **fifteenth** day of each calendar month **following the transaction,** file a return with the department. ~~showing the quantity of cigarettes manufactured, brought in or caused to be brought in from out of the State, or purchased during the preceding calendar month, and the quantity of cigarettes sold or otherwise disposed of during the calendar month.~~ The return shall be made upon forms furnished and prescribed by the department and shall contain such other

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information as the department may reasonably require.

Every out of state distributor holding an Indiana registration certificate shall likewise file, on or before the 15th day of each calendar month, a return with the Department showing the following:

- (1) The Indiana cigarette stamps and the individual package of cigarettes, cigarette papers, wrappers, and tubes, stamped with Indiana stamps or meter impressions, on hand at the beginning of the month. The purchases of Indiana stamps made during the month and the stamps and stamped items on hand at each month.
- (2) A detailed list of stamped cigarettes, cigarette papers, wrappers or tubes distributed to any person or company in Indiana during the month.
- (3) A detailed list of unstamped cigarettes, cigarette papers, wrappers and tubes distributed to registered distributors in Indiana.
- (4) A copy of each cigarette credit issued to any customer.

~~Where a distributor under this Act keeps his books and records and conducts his entire accounting system on a basis of thirteen equal accounting periods annually, permission may be granted to such distributor upon formal request therefor to file returns within fifteen days after the end of each of the respective thirteen periods.~~

(Department of State Revenue; Reg. 6-7-1-19(020); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1804)

SECTION 15. 45 IAC 8.1-1-31 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-31 Additional reports for transactions made out of state

Authority: IC 6-8.1-3-3

Affected: IC 6-7-1-19; IC 6-7-1-19.5

Sec. 31. Indiana distributors claiming exemption from the tax on cigarettes on the ground that shipment or deliveries were made in interstate commerce out of state shall within ten days after the first day of each month file with the Department the following:

- (1) the name and address of all persons receiving such shipment or deliveries in such foreign state;
- (2) the kind and quantity of the sales; and
- (3) the date of delivery: as shown by delivery data in distributor's possession of the following description:
 - (a) A waybill, bill of lading or other evidence of shipment issued by a common carrier; or
 - (b) An insurance receipt or registry receipt issued by the United States Postal Department.
 - (c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside the State who received the goods delivered.

file a report on forms prescribed by the department and shall contain such other information as the department may reasonably require.

(Department of State Revenue; Reg. 6-7-1-19(030); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1804)

SECTION 16. 45 IAC 8.1-1-40 IS AMENDED TO READ AS FOLLOWS:

45 IAC 8.1-1-40 Unused stamps; refund

Authority: IC 6-8.1-3-3

Affected: IC 6-7-1-27

Sec. 40. (a) Sales and transfers of Indiana Cigarette Revenue Stamps by one (1) registered cigarette distributor to another registered cigarette distributor are not permitted unless authorization is given in writing by the department. ~~to make such sale and transfer.~~

~~Where, at the time of terminating his~~ (b) If a registered distributor terminates its business as a registered distributor in this state, and the registered distributor has on hand unaffixed Indiana Cigarette Revenue Stamps, they the stamps may be returned to the department and for a refund. ~~will be given.~~

(c) Cigarettes sold by registered distributors to other registered distributors must not be accompanied by loose stamps. ~~Unless the packages of cigarettes sold have Cigarette Revenue Stamps affixed thereto, the sale should~~

~~be completed without Cigarette Revenue Stamps entering into the transaction.~~

(Department of State Revenue; Reg. 6-7-1-27(020); filed Aug 4, 1982, 3:02 p.m.: 5 IR 1805)

SECTION 17. THE FOLLOWING ARE REPEALED; 45 IAC 8.1-1-4; 45 IAC 8.1-1-5; 45 IAC 8.1-1-6; 45 IAC 8.1-1-7; 45 IAC 8.1-1-8; 45 IAC 8.1-1-9; 45 IAC 8.1-1-10; 45 IAC 8.1-1-11; 45 IAC 8.1-1-12; 45 IAC 8.1-1-13; 45 IAC 8.1-1-14; 45 IAC 8.1-1-15; 45 IAC 8.1-1-17; 45 IAC 8.1-1-21; 45 IAC 8.1-1-22; 45 IAC 8.1-1-24; 45 IAC 8.1-1-32; 45 IAC 8.1-1-33; 45 IAC 8.1-1-34; 45 IAC 8.1-1-35; 45 IAC 8.1-1-36; 45 IAC 8.1-1-37; 45 IAC 8.1-1-38; 45 IAC 8.1-1-39; 45 IAC 8.1-1-41; 45 IAC 8.1-1-42.

Notice of Public Hearing

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