CHAPTER 245
CIGARETTE TAX AND TOBACCO TAX LAW

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Note

Chapter title amended by L 1993, c 220, §6.

The repeal and reenactment on June 30, 2006 by L 2000, c 249, 20(2) of the part I designation and §§245-1, 245-3, 245-5, 245-6, 245-7, 245-8, 245-9, 245-15 and part II comprised of §§245-21 through 245-42 was deleted by L 2002, c 94, §3.

Cross Reference

Tax Information Release No. 23-69, "Sales of Liquor and Tobacco Products from Bonded Warehouses to Foreign Fishing Vessels and to Common Carriers"

Tax Information Release No. 97-4, "Application of the Business Entity Classification Rules Under the 'Check-the-box' Regulations to the Hawaii Income Tax and Other Taxes"

PART I. GENERAL PROVISIONS

§245-1 Definitions. As used in this chapter, unless a different meaning is indicated by the context:

"Armed services of the United States" for purposes of this chapter shall include the Department of Defense, United States Army, Navy, Air Force, Marines, Department of Transportation in the case of Coast Guard facilities, or Coast Guard, and their respective reserve, National Guard, and auxiliaries.

"Attorney general" means the state attorney general or deputy attorneys general.

"Business location" or "place of business" *[Repealed July 1, 2009. L 2005, c 131, §9(2).]* means the entire premises occupied by a retail tobacco permit applicant or an entity required to hold a retail tobacco permit under this chapter and shall include but is not limited to any store, stand, outlet, vehicle, cart, location, vending machine, or structure from which cigarettes or tobacco products are sold or distributed to a consumer.

18-245-1 "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size and shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Cigarette package" means a sealed package of cigarettes originating from the manufacturer and bearing the health warning required by law.

"Consumer" *[Repealed July 1, 2009. L 2005, c 131, §9(2).]* means a person who acquires or possesses a cigarette or a tobacco product for personal consumption and not for resale or distribution.

"Dealer" means any person coming into the possession of cigarettes or tobacco products which have not been acquired from an authorized permit holder or licensee under this chapter, or any person rendering a distribution service who buys and maintains, at the person's place of business, a stock of cigarettes or tobacco products that have not been acquired from a licensee and who distributes or uses such cigarettes or tobacco products.

18-245-1 "Department" means the department of taxation.

"Distribute", "distributes", or "distribution" means to sell, ship, transfer, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

"Entity" means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity.

"Falsely alter" means to change a stamp in any manner so that the altered stamp falsely appears or purports to have a value or validity that is not authorized or consented to by the department.

"Falsely make" means to print, manufacture, or make what purports to be a stamp without the authority or consent of the department.

"Falsely reuse" means to affix a stamp that was previously affixed to a package of cigarettes, to another package of cigarettes.

"Intentionally" for purposes of this chapter shall have the same meaning as in section 702-206.

"Knowingly" for purposes of this chapter shall have the same meaning as in section 702-206.

"License" *[Repeal and reenactment on July 1, 2009. L 2005, c 131, §9(2).]* means a license granted under this chapter, that authorizes the holder to engage in the business of a wholesaler or dealer of cigarettes or tobacco products in the State. For purposes of any action brought pursuant to section 231-35, the term "license" shall include a retail tobacco permit required under this chapter.

"Licensee" *[Repeal and reenactment on July 1, 2009. L 2005, c 131, §9(2).]* means the holder of a license as a wholesaler or dealer granted under this chapter.

"Permittee" *[Repealed July 1, 2009. L 2005, c 131, §9(2).]* means the holder of a retail tobacco permit in accordance with this chapter.

"Persons" means one or more people, a company, corporation, a partnership, or an association.

"Possession" means knowingly having direct physical control at a given time or knowingly having the power and the intention, at a given time, to exercise dominion or control, either directly or through another entity.

"Prosecuting attorney" means the prosecuting attorney or the deputy prosecuting attorneys of each of the respective counties.

"Recklessly" for purposes of this chapter shall have the same meaning as in section 702-206.

"Retail price" means the ordinary, customary, or usual price paid by the consumer for the articles taxed.

"Retail sale" or "tobacco retailing" *[Repealed July 1, 2009. L 2005, c 131, §9(2).]* means the practice of selling cigarettes or tobacco products to consumers and includes the sale of cigarettes or tobacco through a vending machine.

"Retail tobacco permit" *[Repealed July 1, 2009. L 2005, c 131, §9(2).]* means a permit granted under this chapter that authorizes an entity to engage in the business of selling cigarettes and tobacco products to consumers.

"Retailer" *[Repealed July 1, 2009. L 2005, c 131, §9(2).]* means an entity that engages in the practice of selling cigarettes or tobacco products to consumers and includes the owner of a cigarette or tobacco product vending machine.

"Sale" includes every act of selling and includes any sale or act of selling that originates from any order that is placed or submitted by means of a telephonic or other method of voice transmission, the mail, or any other delivery service, or the Internet or other online service.

"Sale" or "sold" includes any delivery of cigarettes or tobacco products, whether cash is actually paid therefor or not.

"Sell" means to:

(1) Solicit and receive an order for;
(2) Have, keep, offer, or expose for sale;
(3) Deliver for value or deliver in any other way than purely gratuitously;
(4) Peddle;
(5) Keep with intent to sell; and
(6) Traffic in.

"Ship" or "causes to be shipped" means to send by any means of transportation, including by vessel, vehicle, or aircraft.

"Stamp" means a stamp printed, manufactured, or made by authority of the department, as provided in this chapter, that is issued, sold, or circulated by the department, and by the use of which the tax levied under this chapter is paid.

"Tobacco products" means tobacco in any form other than cigarettes, that is prepared or intended for consumption by, or the personal use of, humans, including cigars and any substitutes thereof other than cigarettes which bear the semblance thereof, snuff, chewing tobacco, and smoking tobacco.

"Tobacco tax" means the tax imposed by this chapter.

"Use" means the exercise of any right or power incident to ownership or possession, other than the sale, or the keeping or retention for the purpose of sale.

"Wholesale price", in addition to any other meaning of the term, means in the case of a tax upon the use of tobacco products, or upon a sale not made at wholesale:

(1) If made by a person who during the month preceding the accrual of the tax made substantial sales to retailers of like tobacco products, the average price of the sales, and
(2) If made by any other person, the average price of sales to retailers of like tobacco products made by other taxpayers in the same county during the month preceding the accrual of the tax.

"Wholesaler" means a person rendering a distribution service who buys and maintains, at the person's place of business, a stock of cigarettes or tobacco products that the person uses, possesses, or distributes only to retailers, or other wholesalers, or both. [L 1939, c 220, §2; RL 1945, §5751; RL 1955, §125-1; am L 1957, c 34, §20; HRS §245-1; am L 1993, c 220, §7; am L 1994, c 104, §1; am L 2000, c 249, §3; am L 2001, c 270, §3; am L 2004, c 157, §§3, 4; am L 2005, c 131, §2]

Note

The 2005 amendment does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before June 16, 2005.

The 2005 amendment shall be repealed on July 1, 2009; provided that this section, shall be reenacted in the form in which it read on June 15, 2005.

§245-2 License. *[Section Repeal and reenactment on July 1, 2009. L 2005, c 131, §9(2).]* (a) It shall be unlawful for any person to engage in the business of a wholesaler or dealer in the State without having received first a license therefor issued by the department of taxation under this chapter; provided that this section shall not be construed to supersede any other law relating to licensing of persons in the same business.

(b) The license shall be issued by the department upon application therefor, in such form and manner as shall be required by rule of the department, and the payment of a fee of $2.50, and shall be renewable annually on July 1 for the twelve months ending the succeeding June 30.

(c) The department may suspend or, after hearing, revoke or decline to renew any license issued under this chapter whenever the department finds that the applicant or licensee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or licensee has:

(1) Submitted a false or fraudulent application or provided a false statement in an application; or

(2) Possessed or displayed a false or fraudulent license.

Upon suspending or revoking any license, the department shall request that the licensee immediately surrender the license or any duplicate issued to the licensee and the licensee shall surrender the license or duplicate promptly to the department as requested.

(d) Whenever the department suspends, revokes, or declines to renew a license, the department shall notify the applicant or licensee immediately and afford the applicant or licensee a hearing, if requested and if a hearing has not already been afforded. After the hearing, the department shall:

(1) Rescind its order of suspension;

(2) Continue the suspension;

(3) Revoke the license;

(4) Rescind its order of revocation;

(5) Decline to renew the license; or

(6) Renew the license.

[L 1939, c 220, §3; RL 1945, §5752; RL 1955, §125-2; am L Sp 1957, c 1, §8(a); am L Sp 1959 2d, c 1, §16; HRS §245-2; am L 1993, c 220, §8; am L 1995, c 92, §17, am L 2005, c 131, §3]

Note

The 2005 amendment shall be repealed on July 1, 2009; provided that this section, shall be reenacted in the form in which it read on June 15, 2005.

[§245-2.5] Retail tobacco permit. *[Section repealed July 1, 2009. L 2005, c 131, §9(2).]* (a) Beginning December 1, 2006, every retailer engaged in the retail sale of cigarettes and other tobacco products upon which a tax is required to be paid under this chapter shall obtain a retail tobacco permit.

(b) Beginning March 1, 2007, it shall be unlawful for any retailer engaged in the retail sale of cigarettes and other tobacco products upon which a tax is required to be paid under this chapter to sell, possess, keep, acquire, distribute, or transport cigarettes or other tobacco products for retail sale unless a retail tobacco permit has been issued to the retailer under this section and the retail tobacco permit is in full force and effect.

(c) The retail tobacco permit shall be issued by the department upon application by the retailer in the form and manner prescribed by the department, and the payment of a fee of $20. Permits shall be valid for one year, from December 1 to November 30, and renewable annually. Whenever a retail tobacco permit is defaced, destroyed, or lost, or the permittee relocates the permittee's business, the department may issue a duplicate retail tobacco permit to the permittee for a fee of $5 per copy.

(d) A separate retail tobacco permit shall be obtained for each place of business owned, controlled, or operated by a retailer. A retailer that owns or controls more than one place of business may submit a single application for more than one retail tobacco permit. Each retail tobacco permit issued shall clearly describe the place of business where the operation of the business is conducted.

(e) Any entity that operates as a dealer or wholesaler and also sells cigarettes or other tobacco products to consumers at retail shall acquire a separate retail tobacco permit.

(f) A retail tobacco permit shall be nonassignable and nontransferable from one entity to another entity. A retail tobacco permit may be transferred from one business location to another business location after an application has been filed with the department requesting that transfer and approval has been obtained from the department.

(g) A retail tobacco permit issued under this section shall be displayed at all times in a conspicuous place at the place of business requiring the retail tobacco permit.

(h) Any sales of cigarettes or tobacco products made through a cigarette or tobacco product vending machine are subject to the terms, conditions, and penalties of this chapter. A retail tobacco permit need not be displayed on cigarette or tobacco product vending machines if the retail tobacco permit holder is the owner of the cigarette or tobacco product vending machines and the cigarette or tobacco product vending machines are operated at the location described in the retail tobacco permit.

(i) No retailer shall purchase any pack of cigarettes without the appropriate tax stamp being affixed to the bottom of the pack as required by this chapter.

(j) A vehicle from which cigarettes or tobacco products are sold is considered a place of business and requires a retail tobacco permit. Retail tobacco permits for a vehicle shall be issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Retail tobacco permits for vehicles shall not be moved from one vehicle to another.

(k) A permittee shall be subject to the inspection and investigation requirements of this chapter and shall provide the department or the attorney general with any information deemed necessary to verify compliance with the requirements of this chapter.

(l) A permittee shall keep a complete and accurate record of the permittee's cigarette or tobacco product inventory. The records shall:

(1) Include:

(A) A written statement containing the name and address of the permittee's source of its cigarettes and tobacco products;

(B) The date of delivery, quantity, trade name or brand, and price of the cigarettes and tobacco products; and

(C) Documentation in the form of any purchase orders, invoices, bills of lading, other written statements, books, papers, or records in whatever format, including electronic format, which substantiate the purchase or acquisition of the cigarettes and tobacco products stored or offered for sale; and

(2) Be offered for inspection and examination within twenty-four hours of demand by the department or the attorney general, and shall be preserved for a period of three years; provided that:

(A) Specified records may be destroyed if the department and the attorney general both consent to their destruction within the three-year period; and

(B) Either the department or the attorney general may adopt rules pursuant to chapter 91 that require specified records to be kept longer than a period of three years.

(m) The department may suspend or, after hearing, revoke or decline to renew any retail tobacco permit issued under this chapter whenever the department finds that the applicant or permittee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or permittee has:

(1) Submitted a false or fraudulent application or provided a false statement in an application; or

(2) Possessed or displayed a false or fraudulent retail tobacco permit.

Upon suspending or revoking any retail tobacco permit, the department shall request that the permittee immediately surrender any retail tobacco permit or duplicate issued to the permittee, and the permittee shall surrender the permit or duplicate promptly to the department as requested.

(n) Whenever the department suspends, revokes, or declines to renew a retail tobacco permit, the department shall notify the applicant or permittee immediately and afford the applicant or permittee a hearing, if requested and if a hearing has not already been afforded. After the hearing, the department shall:

(1) Rescind its order of suspension;

(2) Continue the suspension;

(3) Revoke the retail tobacco permit;

(4) Rescind its order of revocation;

(5) Decline to renew the retail tobacco permit; or

(6) Renew the retail tobacco permit.

(o) Any cigarette, package of cigarettes, carton of cigarettes, container of cigarettes, tobacco product, package of tobacco products, or any container of tobacco products unlawfully sold, possessed, kept, stored, acquired, distributed, or transported in violation of this section may be seized and ordered forfeited pursuant to chapter 712A. [L 2005, c 131, pt of §1]

[§245-2.6] Unlawful tobacco retailing in the first degree. *[Section repealed July 1, 2009. L 2005, c 131, §9(2).]* (a) Beginning March 1, 2007, a person or entity required to obtain a retail tobacco permit commits the offense of unlawful tobacco retailing in the first degree if the person or entity knowingly fails to obtain a valid permit required under section 245-A and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports five thousand or more cigarettes.

(b) Unlawful tobacco retailing in the first degree is a misdemeanor, except that any offense under subsection (a) that occurs within five years of a conviction for unlawful tobacco retailing in the first degree is a class C felony. [L 2005, c 131, pt of §1]

[§245-2.7] Unlawful tobacco retailing in the second degree. *[Section repealed July 1, 2009. L 2005, c 131, §9(2).]* (a) Beginning March 1, 2007, a person or entity required to obtain a retail tobacco permit commits the offense of unlawful tobacco retailing in the second degree if the person or entity recklessly fails to obtain a valid permit required under section 245-2.5 and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports fewer than five thousand cigarettes or any tobacco products.

(b) Unlawful tobacco retailing in the second degree is a petty misdemeanor, except that any offense under subsection (a) that occurs within five years of a conviction for unlawful tobacco retailing in the first or second degree is a misdemeanor. [L 2005, c 131, pt of §1]

18-245-7 **§245-3 Taxes.** (a) Every wholesaler or dealer, in addition to any other taxes provided by law, shall pay for the privilege of conducting business and other activities in the State:

(1) An excise tax equal to 5.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 1998, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

(2) An excise tax equal to 6.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after September 30, 2002, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

(3) An excise tax equal to 6.50 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2003, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

(4) An excise tax equal to 7.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2004, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

(5) An excise tax equal to 8.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2006, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

(6) An excise tax equal to 9.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2007, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

(7) An excise tax equal to 10.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2008, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

(8) An excise tax equal to 11.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

(9) An excise tax equal to 12.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2010, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

(10) An excise tax equal to 13.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2011, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; and

(11) An excise tax equal to forty per cent of the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.

Where the tax imposed has been paid on cigarettes or tobacco products that thereafter become the subject of a casualty loss deduction allowable under chapter 235, the tax paid shall be refunded or credited to the account of the wholesaler or dealer. The tax shall be applied to cigarettes through the use of stamps.

(b) The taxes, however, are subject to the following limitations:

(1) The measure of the taxes shall not include any cigarettes or tobacco products exempted, and so long as the same are exempted, from the imposition of taxes by the Constitution or laws of the United States;

(2) The measure of taxes shall exempt and exclude all sales of cigarettes and tobacco products to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under this chapter), sold by any person licensed under this chapter; and

(3) The taxes shall be paid only once with respect to the same cigarettes or tobacco product. This limitation shall not prohibit the imposition of the excise tax on receipts from sales of tobacco products under subsection

(a)(5); provided that the amount subject to the tax on each sale shall not include amounts previously taxed under this chapter. [L 1939, c 220, §4; RL 1945, §5753; am L 1945, c 115, §1; am L 1949, c 344, §1; RL 1955, §125-3; am L 1957, c 34, §21; am L Sp 1957, c 1, §8(b); am L 1965, c 155, §6; HRS §245-3; gen ch 1985; am L 1993, c 220, §9; am L 1994, c 104, §2; am L 1997, c 331, §1; am L 1999, c 10, §1; am L 2000, c 249, §§4, 20(2); am L 2002, c 94, §3 and c 246, §§2, 3; am L 2003, c 3, §7; am L 2006, c 316, §7]

Note

The 1999 amendment takes effect retroactively and applies to taxable periods beginning after June 30, 1993. L 1999, c 10, §4.

The 2000 amendment does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before June 19, 2000.

Cross References

Other tax exemption on sales to U.S. government, see §237-25.

§245-4 REPEALED. L 1993, c 220, §17.

§245-5 Returns. Every wholesaler or dealer, on or before the last day of each month, shall file with the department a return showing the cigarettes and tobacco products sold, possessed, or used by the wholesaler or dealer during the preceding calendar month and of the taxes chargeable against the taxpayer in accordance with this chapter. The form of the return shall be prescribed by the department and shall include:

(1) A separate statement of the number and wholesale price of cigarettes;
(2) The amount of stamps purchased and used;
(3) The wholesale price of tobacco products, sold, possessed, or used; and
(4) Any other information that the department may deem necessary for the proper administration of this chapter. [L 1939, c 220, §6; RL 1945, §5755; RL 1955, §125-5; am L Sp 1959 2d, c 1, §16; am L 1966, c 19, §5; HRS §245-5; gen ch 1985; am L 1993, c 220, §10; am L 1994, c 104, §3; am L 2000, c 249, §5]

Note

The 2000 amendment does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before June 19, 2000.

§245-6 Payment of taxes; penalties. At the time of the filing of the return required under section 245-5 and within the time prescribed, each wholesaler or dealer shall pay to the department the taxes imposed by this chapter, required to be shown by the return, including the unpaid amount of taxes imposed by this chapter.

Penalties and interest shall be added to and become a part of the taxes, when and as provided by section 231-39. [L 1939, c 220, §7; RL 1945, §5756; am L 1953, c 125, §13; RL 1955, §125-6; am L Sp 1959 2d, c 1, §16; HRS §245-6; am L 1993, c 220, §11; am L 2000, c 249, §6]

Note

The 2000 amendment does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before June 19, 2000.

§245-7 Determination of taxes; additional assessments, credits, and refunds. (a) As soon as practicable after each return shall have been filed, the department of taxation shall cause it to be examined and shall compute and determine the amount of the taxes payable thereon.

(b) If it should appear upon the examination or within five years after the filing of the return, or at any time if no return has been filed, as a result of the examination, or as a result of any examination of the records of the wholesaler or dealer or of any other inquiry or investigation, that the correct amount of the taxes is greater than that shown on the return, or that any taxes imposed by this chapter have not been paid, an assessment of the taxes may be made in the manner provided in section 235-108(b). The amount of the taxes for the period covered by the assessment shall not be reduced below the amount determined by an assessment so made, except upon appeal or in a proceeding brought pursuant to section 40-35.

(c) If the wholesaler or dealer has paid or returned with respect to any month more than the amount determined to be the correct amount of taxes for the month, the amount of the taxes so returned and any assessment of taxes made pursuant to the return may be reduced, and any overpayment of taxes may be credited upon the taxes imposed by this chapter, or at the election of the wholesaler or dealer, the wholesaler or dealer not being delinquent in the payment of any taxes owing to the State, may be refunded in the manner provided in section 231-23(c); provided that no reduction of taxes may be made when forbidden by subsection (b) or more than five years after the filing of the return. [L 1939, c 220, §8; RL 1945, §5757; RL 1955, §125-7; am L Sp 1957, c 1, §29; am L Sp 1959 2d, c 1, §16; am L 1963, c 45, §8; HRS §245-7; am imp L 1984, c 90, §1; gen ch 1985; am L 1993, c 220, §12; am L 2000, c 249, §7]

Revision Note

In subsection (c), "231-23(c)" substituted for "231-23(d)".

Note

The 2000 amendment does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before June 19, 2000.

§245-8 Records to be kept. (a) Each wholesaler or dealer shall keep a record of:

(1) Every sale or use of cigarettes and tobacco products by the wholesaler or dealer;
(2) The number and wholesale price of cigarettes;
(3) The wholesale price of tobacco products, sold, possessed, or used;
(4) The taxes payable on tobacco products sold, possessed, or used, if any; and
(5) The amounts of stamps purchased and used,

in a form as the department may prescribe. The records shall be offered for inspection and examination at any time upon demand by the department or the attorney general, and shall be preserved for a period of five years, except that the department and the attorney general, in writing, shall both consent to their destruction within the five-year period or either the department or the attorney general may require that they be kept longer. The department, by rule, may require the wholesaler or dealer to keep such other records as it may deem necessary for the proper enforcement of this chapter.

(b) If any wholesaler or dealer fails to keep records from which a proper determination of the taxes due under this chapter may be made, the department may fix the amount of the taxes for any period from the best information obtainable by it and assess the taxes as provided in this chapter. [L 1939, c 220, §9; RL 1945, §5758; RL 1955, §125-8; am L Sp 1959 2d, c 1, §16; am L 1963, c 45, §8(a); HRS §245-8; gen ch 1985; am L 1993, c 220, §13; am L 1994, c 104, §4; am L 2000, c 249, §8]

Note

The 2000 amendment does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before June 19, 2000.

§245-9 Inspection. (a) The department and the attorney general may examine all records, including tax returns and reports under section 245-31, required to be kept or filed under this chapter, and books, papers, and records of any person engaged in the business of wholesaling or dealing cigarettes and tobacco products, to verify the accuracy of the payment of the taxes imposed by this chapter. Every person in possession of any books, papers, and records, and the person's agents and employees, are directed and required to give to the department and the attorney general the means, facilities, and opportunities for the examinations.

(b) The department and the attorney general may inspect the operations, premises, and storage areas of any entity engaged in the sale of cigarettes, or the contents of a specific vending machine, during regular business hours. This inspection shall include inspection of all statements, books, papers, and records in whatever format, including electronic format, pertaining to the acquisition, possession, transportation, sale, or use of packages of cigarettes and tobacco products other than cigarettes, to verify the accuracy of the payment of taxes imposed by this chapter, and of the contents of cartons and shipping or storage containers to ascertain that all individual packages of cigarettes have an affixed stamp of proper denomination as required by this chapter. This inspection may also verify that all stamps were produced under the authority of the department. Every entity in possession of any books, papers, and records, and the entity's agents and employees, are directed and required to give the department and the attorney general the means, facilities, and opportunities for the examinations. For purposes of this chapter "entity" means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity.

(c) If the department or the attorney general has reasonable cause to believe and does believe that cigarettes, stamps, or counterfeit stamps are being acquired, possessed, transported, kept, sold, or offered for sale in violation of this chapter, the department or the attorney general may investigate or search the vehicle or premises in which the cigarettes, stamps, or counterfeit stamps are believed to be located. If cigarettes, stamps, or counterfeit stamps are found in a vehicle, premises, or vending machine in violation of this chapter the cigarettes, vending machine, vehicle, stamps, counterfeit stamps, or other tangible personal property containing those cigarettes, stamps, or counterfeit stamps and any books and records in possession of the entity in control or possession of the cigarettes, stamps, or counterfeit stamps may be seized by the department or the attorney general and are subject to forfeiture as provided in this chapter and chapter 712A.

(d) For purposes of this chapter:

"Counterfeit stamp" means any stamp that is not printed, manufactured, distributed, or made by authority of the department.

"Vehicle" means an automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle. [L 1939, c 220, §10; RL 1945, §5759; RL 1955, §125-9; am L Sp 1959 2d, c 1, §16; HRS §245-9; am imp L 1984, c 90, §1; gen ch 1985; am L 1993, c 220, §14; am L 2000, c 249, §§9, 20(2); am L 2002, c 94, §§1, 3]

Note

The 2000 amendment does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before June 19, 2000.

§245-10 Appeals. Any person aggrieved by any assessment of the taxes imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114. The hearing and disposition of the appeal, including the distribution of costs shall be as provided in chapter 232. [L 1939, c 220, §12; RL 1945, §5760; am L 1945, c 92, §7; RL 1955, §125-10; am L Sp 1957, c 1, §29; HRS §245-10; am L 1993, c 220, §15; am L 2000, c 199, §8; am L 2004, c 123, §8]

Note

The 2000 amendment does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before June 8, 2000. L 2000, c 199, §§11 and 13.

The 2004 amendment applies to tax appeals filed on or after July 1, 2004. L 2004, c 123,§14.

Cross Reference

Tax Information Release No. 2002-1, "Audit of Net Income, General Excise, and Use Tax Returns; Appeal Rights; Claims for Refund; and Payment to State Under Protest"

18-245-8 **§245-11 Chapter 235 and chapter 237 applicable.** All of the provisions of chapter 235 and chapter 237 not inconsistent with this chapter and which may appropriately be applied to the taxes, persons, circumstances, and situations involved in this chapter, including (without prejudice to the generality of the foregoing) provisions as to penalties and interest, and provisions granting administrative powers to the department of taxation, and provisions for the assessment, levy, and collection of taxes, shall be applicable to the taxes imposed by this chapter, and to the assessment, levy, and collection thereof. [L 1939, c 220, §12; RL 1945, §5761; RL 1955, §125-11; am L Sp 1959 2d, c 1, §16; HRS §245-11]

§245-12 Investigations; contempts; fees. The director of taxation, and any agent of the director duly authorized by the director to conduct any inquiry, investigation, or hearing hereunder, shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the director, the director or the director's agent authorized to conduct the hearing may subpoena witnesses and require the production of books, papers, and documents pertinent to the inquiry. No witness under subpoena authorized to be issued by this section shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate the witness, or subject the witness to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which the person shall, under oath, have testified or produced documentary evidence.

Contempts. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to the person by the director or the director's authorized agent, or to produce any books and papers pursuant thereto, the director or such agent may apply to the circuit court of the circuit wherein the taxpayer resides or wherein the transaction, act, or activity under investigation has occurred, or to any judge of such court, setting forth such disobedience to process or refusal to answer, and the court or the judge shall cite such person to appear before the court or the judge to answer such question or to produce such books and papers and, upon the person's refusal so to do, shall commit such person to jail until the person shall testify, but not for a longer period than sixty days. Notwithstanding the serving of the term of such commitment by any person, the director may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify.

Fees. Officers who serve subpoenas issued by the director or under the director's authority, and witnesses attending hearings conducted by the director hereunder, shall receive like fees and compensation as officers and witnesses in the circuit courts of the State, to be paid on vouchers of the director, from any moneys available for litigation expenses of the department of taxation. [L 1939, c 220, §13; RL 1945, §5762; RL 1955, §125-12; am L Sp 1959 2d, c 1, §16; HRS §245-12; am imp L 1984, c 90, §1; gen ch 1985]

§245-13 Administration by director; rules and regulations. The administration of this chapter is vested in the director of taxation, who may prescribe and enforce rules and regulations for the enforcement and administration of this chapter.

The rules and regulations shall be prescribed by the director, subject to chapter 91. [L 1939, c 220, §14; RL 1945, §5763; RL 1955, §125-13; am L 1965, c 96, §87; HRS §245-13]

§245-14 REPEALED. L 1995, c 92, §29.

§245-15 Disposition of revenues. All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations to be kept and accounted for as provided by law; provided that, of the moneys collected under the tax imposed pursuant to:

(1) Section 245-3(a)(5), after September 30, 2006, and prior to October 1, 2007, 1.0 cent per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses;

(2) Section 245-3(a)(6), after September 30, 2007, and prior to October 1, 2008:
   (A) 1.5 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses;
   (B) 0.25 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5; and
   (C) 0.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;

(3) Section 245-3(a)(7), after September 30, 2008, and prior to October 1, 2009:
   (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses;
   (B) 0.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
   (C) 0.25 cents per cigarette shall be deposited to the credit of the community health centers special fund; and
   (D) 0.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;

(4) Section 245-3(a)(8), after September 30, 2009, and prior to October 1, 2010:
   (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses;
   (B) 0.75 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
   (C) 0.75 cents per cigarette shall be deposited to the credit of the community health centers special fund; and
   (D) 0.5 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;

(5) Section 245-3(a)(9), after September 30, 2010, and prior to October 1, 2011:
   (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168 , for research and operating expenses;
   (B) 1.0 cent per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
   (C) 1.0 cent per cigarette shall be deposited to the credit of the community health centers special fund; and
   (D) 1.0 cent per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234; and

(6) Section 245-3(a)(10), after September 30, 2011 and thereafter:
   (A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168 , for research and operating expenses;
   (B) 1.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;
   (C) 1.25 cents per cigarette shall be deposited to the credit of the community health centers special fund; and
   (D) 1.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;

The department shall provide an annual accounting of these dispositions to the legislature. [L 1939, c 220, §16; RL 1945, §5765; RL 1955, §125-15; HRS §245-15; am L 2000, c 249, §10; am L 2001, c 270, §6; am L 2006, c 316, §8; §6; am L 2007, c 102, §2]

[§245-16] Unlawful shipment of cigarettes; penalty; reports; liability for unpaid taxes. (a) A person or entity commits the offense of unlawful shipment of cigarettes if the person or entity is engaged in the business of selling cigarettes and:

(1) Ships or causes to be shipped any cigarettes to a person or entity in this State that is not:
   (A) A licensee under this chapter; or

(B) An export warehouse proprietor pursuant to chapter 52 of the Internal Revenue Code, or an operator of a customs bonded warehouse pursuant to section 1311 or 1555 of title 19 of the United States Code; or

(2) Ships or causes to be shipped any cigarettes to a person or entity in this State in any container or wrapping, other than the cigarette manufacturer's original container or wrapping, and the container or wrapping is not plainly and visibly marked with the word "cigarette".

(b) This section shall not apply to the shipment of cigarettes if any of the following conditions are met:

(1) The cigarettes are exempt from taxes as provided by section 245-3(b) or are otherwise exempt from the applicability of this chapter as provided by section 245-62;

(2) All applicable Hawaii taxes on the cigarettes are paid in accordance with the requirements of this chapter; or

(3) The person or entity engaged in the business of selling, advertising, or offering cigarettes for sale and transfer or shipment:

(A) Has fully complied with all of the requirements of chapter 10A (commencing with section 375) of title 15 of the United States Code, otherwise known as the Jenkins Act; and

(B) Includes on the outside of the shipping container an externally visible and easily legible notice located on the same side of the shipping container as the address to which the shipping container is delivered stating as follows:

"CIGARETTES: HAWAII LAW PROHIBITS THE SALE OF CIGARETTES TO INDIVIDUALS UNDER EIGHTEEN YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID TAXES ON THESE CIGARETTES."

(c) Unlawful shipment of cigarettes is a class C felony if the person or entity knowingly ships or causes to be shipped one thousand or more cigarettes in violation of subsection (a).

(d) Unlawful shipment of cigarettes is a misdemeanor if the person or entity knowingly ships or causes to be shipped less than one thousand cigarettes in violation of subsection (a).

(e) For purposes of this section, a person or entity is a licensee if the person or entity's name appears on a list of authorized licensees published by the department.

(f) Any person or entity that is required to comply with the requirements of chapter 10A (commencing with section 375) of title 15 of the United States Code, otherwise known as the Jenkins Act, shall file such a report with the department on or before the tenth day of each calendar month.

(g) Notwithstanding the existence of other remedies at law, any person or entity that purchases, uses, controls, or possesses any cigarettes for which the applicable taxes imposed under title 14, Hawaii Revised Statutes, have not been paid, shall be liable for the applicable taxes, plus any penalty and interest as provided for by law. [L 2004, c 157, §2]

PART II. STAMPING OF CIGARETTES

The repeal and reenactment on June 30, 2006 by L 2000, c 249, 20(2) of the part I designation and §§245-1, 245-3, 245-5, 245-6, 245-7, 245-8, 245-9, 245-15 and part II comprised of §§245-21 through 245-42 was deleted by L 2002, c 94, §3.

[§245-21] Payment of tax through use of stamps; exemptions. (a) The tax imposed under section 245-3 upon the sale or use of cigarettes shall be paid by licensees through the use of stamps.

(b) The department may provide by rule that the tax imposed under section 245-3 upon the sale or use of cigarettes may be paid without the use of stamps in connection with a particular type of transaction. [L 2000, c 249, pt of §1]

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§245-22 Affixation; required prior to distribution; method and manner. (a) Beginning January 1, 2001, a licensee or the authorized agent or designee of a licensee shall affix a stamp to the bottom of each individual package of cigarettes prior to distribution.

(b) Beginning April 1, 2001, no individual package of cigarettes may be sold or offered for sale to the general public unless affixed with the stamp required under this section.

(c) Beginning April 1, 2001, no cigarette package may be placed or stored in a vending machine unless affixed with the stamp required under subsection (a).

(d) The department shall adopt rules describing the method and manner in which stamps are to be affixed to packages of cigarettes.

(e) For the purpose of allowing compensation for the costs necessarily incurred in affixing the proper tax stamps to each package of cigarettes prior to distribution, each licensee or authorized agent or a designee of a licensee purchasing stamps from the department may purchase the stamps at a reduction of 0.4 per cent of the denominated value of each stamp purchased. The reduction shall be the only discount allowed to purchasers from the department. If a purchaser does not comply with all of the provisions of title 14, the licensee shall pay the full denominated value of the stamps purchased until the licensee has complied. The department may increase or decrease the 0.4 per cent reduction by rule under chapter 91. [L 2000, c 249, pt of §1; am L 2001, c 270, §8]

[§245-22.5] Prohibition against stamping or sale of cigarettes not listed in the directory pursuant to chapter 486P. (a) Beginning December 1, 2003, it shall be unlawful for an entity to:

(1) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or

(2) Import, sell, offer, keep, store, acquire, transport, distribute, receive, or possess for sale or distribution cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(b) Any entity that knowingly violates subsection (a) shall be guilty of a class C felony.

(c) Any cigarettes that are unlawfully imported, possessed, offered, kept, stored, acquired, transported, stamped, distributed, received, or sold in violation of this section may be seized and forfeited as contraband pursuant to chapter 712A and all such cigarettes seized and forfeited shall be destroyed.

(d) This section shall not apply to cigarettes that are exempt from taxes as provided by section 245-3(b).

(e) For purposes of this section:

"Brand family", "cigarette", and "tobacco product manufacturer" shall have the same meaning as in section 486P-1.

"Directory" means the "directory" established pursuant to section 486P-6.

"Entity" means one or more individuals, a company, corporation, a partnership, an association, licensee, or any other type of legal entity. [L 2003, c 77, §1]

18-245-2 **§245-23 Department to furnish stamps; designs, specifications, and denominations; procurement.** The department shall furnish stamps for sale to licensees. Stamps shall be of such designs, specifications, and denominations as may be prescribed by the department. [L 2000, c 249, pt of §1; am L 2004, c 216, §30]

18-245-12 **[§245-24] Sales through financial institutions.** The department may enter into agreements to permit the sale of stamps by designated financial institutions located within the State. A list of financial institutions designated to sell stamps shall be made available at the department. [L 2000, c 249, pt of §1]

18-245-9 **[§245-25] Purchase of stamps; when; by licensee or designee.** (a) A licensee may apply to the department to purchase stamps beginning December 15, 2000.

(b) A licensee may authorize a designee to order purchases of stamps for the licensee at a location where stamps are sold. Authorization of a designee shall be in writing. The written authorization shall continue in effect until written notice of revocation of the authority is delivered at the sales location in the manner prescribed by rule. [L 2000, c 249, pt of §1]

18-245-10 **§245-26 Price; payment; deferred payment purchases.** (a) Stamps shall be sold at their denominated values, plus a stamp fee of 1.7 per cent of the denominated value of each stamp sold, composed of the aggregate of:

(1) .2 per cent of the denominated value of the stamp to pay for the cost to the State of providing the stamps, with that amount to be deposited to the credit of the department of taxation's cigarette tax stamp administrative special fund; and

(2) 1.5 per cent of the denominated value of the stamp to pay for the cost of enforcing the stamp tax, with that amount to be deposited to the credit of the department of the attorney general's tobacco enforcement special fund;

provided that the department of taxation by rule may modify the stamp fee to reflect actual costs incurred by the State in providing the stamps.

(b) Payment for stamps shall be made at the time of purchase; provided that a licensee may defer payments pursuant to section 245-27. [L 2000, c 249, pt of §1; am L 2001, c 270, §7; am L 2003, c 177, §4]

18-245-10, 11 **[§245-27] Maximum amount of deferred-payment purchases; bond.** (a) A licensee may apply to the department to set the maximum amount of deferred-payment purchases of stamps that may remain unpaid by the licensee during the time specified under section 245-28. Upon receipt the application and any bond required of pursuant to subsection (b), the department shall set the amount for deferred-payment purchases.

(b) The department may require that a licensee who submits an application for deferred-payment purchases of stamps post a bond in an amount of up to one hundred per cent of the maximum amount of allowed deferred-payment purchases as a condition of department approval of the application. [L 2000, c 249, pt of §1]

[§245-28] Time for payment of deferred-payment purchases; manner of payment. Amounts owing for stamps purchased on the deferred-payment basis in any calendar month shall be due and payable on or before the last day of the following calendar month. Payment shall be made by a remittance payable to the department. [L 2000, c 249, pt of §1]

[§245-29] Suspension or reduction of privilege to purchase on deferred-payment basis. The department may suspend, without prior notice, the privilege to purchase stamps on the deferred-payment basis or may reduce the amount of deferred-payment purchases allowed the licensee if:

(1) The licensee fails to promptly pay for stamps when payment is due;

(2) The bond or bonds required of the licensee are canceled or become void, impaired, or unenforceable for any reason; or

(3) In the opinion of the department, collection of any amounts unpaid or due from the licensee under this chapter is jeopardized. [L 2000, c 249, pt of §1]

[§245-30] Penalty for failure to make timely payment. A licensee who fails to pay any amount owing for the purchase of stamps within the time required shall pay a penalty of:

(1) Ten per cent of the amount due in addition to the amount due; and

(2) Interest at the rate specified in section 231-39 from the date on which the amount became due and payable until the date of payment. [L 2000, c 249, pt of §1]

[§245-31] Monthly report on distributions of cigarettes and tobacco products, and purchases of stamps. (a) On or before the last day of each month, every licensee shall file on forms prescribed by the department:

(1) A report of the licensee's distributions of cigarettes and purchases of stamps during the preceding month; and

(2) Any other information that the department may require to carry out this part.

(b) On or before the last day of each month, every licensee shall file on forms prescribed by the department:

(1) A report of the licensee's distributions of tobacco products and the wholesale costs of tobacco products during the preceding month; and

(2) Any other information that the department may require to carry out this part. [L 2000, c 249, pt of §1]

18-245-6, 8 **[§245-32] Tax refund or credit for cigarettes and tobacco products shipped for sale or use outside the State.** (a) The department shall adopt rules to provide a tobacco tax refund or credit to a licensee who has paid a tobacco tax on the distribution of cigarettes or tobacco products that are shipped to a point outside the State for subsequent sale or use outside the State.

(b) This part shall not apply to cigarettes or tobacco products that are distributed in this State to consumers and that are subsequently taken outside the State. [L 2000, c 249, pt of §1]

18-245-5, 8 **[§245-33] Unused stamps; cancellation of stamps.** The department shall adopt rules for a refund or credit to a licensee in the amount of the denominated values of any unused stamps. The department may provide by rule for the cancellation of stamps. [L 2000, c 249, pt of §1]

18-245-13 **[§245-34] Approval of department required for transfer of stamps.** Unaffixed stamps shall not be sold, exchanged, or in any manner transferred by a licensee to another person without prior written approval of the department. Any person who violates this section shall be subject to a fine of not less than $500 and not more than $1,000 for each violation. [L 2000, c 249, pt of §1]

[§245-35] Unlicensed possession or use of stamps. A person who is not licensed under this chapter and who knowingly possess or uses a stamp shall be guilty of a class B felony. [L 2000, c 249, pt of §1]

[§245-36] Counterfeiting stamps. A person shall be guilty of a class B felony if the person:

(1) Intentionally or knowingly makes, alters, or reuses a stamp as defined in section 245-1; or

(2) Knowingly possesses or distributes a stamp that has been falsely made, altered, or reused. [L 2000, c 249, pt of §1]

[§245-37] Sale or purchase of packages of cigarettes without stamps; fines and penalties. (a) Beginning April 1, 2001, a person shall be guilty of a class C felony if the person:

(1) Is not a licensee, and knowingly possesses, keeps, stores, acquires, or transports three thousand or more cigarettes that do not have stamps affixed to the cigarette packages as required by this part; or

(2) Knowingly sells one thousand or more cigarettes that do not have stamps affixed to the cigarette packages as required by this part.

(b) Beginning April 1, 2001, a person shall be guilty of a misdemeanor if the person:

(1) Is not a licensee, and knowingly possesses, keeps, stores, acquires, or transports one thousand or more cigarettes that do not have stamps affixed to the cigarette packages as required by this part; or

(2) Knowingly sells less than one thousand cigarettes that do not have stamps affixed to the cigarette packages as required by this part.

(c) In addition to any other authorized disposition, a corporation found in violation of:

(1) Subsection (a) is subject to a fine in an amount not to exceed $50,000; and

(2) Subsection (b) is subject to a fine in an amount not to exceed $25,000. [L 2000, c 249, pt of §1]

[§245-38] Vending unstamped cigarettes. (a) Beginning April 1, 2001, any person who knowingly places for sale in a cigarette vending machine any cigarettes not contained in cigarette packages to which are affixed stamps as required by this part, shall be guilty of a class C felony.

(b) In addition to any other authorized disposition, a corporation found in violation of subsection (a) may be fined in an amount not to exceed $50,000. [L 2000, c 249, pt of §1]

§245-39 Penalty exemptions; presumptions. (a) Sections 245-37 and 245-38 shall not apply to cigarettes that are exempt from taxes as provided by section 245-3(b).

(b) No cigarette tax stamp shall be required to be paid upon cigarettes that are sold for personal use at sales outlets operated under the regulations of the armed services of the United States; provided that it shall be unlawful for any person, including members of the armed services of the United States, to purchase such tax-exempt cigarettes for purposes of resale. Any person who intentionally, knowingly, or recklessly resells, or offers for resale, tax-exempt cigarettes purchased at sales outlets operated under the regulations of the armed services of the United States shall be guilty of a violation of this chapter, and punishable as provided in section 245-37 or 245-38. For purposes of this subsection, "person" means one or more people, a company, corporation, a partnership, or any combination of individuals.

(c) Unless otherwise exempt from taxes by this chapter, it shall be presumed that all cigarettes are subject to the tax imposed by this chapter, unless the contrary is established, and the burden of proof that they are not taxable shall be upon the person having possession of them. [L 2000, c 249, pt of §1; am L 2001, c 270, §9]

§245-40 Forfeitures; disposition. Any cigarette, package of cigarettes, carton of cigarettes, or container of cigarettes unlawfully possessed, kept, stored, acquired, transported, sold, imported, offered, received, or distributed in violation of this chapter may be seized and confiscated by the attorney general and ordered forfeited pursuant to chapter 712A. [L 2000, c 249, pt of §1; am L 2004, c 157, §5]

18-245-14 **§245-41 Enforcement; injunction; disposition of fines.** (a) Enforcement of this part shall be under the jurisdiction of the attorney general. The attorney general may seek assistance in the enforcement of this part from other law enforcement agencies.

(b) Notwithstanding the existence of other remedies at law, the attorney general may apply for a temporary or permanent injunction restraining any person from violating or continuing to violate this part. The injunction shall be issued without bond.

(c) Where the attorney general initiates and conducts an investigation resulting in the imposition and collection of a criminal fine pursuant to this part, one hundred per cent of the fine shall be distributed to the attorney general to be deposited to the credit of the department of the attorney general's tobacco enforcement special fund; provided that if the attorney general engages the prosecuting attorney for the investigation or prosecution, or both, resulting in the imposition and collection of a criminal fine under this part, the fine shall be shared equally between the attorney general and the prosecuting attorney. [L 2000, c 249, pt of §1; am L 2001, c 270, §10; am L 2002, c 94, §§2, 3; am L 2003, c 177, §5]

[§245-41.5] Cigarette tax stamp administrative special fund. (a) There is established in the state treasury the cigarette tax stamp administrative special fund, into which shall be deposited the allocated portion of the stamp fee designated to pay for the cost to the State of providing the stamps as provided by section 245-26.

(b) Moneys in the cigarette tax stamp administrative special fund shall be administered by the department of taxation and shall be used:

(1) To provide the stamps and administer the cigarette tax stamp provisions as provided in chapter 245; and

(2) For any other requirements deemed necessary to carry out the purposes of chapter 245. [L 2001, c 270, §2]

[§245-42] Rules. The department shall adopt rules pursuant to chapter 91 to implement this part. [L 2000, c 249, pt of §1]

PART III. EXPORT AND FOREIGN CIGARETTES

§245-51 Export and foreign cigarettes prohibited. It shall be unlawful for an entity to possess, keep, store, retain, transport, sell, or offer to sell, distribute, acquire, hold, own, import, or cause to be imported into the State any of the following cigarettes:

(1) The package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "for export only", "U.S. tax-exempt", for "use outside U.S.", or similar wording;

(2) The package of which does not comply with all requirements imposed by federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the specific warning labels specified in the federal Cigarette Labeling and Advertising Act, Title 15 U.S.C. section 1333;

(3) The package of which does not comply with all federal trademark and copyright laws;

(4) Imported into the United States on or after January 1, 2000, in violation of Title 26 U.S.C. section 5754 or any other federal law or regulation;

(5) For which the person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States;

(6) For which there has not been submitted to the Secretary of the United States Department of Health and Human Services the list of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal Cigarette Labeling and Advertising Act, Title 15 U.S.C. section 1335a; or

(7) The package of which bears a cigarette brand name that is a registered United States trademark of a participating manufacturer and the package was imported by anyone other than the participating manufacturer of that cigarette brand. "Participating manufacturer" means any signatory to the "Master Settlement Agreement", as the latter term is defined in section 675-2. [L 2000, c 201, pt of §1; am L 2001, c 32, §1; am L 2003, c 77, §4]

§245-52 Alteration of packaging prohibited. It shall be unlawful for an entity to alter the package of any cigarettes, prior to sale or distribution to remove, conceal, or obscure:

(1) Any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "for export only", "U.S. tax-exempt", "for use outside U.S.", or similar wording; or

(2) Any health warning that is not specified in or does not conform with the requirements of the federal Cigarette Labeling and Advertising Act, Title 15 U.S.C. section 1333. [L 2000, c 201, pt of §1; am L 2003, c 77, §5]

[§245-53] Criminal penalties for illegal sale of export or foreign cigarettes. Any person who knowingly violates section 245-51 or 245-52 shall be guilty of a class C felony, and upon conviction thereof, shall be fined not more than $10,000, and may be imprisoned not less than one year and not more than five years, or both. [L 2000, c 201, pt of §1]

§245-54 Confiscation and seizure of illegal export or foreign cigarettes. The attorney general and the police departments of each of the counties may seize and confiscate any cigarette, package of cigarettes, or carton of cigarettes that is possessed, kept, stored, retained, held, owned, received, transported, imported, or caused to be imported, acquired, distributed, sold, or offered for sale in violation of this part. [L 2000, c 201, pt of §1; am L 2003, c 77, §6]

§245-55 Forfeiture. Any cigarette, package of cigarettes, or carton of cigarettes unlawfully possessed, kept, stored, received, held, owned, acquired, retained, transported, imported, or caused to be imported, distributed, sold, or offered for sale, in violation of this part, shall be forfeited as contraband pursuant to chapter 712A. Any cigarette, package of cigarettes, or carton of cigarettes forfeited as provided in this section shall be ordered destroyed. [L 2000, c 201, pt of §1; am L 2003, c 77, §7]

§245-56 Affixing of cigarette tax stamps to export cigarettes or altered packages prohibited. A person shall be guilty of a class B felony if the person knowingly affixes any cigarette tax stamp required under this chapter to the package of any cigarettes described in section 245-51 or altered in violation of section 245-52. [L 2000, c 201, pt of §1; am L 2001, c 32, §2]

[§245-57] Documentation of foreign cigarettes. On the first business day of each month, each licensee shall file the following documents with the department and the attorney general for all cigarettes imported into the United States to which the licensee or licensee's agent has affixed a cigarette tax stamp in the preceding month:

(1) A copy of a permit issued pursuant to the Internal Revenue Code, Title 26 U.S.C. section 5713, to the person importing the cigarettes into the United States, permitting the person to import the cigarettes;

(2) A copy of the United States Customs Service form containing, with respect to the cigarettes, the internal revenue tax information required by the United States Bureau of Alcohol, Tobacco and Firearms;

(3) A statement, signed by the licensee under penalty of perjury, that shall be treated as confidential by the department and shall be exempt from disclosure under chapter 92F, identifying:

(A) The brand and brand styles of all cigarettes;

(B) The quantity of each brand style of the cigarettes;

(C) The supplier of the cigarettes; and

(D) The person or persons, if any, to whom the cigarettes have been conveyed for resale; and

(4) A statement, signed under penalty of perjury by an officer of the manufacturer or importer of the cigarettes, certifying that the manufacturer or importer has complied with:

(A) The package health warning and ingredient reporting requirements of the federal Cigarette Labeling and Advertising Act, Title 15 U.S.C. sections 1333 and 1335a, with respect to the cigarettes; and

(B) Chapter 675, including a statement of whether the manufacturer is or is not a participating manufacturer within the meaning of section 675-3. [L 2000, c 201, pt of §1]

[§245-58] Illegal sale of export or foreign cigarettes; revocation or suspension of license; civil penalties. If any licensee violates this part or any rule adopted pursuant to this part, the director may:

(1) Revoke or suspend the licensee's license pursuant to procedures complying with chapter 91; and

(2) Impose a civil penalty in an amount not to exceed the greater of five times the retail value of the cigarettes involved, or $5,000. [L 2000, c 201, pt of §1]

[§245-59] Unfair trade practices. Any violation of this part shall constitute an unfair method of competition and unfair and deceptive acts or practices in the conduct of any trade of commerce under section 480-2 and shall be subject to a civil penalty as provided in section 480-3.1. Each package of cigarettes sold in violation of this part shall constitute a separate violation. [L 2000, c 201, pt of §1]

[§245-60] Deceptive cigarette sales. The importation or reimportation of cigarettes into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States shall be deemed to violate section 481A-3. [L 2000, c 201, pt of §1]

[§245-61] Enforcement. (a) Enforcement of this part shall be under the concurrent jurisdiction of the attorney general, the prosecuting attorneys or deputy prosecuting attorneys of the various counties, and the police departments of the various counties.

(b) In addition to any other remedy provided by law, including enforcement as provided in subsection (a), any person may bring an action for appropriate injunctive or other equitable relief for a violation of this part and for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than $1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit. [L 2000, c 201, pt of §1]

§245-62 Applicability. (a) This chapter shall not apply to:

(1) Cigarettes allowed to be imported or brought into the United States for personal use free of federal tax or duty or voluntarily abandoned to the United States Secretary of Treasury at the time of entry;

(2) Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of section 1555(b) of Title 19, United States Code, and any implementing regulations; provided that this chapter shall apply to any cigarettes that are brought back into the customs territory for resale within the customs territory; or

(3) A delivery service when engaged in the business of transporting or delivering packages or other containers of cigarettes, if the delivery service is not a knowing accomplice in any act that circumvents the requirements of this chapter. The department and the attorney general shall retain inspection and investigation authority under this chapter. The delivery service shall provide the department or the attorney general with access to inspect any shipments of any cigarettes and shall provide any information, including

shipping and delivery documents, deemed necessary to verify compliance with the requirements of this chapter.

(b) As used in this section:

"Delivery service" means an entity, including the United States Postal Service (as defined in section 102 of title 39, United States Code), that is engaged in the commercial transport or delivery by water, land, or air of letters, packages, merchandise, or other containers whether or not the entity actually operates the vessel, vehicle, or aircraft by which the transportation is provided.

"Shipping documents" or "delivery documents" include but are not limited to bills of lading, air bills, or any other documents, records, or documentation in whatever format, including electronic format used to evidence the undertaking by a delivery service to ship, transport, or deliver letters, packages, merchandise, or other containers. [L 2000, c 201, pt of §1; am L 2004, c 157, §6]

[§245-63] Penalties cumulative. The penalties provided in this part are in addition to any other penalties imposed under other law. [L 2000, c 201, pt of §1]