

## **ARTICLE F. – CIGARETTE TAX**

### **Sec. 2-3-57 - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Agent* means every local dealer and other person who shall be authorized by the treasurer to purchase and affix stamps to packages of cigarettes under the provisions of this article.

*Dealer* means every manufacturer, jobber, wholesale dealer or other person who supplies a seller with cigarettes.

*Package* means every package, box, can or other container of any cigarettes to which the Internal Revenue Stamp of the United States Government is required to be affixed by and under federal statutes and regulations and in which retail sales of such cigarettes are normally made or intended to be made.

*Purchaser* means every person to whom title to any cigarettes is transferred by a seller.

*Sale* means every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any cigarettes shall be transferred from the seller, as defined in this section, to any other person within the town.

*Seller* means every person engaged in the business of selling cigarettes who transfers title or in whose place of business title to any such cigarettes is transferred within the town for any purpose other than resale.

*Stamp* means the small gummed piece of paper or decalcomania to be sold by the treasurer and to be affixed by the agent to every package of cigarettes; it shall also denote any insignia or symbol printed by a meter machine upon any such package under authorization of the treasurer.

*Treasurer* means the treasurer and every person duly authorized by him/her to serve as his/her representative.

### **Sec. 2-3-58. - Levied; amount.**

There is hereby levied and imposed by the town, in addition to any other taxes which may be or have been imposed, a tax of \$0.15 cent to be paid and collected as provided in this article on each and every sale of cigarettes made in the town. The tax is to be paid by the seller, local dealer or other agent by affixing a stamp, or causing a stamp to be affixed to every package of cigarettes, in the kind and manner required in this article and at the applicable rates as follows: The rate or amount of tax levied or imposed on cigarettes shall be fixed from time to time by council.

### **Sec. 2-3-59. - Preparation, sale, of stamps; duties of treasurer generally.**

(a) The treasurer shall acquire, keep and sell necessary stamps to local dealers and other agents, the stamps to be such denominations and quantities as may be necessary for the payment of the tax imposed in this article.

(b) The treasurer may, from time to time and as often as he/she deems advisable, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design. The treasurer is empowered to make and carry into effect such reasonable rules and regulations relating to the preparation, furnishing, sale and redemption of stamps as he/she may deem necessary. In redeeming stamps or making refunds for destroyed stamps, he shall not in any case refund more than the purchase price of such redeemed or destroyed stamps. He/she is further authorized and empowered to prescribe the method to be employed, the conditions to be observed, and any other necessary requirements not contrary to this article in the use of meter machines for printing or affixing upon packages of cigarettes an insignia to represent the payment of the tax and in lieu of stamps.

(c) In addition to powers granted in subsections (a) through (b) of this section, the town treasurer is further authorized and empowered to:

1. Prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of stamps;
2. Delegate his/her powers to agents or others, including the police officers of the town;
3. Promulgate rules, regulations and procedures for providing notice to known holders of property interests in cigarettes and other property seized by the town for violation(s) of this article along with procedures for administrative appeals related to such seizure.
4. Act in any other matters pertaining to the administration and enforcement of the provisions of this article.

**Sec. 2-3-60. - Inspection of records, premises.**

The treasurer, or his/her duly authorized agent, is empowered to examine books, records, invoices and papers related to purchases, sales, etc., of cigarettes and to examine all cigarettes in and upon any premises where cigarettes are placed, sold, stored, offered for sale or displayed for sale by a seller.

**Sec. 2-3-61. - Seizure and disposition of untaxed cigarettes.**

(a) If the treasurer or his/her agent discovers any cigarettes subject to the tax imposed under this article, but upon which such tax has not been paid and upon which stamps have not been affixed or evidence of payment is not shown thereon by printed markings of a meter machine in compliance with the provisions of this article, then the treasurer or duly authorized agents or officers may seize and take possession forthwith of such cigarettes, which shall thereupon be deemed to be forfeited to the town. Such cigarettes may, within a reasonable time thereafter, and after written notice is posted at the front door of the town hall at least five days before the date given therein for sale, may sell such cigarettes in the place designated in such notice. Such written notice to known holders of property interests in such cigarettes shall include, in reasonable detail, the procedure for administrative appeal as well as any affirmative defenses which may be asserted.

(b) Any property, other than motor vehicles, used in the furtherance of any illegal evasion of the tax may be seized, confiscated and disposed of as provided in subsection (a) of this section. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

(c) No credit from any sale or other disposition pursuant to this section shall be allowed toward any tax or penalties owed nor shall the seizure and sale of any property be deemed to relieve any person of any other penalty provided in this article.

(d) The seizure and sale of any property shall not be deemed to relieve any persons of any other penalties provided in this article.

**Sec. 2-3-62. - Obligation of dealers and agents regarding stamps.**

(a) Every local dealer in cigarettes and every agent appointed under these sections shall purchase necessary stamps from the treasurer to pay the tax imposed under this article and shall affix or cause to be affixed a stamp of the monetary value provided by this article to each package of cigarette prior to delivering or furnishing such cigarettes to any seller who is not also an agent.

(b) Nothing contained in this section shall be deemed to preclude any dealer from authorizing and employing any agent to purchase and affix such stamps in his/her behalf or to have a stamp meter machine used in lieu of stamps to effectuate the provisions of this article.

(c) Stamps or printed markings of a meter machine shall be placed upon each package of cigarettes in such a manner as to be readily visible to the purchaser.

(d) It shall be the responsibility of every seller to determine that each package of cigarettes offered for sale shall have a proper stamp affixed thereto in compliance with the provisions of this article.

(e) If inspection by the agents of the town reveals unstamped or improperly stamped packages of cigarettes, the seller, when such cigarettes were obtained from a local dealer, shall immediately notify such dealer and upon such notification such dealer shall forthwith either affix to the unstamped or improperly stamped package, container or item the proper number of stamps or he shall replace such package, container or item with others to which stamps have been properly affixed. If a seller, who is not also an agent, acquires or has in his/her possession unstamped or improperly stamped cigarettes, the seller shall forthwith notify the treasurer of such fact. The treasurer shall thereupon affix or cause to be affixed the proper stamps to such cigarettes. The cost of such stamps at face value shall be advanced by such seller.

(f) The treasurer, by proper rules and regulations, may require every local dealer, agent or seller to cancel stamps upon all packages of cigarettes in his/her possession.

(g) Every local dealer and seller shall maintain and keep for a period of at least two years such records of cigarettes received and sold by him as may be required by the treasurer; such records shall be made available for examination in the town by the treasurer upon demand, and the means, facilities and opportunities for making any such examination shall be made available at all reasonable times.

**Sec. 2-3-63. - Presumptions based on quantity.**

Cigarettes found in quantities of more than six cartons within the town shall be conclusively presumed for sale therein and may be seized and confiscated if:

(1) The cigarettes are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser, and the brands and quantity of cigarettes so transported, or they are in transit and accompanied by a bill of lading or other document which is false or fraudulent, in whole or in part;

(2) The cigarettes are in transit and are accompanied by a bill of lading or another document indicating:

- (a) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such cigarettes on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or district of destination has been paid and the products bear the tax stamps of that state or district; or
- (b) A consignee or purchaser in the commonwealth but outside the town who does not possess a sales tax and use tax certificate, a state retail cigarettes license and, where applicable, both a business and retail cigarette license issued by the local jurisdiction of destination; or

(3) The cigarettes are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subsection shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the town that those cigarettes are temporarily within the town and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.

**Sec. 2-3-64. - Presumption based upon stamps or markings.**

If any package of cigarettes is found in the possession of a seller without proper stamps or authorized printed markings thereon, and the seller is unable to submit evidence establishing that he received such packages, containers or items within the immediately preceding 48 hours, and that he has not offered the same for sale, then it shall be presumed that such packages, containers, or items are being kept in violation of the provisions of this article, and the seller shall be subject to the tax and a penalty in the amount of 50 percent thereof, even though such seller is also an agent.

## **Sec. 2-3-65. - Illegal acts.**

It shall be unlawful and a violation of this article for any dealer or other person liable for the tax to:

1. Perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof, or to fail or refuse to perform any of the duties imposed upon him under the provisions of this article or to fail or refuse to obey any lawful order which may be issued under this article;
2. Falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps;
3. Sell, offer for sale, or authorize or approve the sale of any cigarettes upon which the Town stamp has not been affixed;
4. Possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than 60 cigarettes upon which the town stamp has not been affixed;
5. Transport, authorize or approve the transportation of any cigarettes in quantities of more than 60 packages into or within the town upon which the town stamp has not been affixed, if they are:
  - a. Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported;
  - b. Accompanied by a bill of lading or other document which is false or fraudulent in whole or part; or
  - c. Accompanied by a bill of lading or another document indicating:
    1. A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax on the jurisdiction of destination has been paid and such cigarettes bear the tax stamps of the jurisdiction; or
    2. A consignee or purchaser in the state but outside the taxing jurisdiction who does not possess a state sale and use tax certification, a state retail tobacco license and, where applicable, a business license and a retail tobacco license issued by the local jurisdiction of destination.
6. Reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or
7. Remove from any package any stamp with intent to use or cause the package to be used after such package has already been used or to buy, sell or offer for sale or give away any used, removed, altered or restored stamps to any person, or to reuse any stamp which had therefore been used for evidence of the payment of any tax prescribed by this article or to sell, or offer to sell, any stamp provided for in this article.

**Sec. 2-3-66. - Penalty.**

Any persons violating any of the provisions of this article shall be guilty of a class 1 misdemeanor and shall be subject to the following penalties: for late payments, 10% per month before deducting discount plus interest of 10% per annum on tax and penalty; for fraud or evasion, 50% of the tax. Any fine and/or imprisonment pursuant to conviction of a class 1 misdemeanor shall not relieve any such person from the payment of any tax, penalty or interest imposed by this article.

**Sec. 2-3-67. - Each violation a separate offense.**

The sale of any quantity or the use, possession, storage or transportation of more than 60 packages of cigarettes upon which the town stamp has not been affixed shall constitute a separate violation. Each continuing day of violation shall be deemed a separate offense.