



Bill Draft 2013-TD-1: Tobacco Products Tax Administration.

2011-2012 General Assembly

Committee: Revenue Laws

Date: October 3, 2012

Introduced by:

Prepared by: Heather Fennell

Analysis of: 2013-TD-1

Committee Counsel

SUMMARY: *Bill draft 2013-TD-1 makes several changes to the administration of tobacco products taxes.*

The draft makes the following changes in licensure for tobacco:

- *Requires license applicants to provide specific identifying information, and any other information required by the Secretary.*
- *Clarifies business entity applicants must be authorized to transact business in the State.*
- *Provides specific guidance as to when a license may be denied.*
- *Clarifies the violations for which a license may be cancelled.*

The draft also creates two new requirements for the Department of Revenue:

- *Requires specific information to be included on the license.*
- *Requires the Department to main a list of license holders. The list may be provided to other license holders upon request.*

CURRENT LAW: Tobacco products are taxed under two systems. Cigarettes are taxed by the cigarette. The current tax is 45¢ per pack. Other tobacco products, including cigars, pipe tobacco, chewing tobacco, and snuff are taxed as a percentage of the product price. The current tax is 12.8% of the product price.

Each distributor of tobacco must be licensed. A distributor of tobacco is defined by the Department to include the first entity handling the tobacco product in the State. The tax is remitted to the Department by tobacco distributors. Each distributor receives a discount of 2% of the tax owed for timely payment of the tax owed. Most distributors are required to furnish a bond to protect the State from loss in the event the distributor fails to pay tax owed.

BILL ANALYSIS: The Department of Revenue has recently consolidated all of the excise taxes into one Division. Bill draft 2013-TD-1 makes several changes to the administration of tobacco taxes in order to provide greater conformity in the administration of the different excise taxes. The changes also provide more guidance to the Department, and greater clarity to taxpayers.

Obtaining a License: The draft makes several clarifying changes to the procedure and requirements for obtaining a license. Applicants for a license must provide specific identifying information, and other information required by the Secretary. Business entity applicants must be authorized to transact business in the State.

The draft provides specific guidance as to when a license may be denied. Currently, the Secretary may deny a license if an applicant for licensure willfully withheld information, submitted false information, or applied for a license in bad faith. The draft provides that the Secretary may also refuse to issue a license if any of the following apply to an applicant:

- Had a tobacco products license issued cancelled by the Secretary for cause.
- Had a tobacco products license or registration issued by another state cancelled for cause.

Draft

Page 2

- Been convicted of fraud or misrepresentation.
- Been convicted of any other offense that indicates the applicant may not comply with the statutes governing tobacco taxation.
- Failed to remit payment for a tax debt to the State
- Failed to file a return for a tax due to the State.

New requirements for the Department: The draft also places two new requirements on the Department. First, the draft requires the Department to include the following information on each license:

- The legal name of the license holder.
- The name under which the license holder conducts business.
- The physical address of the place of business of the license holder.
- The account number of the license holder.

The second requirement directs the Department to keep a record of license holders and to provide this list to other license holders upon request. Current statutory privacy provisions prevent the Department from disclosing or confirming whether an entity is currently licensed.

Cancellation of license: The Secretary may cancel a license after holding a hearing if the license holder has been convicted of holding or selling cigarettes meant for export, or for any violation of the Article governing tobacco taxation. The draft clarifies that the Secretary, after a hearing, may cancel a license for the following violations:

- Failing to obtain a license required by the Article.
- Willfully failing to file a return required by the Article.
- Willfully failing to pay a tax when due under the Article.
- Making a false statement in an application or return required under the Article.
- Failing to keep records as required by the Article.
- Refusing to allow the Secretary or a representative of the Secretary to examine the person's books, accounts, and records concerning tobacco product.
- Failing to disclose the correct amount of tobacco product taxable in this State.
- Failing to file a replacement bond or an additional bond as required under the Article.

The draft also provides that if the Secretary cancels a license, any bond furnished by the canceled licensed holder will be returned if all of the taxes and penalties are paid.

EFFECTIVE DATE: This act is effectively July 1, 2013.

2013-TD-1-SMTD-1 v6