

TITLE 3: TAXATION
CHAPTER 9: CIGARETTE AND TOBACCO PRODUCTS TAXES
PART 1: GENERAL PROVISIONS

3.9.1.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[4/30/99; 3.9.1.1 NMAC - Rn, 3 NMAC 9.1.1, 12/14/00]

3.9.1.2 SCOPE: Provisions of this part apply to all persons who sell, distribute or otherwise deal in cigarettes or tobacco products.
[4/30/99; 3.9.1.2 NMAC - Rn, 3 NMAC 9.1.2, 12/14/00]

3.9.1.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[4/30/99; 3.9.1.3 NMAC - Rn, 3 NMAC 9.1.3, 12/14/00]

3.9.1.4 DURATION: Permanent.
[4/30/99; 3.9.1.4 NMAC - Rn, 3 NMAC 9.1.4, 12/14/00]

3.9.1.5 EFFECTIVE DATE: 4/30/99, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[4/30/99; 3.9.1.5 NMAC - Rn & A, 3 NMAC 9.1.5, 12/14/00]

3.9.1.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Cigarette Tax Act and the Tobacco Products Tax Act.
[4/30/99; 3.9.1.6 NMAC - Rn, 3 NMAC 9.1.6, 12/14/00]

3.9.1.7 DEFINITIONS: CIGARETTES DEFINED: For purposes of the Cigarette Tax Act, a "cigarette" is:

- A. a roll of tobacco wrapped in paper or any substance not containing tobacco; or
- B. a roll of tobacco that is wrapped in a substance containing tobacco other than one hundred percent natural leaf tobacco, that weighs no more than three pounds per thousand sticks, and that has three or more of the following characteristics:
 - (1) it has a typical cigarette size and shape;
 - (2) it has a cellulose acetate or other cigarette-type integrated filter;
 - (3) it has a filler primarily consisting of flue-cured, burley, oriental, or unfermented tobaccos or has a filler material yielding the smoking characteristics of any of those tobaccos;
 - (4) it has a filler, binder and wrapper that together contain three percent or more by weight of total reducing sugars and four percent or less by weight of non-reducing sugars;
 - (5) it is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type packages;
 - (6) it is sold in a package that labels the product as a cigarette or a cigarette substitute, or in a package that does not clearly and conspicuously declare that the product is a cigar;
 - (7) it is available for sale in packages of five, ten, twenty or twenty-five sticks;
 - (8) it is available for sale in cartons of ten packages;
 - (9) it is marketed or advertised to consumers as a cigarette or cigarette substitute; or
- C. a bidi or kretek.

[3.9.1.7 NMAC - N, 11/15/06; A, 11/30/07]

3.9.1.8 CIGARETTES AS PRIZES ARE TAXABLE: Cigarettes which are used as prizes for performing certain skills at carnivals, amusement parks, fairs or similar recreation facilities are required to have New Mexico cigarette tax stamps affixed.
[4/30/99; 3.9.1.8 NMAC - Rn, 3 NMAC 9.1.8, 12/14/00]

3.9.1.9 DOCUMENTATION TO SUBSTANTIATE THE ISSUANCE OF A TRIBAL LICENSE: Any documentation showing that a governing body or, if the governing body has delegated the licensing function to an administrative agency, the appropriate administrative agency, has authorized the enrolled tribal member to use or

sell cigarettes on that tribe's reservation or pueblo grant is sufficient to claim the exemption under Section 7-12-4 NMSA 1978.

[3.9.1.9 NMAC - N, 11/15/06]

3.9.1.10 DOCUMENTATION TO SUBSTANTIATE SALES OF CIGARETTES TO EXEMPT ENTITIES:

- A. A distributor shall sell packages of cigarettes bearing a tax-exempt stamp only to:
- (1) the United States or any agency or instrumentality thereof;
 - (2) the State of New Mexico or any political subdivision thereof;
 - (3) an Indian tribe, as defined in Subsection A of 3.2.4.7 NMAC, for use or sale on that tribe's reservation or pueblo grant; or
 - (4) a person who is recognized by the governing body of an Indian tribe to be an enrolled member of that Indian tribe and who is authorized by that Indian tribe to sell cigarettes on the reservation or pueblo grant of that Indian tribe for use or sale on that tribe's reservation or pueblo grant.
- B. The distributor must maintain records demonstrating that the sale is to an entity or person described in Subsection A above.
- C. For sales to a purchaser described in Paragraphs (1) and (2) of Subsection A above, the distributor shall retain documentation related to the transaction showing the governmental entity's name, such as purchase orders, copies of warrants issued in payment and contracts related to the cigarettes sold.
- D. For sales to a purchaser described in Paragraph (3) of Subsection A above, the distributor shall obtain a statement, signed by the purchaser of the cigarettes that the purchaser is an Indian tribe, as defined by Subsection A of 3.2.4.7 NMAC, and that the cigarettes are being purchased for use or sale on that tribe's reservation or pueblo grant. The statement must be attested to by a tribal official.
- E. For sales to a purchaser described in Paragraph (4) of Subsection A above, the distributor shall obtain a statement signed by an official of the purchaser's Indian tribe confirming that the purchaser is an enrolled member of that Indian tribe. The statement of membership may also be provided to the distributor by the Indian tribe on behalf of one or more of its members, if attested to by a tribal official. This documentation shall be conclusive evidence, and the only material evidence, that the purchaser is an enrolled member of an Indian tribe.
- F. For sales to a purchaser described in Paragraph (4) of Subsection A above, the distributor shall also obtain documentation that the purchaser is authorized by, or under, the authority of the governing body of the purchaser's Indian tribe to sell or use cigarettes on the reservation or pueblo grant of that Indian tribe. This documentation must be attested to by a tribal official. The purchaser of the cigarettes shall also affirm in writing to the distributor that the cigarettes are being purchased for use or sale on that tribe's reservation or pueblo grant.

[3.9.1.10 NMAC - N, 11/15/06]

3.9.1.11 QUALIFICATIONS FOR A STAMP TO BE CONSIDERED AFFIXED: In order for a stamp to be considered affixed, a package must have at least 60% of the stamp visible, including the entire serial number. Packages of cigarettes that do not meet these requirements shall be considered contraband cigarettes and may be subject to the penalties imposed under Section 7-12-13.1 NMSA 1978.

[3.9.1.11 NMAC - N, 11/15/06]

3.9.1.12 CIGARETTE STAMP QUANTITIES: The minimum order for cigarette stamps is 1,500, and the minimum order for tax-exempt stamps is 15,000.

[3.9.1.12 NMAC - N, 11/15/06]

3.9.1.13 CIGARETTE DISTRIBUTOR AND MANUFACTURER LICENSE - LICENSING FEE: Any person that applies for a cigarette distributor's license or a manufacturer's license shall pay a licensing fee of one hundred dollars (\$100.00). The licensing fee will be imposed for every license, including annual renewals.

[3.9.1.13 NMAC - N, 11/15/06]

3.9.1.14 CIGARETTES NOT PURCHASED FROM A LICENSED DISTRIBUTOR: If a cigarette retailer has in its possession cigarettes determined by the department to have been purchased from a source other than a licensed distributor, the retailer may be subject to penalties under Section 7-12.13.1 NMSA 1978.

[3.9.1.14 NMAC - N, 11/15/06]

3.9.1.15 CIVIL PENALTIES: The department will impose the penalties authorized by Section 7-12-13.1 NMSA 1978 in accordance with the following schedule.

A. The penalty for a first offense shall be imposed as follows:

- (1) one hundred dollars (\$100) for a violation involving a quantity of fewer than two cartons of contraband cigarettes;
- (2) two hundred fifty dollars (\$250) for a violation involving a quantity of between two cartons and not more than twenty-five cartons of contraband cigarettes;
- (3) five hundred dollars (\$500) for a violation involving a quantity of between twenty-six cartons and not more than two hundred ninety-nine cartons of contraband cigarettes; or
- (4) one thousand dollars (\$1,000) for a violation involving a quantity of three hundred or more cartons of contraband cigarettes.

B. The penalty for a second offense shall be imposed as follows:

- (1) one thousand five hundred dollars (\$1,500) for a violation involving a quantity of fewer than two cartons of contraband cigarettes;
- (2) one thousand seven hundred fifty dollars (\$1,750) for a violation involving a quantity of between two cartons and not more than twenty-five cartons of contraband cigarettes;
- (3) two thousand dollars (\$2,000) for a violation involving a quantity of between twenty-six cartons and not more than two hundred ninety-nine cartons of contraband cigarettes; or
- (4) two thousand five hundred dollars (\$2,500) for a violation involving a quantity three hundred or more cartons of contraband cigarettes.

C. The penalty for a third offense shall be imposed as follows:

- (1) five thousand dollars (\$5,000) for a violation involving a quantity of fewer than two cartons of contraband cigarettes;
- (2) seven thousand five hundred dollars (\$7,500) for a violation involving a quantity of more than two cartons and not more than twenty-five cartons of contraband cigarettes;
- (3) ten thousand dollars (\$10,000) for a violation involving a quantity of between twenty-six cartons and not more than two hundred ninety-nine cartons of contraband cigarettes; or
- (4) fifty thousand dollars (\$50,000) for a violation involving a quantity of three hundred or more cartons of contraband cigarettes.

D. The level of the penalty imposed for a second or third offense is determined only on the quantity of cigarettes involved with that offense, and not on cigarettes involved in a prior offense.

[3.9.1.15 NMAC - N, 11/15/06]

3.9.1.16 REPORTING UNDER SECTION 7-12-18 NMSA 1978: Persons required to submit reports concerning their cigarette transactions, under Section 7-12-18 NMSA 1978, shall do so on a monthly basis. These reports, RPD 41279 *Cigarette Distributor's Monthly Report* and RPD-41280 *Cigarette Manufacturer's Monthly Report* shall be submitted to the department on or before the 25th day of the month after the reporting period.

[3.9.1.16 NMAC - N, 11/15/06]

3.9.1.17 DOCUMENTATION OF CIGARETTES SHIPPED OUT OF NEW MEXICO: A cigarette distributor who ships cigarettes outside New Mexico must report the quantity of cigarette packages shipped out of state for each report period using the *Schedule C* form as an attachment to the form RPD-41279 *Cigarette Distributor's Monthly Report*. In addition to the reporting function the distributor must maintain the following documentation for three years with respect to each shipment:

- A. bill of lading;
- B. delivery receipts;
- C. the name and address of persons to whom cigarettes are shipped out of state.

[3.9.1.17 NMAC - N, 11/15/06]

3.9.1.18 FALSE AND FRAUDULENT MANUFACTURING LABELS: Product labels on packages of cigarettes, including small cigars, that are in compliance with federal requirements are not false and fraudulent manufacturing labels for purposes of the Cigarette Tax Act.

[3.9.1.18 NMAC - N, 11/15/06]

3.9.1.19 POSSESSION OF CONTRABAND CIGARETTES; SEIZURE: Cigarettes in the possession of

of any person which are contraband cigarettes pursuant to Subsection B of Section 7-12-2 NMSA 1978 may be immediately seized by the department. The department shall not be required to obtain a warrant or court order prior to the seizure of contraband cigarettes.

[3.9.1.19 NMAC - N, 10/30/09]

3.9.1.20 RIGHT OF APPEAL: Any person may appeal the department's determination that cigarettes seized are contraband under Subsection B of Section 7-12-2 NMSA 1978, and any imposition of civil penalties authorized by Section 7-12-13.1 NMSA 1978. Any person may appeal the department's decision to deny, suspend or revoke the issuance of a cigarette distributor or manufacturer license.

[3.9.1.20 NMAC - N, 10/30/09]

3.9.1.21 APPEAL PROCEDURES: The following are the procedures for appeals filed pursuant to 3.9.1.20 NMAC:

A. Appeals shall be submitted in writing to the office of the secretary of the taxation and revenue department. Appeals must be received by the office of the secretary or, if mailed, must bear a postmark date, within 10 days after the date cigarettes are seized by the department, the date of a notice of denial, suspension or revocation of a license, or the date of a notice of imposition of civil penalties or, where the tenth day falls on a Saturday, Sunday or legal state holiday, the next business day following the tenth day.

B. Contents of appeal. The appeal shall:

- (1) include the name and address of the appellant;
- (2) contain a statement of the grounds for appeal, including any law to support the grounds for appeal;

and

- (3) include supporting exhibits, evidence or documents to substantiate the appellant's claim.

C. Upon the receipt of a timely appeal, the secretary shall review the materials submitted and shall issue a written decision granting or denying the appeal.

(1) In the event that an appeal is granted with respect to seized cigarettes, the cigarettes seized by the department shall be released to the appellant.

(2) In the event that an appeal is denied, the secretary's decision shall include the reasons for the denial of the appeal.

D. A person from whom more than 2,500 cigarettes were seized or upon whom a civil penalty has been imposed may request an evidentiary hearing on the seizure and forfeiture of the cigarettes or the civil penalty if the appeal provided above is denied. The hearing request must be in writing, addressed to the office of the secretary and received or, if mailed, postmarked within 10 days of the date that the secretary's decision has been mailed to the person. The hearing will be conducted as provided in 3.1.8.8 through 3.1.8.16 NMAC. The secretary may designate a hearing officer to conduct the hearing.

E. The decision of the secretary to grant or deny an appeal shall become final and conclusive 30 days from the date the written decision is mailed by the department to the appellant unless a request for hearing as allowed by Subsection D above has been filed. If a request for hearing is filed, the decision of the secretary or hearing officer shall become final and conclusive 30 days from the date the written decision is mailed by the secretary or hearing officer to the appellant.

[3.9.1.21 NMAC - N, 10/30/09]

3.9.1.22 FORFEITURE: In the absence of the filing of a timely appeal of a seizure of contraband cigarettes or when a decision has become final under Subsection E of 3.9.1.21 NMAC, the cigarettes seized by the department shall be deemed forfeited and shall be destroyed by the department unless needed for evidence in other proceedings.

[3.9.1.22 NMAC - N, 10/30/09]

HISTORY OF 3.9.1 NMAC:

Pre-NMAC History: [RESERVED]

NMAC History:

3 NMAC 9.1, Cigarette and Tobacco Products Taxes - General Provisions, filed 4/19/99.

3.9.1 NMAC, Cigarette and Tobacco Products Taxes - General Provisions, filed 12/1/00.