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ARIZONA LUXURY TAX NOTICE LTN 15-5

Frequently Asked Questions
Regarding Tobacco Tax in Arizona

INTRODUCTION:

During the 2014 and 2015 legislative sessions, the Arizona legislature made significant changes to the Arizona Revised Statutes ("A.R.S.") impacting the administration of tax on tobacco products in Arizona. On July 1, 2015, the Arizona Department of Revenue ("Department") implemented Arizona Luxury Tax Online, an electronic filing and payment system for all tobacco taxes. Arizona Luxury Tax Online is available at <https://luxury.aztaxes.gov>. This document addresses various questions regarding tobacco tax in Arizona and the use of the new electronic filing and payment system to meet statutory requirements.

FREQUENTLY ASKED QUESTIONS:

- Q1.** Who is required to obtain a tobacco distributor license in Arizona?
- A1.** Every distributor acquiring or possessing for the purpose of making the initial sale or distribution in Arizona of any tobacco product on which a tax is imposed must obtain a license to sell tobacco products from the Department.
- Q2.** What is a tobacco distributor?
- A2.** A tobacco distributor is any person who manufactures, produces, ships, transports, imports, acquires or possesses for the purpose of making the first sale either of the following:
- (a) Cigarettes without Arizona tax stamps affixed;
 - (b) Roll-your-own tobacco or other tobacco products on which Arizona tobacco taxes have not been paid.

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Q3. Can I obtain a list of tobacco distributors that are licensed in Arizona?

A3. Yes. The Department is required to publish a list of the names of each person that is issued a tobacco distributor license. The current list of licensed distributors may be accessed on the Department's website at <https://www.azdor.gov/Portals/0/Newsroom/TobaccoDistributors.pdf>.

Q4. Do I need a tobacco distributor license if I manufacture tobacco products and sell them to an Arizona-licensed tobacco distributor?

A4. No. A tobacco product manufacturer is not required to obtain a tobacco distributor license if it sells or distributes its product directly to an Arizona-licensed tobacco distributor.

Q5. Do I need a tobacco distributor license if I am a tobacco product manufacturer located outside of Arizona?

A5. Any tobacco product manufacturer, regardless of whether or not it is located within Arizona, must be licensed by the Department as a tobacco distributor and pay the applicable tax unless the manufacturer sells or distributes its product to a person who is an Arizona-licensed distributor.

Q6. How do I obtain a license to distribute tobacco products in Arizona?

A6. You may apply for a tobacco distributor license through Arizona Luxury Tax Online by selecting "New Business Registration" on the main screen.

You may also apply for a tobacco distributor license by submitting Arizona Form 10428, together with the applicable fee, to the Department. Arizona Form 10428 is available online at <https://www.azdor.gov/Forms/Tobacco.aspx>.

Q7. Is there an application fee for a tobacco distributor license?

A7. Yes. Any application for a tobacco distributor license must be accompanied by a fee of \$25 for each place of business included in the application.

Q8. Which business locations must I include in my application for a tobacco distributor license?

A8. An applicant must include each business location from which it conducts any activity related to the initial sale or distribution of tobacco products in Arizona, regardless of where the business is located. An applicant owning or controlling at least 80% of more than one business engaged in the distribution of tobacco products must apply for a single license encompassing all such businesses and list each place of business in the application.

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Q9. What is the difference between “additional business locations” and “affiliated entities?”

A9. “Additional business locations” are all sites from which a single distributor conducts its distribution business. “Affiliated entities” are separate businesses engaged in tobacco distribution activities that are each owned or controlled (at a threshold of at least 80%) by the same person.

Q10. Do I need to obtain a separate license for each “additional business location” or “affiliated entity” from which I conduct activity related to the sale or distribution of tobacco products in Arizona?

A10. No. Although “additional business locations” and “affiliated entities” must be disclosed in your license application, and a \$25 application fee paid for each location, these business locations are not separately licensed by the Department. However, a copy of the license issued by the Department must be conspicuously displayed at each location.

Q11. Do tobacco distributor licenses expire? When am I required to renew my license?

A11. Yes. Tobacco distributor licenses are valid for one year unless revoked by the Department. Licensed tobacco distributors must renew their license annually. Fees are assessed at the time of each renewal consistent with the fees associated with the original application. Licensed tobacco distributors may renew their license by accessing their account on Arizona Luxury Tax Online and paying all applicable fees.

Q12. If I fail to timely renew my license, can I request to have it reinstated?

A12. No. Once a tobacco distributor license has expired, the distributor must cease all operations related to the distribution of tobacco products in Arizona until it applies for and receives a new license from the Department.

Q13. Am I required to file a PACT Act report?

A13. The Prevent All Cigarette Trafficking (“PACT”) Act, 15 U.S.C. §§ 375, et seq., requires all persons who sell, transfer, or ship (or **advertise or offer** to sell, transfer or ship) cigarettes (including roll-your-own tobacco) or smokeless tobacco in interstate commerce for profit to:

- Register with the United States’ Attorney General and the tobacco tax administrator of the state into which the shipment, advertisement or offer is made (for Arizona, the administrator is the Department of Revenue); and

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- File monthly reports with the tobacco tax administrator, no later than the 10th of each month, identifying the brands, quantities, and recipients of cigarette and smokeless tobacco shipments into such state during the previous month.

These provisions apply to any person meeting the above criteria, including manufacturers, distributors and delivery sellers.

The registration statement must include:

- the registrant's name and trade name, if any;
- the address of the registrant's principal place of business and of any other place of business;
- the telephone number for each place of business;
- a principal electronic mail address;
- any website addresses; and
- the name, address, and telephone number of an agent in Arizona authorized to accept service on behalf of the person.

The report is due on the 10th day of each month and must include a memorandum or copies of invoices covering each and every shipment made into Arizona during the previous calendar month. The report must provide at least the following information, organized by city or town and by zip code:

- the name and address of the person to whom the shipment was made;
- the invoice or memoranda information relating to the specific customer including brand and quantity of cigarettes and smokeless tobacco shipped; and
- the name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller.

In addition to the registration and reporting requirements, the PACT Act requires that each delivery seller comply with “all State, local, tribal, and other laws generally applicable to sales of cigarettes or smokeless tobacco as if the delivery sales occurred entirely within the specific State and place, including laws imposing—(A) excise taxes; (B) licensing and tax-stamping requirements; (C) restrictions on sales to minors; and (D) other payment obligations or legal requirements relating to the sale, distribution, or delivery of cigarettes or smokeless tobacco.” 15 U.S.C. § 376a(a)(3).

Violators of the PACT Act may be subject to criminal and civil penalties.

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Q14. How do I submit a PACT Act report to the Department?

A14. The PACT Act report may be submitted electronically through Arizona Luxury Tax Online. In order to submit a PACT Act report online, you will first need to register your business and establish an account. You can register your business through Arizona Luxury Tax Online by selecting “New Business Registration” on the main screen.

You may also submit your PACT Act report to the Department of Revenue by completing and mailing Arizona Form 11134, available on the Department’s website at <https://www.azdor.gov/Forms/Tobacco.aspx>.

Q15. Am I required to register with the Department if I operate a retail location on tribal lands?

A15. Yes. You must register with the Department if your business sells tobacco products at retail and is located on tribal lands. Once registered, you will be assigned a retailer identification number to be used by Arizona-licensed tobacco distributors when reporting sales to your business.

You can register your retail location through Arizona Luxury Tax Online by selecting “New Business Registration” on the main screen. You may also register by completing and mailing Arizona Form 14-2039, available upon request by contacting the Luxury Tax Unit at 602-716-7808 or by emailing luxurytax@azdor.gov.

Q16. Am I required to use Arizona Luxury Tax Online?

A16. Licensed tobacco distributors must electronically file all required returns and remit payment of taxes due on tobacco products other than cigarettes through Arizona Luxury Tax Online. Distributors who fail to electronically file their return or remit payment by electronic funds transfer may be subject to penalties and interest.

You may also use Arizona Luxury Tax Online to: (i) apply for or renew a tobacco distributor license; (ii) order Arizona tax stamps; (iii) register as a retailer on tribal lands; (iv) request rebates of tobacco taxes paid; and (v) submit a PACT Act report.

Q17. How do I create an account in Arizona Luxury Tax Online?

A17. To access and use Arizona Luxury Tax Online, you must create a logon profile. Detailed instructions on how to create a logon profile are available on the Department’s website at <https://www.azdor.gov/TobaccoEFileProgram/Training.aspx>.

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Q18. How do I change my account password in Arizona Luxury Tax Online?

A18. Detailed instructions on how to change your password are available on the Department's website at <https://www.azdor.gov/TobaccoEFileProgram/Training.aspx>.

Q19. How do I update a name or address listed on my account?

A19. Access your account on Arizona Luxury Tax Online and select any field that is highlighted in blue. This is a hyperlink to edit those fields. Enter the correct information and click "save." You are required to update your account information within 30 days of any change to your business address.

Q20. When are tobacco tax returns due?

A20. Licensed tobacco distributors are required to file a return for each place of business on or before the 20th day of the month following the month reported in the return.

For tobacco products other than cigarettes, each distributor is required to submit the return, together with payment of any tax due, on or before the 20th day of the month following the month in which the tax accrues. The return and payment must be submitted within 10 calendar days of the due date to avoid penalties and interest.

Q21. Is there a penalty if I fail to file my tobacco tax return or pay any tax due by the deadline?

A21. Yes. For cigarette distributors, failure to file your tobacco tax return by the statutory deadline will subject you to a penalty under A.R.S. § 42-1125(K).

For distributors of tobacco products other than cigarettes, failure to file your tobacco tax return within 10 days of the statutory deadline will subject you to a penalty under A.R.S. § 42-1125(K). Failure to pay tax due on tobacco products other than cigarettes within 10 days of the statutory deadline will subject you to a penalty under A.R.S. § 42-1125(D) and interest pursuant to A.R.S. § 42-3501(D).

Q22. How do I file a tobacco tax return and remit payment of tax through Arizona Luxury Tax Online?

A22. To file a tobacco tax return and remit payment of tax, navigate to Arizona Luxury Tax Online and follow these steps:

- Enter your username and password on the main screen.

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- You will receive an authentication code by electronic mail or text. Enter the code on the main screen.
- Select the account you wish to file a tax return for.
- Click the “File Now” link for the period for which you want to file the return.
- You can choose the method by which you would like to file your return. You may upload an Excel file, complete the return manually (enter the data directly into Arizona Luxury Tax Online) or file a return with zero activity. Select the chosen filing method from the drop-down menu on the screen.
- Follow the instructions on the screen to complete your return and remit payment for any tax due.

Detailed instructions on how to upload return information and make an online payment through Arizona Luxury Tax Online are available on the Department’s website at <https://www.azdor.gov/TobaccoEFileProgram/Training.aspx>.

Q23. Am I required to report the exact ounces of other tobacco products (“OTP”) in my tobacco tax return?

A23. Yes. For each type of OTP (excluding cigars, which are reported as individual units), you are required to report the exact number of ounces received or sold. The information must be separated and supported by an invoice. Reported ounces must be exact and may not be rounded.

Q24. What is the current tax rate for tobacco products?

A24. Generally, the luxury privilege tax (A.R.S. § 42-3052), three Tobacco Taxes for Health Care (A.R.S. §§ 42-3251, 3251.01, 3251.02) and Tobacco Tax for Early Childhood Development and Health (A.R.S. § 42-3371) are applicable to all tobacco sales occurring off of tribal lands and those made on tribal lands between retailers and purchasers that are not enrolled members of that tribe.

The current combined tax rate on cigarettes is \$0.10 per cigarette (\$2.00 per pack of 20 cigarettes and \$2.50 per pack of 25 cigarettes).

The current combined tax rates for other tobacco products (“OTP”) are as follows:

- Small cigars (weighing not more than three (3) pounds per 1,000 cigars) - \$0.441 per 20 cigars.
- Cigars retailing at more than \$0.05 each - \$0.218 per cigar.
- Cigars retailing at not more than \$0.05 each - \$0.218 per 3.
- Smoking tobacco, snuff, fine cut chewing, etc. - \$0.223 per ounce.
- Cavendish, plug, or twist - \$0.055 per ounce.

The Indian Reservation Tobacco Tax (A.R.S. § 42-3302) is applicable to tobacco sales made by a retail business that is owned and operated either by

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a tribe on whose reservation the retail sale takes place, or a member of that tribe, to purchasers who are not enrolled members of that tribe.

The current tax rate on cigarettes subject to the Indian Reservation Tobacco Tax is \$0.05 per cigarette (\$1.00 per pack of 20 cigarettes and \$1.25 per pack of 25 cigarettes).

The current tax rates for other tobacco products (“OTP”) subject to the Indian Reservation Tobacco Tax are as follows:

- Small cigars (weighing not more than three (3) pounds per 1,000 cigars) - \$0.223 per 20 cigars.
- Cigars retailing at more than \$0.05 each - \$0.11 per cigar.
- Cigars retailing at not more than \$0.05 each - \$0.11 per 3.
- Smoking tobacco, snuff, fine cut chewing, etc. - \$0.113 per ounce.
- Cavendish, plug, or twist - \$0.028 per ounce.

Q25. How is tax collected on cigarettes in Arizona?

A25. Licensed tobacco distributors pay tax on cigarettes through the purchase of tax stamps from the Department. These stamps are then affixed to packs of cigarettes intended for sale in Arizona. An affixed stamp is evidence that taxes have been paid on that product (or precollected in the case of the Indian Reservation Tobacco Tax). Arizona cigarette stamps are available in four colors. The color of the stamp reflects the classification of tax paid or collected:

- **Blue** stamps represent the payment of the combined tax rate for general sales.
- **Red** stamps represent the precollection of the Indian Reservation Tobacco Tax.
- **Yellow** stamps represent sales to enrolled members of a tribe that are exempt from state taxation but are subject to tribal tobacco tax.
- **Green** stamps represent sales to enrolled members of a tribe that are exempt from state and tribal tobacco taxation.

For more information on tobacco tax rates and the various types of tobacco tax stamps issued by the Department, please see Publication 541 available on the Department’s website at <https://www.azdor.gov/Publications.aspx>.

Q26. How do I purchase tobacco tax stamps?

A26. Only Arizona-licensed distributors may purchase, possess or affix cigarette tax stamps.

Licensed distributors may purchase tobacco tax stamps through Arizona Luxury Tax Online. Detailed instructions on how to place a stamp order

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through Arizona Luxury Tax Online are available on the Department's website at <https://www.azdor.gov/TobaccoEFileProgram/Training.aspx>.

Licensed distributors may also purchase tobacco tax stamps by completing Arizona Form 811, available on the Department's website at <https://www.azdor.gov/Forms/Tobacco.aspx>.

- Q27.** What is meant by "affixed stamps" and "unaffixed stamps" on the tobacco tax return?
- A27.** "Affixed stamps" references tobacco tax stamps that have been placed on a pack of cigarettes. "Unaffixed stamps" references tobacco tax stamps that have not yet been removed from the original roll as issued by the Department.
- Q28.** May I transfer unaffixed tobacco tax stamps to another distributor or person?
- A28.** No. Distributors may not sell or provide tobacco tax stamps to any other distributor or person.
- Q29.** How do I request a rebate of taxes paid on tobacco products sold by retailers located on tribal lands?
- A29.** You may request a rebate of tobacco taxes paid through Arizona Luxury Tax Online.

You may also request a rebate of tobacco taxes paid by completing Arizona Form 840-A or 840-B and mailing the form to the Department. These forms are available on the Department's website at <https://www.azdor.gov/Forms/Tobacco.aspx>.

Licensed distributors are required to establish entitlement to a rebate by providing a report executed by the retailer that purchased the tobacco products upon which the request is based. The Department has prescribed Arizona Form 845-CIG and Arizona Form 845-OTP to facilitate compliance with this requirement. Both forms are available on the Department's website at <https://www.azdor.gov/Forms/Tobacco.aspx>.

In the event the retailer is uncooperative or has gone out of business, a licensed distributor may request authorization to submit proof other than the required retailer report by completing Arizona Form 850 and submitting the form to the Department. Arizona Form 850 is available on the Department's website at <https://www.azdor.gov/Forms/Tobacco.aspx>. For more information on this requirement, please see Luxury Tax Procedure 15-2, available on the Department's website at <https://www.azdor.gov/LegalResearch/Procedures.aspx>.

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Q30. How do I request a refund for cigarette tax stamps or taxes paid on other tobacco products?

A30. Licensed distributors may request a refund for cigarette tax stamps or taxes paid on other tobacco products that were exported from the state, have become unfit for sale due to breakage or spoilage, or have been returned to the manufacturer. Distributors are required to provide proof to the Department to establish entitlement to the refund. The Department will not refund tax for cigarette tax stamps affixed to articles that are deemed contraband under A.R.S. Title 42, Chapter 3.

You may request a refund of tobacco taxes paid on cigarettes and other tobacco products through Arizona Luxury Tax Online. The required proof must be uploaded with your online request.

You may also request a refund of tobacco taxes paid by completing Arizona Form 840 or 840-C and mailing the form to the Department. These forms are available on the Department's website at <https://www.azdor.gov/Forms/Tobacco.aspx>.

Q31. Are free samples of cigarettes and other tobacco products subject to tobacco tax in Arizona?

A31. Yes. Samples of cigarettes packaged in quantities of 20 or 25 can lawfully be distributed in Arizona, provided that an Arizona-licensed distributor has reported and affixed the proper Arizona tax stamps to the packs. Samples of tobacco products other than cigarettes can be lawfully distributed in Arizona, provided that an Arizona-licensed distributor first receives the samples, timely reports them to the Department and remits payment of all applicable state tobacco taxes.

For more information on the treatment of samples of cigarettes and other tobacco products in Arizona, please see Arizona Luxury Tax Notice 15-4 available on the Department's website at <https://www.azdor.gov/Business/LuxuryTax.aspx>.

Q32. Where can I find more information regarding tobacco tax in Arizona?

A32. You may visit the following online resources for additional information regarding tobacco tax in Arizona:

- The Arizona Department of Revenue's website for rulings, procedures, and notices regarding tobacco tax administration: <http://www.azdor.gov/>.
- The Arizona State Legislature's website for access to the Arizona Revised Statutes: <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp>.

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- The Arizona Secretary of State's website for access to the Arizona Administrative Code, Title 15, Chapter 3, which contains administrative rules relating to taxes on tobacco products:
http://apps.azsos.gov/public_services/Title_15/15-03.pdf.
- The Arizona Attorney General's Office website for information regarding the Arizona Cigarette Directory, delivery sales ban and other tobacco laws:
<https://www.azag.gov/tobacco/>.

Q33. Who should I contact for more information about tobacco tax in Arizona?

A33. You may contact the Luxury Tax Unit by calling (602) 716-7808 or by sending your question by email to luxurytax@azdor.gov. For general information, please refer to Publication 541, available on the Department's website at <https://www.azdor.gov/Publications.aspx>.

EXPLANATORY NOTICE

The purpose of a tax notice is to provide general guidance to assist taxpayers in becoming familiar with Arizona tax laws. Relevant statute, case law or administrative rules, as well as a subsequent notice, may modify or negate any or all of the provisions of any tax notice. In the case of inconsistency or omission in this notice, the language of the Arizona Revised Statutes and the Arizona Administrative Code will prevail. Please see General Tax Ruling ("GTR") 08-1 for more detailed information regarding documents issued by the Department of Revenue. GTR 08-1 is available online on the Department's website at <https://www.azdor.gov/LegalResearch/Rulings.aspx>.