

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

205.426 Records and statements; markings required on shipping case, box, or container; examination of records; invoices or bills of lading in possession of transporter; transporter license required; exceptions.

Sec. 6. (1) A manufacturer, wholesaler, secondary wholesaler, vending machine operator, transportation company, unclassified acquirer, or retailer shall keep a complete and accurate record of each tobacco product manufactured, purchased, or otherwise acquired. Except for a manufacturer, the records must include a written statement containing the name and address of both the seller and the purchaser, the date of delivery, the quantity, the trade name or brand, and the price paid for each tobacco product purchased or otherwise acquired. Except as otherwise provided in this section, a licensee shall keep as part of the records a true copy of all purchase orders, invoices, bills of lading, and other written matter substantiating the purchase or acquisition of each tobacco product at the location where the tobacco product is stored or offered for sale. For an unclassified acquirer that does not maintain a place of business where tobacco products are sold, brought, or kept, the records required by this section must be kept at the physical address licensed under section 3. A retailer shall keep as part of the records a true copy of all purchase orders, invoices, bills of lading, and other written matter substantiating the purchase or acquisition of each tobacco product and related to any tobacco products subject to subsection (15), if applicable, at the location where the tobacco product is offered for sale for a period of 4 months from the date of purchase or acquisition. The department may, by giving prior written approval, authorize a person licensed under this act or a retailer to maintain records in a manner other than that required by this subsection. Other records shall be kept by these persons as the department reasonably prescribes.

(2) A manufacturer, wholesaler, unclassified acquirer, and secondary wholesaler shall deliver with each sale or consignment of a tobacco product a written statement containing the name or trade name and address of both the seller and the purchaser, the date of delivery, the quantity, and the trade name or brand of the tobacco product, correctly itemizing the prices paid for each brand purchased, and shall retain a duplicate of each statement.

(3) A vending machine operator shall keep a detailed record of each vending machine owned for the sale of tobacco products showing the location of the machine, the date of placing the machine on the location, the quantity of each tobacco product placed in the machine, the date when placed there, and the amount of the commission paid or earned on sales through the vending machine. When filling or refilling the vending machine, the operator shall deliver to the owner or tenant occupying the premises where the machine is located a written statement containing the operator's own name and address, the name and address of the owner or the tenant, the date when the machine was filled, and the quantity of each brand of tobacco product sold from the machine since the date when tobacco products were last placed in the machine. A person in possession of premises where a vending machine is located shall keep a record of each tobacco product sold through the vending machine located on the premises and the amount of commission paid by the person operating the vending machine. The records must consist of written statements required to be given by each person operating a vending machine for the sale of tobacco products as provided in this section.

(4) A licensee under this act shall not issue or accept a written statement or invoice that is known to the licensee to contain a statement or omission that falsely indicates the name of the customer, the type, trade name, or brand of merchandise, the quantity of each type, trade name, or brand of merchandise, the prices, the discounts, the date of the transaction, or the terms of sale. A person shall not use a device or game of chance to aid, promote, or induce sales or purchases of a tobacco product, or give a tobacco product in connection with a device or game of chance.

(5) Except as otherwise provided in subsection (6), all statements and other records required by this section must be in a form prescribed by the department and must be preserved for a period of 4 years from the date of purchase or acquisition of the tobacco product and offered for inspection at any time upon oral or written demand by the department or its authorized agent by every wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, and retailer.

(6) A licensee or retailer in possession or control of a tobacco product that has not preserved the statements and records required by this section because the licensee or retailer claims the tobacco product was purchased or acquired more than 4 years ago has the burden of proving that the tobacco product was purchased or acquired more than 4 years ago. A licensee or retailer that fails to preserve documentation sufficient to meet this burden of proof is in violation of the record-keeping requirements under this section for that tobacco product.

(7) A shipping case or container of a tobacco product other than cigarettes received or acquired within this

state by a wholesaler or unclassified acquirer from a manufacturer or any person located outside this state must bear either the name and address of the wholesaler or unclassified acquirer that made the first purchase of that shipping case or container or any other markings the department prescribes. The point at which a shipping case or container is considered to be received or acquired in this state is to be determined based on the facts and circumstances including, but not limited to, all of the following:

(a) Ownership of the shipping case or container when it enters this state's borders or when it is delivered to the wholesaler or unclassified acquirer.

(b) The risk of loss.

(c) The use of a common carrier or a vehicle owned or leased by the wholesaler or unclassified acquirer to import or transport the shipping case or container into this state or deliver the shipping case or container to the wholesaler or unclassified acquirer.

(8) A wholesaler or unclassified acquirer, licensed under this act, shall place or otherwise affix the markings prescribed by the department on every shipping case or container of a tobacco product other than cigarettes that is sold, transferred, shipped, or delivered by the wholesaler or unclassified acquirer to a retailer or another licensee, in this state.

(9) If a marking prescribed by the department is to be affixed to a shipping case or container of tobacco products other than cigarettes by means of a mechanical or other device that applies the marking, the wholesaler or unclassified acquirer must obtain prior approval from the department to purchase, possess, or otherwise be permitted to use such a device. A wholesaler or unclassified acquirer whose license is revoked, is terminated, or has expired shall return all such devices in its possession to the department within 60 days of the revocation, termination, or expiration of its license. In addition to any other fine or any civil or criminal penalty or charge allowed by law, a wholesaler or unclassified acquirer that fails to return each device in its possession as required by this subsection is liable for a fine of \$500.00 for each device not timely returned.

(10) The markings required by this section on shipping cases and containers of tobacco products other than cigarettes must not be affixed in a manner that makes the markings illegible or that covers up, in whole or in part, or that otherwise obstructs or makes illegible the information or markings described in subsection (7).

(11) If a tobacco product other than cigarettes is found in a place of business or otherwise in the possession of a wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transporter, or retailer without the markings prescribed by the department or the information required by this section on the shipping case or container of the tobacco product, if required by this section, or if an individual package of cigarettes is found without a stamp affixed as provided under this act or if a tobacco product is found, or was acquired, imported, transferred, or sold, without proper substantiation by invoices or other records as required by this section, the presumption shall be that the tobacco product is kept in violation of this act and constitutes contraband subject to seizure and forfeiture under section 9. Notwithstanding anything in this act to the contrary, if any tobacco product is adjudicated by a court of competent jurisdiction to have been lawfully seized under this act, and if the adjudication of lawful seizure survives the exhaustion or lapse of any appeal rights, the tobacco product shall be automatically forfeited to this state and the person from whom that tobacco product was seized shall be liable for the tax imposed under this act on that tobacco product.

(12) If a tobacco product is to be or is being transported on a public highway, road, or street in this state for shipment outside this state, as indicated by the bills of lading, invoices, packing slips, or other documentation related to that shipment, the licensee shipping the tobacco product shall cause to be placed on every shipping case or container in which the tobacco product is shipped the name and address of the consignee or purchaser to whom the shipment is made outside of the state and, for tobacco products other than cigarettes, the marking prescribed by the department unless the shipping case or other container already bears that marking from the licensee. A tobacco product that was located in this state is considered to have been shipped outside this state for purposes of this subsection if the tobacco product crosses the border of this state regardless of whether the tobacco product is delivered to or accepted by the consignee or purchaser to whom the shipment is made outside this state.

(13) The department may require reports from a common carrier who transports a tobacco product to a point within this state from another person who, under contract, transports a tobacco product, or from a bonded warehouseperson or bailee who has in his or her possession a tobacco product. A carrier, bailee, warehouseperson, or other person shall permit the inspection of the tobacco products and examination by the department or its duly authorized agent of any records relating to the shipment of a tobacco product into, from, or within this state.

(14) Except as otherwise provided in subsection (15), any person transporting, possessing, or acquiring for the purpose of transporting a tobacco product upon a public highway, road, or street of this state shall be licensed under this act as a transporter, unless that person is licensed under this act as an unclassified acquirer, wholesaler, transportation company, vending machine operator, or secondary wholesaler, and shall have in the

person's actual possession invoices or bills of lading containing the name and address of both the seller and the purchaser, the actual or estimated date of delivery, the person's name and address, the quantity and trade name or brand of each tobacco product, the price paid for each trade name or brand in the person's possession or custody, and a copy of the license as prescribed under this act.

(15) Notwithstanding anything in this act to the contrary, a retailer in this state, or other person acting on behalf of a retailer in this state, is not required to be licensed under this act to transport a tobacco product upon a public highway, road, or street of this state for the purpose of delivering a tobacco product to a consumer in this state if all of the following conditions are met:

(a) The tobacco product was purchased by the consumer from the retailer at retail.

(b) The consumer has paid for the tobacco product in full before the shipment and delivery of the tobacco product to the consumer.

(c) The retailer or other person making the delivery has in its possession, at all times during which the tobacco product is being transported on a public highway, road, or street of this state, an invoice, receipt, or other documentation substantiating the sale to the consumer that states the name and address of the retailer, the name and address of the consumer, the delivery date, the trade name or brand of the tobacco product, the quantity, and the price paid for the tobacco product.

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