

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Technical Services Division

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Cigarette Tax
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**Cigarette Manufacturer Certifications and
Prohibition Against the Stamping of Certain Cigarettes**

On October 29, 2001, Governor George E. Pataki signed into law Chapter 383 of the Laws of 2001. This act adds a new section 480-b to the Tax Law, which subjects cigarette manufacturers to an annual certification requirement and prohibits agents from stamping certain cigarettes. In addition, the Tax Law is amended to provide for civil penalties and the seizure of cigarettes for violation of these new provisions.

Subdivision 1 of section 480-b requires that every *tobacco product manufacturer*, as defined in Public Health Law section 1399-oo, whose cigarettes are sold for consumption in New York State must issue a certification annually to the Commissioner of Taxation and Finance, the Attorney General of the State of New York, and to every agent who affixes New York State cigarette tax stamps to the manufacturer's cigarettes.

Each tobacco product manufacturer must certify, under penalty of perjury, that it is either:

- a *participating manufacturer* in the Tobacco Master Settlement Agreement as defined in Public Health Law section 1399-pp, and has generally performed its financial obligations under the Master Settlement Agreement, or
- a *non-participating manufacturer* (as defined in the Tobacco Master Settlement Agreement) which is in full compliance with the provisions of section 1399-pp of the Public Health Law, and has established any required qualified escrow fund.

Section 1399-oo of the Public Health Law defines a *tobacco product manufacturer* as an entity that directly (and not exclusively through any affiliate) manufactures cigarettes that it intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer. A *tobacco product manufacturer* also includes the first purchaser anywhere, for resale in the United States, of cigarettes which are manufactured anywhere and which the original manufacturer did not intend to be sold in the United States. A successor of a tobacco product manufacturer is also a *tobacco product manufacturer*. (For a complete definition of *tobacco product manufacturer*, and other associated terms, see section 1399-oo of the Public Health Law.)

All tobacco product manufacturers must issue their first certification by December 28, 2001. Thereafter, certifications must be made annually, no earlier than April 16 and no later than April 30 of each year.

A listing of the complete brand names of the manufacturer's cigarettes sold for consumption in New York State, from January 1 of the prior calendar year until the date the annual certification is made, must accompany each certification. Agents must retain these certifications and the list of brand names for a period of five years.

The first certification period begins on January 1, 2000, and ends on the date the certification is made. The certification period for certifications due between April 16 and April 30, 2002, begins on January 1, 2001, and ends on the date the certification is made.

Subdivision 2 of section 480-b prohibits a New York State stamping agent from affixing New York State cigarette tax stamps to a tobacco product manufacturer's packages of cigarettes if either:

- the tobacco product manufacturer has not provided the agent with the certification required by subdivision 1 above, or
- the Commissioner of Taxation and Finance has notified the agent that the tobacco product manufacturer is in violation of the provisions of section 1399-pp of the Public Health Law or has filed a false certification and the Commissioner has not notified the agent that the violation has ceased.

As required by **Subdivision 3** of section 480-b, a new form, Form CG-30, *Certification of Tobacco Master Settlement Agreement Status*, has been created for use by both participating and non-participating manufacturers to satisfy the certification requirements. A copy of this form may be ordered by calling the Taxpayer Assistance Bureau at 1 800 462-8100, by calling the Tax Department fax-on-demand line at 1 800 748-3676 or may be downloaded from our website at <http://www.tax.state.ny.us>

Penalties for violation of the provisions of Section 480-b

The act also amends subdivision 1 of section 481 of the Tax Law to provide that the Commissioner may impose a civil fine not to exceed \$5,000 for each violation of section 480-b by an agent or by a tobacco product manufacturer, and may also suspend or cancel the violator's cigarette tax licenses. These penalties are in addition to any other penalty that may be imposed by law.

The act also amends section 1846 of the Tax Law to provide that police officers and certain peace officers are authorized to seize cigarettes which have been stamped in violation of section 480-b, and to provide that the cigarettes seized are subject to forfeiture.