



Important Notice

June 20, 2002

New York State Tobacco Products Tax Rate Increase and Floor Tax Due

Effective July 2, 2002, the New York State tobacco products tax rate is increased from 20% to 37% of the wholesale price of tobacco products.

Retail dealers, wholesale dealers and distributors must take a physical inventory of all tobacco products on hand as of the close of business July 1, 2002.

Retail dealers, wholesale dealers, and distributors must file a tobacco products floor tax return by September 20, 2002, and pay the additional tax equal to 17 % of the wholesale price of the tobacco products stored, kept or offered for sale as of the close of business on July 1, 2002.

Tobacco products include any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco, and any tobacco other than cigarettes, intended for consumption by smoking, chewing, or as snuff.

The **wholesale price** is the established price for which a manufacturer sells tobacco products to a distributor before the allowance of any discount, trade allowance, rebate or other reduction. In the absence of the established price, the wholesale price is the manufacturer's invoice price. Generally, if the manufacturer's established price or the manufacturer's invoice price are not known, the tax would be computed on the price at which the tobacco products were purchased, without allowance of any discount, trade allowance, rebate or other reduction. **However, for purposes of the floor tax only, retail dealers may use 50% of their selling price (excluding sales tax) as the wholesale price.**

Physical inventory

Each distributor, wholesale dealer and retail dealer of tobacco products who stores or keeps tobacco products in New York State for sale is subject to the tobacco products floor tax and must take a physical inventory of all tobacco products on hand in New York State as of the close of business July 1, 2002. These inventories must be reported on Form MT-200, *Tobacco Products Tax Floor Tax Return* (copy enclosed).

For audit purposes, retail dealers, wholesale dealers and distributors must keep all records of the physical inventory used to arrive at the tobacco products floor tax due.

If you have tobacco products stored, kept or offered for sale at more than one business location in New York State, you must file one floor tax return covering all locations. Keep an original inventory report at each location for inspection and forward a duplicate to the location responsible for completing the floor tax return.

Note: Sellers must take their own physical inventory. Random inventory counts made by Tax Department personnel for statistical purposes may not be used.

Attention vending machine operators

Each vending machine operator should take as many physical inventories as possible with available personnel. If it is impossible to take a physical inventory of tobacco products in each vending machine on location, the vending machine operator may pay a tobacco products floor tax on one-half of the **normal fill capacity** for those machines that cannot be physically inventoried on July 1, 2002. Normal fill capacity means the inventory as indicated on the individual inventory record maintained for each vending machine on location. For example, if the normal fill capacity of a machine is 200 cigars and the wholesale price of each cigar is \$2.50, the

department will permit the vending machine operator to report a tax based on one-half of 200, or 100 cigars, at 17% of their wholesale price of \$250 (100 cigars x \$2.50) for a tobacco products floor tax due of \$42.50 (17% x \$250) for that machine.

The alternative method outlined above only applies to vending machines on location. A physical inventory must be taken of all tobacco products stored elsewhere.

Tobacco products floor tax payment

The tobacco products floor tax return must be filed with the Tax Department on or before September 20, 2002. A taxpayer having a tobacco products floor tax liability of more than \$200.00 may elect to pay the liability in two installments. If you make this election, the first installment is due with the filing of the return on or before September 20, 2002, and cannot be less than 25% of the total tobacco products floor tax due, but not less than \$200.00. (The entire tobacco products floor tax due must be paid if it amounts to less than \$200.00.) The second and final installment must be paid on or before January 20, 2003.

For example:

- A taxpayer having a tobacco products floor tax liability of \$50 would be liable for the full payment of the liability on September 20, 2002.
- A taxpayer having a tobacco products floor tax liability of \$240.00 would be liable for a first installment of at least \$200.00. Any remaining floor tax liability must be paid no later than January 20, 2003.
- A taxpayer having a tobacco products floor tax liability of \$876 would be liable for a first installment of at least \$219.00 (25% of \$876). Any remaining floor tax liability must be paid no later than January 20, 2003.

The floor tax on tobacco products inventory and any applicable installment should be paid by check or money order, payable to NYS Tobacco Products Tax.

If you are required to file a return but have not received one, contact the Tax Department at 1 800 972-1233. You can also obtain the return by calling the department's automated fax-on-demand system at 1 800 748-3676 or by accessing the department's web site www.tax.state.ny.us. Failure to receive a tobacco products floor tax return is not an acceptable excuse for failure to file and remit any tobacco products floor tax due.

Penalty and interest

Failure to file a tobacco products floor tax return or pay the appropriate tax due on or before September 20, 2002, will result in civil penalties and interest under Article 20 of the New York State Tax Law and may result in criminal penalties under Article 37 of the Tax Law.

If you elect to pay your tobacco products floor tax liability in two installments and you fail to pay the correct amount of your first installment on or before September 20, 2002, the entire amount of the floor tax will be due immediately and interest and penalty will accrue on the entire amount that remains unpaid. If you paid the correct amount of the first installment on time, but did not pay the second and final installment by January 20, 2003, interest and penalty will accrue from that date on the amount that remains unpaid.

Penalty is imposed on a **tobacco products distributor** at the rate of 10% of the tax due for the first month or any fraction of a month, plus 1% of the tax due for each subsequent month or fraction of a month in which a return remains unfiled or the tax remains unpaid, up to a maximum of 30%.

Penalty is imposed on any **retail or wholesale dealer** for failure to pay on time at the rate of 50% of the tax due for the first month or any fraction of a month, plus 1% of the tax due for each subsequent month or fraction of a month in which the tax remains unpaid.

If a return is not filed within 60 days of the due date, the minimum penalty imposed is the lesser of the tax due or \$100. However, in no instance may this minimum penalty be less than the penalty computed using the paragraphs above.

Interest is computed at the rate set by the Commissioner of Taxation and Finance and is compounded daily. It is computed from the day the tax was due until the day the tax is paid. If you need help figuring interest, call the New York State Business Tax Information Center at 1 800 972-1233.