

STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
COMMISSIONER OF TAXATION AND FINANCE  
ALBANY, NEW YORK

Pursuant to the authority contained in subdivision First of section 171, and section 475 (not subdivided) of the Tax Law, the First Deputy Commissioner of Taxation and Finance, being duly authorized to act due to the vacancy in the office of the Commissioner of Taxation and Finance, hereby proposes to make and adopt the following amendments to the Cigarette Tax Regulations and the Tobacco Products Tax Regulations, as published in Articles 1 and 3, respectively, of Subchapter I of Chapter I of Title 20 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

Section 1. Subdivision (a) of section 70.2 is amended to read as follows:

(a) “Cigarette” [means any roll for smoking made wholly or in part of tobacco or of any other substance, irrespective of size or shape and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any substance or material other than tobacco] shall have the same meaning as is found in section 470(1) of the Tax Law.

Section 2. The title of section 78.4 and subdivision (a) of section 78.4 are amended to read as follows:

Section 78.4 [Possession or control of] Penalties relating to unstamped or unlawfully stamped packages of cigarettes and unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions. (Tax Law, section 481(1)(b))

(a) In addition to any other penalty imposed by the Tax Law, any person who has in its possession or control, unstamped or unlawfully stamped packages of cigarettes or unaffixed false, altered or counterfeit cigarette tax stamps, imprints or impressions is subject to a penalty [of not more than \$150 for each 200 such cigarettes or fraction thereof in excess of 1,000 cigarettes. The Department of Taxation and Finance may, in its discretion, remit all or any part of the penalty imposed] as provided for in Tax Law section 481(1)(b).

Section 3. Subdivision (b) of section 78.4 is REPEALED, and subdivision (c) of such section is relettered subdivision (b).

Section 4. Section 89.1 is amended to read as follows:

Section 89.1 General. (Tax Law, sections 471-b, 471-c)

Except as otherwise provided in this Subchapter or the Tax Law, all tobacco products:

- (a) possessed in New York State by any person for sale; or
- (b) used in New York State by any person;

are subject to the tobacco products tax imposed pursuant to article 20 of such law. [The tobacco products tax is imposed at the rate of 37 percent of the wholesale price of the tobacco product.]

Section 5. The introductory paragraph to section 89.2 and subdivision (a) of such section are amended to read as follows:

Any term defined in this Subchapter relating to the cigarette tax shall have the same meaning when used with respect to the tobacco products tax. [However, for such purpose] For purposes of the tobacco products tax, the following terms shall have the meanings indicated [herein] below.

(a) "Tobacco products" [means 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] shall have the same meaning as is found in section 470(2) of the Tax Law.

DATED: Albany, New York  
November 18, 2010

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Jamie Woodward  
Acting Commissioner and Executive Deputy  
Commissioner of Taxation and Finance