

DELIVERY SALES OF CIGARETTES

Tobacco
tax notice
#05-11[Public Chapter 388 \(2005\)](#)

Chapter 388, Public Acts of 2005, amends the tobacco tax laws to impose restrictions on delivery sales of cigarettes (including little cigars) effective July 1, 2005. A “delivery sale” is any sale of cigarettes to a consumer in Tennessee when the delivery of either the consumer’s purchase order for cigarettes or the seller’s product (i.e., cigarettes) is made through a delivery service. Delivery of purchase orders by consumers in a delivery sale is made by means of telephone or other method of voice transaction, the mail or any other delivery service, or the Internet or other online service. Delivery of cigarette products by sellers in a delivery sale is by mail or other delivery service.

Tenn. Code Ann. Title 67, Chapter 4, Part 10 has been amended to mandate that cigarette sellers, dealers, or distributors making delivery sales:

- Provide a prominent and clearly legible statement on Web site or other literature to each prospective consumer that:
 - (A) Cigarette sales to consumers below the legal minimum age are illegal;
 - (B) Sales of cigarettes are restricted to those consumers who provide verifiable proof of age which would justify legal delivery; and
 - (C) Cigarette sales are subject to tax under Tenn. Code Ann. Section 67-4-1004; such statement shall include an explanation of how such tax has been, or is to be, paid with respect to such delivery sale;
- Include a clear and conspicuous statement upon the package as follows: “Cigarettes: Tennessee Law Prohibits Shipping to Individuals Under Age Eighteen, and requires the payment of all Applicable Taxes;” and
- Use a method of mailing, shipping, or delivery that obligates the delivery service to:
 - (A) Require the consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age, to sign to accept delivery of the shipping container, and

(B) Restrict delivery to an adult of legal minimum purchase age.

Cigarette sellers, dealers, or distributors who mail, ship, or otherwise deliver cigarettes in connection with delivery sales during a calendar month shall file with the Department of Revenue, by the 10th day of the following calendar month, a memorandum or a copy of the invoice that provides for each delivery sale:

- (A) The name and address of the consumer to whom such delivery sale was made;
- (B) The brand or brands of the cigarettes that were sold in such delivery sale; and
- (C) The quantity of cigarettes that were sold in such delivery sale. Use of the Delivery Sales Information Report, available on the department’s Web site at www.Tennessee.gov/revenue, should facilitate compliance with these reporting requirements.

Any person who satisfies the requirements of 15 U.S.C.A. Section 376 (a principle provision of the Jenkins Act) is deemed to satisfy the new reporting requirements established by Section 2 of Public Chapter 388.

A first violation of the delivery sales provisions of the law by a seller, dealer, or distributor of cigarettes is subject to a fine of the greater of \$1,000 or five times the retail value of the cigarettes involved. A second or subsequent violation is subject to a fine of \$5,000 or five times the retail value of the cigarettes involved, whichever is greater.

A delivery service who fails to require that the consumer to whom it delivers cigarettes is an adult of legal minimum purchase age and restrict its delivery to such persons is subject to a fine of \$500.

Cigarettes sold or attempted to be sold in a delivery sale not meeting the above requirements are subject

to forfeiture to the state and subsequent destruction. All fixtures, equipment, and all other materials and personal property on the premise of any person who, with intent to defraud the state, violates any of the requirements stated above shall be forfeited to the state.

Enforcement actions may be brought by the attorney general or his designee or any person holding a valid permit under 26 U.S.C.A. Section 5712 to restrain violations of the above requirements.

A person accepting a purchase order for a delivery sale shall collect and remit to the department of Revenue all applicable cigarette taxes and sales and use taxes on such sale except to the extent such

person has proof, in the form of the presence of applicable tax stamps or otherwise, that such taxes already have been paid to Tennessee.

If you have any questions about this notice, you may contact the Department. Tennessee residents outside the Nashville calling area may call our statewide toll-free number at (800) 342-1003. Callers from Nashville or out-of-state may dial (615) 253-0600. You can access additional information on our Web site at www.Tennessee.gov/revenue.

Publication Date: July 29, 2005