

## Delivery Sales of Cigarettes, RYO &amp; Smokeless Tobacco

Notice #11-13

Tobacco Tax

August 2011



## Highlights

- *The PACT Act became effective June 30, 2010.*
- *"Cigarette" includes RYO for PACT Act purposes*
- *Big cigars are not covered by the PACT Act*
- *Any person who sells, transfers, or ship cigarettes, RYO, or smokeless tobacco in interstate commerce must register with the Department and file monthly reports*
- *All delivery sellers must comply with Tennessee tobacco tax laws*

**INTRODUCTION**

This notice is intended to provide taxpayers and the general public with information concerning the delivery sales of cigarettes, roll-your-own ("RYO") tobacco, and smokeless tobacco.

**DISCUSSION**

The Prevent All Cigarette Trafficking Act ("PACT Act"), 15 U.S.C. §§ 375, *et. seq.*, became effective on June 30, 2010. The PACT Act amended provisions of the Jenkins Act regarding delivery sales of cigarettes, roll-your-own ("RYO") tobacco, and smokeless tobacco; compliance with state tax and licensing requirements relating to cigarettes, RYO, and smokeless; and the filing of certain reports to state tax administrators. A "delivery sale" is the sale of any cigarettes, RYO, or smokeless tobacco to a consumer if the consumer submits the purchase order through a means whereby the seller is not in the physical presence of the buyer or if the products are delivered to the buyer by a remote delivery method.

**Definitions**

Cigarette: "Cigarette" includes RYO, but does not include a big cigar.

Delivery Sale: "Delivery sale" means the sale of any cigarettes, RYO or smokeless tobacco to a consumer:

- If the consumer submits a purchase order through the mail, facsimile, internet, or over the telephone, or
- If the cigarettes, RYO or smokeless tobacco are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes, RYO or smokeless tobacco.

**Requirements**

As amended, the Jenkins Act now provides that any person who sells, transfers, or ships for profit cigarettes, RYO, or smokeless tobacco in interstate commerce, or who advertises such products for sale, must: (1) register with the tobacco tax administrator of the state into which the shipment is made and (2) file monthly reports with the tobacco tax administrator no later than the 10<sup>th</sup> day of each month. The monthly shipment reports must include the following information:

- Name and address of the person to whom the shipment was made;
- The brand name and quantity thereof;
- Name, address, and phone number of the person delivering the shipment to the recipient on behalf of the delivery seller.

All persons required to file this report (beginning with the report due July 10, 2010, for the month of June 2010) who have not yet done so should file immediately.

In addition, the amendments to the Jenkins Act require delivery sellers to comply with all state and local laws applicable to the sales of cigarettes, RYO, and smokeless tobacco "as if the delivery sales occurred entirely within the specific state."

## Who Must File These Reports in Tennessee?

All delivery sellers shipping cigarettes, RYO or smokeless tobacco **into Tennessee from another state** must register as noted above and **file these reports with the Tennessee Department of Revenue**. Delivery sellers shipping big cigars do not have to register and file reports regarding these shipments. In addition, delivery sellers located within Tennessee and shipping tobacco products within state lines do not have to register and file reports regarding these shipments with the Tennessee Department of Revenue. However, delivery sellers located within Tennessee do need to register and file reports with any other states into which they are shipping tobacco products.

➤ *A seller may not act as both a wholesaler and a retailer*

➤ *Wholesalers may not sell tobacco products directly to the consumer*

### What does this mean for you?

First, a seller may act as either a wholesaler or a retailer, but **may not act as both**. In Tennessee, a wholesaler may sell tobacco products at wholesale only to other licensed wholesalers or retail dealers but **may not sell directly to the consumer**. Tenn. Code Ann. §67-4-1001(23).

### If you are a manufacturer:

Manufacturers must certify their products with the Department of Revenue and the Attorney General's Office, pursuant to Tenn. Code Ann. §67-4-2601, *et seq.* All cigarettes and RYO that the manufacturer intends to ship into Tennessee must be listed on the Directory of Approved Tobacco Product Manufacturers and Products. In addition, all such products must be certified as fire-safe compliant with the State Fire Marshal. Manufacturers must register pursuant to the Jenkins, Act and must file monthly reports of all shipments of cigarettes, RYO, and smokeless into the State of Tennessee with the State Department of Revenue. Compliance with the requirements of this Act is deemed by the State of Tennessee to be a requirement of continued listing on the Directory of Approved Tobacco Product Manufacturers.

### If you are a wholesaler:

➤ *Wholesalers must obtain a tobacco license and comply with all reporting requirements*

Wholesalers must comply with all reporting and sales requirements imposed by the State of Tennessee, including filing tax forms and licensed distributor reports. Additionally, wholesalers may only sell products listed on Tennessee's Directory of Approved Product Manufacturers and those products that are certified as fire-safe compliant. Tennessee's Directory of Approved Tobacco Product Manufacturers is available at: <http://www.tennessee.gov/revenue/tntaxes/tobacco/tobmanuflist.htm>.

### If you are a retailer:

➤ *Retailers may only sell tobacco products upon which the tobacco tax has been paid by a licensed wholesaler, with the exception of smokeless tobacco*

Retailers are the only entities permitted to sell tobacco products directly to the consumer. Retailers may only sell those cigarettes and other tobacco products upon which the tax has been paid by a Tennessee licensed stamping agent (wholesaler), with the exception of smokeless tobacco. Retailers may pay the tax on smokeless tobacco themselves. Retailers may only sell those products which are listed on Tennessee's Directory of Approved Tobacco Product Manufacturers and those products which have been certified as fire-safe compliant. Retailers must register for Sales and Use tax and submit monthly returns with the Department of Revenue.

### Packaging and Age Verification Requirements

All shipping packages must include the following statement on the outside of the package: "CIGARETTES/SMOKELESS TOBACCO: FEDERAL LAW REQUIRES THE PAYMENT OF ALL APPLICABLE EXCISE TAXES AND COMPLIANCE WITH APPLICABLE LICENSING AND TAX-STAMPING OBLIGATIONS." There are also age verification requirements whereby the purchaser must sign to accept delivery of the package and must provide a valid, government-issued identification bearing a photograph of the individual, and show that the person is the minimum age required for the legal sale or purchase of tobacco products.

## Penalties

Under § 377(b) of the PACT Act, if you are a delivery seller, violations may result in civil penalties of up to \$5,000 for the first violation, \$10,000 for the second violation, or 2% of the gross sales during the prior 12 months.

Additionally, § 377(b) of the PACT Act provides the following penalties for common carriers or other persons providing delivery services: up to \$2,500 for a first violation, or \$5,000 for any other violation within one year of a prior violation.



## References:

15 U.S.C. §§ 375, *et seq.*, Tenn. Code Ann. §67-4-1001, *et seq.*, Tenn. Code Ann. §67-4-2601, *et seq.*

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.