

## NOTICE OF INTENT

### Department of Revenue Tax Policy and Planning Division

#### Tobacco Tax (LAC 61:I.5101-5115)

Under the authority of R.S. 13:5077(F), R.S. 47:843(F), 857 and 1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Tax Policy and Planning Division, proposes to amend LAC 61:I.5101 pertaining to reporting of certain imported cigarettes and to adopt LAC 61:I.5107-5115 related to wholesale tobacco dealers receiving unstamped and or unpaid tobacco products, purchasing and affixing tax stamps, and bonds waivers.

The Notice of Intent is needed to provide guidelines and clarification for licensed wholesale tobacco dealers regarding how to report certain imported cigarettes, the purchase of unstamped cigarettes and tobacco that require approval from the Tobacco Unit of the Attorney General's Office, the purchase of stamps and insurance on the shipment, procedure for affixing tax stamps, procedures for bond waiver, and procedures for requesting a refund for stamps affixed to goods that become damage or removed from the state's directory.

This rule is written in plain language in an effort to increase transparency.

### Title 61

#### Revenue and Taxation

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 51. Tobacco Tax

#### §5101. Reporting of Certain Imported Cigarettes; Penalty

A. – C. ...

~~D. When it is determined that a registered wholesale tobacco dealer is not in compliance with this rule, the secretary shall give that wholesale dealer written notice by registered mail of the noncompliance and request compliance within 15 days. Upon a second instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to, within 10 days, show cause why the wholesale dealer's permit shall not be suspended. Upon a third instance of noncompliance with this rule, the secretary shall, by registered mail, inform the wholesale dealer of the noncompliance and request the wholesale dealer to show cause, on a date and time set by the secretary, as to why the wholesale dealer's permit shall not be suspended. If the wholesale dealer does not comply with the terms of this rule after the hearing, the secretary shall suspend the wholesale dealer's permit for a period of at least 30 days, or until such time as the dealer has become compliant. Failure to properly respond to written notification of noncompliance shall constitute a subsequent instance of noncompliance.~~

~~E.—~~The information furnished under Subsection A may be disclosed as provided in R.S. 47:1508(B)(11).

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5062 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Policy Services Division, LR 28:866 (April 2002), amended by the Department of Revenue, Office of Legal Affairs, Tax Policy and Planning Division, LR 50:

#### §5107. Authority for Stamping Agents to Purchase Certain Unstamped Cigarettes, Tobacco; Approval from Attorney General

A. Stamping agents licensed with the Office of Alcohol and Tobacco Control may sell cigarettes in or into the state only if the manufacturer and brand family of the cigarettes are listed on the state directory maintained by the attorney general at the time of stamping. However, unless prior written approval is obtained from the attorney general, stamping agents may not purchase cigarettes from an entity other than an importer, manufacturer, or sales entity affiliate.

B. For a stamping agent to purchase unstamped cigarettes from an entity other than an importer, manufacturer, or sales entity affiliate, the stamping agent must first request approval from the attorney general on a quarterly basis by submitting a written request on a form approved and provided by the attorney general that includes the following:

1. the names and addresses of the entities from whom the stamping agent intends to purchase unstamped cigarettes or roll-your-own tobacco products;
2. the manufacturers and brand names of the unstamped cigarettes and roll-your-own tobacco products that the stamping agent intends to purchase;
3. the intended state of destination of the unstamped cigarettes and roll-your-own tobacco products upon resale by the stamping agent;
4. written verification from the entities from whom the stamping agent intends to purchase unstamped cigarettes or roll-your-own tobacco products that the former agrees to provide copies of invoices and any other necessary documentation to confirm the accuracy of the reported transactions within twenty days following the end of the applicable sales quarter; and
5. any other information that the attorney general may deem relevant.

C. The request shall be made at least ten days prior to the beginning of the applicable sales quarter and prior to the purchase of any unstamped cigarettes or roll-your-own tobacco products as described in this Section. In the event that any information changes after the request has been submitted, whether or not approval has been given, a revised form shall be submitted immediately to the attorney general.

D. The decision to approve or deny the request shall be based upon the information provided by the stamping agent as well as any additional information that the attorney general may deem relevant, but in any case, approval shall be contingent upon agreement and cooperation by the entities from whom the stamping agent intends to purchase the unstamped cigarettes or roll-your-own tobacco products to provide copies of invoices and any other necessary documentation to confirm the accuracy of the reported transactions within twenty days following the end of the applicable sales quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:847 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Tax Policy and Planning Division, LR 50:

#### §5109. Purchase, Shipment of tax stamps; Insurance

A. Tobacco tax stamps shall be purchased by licensed wholesale distributors who are registered as stamping agents with the Office of Alcohol and Tobacco Control. The tobacco tax stamps are shipped to the stamping agents directly from the stamp provider.

B. Purchase orders for tax stamps shall be placed electronically with the Department of Revenue using the prescribed electronic format. Tobacco tax stamp sheets shall be ordered in multiples of ten. When placing the order, the stamping agent may purchase insurance on the shipment for reimbursement purposes in the event the tax stamps are lost or damaged. If insurance is not purchased, the stamping agent assumes liability for any missing or damaged tax stamps.

C. All electronic orders shall be verified and approved by the Department of Revenue before the stamp provider is authorized to fill and ship the order.

D. Orders will be processed as standard 2-day delivery. Stamping agents that request next day delivery are responsible for the delivery costs and must provide billing account information for this purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:843 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Tax Policy and Planning Division, LR 50:

#### §5111. Affixing of tax stamps

A. Tax stamps required by R.S. 47:843 and 847 shall be affixed to the bottom of cigarette packages in a manner that is clearly visible to subsequent purchasers. No other stamp, label, decal, mark or sign shall be affixed to or displayed on the bottom of a package of cigarettes without prior written approval from the Department of Revenue.

B. The stamp shall be affixed in such a manner that it cannot be removed from the package without being mutilated or destroyed.

C. Each individual package must contain more than 50 percent of the stamp to be considered stamped and taxed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:843(F) and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Tax Policy and Planning Division, LR 50:

#### §5113 Bond Waiver

A. A registered tobacco dealer in tobacco products including but not limited to cigars, cigarettes, and smoking tobacco, shall furnish a bond in accordance with R.S. 47:848(A).

B. The secretary is authorized to waive the furnishing of a surety bond as set forth in R.S. 47:848(B).

C. If any dealer whose bond has been waived by the secretary:

1. commits a stamping violation,

2. fails to file monthly reports with the Department of Revenue or the Tobacco Unit with the Department of Justice, or

3. acts in bad faith, such as not filing the required tobacco monthly return or schedules or repeatedly filing inaccurate or incomplete tobacco monthly returns or schedules with either department, the secretary may revoke the waiver and require the dealer to furnish a bond in the amount required in R.S. 47:848(A). If a bond waiver is revoked, the dealer shall not be eligible for a bond waiver for a period of three years thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:848 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Tax Policy and Planning Division, LR 50:

#### §5115. Refunds/Credits and Destruction of Products

A. A dealer may be refunded or credited the cost of stamps affixed to goods when:

1. by reason of damage the goods become unfit for sale and are destroyed by the dealer or returned to the manufacturer or jobber; or

2. the goods were listed on the state directory at the time the stamps were affixed but have subsequently been removed from the state directory and the goods have been destroyed.

B. A dealer seeking a refund or credit of the cost of stamps affixed to goods which, because of damage were unfit for sale and have been returned to the manufacturer, must claim the refund or credit in the manner prescribed by the secretary and provide the following documentation:

1. a notarized affidavit containing the product brand name, the quantity returned to the manufacturer or jobber, the date of return of the product and the location to which the product was returned; and

2. a copy of the credit memo received from the manufacturer.

C. A dealer who intends to destroy goods which have been affixed with a tax stamp because they have either been damaged and are unfit for sale or have been removed from the state directory shall notify the department prior to the destruction and comply with the following requirements: .

1. The destruction shall be witnessed by a representative of the Department of Revenue and/or the Office of the Attorney General.

2. Goods shall be destroyed by cutting in half and saturating the product with bleach.

3. The Department of Revenue shall provide the dealer with a certification of the destruction which shall be submitted with the claim for credit or refund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:857 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Legal Affairs, Tax Policy and Planning Division, LR 50:

Richard Nelson  
Secretary of Revenue

#### **Family Impact Statement**

The proposed adoption of this rule has no known impact on family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. The proposed rule also have no other known or foreseeable impact on:

1. the stability of the family.

2. the authority and rights of parents regarding the education and supervision of their children.

3. the functioning of the family.

4. family earnings and family budget.

5. the behavior and personal responsibility of children.

6. the ability of the family or a local government to perform this function.

#### **Poverty Impact Statement**

The proposed Rule has no known impact on poverty as described in R.S. 49:973.

#### **Small Business Analysis**

The proposed Rule has no known or foreseeable measurable impact on small businesses as described in R.S. 49:974.4.

#### **Provider Impact Statement**

The proposed Rule has no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the cost to the provider to provide the same level of service.
3. The overall effect on the ability of the provider to provide the same level of service.

#### **Public Comments**

All interested persons may submit written data, views, arguments or comments regarding this proposed rule to Shanda J. McClain, Attorney, Tax Policy and Planning Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098 or by email at shanda.mcclain@la.gov and reference Tobacco Tax Regulations Comments. Written comments will be accepted until 4:30 p.m., September 30, 2024.

#### **Public Hearing**

A public hearing will be held on October 1, 2024 at 10 a.m. in the Calcasieu Room located on the 2<sup>nd</sup> floor of the LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana. Should individuals with a disability need an accommodation in order to participate, contact Shanda J. McClain at the address given above in the Public Comments section, by email at shanda.mcclain@la.gov.

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Richard Nelson  
Secretary of Revenue

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

Person Preparing Statement:	<u>Shirley Bonaccorso</u>	Dept.:	<u>Louisiana Dept. of Revenue</u>
Phone:	<u>(225) 219-2780</u>	Office:	<u>External Reporting Division</u>
Return Address:	<u>617 North Third Street</u>	Rule Title:	<u>LAC 61.L5101-5115</u>
	<u>Baton Rouge, LA 70802</u>	Date Rule Takes Effect:	<u>November 20, 2024</u>

**SUMMARY**  
(Use complete sentences)

In accordance with Section 961 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. **THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

**There are no anticipated implementation costs or savings to state or local governments.**

**The proposed amendments remove outdated procedures for when a registered wholesale tobacco dealer is found non-compliant in reporting certain cigarette and tobacco products made by tobacco product manufacturers not participating in the Master Settlement Agreement (MSA) to allow for consideration of more adaptive procedures for enforcement.**

**The proposed amendments clarify and provide guidance on procedures for stamping agents to contact the Office of the Attorney General prior to the purchase of certain unstamped cigarettes and tobacco, for the purchase of and affixing of tax stamps, and how to obtain refund or credit for stamped product destroyed or removed from the state directory. It also provides guidance on the circumstances for which a surety bond requirement may be waived or the waiver revoked.**

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

**There are no anticipated effects on revenue collections of state or local governments.**

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NON-GOVERNMENTAL GROUPS (Summary)**

**Stamping agents purchasing tax stamps and opting to obtain insurance on the shipment of stamps from the stamp provider may incur some additional costs. Any additional costs for completion and submission of the required paperwork of this proposed rule are expected to be minor.**

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition or employment.

  
\_\_\_\_\_  
Signature of Head or Designee

RICHARD NELSON, SECRETARY  
Typed Name & Title of Agency Head or Designee

7/31/24  
Date of Signature

  
\_\_\_\_\_  
Legislative Fiscal Officer or Designee

8/1/24  
Date of Signature