

Tobacco Wholesaler v. Retailer

Notice #13-07

Tobacco Tax

June 2013



Highlights

INTRODUCTION

This notice is intended to provide tobacco wholesalers and retailers, as well as the general public, with clarification of who may make wholesale sales of cigarettes and other tobacco products in Tennessee.

DISCUSSION**Tobacco Wholesalers**

It has been reported that some retailers of cigarettes and tobacco are under the false impression that it is acceptable to sell cigarettes and tobacco to other retailers as long as they obtain a resale certificate from the other retailers to whom they make sales. However, a seller of cigarettes and tobacco may act as either a wholesaler or a retailer, but may not act as both.

- *Retailers cannot sell tobacco to other retailers*
- *Retailers can only sell directly to ultimate consumer*
- *Wholesalers cannot sell directly to ultimate consumer*

"Wholesale dealer and jobber" means any person who maintains wholesale facilities in one (1) or more permanent locations, and engages in the business of receiving, storing, purchasing, selling at wholesale only, importing unstamped tobacco products, and otherwise handling tobacco products for resale at a wholesale price only to other licensed wholesale dealers and jobbers, or tobacco distributors or retail dealers as defined in this section, but does not sell tobacco products directly to the ultimate consumer.

"Retail dealer" means each tobacco vending machine, place, store, booth, concession, truck or vehicle, or person that in any way sells or makes available tobacco products directly to the ultimate consumer.

T.C.A. § 67-4-1001

Remedy

- *If a party wishes to engage in both retail and wholesale sales, two separate legal entities must be formed*

Any person that wishes to sell tobacco products to retailers must first be licensed and bonded in Tennessee as a tobacco wholesaler. The same person cannot sell tobacco products at retail and also be licensed as a wholesaler. If a party wishes to engage in both retail and wholesale sales, two separate legal entities must be formed, one to make retail sales and the other licensed to make wholesale sales. The Department will issue a wholesaler license only to a person with separate bookkeeping (which includes a separate cash register or device for tracking sales for resale) and a separate tobacco inventory segregated from any tobacco inventory that is intended for sale to the ultimate consumer. 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 must electronically upload invoice-level information for all tobacco sales to retailers. Additional information about this wholesale filing requirement is located on our website at <http://www.state.tn.us/revenue/misc/beertobaccorpts.shtml>.

- *Wholesale license may be revoked for making retail sales*

The Department may revoke the wholesale license of any person that makes retail sales.

The commissioner may revoke any license issued under this part upon the failure of the licensee to pay the tax or taxes imposed by this part, or for the violation of any provision of this part of any rule or regulation promulgated by the commissioner under the scrutiny vested in the commissioner. *T.C.A. § 67-4-1016*

If a retailer of cigarettes and tobacco products makes sales of such products to other retailers, the retailer selling the products may be subject to a penalty of up to \$250 a day, until such activity ceases.

- *Penalty of \$250 per day for making wholesale sales without a wholesale license*

Any person who engages in any business or activity for which a license is required under this part without obtaining a license to do so, or who fails to file an application for renewal of a license before expiration of the current license, is subject to a specific penalty in the amount of the license fee for each month or part of a month during which the activity or failure continues. In addition to this specific penalty, the commissioner may impose a penalty of no more than two hundred fifty dollars (\$250) a day for each day during which the activity or failure occurs or continues. This discretionary penalty may also be imposed upon a person to whom a license has been issued, if the person continues to engage in the business or activity after receiving notice the license is revoked or suspended by the commissioner. *T.C.A. § 67-4-1015*



References:

- T.C.A. § 67-4-1001*
- T.C.A. § 67-4-1015*
- T.C.A. § 67-4-1016*

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.