

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #03-11**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Reimbursement for lost, stolen or damaged tobacco tax stamps.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

The Taxpayer is a wholesale cigarettes distributor and this request is based upon an insurer's suggestion for coverage of the distributor's tobacco tax stamps.

QUESTION

The Taxpayer asks whether it would be reimbursed by the Department of Revenue in the event that its tobacco tax stamps were reported damaged or destroyed by natural disaster, damaged or destroyed by an accident (i.e., fire), stolen by anyone inside or outside of Taxpayer's employ, or in any other possible scenario.

RULING

The Taxpayer would qualify for a refund only if the stamps are returned to the Department as set out in TENN. COMP. R. & REGS. 1320-4-3-.08(1) or if the stamps are affixed to unsalable products that are returned to the manufacturer as set out in TENN. COMP. R. & REGS. 1320-4-3-.08(2).

ANALYSIS

Under TENN. CODE ANN. § 67-4-1002, "every dealer or distributor of tobacco" must "pay to the [D]epartment [of Revenue] for exclusive state purposes, taxes in addition to all other taxes or fees, for the privilege of selling cigarettes and tobacco products in [Tennessee]." Generally, the tobacco tax is paid by the purchase of stamps from the Commissioner. TENN. CODE ANN. § 67-4-1006(a)(1).

Under certain circumstances, the distributor may receive a refund for unused tobacco tax stamps that are returned to the Department and tobacco tax stamps affixed to unsalable products that are returned to the manufacturer. TENN. CODE ANN. § 67-4-1008, TENN. COMP. R. & REGS. 1320-4-3-.08.

TENN. COMP. R. & REGS. 1320-4-3-.08(1) provides for refunds for unused tax stamps, including those that are mutilated but identifiable and those that are inadvertently affixed to carton flaps. This provision states:

[a] refund equal to the face value, less the discount received will be made on all unused or mutilated, but identifiable, cigarette tax stamps purchased within a two (2) year period prior to filing of the claim. Unused stamps for which a refund is desired shall be returned to the Department accompanied by a properly executed claim for refund. Likewise, stamps inadvertently affixed to carton flaps shall accompany the claim for refund, however, a representative of the Department must witness the stamping of the packages contained in such cartons and certify to this effect. It will be incumbent upon the affixing agent to retain such cartons containing the cigarette packages and the stamped carton flaps intact until such inspection and certification may be made.

In addition, refunds for tobacco tax stamps affixed to unsalable products may be given under certain circumstances. TENN. COMP. R. & REGS. 1320-4-3-.08(2) states that:

[1]licensees filing a claim for refund for cigarette tax stamps on unsalable products to be returned to the manufacturer shall make application to the Department for such refund under oath.

In order to satisfy TENN. COMP. R. & REGS. 1320-4-3-.08(2), the Taxpayer must submit a bill of lading and a manufacturer's statement, certifying that the unsalable tobacco products (with the stamp affixed) were returned to the manufacturer.¹

Here, the Taxpayer would not qualify for a refund from the Department of Revenue unless it can include unused or mutilated but identifiable tobacco tax stamps or a manufacturer's statement and an affidavit, certifying that the unsalable or otherwise unused tobacco products (with the stamp affixed) were returned to the manufacturer, with its properly executed refund claim. Where there is a failure by the claimant to provide this documentation, no refund for tobacco tax stamps will be given.

Stamps that are destroyed or stolen could not meet these criteria. Therefore, no refund would be made. Unused stamps that are damaged could be returned to the Department for a refund if they are identifiable. Similarly, a refund would be made for stamps affixed to damaged products, if such products were returned to the manufacturer and the requirements of TENN. COMP. R. & REGS. 1320-4-3-.08(2) were met.²

¹ This provision specifically details the administrative process by which tobacco tax stamp refunds are issued. In order to be considered for a refund on tobacco tax stamps affixed to unsalable products, a taxpayer must attach the following to its refund claim:

(a) A copy of the bill of lading or similar document covering such goods, under which the goods were returned to the manufacturer; and

(b) A certificate from the manufacturer to whom the goods were returned setting forth:

1. The quantity of products received by him;
2. The condition of the cigarette tax stamps affixed thereto;
3. That credit has been issued to the distributor for such products; and
4. That the cigarette tax stamps have been or will be destroyed.

² TENN. COMP. R. & REGS. 1320-4-3-.08(4) also governs any claims for refunds for tobacco tax stamps. This provision states:

[a]ll claims for refund shall be completed to the satisfaction of the Commissioner and shall, among other things, show on the face or an appended paper the quantity of cigarette tax stamps, the denomination, and the extended total value. Any applicable discount shall be deducted from the total face value of all stamps. Any extraordinary cost incurred by the Department for the inspection, cancellation, and/or destruction of stamps and/or products to which stamps are affixed shall be paid to the Department by the licensee for whom such stamps are inspected or cancelled.

Costin Shamble
Tax Counsel

APPROVED: Loren L. Chumley
Commissioner

DATE: 10/30/03