

Amendments to Definitions and Tax Rates for Tobacco Products

Chapter 134 of the Laws of 2010 amended Article 20 of the Tax Law in relation to the definitions and tax rates for various tobacco products. Effective August 1, 2010:

- the tax rate on cigars and tobacco products (other than little cigars and snuff) increases from 46% to 75% of the wholesale price;
- little cigars will be taxed at the same tax rate as cigarettes; and
- the tax rate for snuff increases from \$.96 to \$2.00 per ounce and a proportionate rate on any fractional part of an ounce over an ounce.

Form MT-203, *Distributor of Tobacco Products Return*, is being revised to adjust the tax rates and to separately calculate the tax on little cigars, and must be used beginning with the return for the month of August 2010, due September 20, 2010.

Definitions

Chapter 134 amended the definitions of *tobacco products*, *cigar*, and *cigarette* and provided a new definition for *little cigar*, as follows:

- *Tobacco products* mean any cigar, including a little cigar, or tobacco, other than cigarettes, intended for consumption by smoking, chewing, or as snuff.
- A *cigar* is any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette as defined in section 470(1) of the Tax Law). Except when expressly excluded, a *little cigar* is considered a *cigar*.
- A *cigarette* is any roll for smoking made wholly or in part of tobacco or of any other substance, irrespective of size or shape, and whether or not such tobacco or substance is flavored, adulterated or mixed with any other ingredient, whose wrapper or cover of is made of paper or any other substance or material but is not made in whole or in part of tobacco. (Note: Chapter 134 also amended this definition under the Administrative Code of the City of New York.)
- A *little cigar* is any roll for smoking made wholly or in part of tobacco if the product is wrapped in any substance containing tobacco, other than natural leaf tobacco wrapper, and weighing not more than four pounds per thousand.

Cigars and tobacco products (other than little cigars and snuff)

For cigars and tobacco products (other than little cigars and snuff) imported or caused to be imported into New York State or manufactured in New York State on or after August 1, 2010, the tobacco products tax will be computed at the rate of 75% of the wholesale price.

Little cigars

Little cigars imported or caused to be imported into New York State or manufactured in New York State on or after August 1, 2010, will no longer be taxed based on their wholesale price, but will be taxed at the same rate as cigarettes. The tax rate for little cigars will be \$4.35 for packs containing 20 little cigars or less. For packs containing more than 20, the additional little cigars will be taxed at a rate of \$1.0875 for each five little cigars or fraction thereof.

Example: For a pack of 25 little cigars, the tax rate will be \$5.4375 (\$4.35 + \$1.0875).

Although they are taxed at the same rate as cigarettes, *little cigars* are still considered a *tobacco product* and a *cigar* as defined in Article 20 of the Tax Law. Packs of little cigars are not required to have tax stamps affixed to them. The New York City tax on cigarettes of \$1.50 per pack does not apply to little cigars.

Snuff

For snuff imported or caused to be imported into New York State or manufactured in New York State on or after August 1, 2010, the excise tax rate is \$2.00 per ounce, and a proportionate rate on any fractional part of an ounce over an ounce. The tax rate for cans or packages of snuff with a net weight of less than one ounce, as listed by the manufacturer, is \$2.00 per container.

No floor tax

There will be no floor tax on the inventory of any of these products in your possession. The taxes on cigars and other tobacco products, little cigars, and snuff in inventory that were imported or caused to be imported into or manufactured in New York State prior to August 1, 2010, do not have to be recomputed at the new rates.

Tobacco products use tax

The tobacco products use tax must be paid at the rates shown above for cigars and other tobacco products, little cigars, and snuff used in New York State on or after August 1, 2010, on which the tobacco products excise tax has not been paid and the use of the product is not exempt from tax. The tobacco products use tax is not imposed where the amount brought into New York State on or in the possession of any person does not exceed (a) 250 cigars (including little cigars), (b) five pounds of tobacco (including snuff), or (c) 36 ounces of roll-your-own (RYO) cigarette tobacco. To file and pay the tobacco products use tax, use Form MT-201, *Tobacco Products Use Tax Return*.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.