

CHAPTER 704**TOBACCO PRODUCTS TAX****§4401. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1985, c. 783, §16 (NEW).]

1. Business. "Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling or distributing tobacco products in this State. [PL 1985, c. 783, §16 (NEW).]

1-A. Delivery sale. "Delivery sale" means a sale of tobacco products, other than premium cigars, to a consumer in this State when:

A. The purchaser submits the order for the sale by means of telephonic or other electronic method of voice transmission, the United States mail, the Internet or a delivery service; or [PL 2023, c. 441, Pt. E, §1 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. The tobacco products are delivered by use of a delivery service. [PL 2011, c. 285, §11 (NEW).]
[PL 2023, c. 441, Pt. E, §1 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

1-B. Consumer. "Consumer" means an individual who purchases, receives or possesses tobacco products for personal consumption and not for resale. [PL 2023, c. 441, Pt. E, §2 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

1-C. Cost price. "Cost price" means:

A. In the case of a manufacturer, the price set for tobacco products or, if a price has not been set, the wholesale value of those products; [PL 2023, c. 441, Pt. E, §3 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. In the case of a distributor or consumer, the price at which the distributor or consumer purchases tobacco products before the allowance of any discount, trade allowance, rebate or other reduction; or [PL 2023, c. 441, Pt. E, §3 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

C. In the case of a remote retail seller:

(1) The actual price paid for an item identified using a stock keeping unit that identifies the item using a unique code or identifier; or

(2) If the actual price paid for an item is not available, the average of the actual price paid for the item over the 12 calendar months before January 1st of the year in which the remote sale occurs. [PL 2023, c. 441, Pt. E, §3 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

[PL 2023, c. 441, Pt. E, §3 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

2. Distributor. "Distributor" means:

A. A person engaged in the business of producing or manufacturing tobacco products in this State for sale in this State; [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. A person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State tobacco products for sale to a retailer; [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

C. A person with a place of business in this State engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State tobacco products for sale

to a person other than a retailer; [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

D. A person engaged in the business of selling tobacco products who ships or transports tobacco products to retailers for sale in this State; [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

E. A retailer who imports, receives or acquires, from a person other than a licensed distributor, tobacco products for sale within the State; or [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

F. A person who makes delivery sales. [PL 2023, c. 441, Pt. E, §4 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

A distributor may be located within or without the State.

[PL 2023, c. 441, Pt. E, §4 (RPR); PL 2023, c. 441, Pt. E, §28 (AFF).]

2-A. Electronic smoking device. "Electronic smoking device" means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.

[PL 2019, c. 530, Pt. A, §1 (NEW); PL 2019, c. 530, Pt. A, §7 (AFF).]

2-B. Hookah. "Hookah" means a device used for smoking tobacco that consists of a tube connected to a container where the smoke is cooled by passing through water.

[PL 2019, c. 530, Pt. A, §1 (NEW); PL 2019, c. 530, Pt. A, §7 (AFF).]

3. Manufacturer. "Manufacturer" means a person who manufactures and sells tobacco products.

[PL 1985, c. 783, §16 (NEW).]

4. Place of business. "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machines.

[PL 1985, c. 783, §16 (NEW).]

4-A. Premium cigar. "Premium cigar" has the same meaning as in Title 22, section 1551, subsection 5.

[PL 2023, c. 441, Pt. E, §5 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

4-B. Remote retail sale. "Remote retail sale" means any sale into this State of premium cigars to a consumer when:

A. The consumer submits the order for the sale by means of a telephone or other method of voice transmission, United States mail or the Internet or other online service or the remote retail seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or [PL 2023, c. 441, Pt. E, §6 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. The premium cigars are delivered to the buyer by common carrier, private delivery service or other method of remote delivery or the remote retail seller is not in the physical presence of the buyer when the buyer obtains possession of the cigars. [PL 2023, c. 441, Pt. E, §6 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

[PL 2023, c. 441, Pt. E, §6 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

4-C. Remote retail seller. "Remote retail seller" means a person who makes a remote retail sale when:

A. The person's gross sales from sales of tangible personal property or taxable services, as those terms are defined in Part 3, into this State in the previous calendar year or current calendar year exceeds \$100,000; or [PL 2023, c. 441, Pt. E, §7 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. The person made sales of tangible personal property or taxable services, as those terms are defined in Part 3, for delivery into this State in at least 200 separate transactions in the previous calendar year or current calendar year. [PL 2023, c. 441, Pt. E, §7 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

[PL 2023, c. 441, Pt. E, §7 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

5. Retailer. "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

[PL 1985, c. 783, §16 (NEW).]

6. Retail outlet.

[PL 2023, c. 441, Pt. E, §8 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

7. Sale. "Sale" means any transfer, exchange, barter or gift in any manner or by any means whatsoever, for a consideration. "Sale" includes a gift for advertising by a person engaged in the business of selling tobacco products.

[PL 2005, c. 627, §2 (AMD).]

7-A. Smoking. "Smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

[PL 2019, c. 530, Pt. A, §1 (NEW); PL 2019, c. 530, Pt. A, §7 (AFF).]

8. Subjobber.

[PL 2005, c. 627, §3 (RP).]

9. Tobacco products. "Tobacco products" means any products that are made from or derived from tobacco, or that contain nicotine, whether natural or artificial, including, but not limited to, cigars, including premium cigars; cheroots; stogies; electronic smoking devices and liquids used in electronic smoking devices whether or not they contain nicotine; periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; snuff flour; snus; cavendish; plug and twist tobacco; finecut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be intended for human consumption or as is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means.

A. [PL 2023, c. 441, Pt. E, §9 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. [PL 2023, c. 441, Pt. E, §9 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

C. [PL 2023, c. 441, Pt. E, §9 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

D. [PL 2023, c. 441, Pt. E, §9 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

[PL 2023, c. 613, Pt. B, §5 (AMD).]

10. Unclassified importer.

[PL 2005, c. 627, §5 (RP).]

11. Wholesale sales price. "Wholesale sales price" means the price for which a manufacturer sells tobacco products to a distributor, exclusive of any discount or other reduction.

[PL 2005, c. 627, §6 (AMD).]

SECTION HISTORY

PL 1985, c. 783, §16 (NEW). PL 2005, c. 627, §§1-6 (AMD). PL 2011, c. 285, §§11, 12 (AMD). PL 2019, c. 530, Pt. A, §§1, 2 (AMD). PL 2019, c. 530, Pt. A, §7 (AFF). PL 2019, c. 607, Pt. B, §7 (AMD). PL 2021, c. 669, §5 (REV). PL 2023, c. 441, Pt. E, §§1-9 (AMD). PL 2023, c. 441, Pt. E, §28 (AFF). PL 2023, c. 613, Pt. B, §5 (AMD).

§4402. Licenses

1. Generally. Every distributor or remote retail seller shall obtain a license from the State Tax Assessor before engaging in business. A retailer required to be licensed as a distributor or remote retail seller pursuant to this chapter that is required to hold a current retail tobacco license issued under Title 22, chapter 262-A, subchapter 1 must hold that license as a condition for licensure under this chapter. A license issued pursuant to this section may not be transferred to any other person. A license issued pursuant to this section is not a license within the meaning of that term in the Maine Administrative Procedure Act.

[PL 2023, c. 441, Pt. E, §10 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

2. Applications; forms. Every license application must be made on a form prescribed by the assessor and must state the name and address of the applicant, the address of the applicant's principal place of business and such other information as the assessor may require for the proper administration of this chapter. A person applying for a license shall agree to submit that person's books, accounts and records to examination by the bureau during reasonable business hours and to accept service of process by mail when service is made in any proceeding involving enforcement of this chapter.

[PL 2023, c. 441, Pt. E, §11 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

3. Expiration and reissuance.

[PL 2019, c. 379, Pt. B, §16 (RP).]

4. Penalties. The following penalties apply to a violation of this section.

A. A distributor or remote retail seller that imports into this State any tobacco product without holding a license issued by the assessor pursuant to this section commits a civil violation for which a fine of not less than \$250 and not more than \$500 must be adjudged. [PL 2023, c. 441, Pt. E, §12 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. A distributor or remote retail seller that violates paragraph A after having been previously adjudicated as violating paragraph A commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 must be adjudged for each subsequent violation. [PL 2023, c. 441, Pt. E, §12 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

C. A distributor or remote retail seller that sells at wholesale or retail, offers for sale at wholesale or retail or possesses with intent to sell at wholesale or retail any tobacco product without holding a license issued by the assessor pursuant to this section commits a civil violation for which a fine of not less than \$250 and not more than \$500 must be adjudged. [PL 2023, c. 441, Pt. E, §12 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

D. A distributor or remote retail seller that violates paragraph C after having been previously adjudicated as violating paragraph C commits a civil violation for which a fine of not less than \$500 and not more than \$1,000 must be adjudged for each subsequent violation. [PL 2023, c. 441, Pt. E, §12 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

[PL 2023, c. 441, Pt. E, §12 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

5. Surrender, revocation or suspension. When the business with respect to which a license was issued pursuant to this section is sold or ceases to do business in this State, the holder of the license shall immediately surrender it to the assessor. The assessor may revoke or suspend the license of any distributor or remote retail seller for failure to comply with any provision of this chapter or if the person no longer imports or sells tobacco products. A license that has been revoked or suspended pursuant to

this subsection must be immediately surrendered to the assessor. A person aggrieved by a revocation or suspension may request reconsideration as provided in section 151.

[PL 2023, c. 441, Pt. E, §13 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

6. License directory maintained. The assessor shall maintain a directory of distributors and remote retail sellers licensed pursuant to this chapter. The assessor shall update the directory as necessary, but not less than annually. Notwithstanding the provisions of section 191, the list must be available to the public and must be posted on a publicly accessible website maintained by the assessor. [PL 2023, c. 441, Pt. E, §14 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

7. Notification. A distributor or remote retail seller that has its license suspended or revoked, within 10 business days of the suspension or revocation, shall inform in writing all its accounts in this State that it no longer holds a valid license under this section. Notwithstanding the provisions of section 191, the assessor may publish the names of distributors and remote retail sellers that have had a license suspended or revoked.

[PL 2023, c. 441, Pt. E, §15 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

SECTION HISTORY

PL 1985, c. 783, §16 (NEW). PL 1997, c. 526, §14 (AMD). PL 2001, c. 382, §1 (AMD). PL 2001, c. 526, §4 (AMD). PL 2003, c. 439, §4 (AMD). PL 2005, c. 627, §7 (RPR). PL 2013, c. 331, Pt. C, §31 (AMD). PL 2013, c. 331, Pt. C, §41 (AFF). PL 2015, c. 300, Pt. A, §37 (AMD). PL 2019, c. 379, Pt. B, §§15-18 (AMD). PL 2023, c. 441, Pt. E, §§10-15 (AMD). PL 2023, c. 441, Pt. E, §28 (AFF).

§4403. Tax on tobacco products

1. Smokeless tobacco. A tax is imposed on smokeless tobacco, including chewing tobacco and snuff, at the rate of:

A. On amounts of smokeless tobacco packaged for sale to the consumer in a package that contains one ounce or more of smokeless tobacco, \$2.02 per ounce and prorated; and [PL 2009, c. 213, Pt. H, §1 (NEW); PL 2009, c. 213, Pt. H, §3 (AFF).]

B. On smokeless tobacco packaged for sale to the consumer in a package that contains less than one ounce of smokeless tobacco, \$2.02 per package. [PL 2009, c. 213, Pt. H, §1 (NEW); PL 2009, c. 213, Pt. H, §3 (AFF).]

Beginning January 2, 2020, the tax rates in this subsection are subject to adjustment pursuant to subsection 5.

[PL 2019, c. 530, Pt. A, §3 (AMD).]

2. Other tobacco. Beginning January 2, 2020, a tax is imposed on all tobacco products, other than those subject to tax under subsection 1, at the rate of 43% of the wholesale sales price. Beginning January 1, 2024, a tax is imposed on all tobacco products, other than those subject to tax under subsection 1, at the rate of 43% of the cost price. Beginning January 2, 2020, the tax rate imposed pursuant to this subsection is subject to adjustment pursuant to subsection 5.

[PL 2023, c. 441, Pt. E, §16 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

3. Imposition. The tax is imposed at the time the distributor or remote retail seller brings or causes to be brought into this State tobacco products that are for sale or for use or at the time tobacco products are manufactured or fabricated in this State for sale in this State.

[PL 2023, c. 441, Pt. E, §17 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

4. Exclusion.

[PL 2023, c. 441, Pt. E, §18 (RP); PL 2023, c. 441, Pt. E, §28 (AFF).]

5. Equivalence. If the tax on cigarettes under chapter 703 is increased after January 2, 2020, the assessor shall calculate a rate of tax on other tobacco products under subsections 1 and 2 that is

equivalent to the same percentage change in the tax rate for one cigarette. The adjusted rates calculated by the assessor take effect at the same time as the increase in the tax on cigarettes.

[PL 2019, c. 530, Pt. A, §5 (NEW).]

A tobacco product may be taxed only once by the State in accordance with this section. [PL 2023, c. 441, Pt. E, §19 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

SECTION HISTORY

PL 1985, c. 783, §16 (NEW). PL 1989, c. 588, §D4 (AMD). PL 2001, c. 382, §2 (AMD). PL 2005, c. 218, §48 (AMD). PL 2005, c. 457, §AA6 (AMD). PL 2005, c. 457, §AA8 (AFF). PL 2005, c. 627, §§8,9 (AMD). PL 2009, c. 213, Pt. H, §1 (AMD). PL 2009, c. 213, Pt. H, §3 (AFF). PL 2019, c. 530, Pt. A, §§3-5 (AMD). PL 2023, c. 441, Pt. E, §§16-19 (AMD). PL 2023, c. 441, Pt. E, §28 (AFF).

§4403-A. Exemptions from the tobacco tax

1. Exempt items. The tax imposed on tobacco products does not apply to the following products:

A. Products that are subject to the tax provided by chapter 703; or [PL 2023, c. 441, Pt. E, §20 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. Drugs, devices or combination products authorized for sale by the United States Department of Health and Human Services, Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act. [PL 2023, c. 441, Pt. E, §20 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

[PL 2023, c. 441, Pt. E, §20 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

2. Tobacco products containing cannabis. The tax imposed on tobacco products does not apply to the sale of an electronic smoking device or other tobacco product containing adult use cannabis subject to tax under chapter 723 or an electronic smoking device or other tobacco product containing cannabis or cannabis products subject to control under Title 22, chapter 558-C.

[PL 2023, c. 441, Pt. E, §20 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

3. Exportation. The tax imposed on tobacco products does not apply to those products exported from this State or to any tobacco products that under laws of the United States may not be subject to taxation by this State.

[PL 2023, c. 441, Pt. E, §20 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

SECTION HISTORY

PL 2023, c. 441, Pt. E, §20 (NEW). PL 2023, c. 441, Pt. E, §28 (AFF).

§4404. Returns; payment of tax and penalty

1. Monthly returns. Every distributor or remote retail seller subject to the licensing requirement of section 4402 shall file, on or before the last day of each month, a return on a form prescribed by the assessor together with payment of the tax due under this chapter. The return must report all tobacco products held, purchased, manufactured, brought in or caused to be brought in from outside the State or shipped or transported to retailers or consumers within the State during the preceding calendar month.

[PL 2023, c. 441, Pt. E, §21 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

2. Exports. The return must include further information as the assessor may prescribe and must show a credit for any tobacco products exported on which the tax was previously paid as provided in section 4403-A, subsection 3. The distributor or remote retail seller shall maintain records to substantiate the credit.

[PL 2023, c. 441, Pt. E, §21 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

3. Tax previously paid on unsalable items. Tax previously paid on tobacco products that are returned to a manufacturer, a distributor or a remote retail seller because the product has become unfit for use, sale or consumption and on tobacco products that are returned to a distributor or remote retail seller that are subsequently destroyed by the distributor or remote retail seller may be taken as a credit on a subsequent return. The assessor may either witness the destruction of the product or may accept another form of proof that the product has been destroyed by the distributor or remote retail seller or returned to the manufacturer.

[PL 2023, c. 441, Pt. E, §21 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

4. Person not a distributor or remote retail seller required to file. A person who is not a distributor or remote retail seller licensed pursuant to this chapter who imports, receives or otherwise acquires tobacco products for use or consumption in the State from a person other than a licensed distributor or licensed remote retail seller shall file, on or before the last day of the month following each month in which tobacco products were acquired, a return on a form prescribed by the assessor together with payment of the tax imposed by this chapter at the rate provided in section 4403. The return must report the quantity of tobacco products imported, received or otherwise acquired from a person other than a licensed distributor, licensed remote retail seller or retailer during the previous calendar month and additional information the assessor may require.

[PL 2023, c. 441, Pt. E, §21 (NEW); PL 2023, c. 441, Pt. E, §28 (AFF).]

SECTION HISTORY

PL 1985, c. 783, §16 (NEW). PL 1987, c. 497, §46 (AMD). PL 2001, c. 382, §3 (AMD). PL 2005, c. 627, §10 (AMD). PL 2007, c. 438, §§101,102 (AMD). PL 2009, c. 213, Pt. H, §2 (AMD). PL 2011, c. 441, §§ 3, 4 (AMD). PL 2019, c. 379, Pt. B, §§19, 20 (AMD). PL 2023, c. 441, Pt. E, §21 (RPR). PL 2023, c. 441, Pt. E, §28 (AFF).

§4404-A. Importation of tobacco products

1. Generally. Except as provided in subsections 2 and 3, only a person licensed pursuant to section 4402 may import tobacco products into this State.

[PL 2005, c. 627, §11 (NEW).]

2. Manufacturers. A manufacturer may transport tobacco products into this State and may transport tobacco products from place to place within this State in quantities greater than those excepted in subsection 3 for the purpose of marketing and sales if the sale or distribution of those tobacco products is accounted for and the taxes are paid by a person licensed pursuant to section 4402.

[PL 2007, c. 466, Pt. A, §64 (AMD).]

3. Exception for personal use. A person who is not a licensed distributor or licensed remote retail seller may:

A. Import or transport tobacco products other than cigars into this State and transport those tobacco products from place to place within this State for personal use in a quantity not greater than one pound; or [PL 2007, c. 438, §103 (AMD).]

B. Import or transport cigars into this State and transport those cigars from place to place within this State for personal use in a quantity of no more than 125 cigars. [PL 2005, c. 627, §11 (NEW).]

Untaxed tobacco products imported or transported into this State in any quantity are subject to the tax imposed by section 4403.

[PL 2023, c. 441, Pt. E, §23 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

4. Evidence. The possession by a person who is not licensed pursuant to section 4402 of more than 125 cigars or one pound of other tobacco product for which the tax imposed by this chapter has not been paid is prima facie evidence of a violation of this section.

[PL 2005, c. 627, §11 (NEW).]

5. Penalties. The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime. [PL 2005, c. 627, §11 (NEW).]

B. A person who violates this section when the person has one or more prior convictions for violation of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence. [PL 2005, c. 627, §11 (NEW).]

[PL 2005, c. 627, §11 (NEW).]

Violation of this section by a person other than a retailer is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. It is an affirmative defense to a prosecution under this section that a retailer, alleged to have imported tobacco products or caused tobacco products to be imported, reasonably relied on licensing information provided by the assessor pursuant to section 4402, subsection 6 that listed the company from which the retailer obtained tobacco products as being a licensed distributor. [PL 2023, c. 441, Pt. E, §22 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

SECTION HISTORY

PL 2005, c. 627, §11 (NEW). PL 2007, c. 438, §103 (AMD). PL 2007, c. 466, Pt. A, §64 (AMD). PL 2023, c. 441, Pt. E, §§22, 23 (AMD). PL 2023, c. 441, Pt. E, §28 (AFF).

§4404-B. Sales of tobacco products in contravention of law

1. Tobacco products. A distributor or remote retail seller may not offer for sale or sell tobacco products if the package containing the tobacco products:

A. Is subject to and does not comply with 15 United States Code, Section 4401, et seq., for the placement of labels, warnings or any other information for a package of tobacco products to be sold within the United States and 26 United States Code, Section 5723; [PL 2005, c. 627, §11 (NEW).]

B. Is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S." or with other wording indicating that the manufacturer did not intend that the product be sold in the United States; [PL 2005, c. 627, §11 (NEW).]

C. Has been altered by adding or deleting wording, labels or warnings described in paragraphs A and B; [PL 2005, c. 627, §11 (NEW).]

D. Has been imported into the United States in violation of 26 United States Code, Section 5754; or [PL 2005, c. 627, §11 (NEW).]

E. In any way violates federal trademark or copyright laws. [PL 2005, c. 627, §11 (NEW).]
[PL 2023, c. 441, Pt. E, §24 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

2. Shipment only to licensed retailers. A distributor may not sell or offer to sell tobacco products to a retailer unless the retailer has provided documentation to the distributor that the retailer holds a current retail tobacco license issued under Title 22, section 1551-A.

[PL 2005, c. 627, §11 (NEW).]

3. Deceptive practice. A distributor or remote retail seller that sells tobacco products described in subsection 1, with or without having paid the appropriate tax, commits an unfair or deceptive act or practice under the Maine Unfair Trade Practices Act.

[PL 2023, c. 441, Pt. E, §24 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

4. Penalties. The following penalties apply to violations of this section.

A. A distributor or remote retail seller that violates this section commits a Class E crime. [PL 2023, c. 441, Pt. E, §24 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. A distributor or remote retail seller that violates this section after having one or more prior convictions for a violation of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence. [PL 2023, c. 441, Pt. E, §24 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

[PL 2023, c. 441, Pt. E, §24 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [PL 2005, c. 627, §11 (NEW).]

SECTION HISTORY

PL 2005, c. 627, §11 (NEW). PL 2023, c. 441, Pt. E, §24 (AMD). PL 2023, c. 441, Pt. E, §28 (AFF).

§4404-C. Seizure and forfeiture of contraband tobacco products

1. Generally. Except as provided in subsection 2, any tobacco products for which the tax imposed by this chapter has not been paid or tobacco products described in section 4404-B, subsection 1 that are found in this State are contraband goods subject to seizure by and forfeiture to the State. A law enforcement officer, including a contract officer pursuant to Title 22, section 1556-A, and a duly authorized agent of the State Tax Assessor may seize contraband tobacco products under the process described in subsection 3.

[PL 2005, c. 627, §11 (NEW).]

2. Exceptions. The following tobacco products are not subject to seizure:

A. Tobacco products in the possession of a licensed distributor, remote retail seller or manufacturer for which the tax imposed by this chapter has not been paid; [PL 2023, c. 441, Pt. E, §25 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

B. Tobacco products for which the tax imposed by this chapter has not been paid that are in the course of transit from without the State and are:

(1) Consigned to a licensed distributor or remote retail seller; or

(2) In transit by common carrier or contract carrier; and [PL 2023, c. 441, Pt. E, §25 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

C. Tobacco products in a quantity of no more than 125 cigars or one pound of other tobacco product in the possession of an individual who is not a licensed distributor or remote retail seller for which the tax imposed by this chapter has not been paid. [PL 2023, c. 441, Pt. E, §25 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

Notwithstanding paragraphs A, B and C, tobacco products described in section 4404-B, subsection 1 are subject to seizure under the process described in subsection 3 unless the distributor or remote retail seller can prove the tobacco products are to be exported out of the country.

[PL 2023, c. 441, Pt. E, §25 (AMD); PL 2023, c. 441, Pt. E, §28 (AFF).]

3. Procedure for seizure. Contraband tobacco products may be seized by a law enforcement officer or duly authorized agent of the assessor who has probable cause to believe that the tobacco products are untaxed or are tobacco products described in section 4404-B, subsection 1 under the following circumstances:

A. When the tobacco products are discovered in a place where the law enforcement officer or agent has the lawful right to be in the performance of official duties; or [PL 2005, c. 627, §11 (NEW).]

B. When the seizure is incident to a search under a valid search warrant or an inspection under a valid administrative inspection warrant. [PL 2005, c. 627, §11 (NEW).]

[PL 2005, c. 627, §11 (NEW).]

4. Procedure for forfeiture. A petition for forfeiture must be filed as provided in this subsection.

A. A district attorney or an assistant district attorney, or the Attorney General or an assistant attorney general, may petition the District Court in the name of the State in the nature of a proceeding in rem to order the forfeiture of contraband tobacco products. [PL 2005, c. 627, §11 (NEW).]

B. There may be no discovery other than under the Maine Rules of Civil Procedure, Rule 36 except by order of the court upon a showing of substantial need. An order permitting discovery must set forth in detail the areas in which substantial need has been shown and the extent to which discovery may take place. [PL 2005, c. 627, §11 (NEW).]

C. A petition for forfeiture filed pursuant to this section must be accepted by the District Court without the assessment or payment of civil entry or filing fees otherwise provided for by rule of court. [PL 2005, c. 627, §11 (NEW).]

[PL 2005, c. 627, §11 (NEW).]

5. Jurisdiction and venue. Tobacco products subject to forfeiture under this section must be declared forfeited by the District Court having jurisdiction over the tobacco products. Venue is in the location where the contraband tobacco products are seized or in Kennebec County.

[PL 2005, c. 627, §11 (NEW).]

6. Type of action; burden of proof. A proceeding instituted pursuant to this section is an in rem civil action. The State has the burden of proving all material facts by a preponderance of the evidence. The owner of the tobacco products or other person claiming the tobacco products has the burden of proving by a preponderance of the evidence one of the exceptions set forth in subsection 2.

[PL 2005, c. 627, §11 (NEW).]

7. Hearings; disposition; deposit of funds. At a hearing other than a default proceeding, the court shall hear evidence, make findings of fact, enter conclusions of law and file a final order to which the parties have the right of appeal. When tobacco products are ordered forfeited, the final order must provide for the disposition of the tobacco products by the assessor by public auction or by the Chief Procurement Officer. Proceeds must be deposited in the General Fund. Tobacco products described in section 4404-B, subsection 1 must be destroyed by the assessor in a manner that prevents their reintroduction into the marketplace.

[PL 2023, c. 516, Pt. B, §55 (AMD).]

8. Default proceedings. Default proceedings must be held in the same manner as default proceedings in other civil actions, except that service of motions and affidavits related to the default proceedings need not be served upon any person who has not answered or otherwise defended in the action under this section.

[PL 2005, c. 627, §11 (NEW).]

SECTION HISTORY

PL 2005, c. 627, §11 (NEW). PL 2023, c. 441, Pt. E, §25 (AMD). PL 2023, c. 441, Pt. E, §28 (AFF). PL 2023, c. 516, Pt. B, §55 (AMD).

§4405. The tax assessor may estimate liability

(REPEALED)

SECTION HISTORY

PL 1985, c. 783, §16 (NEW). PL 1987, c. 497, §47 (RP).

§4406. Inspection of records; civil action for tax

(REPEALED)

SECTION HISTORY

PL 1985, c. 783, §16 (NEW). PL 1987, c. 497, §47 (RP).

§4407. Appeal procedure

(REPEALED)

SECTION HISTORY

PL 1985, c. 783, §16 (NEW). PL 1987, c. 497, §47 (RP).

§4408. Penalties; civil action for tax

(REPEALED)

SECTION HISTORY

PL 1985, c. 783, §16 (NEW). PL 1987, c. 497, §47 (RP).

§4409. Claims

(REPEALED)

SECTION HISTORY

PL 1985, c. 783, §16 (NEW). PL 1987, c. 497, §47 (RP).

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