

§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 or manufacturer for which the tax imposed by this chapter has not been paid; [PL 2005, c. 627, §11 (NEW).]

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:

(1) Consigned to a licensed distributor; or

(2) In transit by common carrier or contract carrier. [PL 2005, c. 627, §11 (NEW).]

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 for which the tax imposed by this chapter has not been paid. [PL 2005, c. 627, §11 (NEW).]

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 can prove the tobacco products are to be exported out of the country.

[PL 2005, c. 627, §11 (NEW).]

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 State Purchasing Agent. 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 2005, c. 627, §11 (NEW).]

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).

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