

- Provide for the storage of evidence and eventual disposition upon adjudication of the case.

Cigarette Smuggling is a Crime That Affects All of Us

- State programs, and the citizens they serve, lose when tax revenues are not realized.
- Legitimate, licensed retailers, wholesalers, and distributors are forced to compete against a black market in cigarettes and tobacco products.
- Voluntary tax compliance is eroded.

Contact Us

If you suspect violations of the Cigarette Tax Act, need assistance, or have questions about the cigarette and tobacco products laws call:

Office of Criminal Investigation

609-588-5017 — Monday through Friday

609-588-5001 — Nights and weekends

For more information, visit

www.state.nj.us/treasury/taxation/

State of New Jersey

Chris Christie, *Governor*

Kim Guadagno, *Lt. Governor*

Department of the Treasury

Andrew P. Sidamon-Eristoff, *Treasurer*

Division of Taxation

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Office of Criminal Investigation

Charles E. Giblin, *Special Agent in Charge*



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A Guide to the Enforcement of the New Jersey Cigarette Tax Act

N.J.S.A. 54:40A-1 et seq. and Other Related Acts



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Division of Taxation
Office of Criminal Investigation
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Protecting the Revenue

The original Cigarette Tax Act, passed by the New Jersey Legislature in 1948, has undergone numerous amendments. The law provides for the licensure of various levels of the cigarette industry from retailers to manufacturers. The law also regulates the sale, storage, use, and transportation of cigarettes, both stamped and unstamped, within the State. These laws and their attendant Administrative Code provisions are enforced by the Department of the Treasury, Division of Taxation, Office of Criminal Investigation (OCI) through both the Municipal and Superior Courts of the State of New Jersey. The Director of the Division of Taxation may also apply administrative sanctions against licensees. These enforcement activities “Protect the Revenue” of the State and the programs those revenues fund.

Areas of Noncompliance

The New Jersey Criminal Code, N.J.S.A. 2C:64-1.a.(1), defines “untaxed cigarettes” as prima facie contraband. “Untaxed” means any cigarettes that do not bear the required New Jersey tax stamp as approved by the Director, Division of Taxation. Examples of untaxed cigarettes include unstamped, other states’ stamped, and counterfeit New Jersey-stamped cigarettes.

Unlawful Sales

- Selling cigarettes without a license (disorderly persons offense).
- Selling untaxed cigarettes (third-degree crime).
- Selling, or offering for sale, individual “loose” cigarettes (civil penalty).

Unlawful Possession

- Possession of untaxed cigarettes, 10–100 cartons (fourth-degree crime).
- Possession of untaxed cigarettes, 100 cartons or more (third-degree crime).
- Possession of untaxed cigarettes, under 10 cartons (disorderly persons offense).
- Possession of untaxed cigarettes, failure to remit tax due, \$1,000 penalty per carton (civil offense) in addition to any criminal charges.

Unlawful Transportation

- Transportation of contraband cigarettes (fourth-degree crime). Vehicle subject to seizure and forfeiture by the courts.

The transportation of untaxed cigarettes in or through New Jersey requires specific licenses, actions, and documents which provide consignor and consignee information, a full inventory, and verification of who will assume the cigarette tax liability either in New Jersey or another state.

Counterfeit Stamps

- Forgery – known to be forged (third- to second-degree crime).
- Manufacture and/or sale of counterfeit stamps (third-degree crime).
- Possession of counterfeit stamps (third-degree crime).

Counterfeit-Manufactured Cigarettes

Cigarettes unlawfully manufactured to appear as legitimate well-known brands or to appear generic in nature.

- Import, sell, transport, or possess counterfeit-manufactured cigarettes (third-degree crime).

- Violations of the New Jersey Trademark Counterfeiting Act. N.J.S.A. 2C:21-32 violations range from fourth- to second-degree crimes.

Subject to Confiscation and Forfeiture

- Untaxed cigarettes, U.S. tax-exempt or duty-free, and counterfeit-manufactured cigarettes.
- Illegal imported cigarettes from other countries.
- Cigarette vending machines that are not properly licensed or that contain untaxed cigarettes, or counterfeit-manufactured cigarettes.
- Any vehicle, vessel, device, or paraphernalia used in the unlawful transportation of contraband cigarettes or used in the manufacture of counterfeit tax stamps.
- Any monies that are the proceeds of the crime involving the sale, possession, or transportation of contraband or counterfeit-manufactured cigarettes.

What to Watch for

New Jersey utilizes a heat transfer tax stamp as an indicia that the State cigarette tax has been paid. *These stamps can only be purchased or possessed by New Jersey-licensed cigarette distributors.* Each stamp contains a serial number which identifies the distributor to whom it was sold.

Be Alert for

- Cigarette packs without the New Jersey tax stamp.
- Cigarette packs affixed with “fake” stamps or stamps that appear amateur-made, stamps with inconsistent coloring,

stamps placed crooked on the pack or applied with clear adhesive tape.

- Unstamped cigarette packs or packs affixed with other states’ cigarette tax stamps.
- Untaxed cigarettes transported in rental or personal cars, vans, or trucks.
- Subjects selling cigarettes from the trunk of a car, van, or truck.
- Subjects selling cigarettes in public areas from shopping bags, gym bags, duffle bags, or laundry bags.
- Cigarette cartons wrapped in cellophane.
- Cigarette packs marked “For Export Only,” “US Tax Exempt,” or “Duty Free.”
- Individual cigarettes removed from the pack and sold loose.
- Retailers/wholesalers with expired licenses.
- Cigarettes obtained through the Internet and delivered by mail or other commercial carrier.
- Cigarette packaging printed in a language other than English; cigarette packaging without the U.S. Surgeon General’s Warning.

Roll-Your-Own Cigarette Machines (RYO)

Any device used to make commercial quality cigarettes is considered a roll-your-own cigarette machine. These machines are prohibited by the Federal government unless the owner registers with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF),

becomes a licensed New Jersey cigarette manufacturer, and abides by the appropriate State and Federal tax laws (27 C.F.R. 40.1 et seq., 26 U.S.C 5702, and N.J.S.A. 52:40D-2 et seq.).

Sales to Minors

Law enforcement officers and local health officials are empowered to enforce the provisions of N.J.S.A. 2C:33-13.1, which forbids the sale of tobacco products to anyone under the age of 19. Violations should be referred to the local or regional Board of Health.

Tobacco Products Tax

The Tobacco Products Wholesale Sales and Use Tax Act imposes a tax on every sale of tobacco products, other than cigarettes, as follows:

- \$0.75 per ounce on the net weight of moist snuff, **OR**
- 30% tax on the wholesale price of all other tobacco products, excluding moist snuff.

These tobacco products, which *exclude* cigarettes, are each taxed at the wholesale price from the supplier to a retailer. The supplier (distributor, wholesaler, etc.) shall include this tax in the sale of tobacco to each of their customers. The retailer or consumer will be given an invoice, receipt, or other memorandum stating that the tax has been paid or will be paid by the supplier.

With the exception of cigarettes, tobacco products do not bear a New Jersey tax stamp to indicate the tax has been paid. Compliance is accomplished by the examination of purchase and sales invoices along with the registration of those in the industry.

Untaxed tobacco products are also considered prima facie contraband under the New Jersey Criminal Code at N.J.S.A. 2C:64-1. Evasion of the Tobacco Products Wholesale Sales and Use Tax Act carries criminal penalties similar to violations of the New Jersey Cigarette Tax Act.

Undocumented importation from other states is the most common form of evasion. OCI is enforcing the provisions of this Act both by criminal prosecution and forensic audits of tobacco product retailers, wholesalers, and suppliers. Vehicles and currency connected to illegal possession and or transportation are also subject to seizure and forfeiture by the courts.

Cooperation is the Key to Success

New Jersey Department of the Treasury special agents assigned to OCI are responsible for the enforcement of the Cigarette Tax Act and other related laws such as the Tobacco Products Wholesale Sales and Use Tax Act.

The Office of Criminal Investigation will:

- Examine evidence for counterfeit stamps and counterfeit cigarettes.
- Investigate violations of the Cigarette Tax Act and other criminal violations of the laws administered by the Division of Taxation.
- File charges in the court of jurisdiction.
- Seize contraband, vehicles, vessels, devices, paraphernalia, and monies subject to forfeiture.
- Act as a liaison between other law enforcement agencies and the cigarette/tobacco industry.