

Changes in Definitions of Cigarette, Cigar, and Tobacco Products

Part MM-1 of Chapter 57 of the Laws of 2008 amends Article 20 of the Tax Law, the Administrative Code of the City of New York, and Chapter 235 of the Laws of 1952 in relation to the definition of a *cigarette* effective July 1, 2008. Article 20 of the Tax Law is also amended to change the definition of *tobacco products* and to add a definition of a *cigar*.

Definitions

Cigarette:

- (a) Any roll for smoking made wholly or in part of tobacco or of any other substance, wrapped in paper or in any other substance not containing tobacco, and
- (b) any roll for smoking made wholly or in part of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a). However, a roll will not be considered to be a cigarette for purposes of this paragraph (b) if it is not treated as a cigarette for federal excise tax purposes under the applicable federal statute in effect on April 1, 2008.

Cigar:

Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is defined as a cigarette). However, a roll of tobacco will not be considered to be a cigar if it is not treated as a cigar for federal excise tax purposes under the applicable federal statute in effect on April 1, 2008.

Tobacco products:

Any cigar or tobacco, other than cigarettes, intended for consumption by smoking, chewing, or as snuff.

Effect of the federal statute

As a result of these amendments, effective July 1, 2008, products will be classified as a cigarette or cigar depending on how they are treated for federal excise tax purposes under the Internal Revenue Code. The amendments to the definitions do not result in the immediate reclassification of any products currently treated as cigarettes or cigars in New York State.

However, in the event certain products (e.g., *little cigars*) are treated as cigarettes or are reclassified as cigarettes for federal excise tax purposes, all of the provisions of Articles 20,

20-A, and 37 of the Tax Law in relation to the administration and enforcement of the taxes on cigarettes will apply. **In addition**, all existing enforcement provisions of the Public Health Law regarding the tobacco escrow funds act and the sale, shipment, and possession of cigarettes in New York State will become effective at the time the products are first classified as cigarettes.

NOTE: A TSB-M is an informational statement 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.

Part SS-1 also amends the Public Service Law to allow certain energy businesses to pass-through to an electric company an amount equal to the City sales and use tax on the natural gas used by them. An energy business must have entered into a contract with an electric corporation for the sale of electricity before June 1, 2000, to be eligible for the pass-through. This provision takes effect immediately.

Miscellaneous Provisions

Increase Cigarette Tax Rate

Part RR-1 of Chapter 57 of the Laws of 2008 increases the New York State cigarette excise and use tax rates on cigarettes, from \$1.50 to \$2.75 for each 20 cigarettes. In addition, part RR-1 changes the disposition rate of revenue into the Tobacco Control and Insurance Initiatives Pool from 61.22 percent to 70.63 percent. This act takes effect on June 3, 2008.

A floor tax is imposed on cigarettes stamped at the pre-June 3, 2008 rate and unaffixed tax stamps on hand at the close of business June 2, 2008.

Reclassify Little Cigars

Part MM-1 of Chapter 57 of the Laws of 2008 changes the definition of a cigarette for New York State and New York City excise taxes to parallel the Federal definition by defining cigarettes to include little cigars. It clarifies that certain rolls for smoking need to be treated as cigarettes for Federal excise tax purposes before they can fall under the definition for New York State and New York City excise tax purposes. The Federal definition of a cigar is added to the Tax Law for further clarification. This act takes effect on July 1, 2008.

Convert Tax on Moist Snuff

Part QQ-1 of Chapter 57 of the Laws of 2008 adds the Federal definition of snuff to the Tax Law to allow snuff to be categorized separately from other tobacco products. In addition, Part QQ-1 changes the tax rate for snuff from the current rate of 37 percent of the wholesale price to a rate of 96 cents per ounce with a proportionate rate for any fractional parts of an ounce. This act takes effect on July 1, 2008.

HESC Data Sharing

Part M of the Chapter 57 of the Laws of 2008 expands the current data exchange that exists between the Department and the Higher Education Services Corporation (HESC) to include any education loan debt collected by HESC including judgments owed to the Federal or New York State government. The expansion is effective immediately.