



Janice K. Brewer  
Governor

David Raber  
Director

## ARIZONA LUXURY TAX PROCEDURE LTP 14-1

Procedure for Requesting Distributor-to-Distributor Transfers of Unstamped Cigarettes under Arizona Revised Statutes ("A.R.S.") § 42-3203(D)

### **ISSUE:**

This procedure provides guidance to a taxpayer wishing to request a waiver of the general prohibition against transfers of unstamped cigarettes between licensed distributors.

### **BACKGROUND:**

Laws 2014, chapter 160 ("HB 2674") introduced numerous changes to Arizona laws governing state tobacco tax. One such change is that, beginning July 24, 2014, an Arizona-licensed tobacco distributor is generally prohibited from the sale, distribution, or transfer of unstamped cigarettes to another licensed tobacco distributor, pursuant to A.R.S. § 42-3203(C). Nevertheless, pursuant to A.R.S. § 42-3203(D), the new law provides a means for a distributor to request a waiver from this prohibition.

The relevant provisions are as follows:

#### **42-3203. Stamped packages required for cigarettes; exception**

\* \* \* \*

C. Cigarettes that are sold, distributed or transferred by a distributor licensed pursuant to section 42-3201 to sell cigarettes are required to have affixed the luxury stamps described in section 42-3006 at the time the cigarettes are sold, distributed or transferred to another licensed distributor.

D. Notwithstanding subsection C of this section, a licensed distributor can submit a written request in the form and manner prescribed by the department in rule or procedure to sell, distribute or transfer unstamped cigarettes to another licensed distributor. Once an accurate and complete request is submitted to the department, the department will approve or deny the request as prescribed in rule or procedure within ten days of receipt of the request.

### **PROCEDURE:**

A waiver request must be in writing and submitted by a licensed distributor wishing to sell, distribute, or transfer unstamped cigarettes ("Requesting Distributor") to another licensed distributor ("Acquiring Distributor"). A Requesting Distributor may choose to request one waiver that covers transactions with multiple Acquiring Distributors. The request must also contain each of the following elements:

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1. Identification of both the Requesting Distributor and Acquiring Distributor by name, address, and tobacco distributor license number. If the request covers transactions the Requesting Distributor conducts with more than one Acquiring Distributor, each Distributor must be identified in this manner.
2. The addresses of the Requesting Distributor's place of business at which the unstamped cigarettes at issue in the waiver are physically being held and the Acquiring Distributor's place of business at which the cigarettes will be physically accepted by the Acquiring Distributor. If multiple places of businesses are involved with either party in the transactions, the request must list all of these locations. The request must clearly match the Requesting Distributor's place or places of business at which unstamped cigarettes are currently held to the particular place or places of business of the Acquiring Distributor to which the cigarettes will be sold, distributed, or transferred.
3. The names of the manufacturers and corresponding brand families of the unstamped cigarettes for which the Requesting Distributor is requesting the waiver.
4. The reasons for which the request is necessary to the Requesting Distributor, Acquiring Distributor(s), or both parties.
5. A statement as to whether the Requesting Distributor expects the transaction or transactions at issue to be of an isolated or ongoing nature. If the transaction is isolated, indicate the number of packs that will be involved in the proposed transaction.
6. The signature of the Requesting Distributor or the Requesting Distributor's authorized representative. Authorized representatives must be, and must explicitly identify themselves as, one of the following:
  - a. An attorney who is a member in good standing of the bar of the highest court of any state, territory, or possession of the United States, including a Commonwealth or the District of Columbia and who is not currently under suspension or disbarment from practice.
  - b. A certified public accountant who is duly qualified to practice as a certified public accountant in any state, territory, or possession of the United States, including a Commonwealth, or the District of Columbia and who is not currently under suspension or disbarment from practice.
  - c. An enrolled agent who is qualified to practice before the Internal Revenue Service in compliance with the requirements of Circular 230 and who is not currently under suspension or disbarment from practice.
  - d. Federally authorized tax practitioners, as defined in A.R.S. § 42-2069(D)(1).
  - e. A full-time officer, partner, member, limited liability company member, or employee of the Requesting Distributor, provided that: the Requesting

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Distributor must have specifically authorized such person to represent it in the particular matter; such representation is not the person's primary duty to the Requesting Distributor, but secondary or incidental to other duties relating to the management or operation of the Requesting Distributor's business; and the person is not receiving separate or additional compensation (other than reimbursement for costs) for such representation.

Please note that any cigarette manufacturer holding a current tobacco distributor license must also follow this procedure for requesting the sale, distribution, or transfer of any unstamped cigarettes to another licensed tobacco distributor into this state.

The Department will review and either approve or deny the Requesting Distributor's request within ten days of receipt. In the event of a denial, the Department may ask the Requesting Distributor to resubmit a new request with information that was missing from its original request or information supplementing the information that the Requesting Distributor provided before.

With regard to an approval issued by the Department:

- A waiver is limited in scope to the Requesting Distributor's sale, distribution, or transfer of unstamped cigarettes, and does not encompass the sale, distribution, or transfer of unstamped cigarettes to the Requesting Distributor from another licensed tobacco distributor. In the latter case, the other licensed distributor is the party to the transaction that must request a waiver from the Department.
- A waiver issued pursuant to this procedure applies only to the sale, distribution, or transfer of unstamped (*i.e.*, untaxed) cigarettes. It does *not* apply to tobacco products other than cigarettes ("OTP"), on which the licensed distributor receiving the untaxed OTP would remain the taxpayer for purposes of Arizona tobacco taxes.
- A waiver will state the specific time period for which it is effective. The Department will issue a waiver with no time limitation if the subject of the request is limited to cigarettes manufactured by Participating Manufacturers to the Master Settlement Agreement.
- Regardless of the designated length of a waiver, any waiver issued for a Requesting Distributor or Acquiring Distributor terminates on the date of a suspension or revocation of the Arizona tobacco distributor license held by either party.
- If a manufacturer or brand family is missing or removed from the state directory maintained by the Arizona Attorney General's office pursuant to A.R.S. § 44-7111 ("Directory"), this waiver will be ineffectual to permit sale, distribution, or transfer during the period of any affected cigarettes until such time that such products are listed in the Directory.

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The Department will not issue a waiver for any request involving cigarettes that are prohibited from sale in Arizona by state or federal law. Any waiver issued for products that are so prohibited is ineffectual to permit their sale, distribution, or transfer.

All waiver requests must be sent to the following address:

Arizona Department of Revenue  
Attn: Luxury Tax Unit—Distributor Waiver Request  
1600 W. Monroe St., Division Code 19  
Phoenix, AZ 85007

If requests are not properly addressed as shown above, responses will not be timely issued.

David Raber, Director

Signed: July 28, 2014

### Explanatory Notice

The purpose of a tax procedure is to provide procedural guidance to the general public and to Department personnel. A tax procedure is a written statement issued by the Department to assist in the implementation of tax laws, administrative rules, and tax rulings by delineating procedures to be followed in order to achieve compliance with the law. Relevant statute, case law, or administrative rules, as well as a subsequent procedure, may modify or negate any or all of the provisions of any tax procedure. See GTP 96-1 for more detailed information regarding documents issued by the Department of Revenue.