

STATE OF HAWAII—DEPARTMENT OF TAXATION
INSTRUCTIONS FOR FORM M-19
CIGARETTE AND TOBACCO PRODUCTS MONTHLY TAX RETURN

Changes to Note for 2011

- Act 59, SLH 2010, increases the tax on cigarettes and little cigars to \$.16 for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after July 1, 2011.

General Instructions

Form M-19 is used to report the monthly sales, use, or possession (as defined in section 245-1, Hawaii Revised Statutes (HRS)) of cigarettes and tobacco products.

Caution: Use Form M-19 (Rev. 2011) for sales, use, or possession of cigarettes and tobacco products after June 30, 2011. For sales, use, or possession of cigarettes and tobacco products occurring after June 30, 2010, and before July 1, 2011, use Form M-19 (Rev. 2010).

Cigarette Tax

Sections 245-21 and 245-22, HRS, provide that licensees, as defined in section 245-1, HRS, shall pay the cigarette tax through the use of cigarette tax stamps and that licensees are required to place cigarette tax stamps on packs of cigarettes prior to distribution, as defined in section 245-1, HRS.

Section 245-3, HRS, increases the cigarette tax from \$.15 per cigarette to \$.16 per cigarette beginning on July 1, 2011. Licensees, as defined in section 245-1, HRS, may continue to use their existing inventory of cigarette tax stamps with the denominated value of \$3.00 (yellow stamps) after June 30, 2011 if licensees pay the price difference between the yellow stamps and the cigarette tax stamps with the denominated value of \$3.20 (light gray stamps) on all affixed and/or unused yellow stamps in their ending inventory at the close of business on June 30, 2011. Form M-107 (Rev. 2011), Cigarette Tax Stamps Floor Stock Return, is used to pay the price difference. All licensees approved to purchase cigarette tax stamps are required to submit Form M-107 (Rev. 2011) along with any amount due to the Department of Taxation by July 20, 2011. Failure to do so may result in the suspension of the licensees' approval to purchase cigarette tax stamps. Once Form M-107 (Rev. 2011) and all amounts due and payable are remitted in July 2011, the yellow stamps will be valued at the denominated value of \$3.20 per stamp.

Tobacco Tax

Section 245-3, HRS, imposes the tobacco tax as follows:

- For sales, use, or possession of tobacco products (other than cigarettes, large cigars, and little cigars) on and after September 30, 2009, the tax is imposed at the rate of 70 percent of the wholesale price of the tobacco products.
- For sales, use, or possession of large cigars of any length on and after September 30, 2009, the tax is imposed at the rate of 50 percent of the wholesale price of the large cigars.

- For sales, use, or possession of little cigars on and after July 1, 2011, the tax is imposed at the rate of \$.16 per little cigar.

Definition of Certain Terms Used in Chapter 245, HRS

"Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of the size and shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Dealer" means any person coming into the possession of cigarettes, little cigars, or tobacco products which have not been acquired from an authorized permit holder or licensee under chapter 245, HRS, or any person rendering a distribution service who buys and maintains, at the person's place of business, a stock of cigarettes, little cigars, or tobacco products that have not been acquired from a licensee and who distributes or uses such cigarettes, little cigars, or tobacco products.

"Distribute", "distributes", or "distribution" means to sell, ship, transfer, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

"Large cigar" means any roll for smoking made wholly or in part of tobacco if such product is wrapped in any substance containing tobacco and weighs more than four pounds per thousand.

"Little cigar" means any roll for smoking made wholly or in part of tobacco if such product is wrapped in any substance containing tobacco, other than natural leaf tobacco, and weighs not more than four pounds per thousand rolls.

"Possession" means knowingly having direct physical control at a given time or knowingly having the power and the intention, at a given time, to exercise dominion or control, either directly or through another entity.

"Sale" includes every act of selling and includes any sale or act of selling that originates from any order that is placed or submitted by means of a telephonic or other method of voice transmission, the mail, or any other delivery service, or the Internet or other online service.

"Ship", or "causes to be shipped" means to send by any means of transportation, including by vessel, vehicle, or aircraft.

"Tobacco products" means tobacco in any form other than cigarettes or little cigars, that is prepared or intended for consumption or for personal use by humans, including large cigars and any substitutes thereof other than cigarettes that bear the semblance thereof, snuff, chewing or smokeless tobacco, and smoking or pipe tobacco.

"Use" means the exercise of any right or power incident to ownership or possession, other than the sale, or the keeping or retention for the purpose of sale.

"Wholesale price", in addition to any other meaning of the term, means in the case of a tax upon the use of tobacco products, or upon a sale not made at wholesale: (1) If made by a person

who during the month preceding the accrual of the tax made substantial sales to retailers of like tobacco products, the average price of the sales, and (2) If made by any other person, the average price of sales to retailers of like tobacco products made by other taxpayers in the same county during the month preceding the accrual of the tax.

"Wholesaler" means a person rendering a distribution service who buys and maintains, at the person's place of business, a stock of cigarettes, little cigars, or tobacco products that the person uses, possesses, or distributes only to retailers, or other wholesalers, or both.

Export and Foreign Cigarettes Prohibited

It is unlawful for an entity to possess, keep, store, retain, transport, sell, or offer to sell, distribute, acquire, hold, own, import, or cause to be imported into the State any of the cigarettes described in section 245-51, HRS.

Stamping or Sale of Cigarettes Not Listed in the Directory Prohibited

Beginning December 1, 2003, unless the cigarette package is exempted under section 245-3(b), HRS, it is unlawful (a) to affix a cigarette tax stamp to any cigarette package whose tobacco product manufacturer or brand family is not listed in the directory established under chapter 486P, HRS, or (b) to import, sell, offer, keep, store, acquire, transport, distribute, receive, or possess for sale or distribution cigarettes of a tobacco product manufacturer or brand family not included in the directory. Any violation will be guilty of a class C felony.

To determine whether the cigarette manufacturer or brand family is listed in such directory, please visit the Tobacco Enforcement Unit, Department of the Attorney General's website at: www.hawaii.gov/ag/tobacco. The Tobacco Enforcement Unit also may be contacted as follows:

Correspondence:
TOBACCO ENFORCEMENT UNIT
Department of the Attorney General
425 Queen Street
Honolulu, Hawaii 96813

Telephone: (808) 586-1203

Retail Tobacco Permit

Every retailer engaged in the retail sale of cigarettes and other tobacco products upon which the cigarette and tobacco tax is required to be paid shall obtain a retail tobacco permit. An entity that operates as a dealer or wholesaler and also sells cigarettes or other tobacco products to consumers at retail shall acquire a separate retail tobacco permit.

Who Must File

Every wholesaler or dealer as defined above must file Form M-19.

When to File

Form M-19 must be filed on or before the twentieth day of each month, showing the cigarettes and tobacco products sold, possessed, or used by the wholesaler or dealer during the preceding calendar month. If the due date falls on a Saturday, Sunday, or legal holiday, file by the next regular workday.

The official U.S. Post Office cancellation mark will be considered primary evidence of the date of filing of tax documents and payments. Hawaii has adopted the Internal Revenue Code provision to allow documents and payments delivered by a designated private delivery service to qualify for the "timely mailing treated as timely filing/paying rule." The Department of Taxation will conform to the Internal Revenue Service listing of designated private delivery services and type of delivery services qualifying for the "timely mailing treated as timely filing/paying rule." Timely filing of mail which does not bear a U.S. Post Office cancellation mark will be determined by reference to other competent evidence.

Where to File

File Form M-19 with the taxation district office in which the wholesaler or dealer's principal place of business is located, or if there is no such place of business in Hawaii, then with the Department of Taxation, P.O. Box 259, Honolulu, Hawaii 96809-0259.

The addresses and locations of the taxation district offices are as follows:

MAILING ADDRESSES

OAHU DISTRICT OFFICE
P.O. Box 259
Honolulu, Hawaii 96809-0259

MAUI DISTRICT OFFICE
54 S. High Street, #208
Wailuku, Hawaii 96793-2198

HAWAII DISTRICT OFFICE
75 Aupuni Street, #101
Hilo, Hawaii 96720-4245

KAUAI DISTRICT OFFICE
3060 Eiwa Street, #105
Lihue, Hawaii 96766-1889

LOCATIONS

OAHU DISTRICT OFFICE
830 Punchbowl Street
Honolulu, Hawaii 96813-5094
(808) 587-4242

Toll-Free: 1-800-222-3229
For the hearing impaired:
TDD/TTY: (808) 587-1418
TDD/TTY Toll-Free: 1-800-887-8974

MAUI DISTRICT OFFICE
54 S. High Street, #208
Wailuku, Hawaii 96793-2198
Toll-Free: 1-800-222-3229

HAWAII DISTRICT OFFICE
75 Aupuni Street, #101
Hilo, Hawaii 96720-4245
Toll-Free: 1-800-222-3229

KAUAI DISTRICT OFFICE
3060 Eiwa Street, #105
Lihue, Hawaii 96766-1889
Toll-Free: 1-800-222-3229

Website address:
www.hawaii.gov/tax

Penalty and Interest

Late Filing of Return – The penalty for failure to file a return on time is assessed on the tax due at a rate of 5% per month, or part of a month, up to a maximum of 25%.

Failure to Pay Tax After Filing Timely Return – The penalty for failure to pay the tax after filing a timely return is 20% of the tax unpaid within 60 days of the prescribed due date. The 60-day period is calculated beginning with the prescribed due date even if the prescribed due date falls on a Saturday, Sunday, or legal holiday.

Interest – Interest at the rate of 2/3 of 1% per month or part of a month shall be assessed on unpaid taxes and penalties beginning with the first calendar day after the date prescribed for payment, whether or not that first calendar day falls on a Saturday, Sunday, or legal holiday.

Signature

The return must be signed and dated by a person who is authorized to sign Form M-19.

Specific Instructions

These instructions are numbered to correspond to the line items of Form M-19. Other line items on the form are self-explanatory.

Address

If the address is a foreign address, enter the information in the following order: city, province or state, country, and postal code. Do not abbreviate the country name.

Lines 1, 8, and 15

Enter the wholesale value of wholesale sales of tobacco products, large cigars, and little cigars for the month. For little cigars, also enter the number of little cigars sold at wholesale during the month.

Lines 2, 9, and 16

Enter the wholesale value of retail sales of tobacco products, large cigars, and little cigars for the month. For little cigars, also enter the number of little cigars sold at retail during the month.

Lines 3, 10, and 17

Enter the wholesale value of the taxable use of tobacco products, large cigars, and little cigars for the month. For little cigars, also enter the number of little cigars used during the month subject to the tax.

Lines 5, 12, and 19

Enter the amount of non-taxable sales of tobacco products, large cigars, and little cigars from page 2, Part I, Non-Taxable Sales of Tobacco Products, Large Cigars, and Little Cigars. The following sales should be included on this line: (1) Sales to the United States, including any agency or instrumentality thereof; and (2) Sales that are shipped to a point outside the State for subsequent sale or use outside the State.

Line 23

The areas of Form M-19 that address the overpayment of cigarette tax paid with cigarette tax stamps are found on pages 3 and 4, Part II. A wholesaler or dealer may claim a refund of cigarette taxes paid with cigarette tax stamps in the following situations:

- The cigarettes were shipped outside of Hawaii for sale or use outside of Hawaii. See instructions to Part II, Schedule 1.
- The cigarettes became the subject of a casualty loss. See instructions to Part II, Schedule 2.
- The cigarettes became stale and were returned to the manufacturer. See instructions to Part II, Schedule 3.
- There were more than 20 cigarettes in the cigarette package and more than one cigarette tax stamp was affixed to the cigarette package. See instructions to Part II, Schedule 4.
- The cigarette tax stamps were damaged while being affixed to the cigarette packages. See instructions to Part II, Schedule 5.

Enter the amount of refund from page 4, Part II, Refund of Cigarette Tax Paid With Cigarette Tax Stamps, line 6.

Line 27

Enter the total amount due with the return. If line 27 is a negative number, enter the amount in (parentheses). The amount will be refunded to you.

Amended Returns

If you are filing an amended return, check the amended return box at the top of Form M-19. Complete your amended return using corrected amounts through line 27. Attach Schedule AMD, Explanation of Changes on Amended Return.

Line 28

Enter the amount paid (or overpaid) on your original Form M-19. If the amount is an overpayment, enter the amount in (parentheses).

Line 29

Enter the balance due (or refund) with the amended return. If the amount is a refund, enter the amount in (parentheses). The amount will be refunded to you.

Line 30

NOTE: If you are NOT submitting a check with your return, enter "0.00" on line 30. Write the "Amount of Your Payment", including any penalty and interest, on line 30. Attach your check or money order for this amount payable to "Hawaii State Tax Collector" in U.S. dollars drawn on any U.S. bank. Write "M-19", the filing period, and your Hawaii Tax I.D. No. on your check or money order. **DO NOT SEND CASH.**

Part I – List of Non-Taxable Sales

Non-Taxable Sales of Tobacco Products, Large Cigars, and Little Cigars - List (1) Sales to the United States, including any agency or instrumentality thereof; and (2) Sales that are shipped to a point outside the State for subsequent sale or use outside the State, including sales made under section 212-8, HRS, to any common carrier for consumption out-of-state by the crew or passengers on such carrier; and sales by wholesalers from U.S. licensed bonded warehouses to foreign fishing vessels and to common carriers for out-of-state consumption by the crew or passengers.

Attach a separate schedule if more space is needed.

Non-Taxable Sales of Cigarettes - List sales of cigarettes to the United States, including any agency or instrumentality thereof.

Do not include in this list, sales of cigarettes that are shipped to a point outside the State for subsequent sale or use outside the State, including sales made under section 212-8, HRS, to any common carrier for consumption out-of-state by the crew or passengers on such carrier; and sales by wholesalers from U.S. licensed bonded warehouses to foreign fishing vessels and to common carriers for out-of-state consumption by the crew or passengers. These sales should be listed on page 3, Part II, Refund of Cigarette Tax Paid With Cigarette Tax Stamps.

Attach a separate schedule if more space is needed.

Part II – Refund of Cigarette Tax Paid With Cigarette Tax Stamps

The five schedules in Part II are used to compute the amount of refund for cigarette tax stamps affixed to the cigarette packages.

By paying the price difference between the yellow stamps and light gray stamps via Form M-107 (Rev. 2011) (see discussion under General Instructions), the yellow stamps will have the denominated value of \$3.20 per stamp. In computing any amount of refund for cigarette tax stamps affixed to cigarette packages, use the denominated value of \$3.20 for all yellow stamps inventoried and reported on Form M-107 (Rev. 2011).

If the price difference between the red stamps and yellow stamps has been paid via Form M-107 (Rev. 2010), the red stamps would have the denominated value of \$3.00 per stamp. In computing any amount of refund for cigarette tax stamps affixed to cigarette packages, use the denominated value of \$3.00 for all red stamps inventoried and reported on Form M-107 (Rev. 2010).

If the price difference between the light brown stamps and red stamps has been paid via Form M-107 (Rev. 2009), the light brown stamps would have the denominated value of \$2.60 per stamp. In computing any amount of refund for cigarette tax stamps affixed to cigarette packages, use the denominated value of \$2.60 for all light brown stamps inventoried and reported on Form M-107 (Rev. 2009).

Schedule 1, Cigarettes Shipped Outside of the State for Sale or Use Outside the State - A refund of cigarette tax may be claimed for cigarette tax stamps that were affixed to cigarette packages which were shipped outside of Hawaii (exempt sale).

Note: A copy of Form M-104, Export Exemption Certificate for Cigarette and Tobacco Taxes must be attached to Form M-19 in order to claim the refund.

Schedule 2, Cigarettes Which Became the Subject of a Casualty Loss - A refund of cigarette tax may be claimed for cigarette tax stamps that were affixed to cigarette packages that became the subject of a casualty loss.

Note: A copy of the claim of loss to the insurance company for inventory loss or destroyed cigarettes must be attached to Form M-19 in order to claim the refund.

Schedule 3, Stale Cigarettes Returned to Manufacturer - A refund of cigarette tax may be claimed for cigarette tax stamps that were affixed to cigarette packages that were returned to the manufacturer because they became stale.

For cigarette packages with yellow or red stamps which were distributed after June 30, 2010, but prior to July 1, 2011, use Table 1. For cigarette packages with light gray or yellow stamps which were distributed after June 30, 2011, use Table 2.

For cigarette packages with red or light brown stamps which were distributed after June 30, 2009, but prior to July 1, 2010, attach a separate schedule showing the computation of the refund. Include in the schedule, all information requested in Schedule 3, Table 1. In computing the amount of the refund, the denominated value in column (E) should be \$2.60 instead of \$3.00. The refund amount should be included in the refund amount on Schedule 3, Table 1, line 3a. Also, write "Refund for cigarette packages with light brown or red stamps (denominated value of \$2.60) included in line 3a" in the space below line 3a.

Note: A copy of the certification from the manufacturer for the return of the stale cigarettes must be attached to Form M-19 in order to claim the refund.

Schedule 4, Overpayment of Tax on Cigarette Packages Containing More Than 20 Cigarettes - A refund of cigarette tax may be claimed for situations where there were more than 20 cigarettes in the cigarette package and the cigarette tax stamps affixed to the cigarette package were more than the actual tax due on the cigarette package. For example, two cigarette tax stamps with the denominated value of \$3.20 per stamp (light gray stamp) were affixed to a cigarette package containing 25 cigarettes. Since the tax on the 25 cigarettes is \$4.00 (\$.16 x 25), a refund of \$2.40 (\$6.40 - \$4.00) may be claimed for that cigarette package.

Schedule 5, Refund for Damaged Cigarette Tax Stamps Affixed to Cigarette Packages - A refund of cigarette tax may be claimed for situations where cigarette tax stamps were damaged while being affixed to the packages. If new stamps had to be affixed to the cigarette packages, a refund may be claimed for the damaged cigarette tax stamps. Evidence that the cigarette tax stamps have been damaged must be offered for inspection and examination at any time upon request of the Department of Taxation or the Department of the Attorney General.

Part III – Schedule of Cigarette Brands Sold

List the cigarette brand, cigarette brand style, and number of cigarettes sold at wholesale and retail during the month. The total number of cigarettes entered on this schedule should equal the number of cigarettes entered on page 4, Part IV, Schedule of Cigarettes Sold, Used, and Possessed, lines 1 and 2.

In lieu of completing this schedule, a report or other schedule showing the requested information may be attached to Form M-19.

Part IV – Schedule of Cigarettes Sold, Used, and Possessed

Line 5

Enter the total number of cigarettes from page 2, Part I, Non-Taxable Sales of Cigarettes. Only the number of cigarettes sold to the United States, including any agency or instrumentality thereof, should be included on this line.

Part V – Cigarette Tax Stamps Inventory

Complete the cigarette tax stamps inventory for the month. Enter the information under the appropriate column: yellow stamps and light gray stamps. Include in the yellow stamps column, the number of yellow stamps inventoried and reported on Form M-107 (Rev. 2011). Do not enter the number of yellow stamps inventoried and reported on Form M-107 (Rev. 2011) in the light gray stamps column.

Line 3 - Enter the number of cigarette tax stamps that were transferred in during the month. Form M-103, Transfer of Cigarette Tax Stamps, must have been approved by the Department of Taxation prior to the transfer of the cigarette tax stamps.

Line 6 - Enter the number of cigarette tax stamps that were transferred out during the month. Form M-103, Transfer of Cigarette Tax Stamps, must have been approved by the Department of Taxation prior to the transfer of the cigarette tax stamps.

Line 7 - Enter the number of unused cigarette tax stamps that were returned for a refund during the month. Form M-106, Request for Refund of Unused Cigarette Tax Stamps, must have been filed to request a refund for unused cigarette tax stamps.