



Successor Liability for Cigarette Tax

Purpose: This Informational Publication explains successor liability for cigarette tax and describes the requirements and procedures for a purchaser of the business or stock of goods of a licensed cigarette distributor to request a cigarette tax clearance certificate.

Effective Date: Effective upon issuance.

Statutory Authority: 2003 Conn. Pub. Acts 225, §5 (amending Conn. Gen. Stat. §12-294).

Definitions: For purposes of this Informational Publication:

- **Successor** means a person who is the purchaser or transferee of the business or stock of goods of a licensed cigarette distributor;
- **Licensed cigarette distributor** means a person who has been issued a cigarette distributor's license by Department of Revenue Services (DRS);
- **DRS** means the Department of Revenue Services;
- **Predecessor** means a licensed cigarette distributor who sells the business or the stock of goods of the business or who quits the business; and
- **Cigarette tax liability** of the predecessor means the predecessor's liability for cigarette tax, and includes any interest accrued on such tax, and any penalty for late payment or for negligence or intentional disregard of the provisions of Chapter 214 of the Connecticut General Statutes imposed on the predecessor.

1. What is Successor Liability? For Connecticut cigarette tax purposes, successor liability is the obligation of a purchaser (successor) of the business or stock of goods of a licensed cigarette distributor (predecessor) to withhold a sufficient amount of the purchase price to cover any cigarette tax liability of the predecessor until the predecessor produces a receipt from the Commissioner of Revenue Services showing that any cigarette tax liability of the predecessor has been paid or a certificate stating that no amount of cigarette tax is due. A successor who fails to withhold a sufficient amount of the purchase price as required is liable, to the extent of the purchase price, valued in money, for the predecessor's cigarette tax liability.

For Connecticut cigarette tax purposes, successor liability applies where:

- One or more persons purchase under a contract the cigarette distribution business or stock of goods of a licensed cigarette distributor (including a distributor who quits the business for little or no monetary consideration); or
- One or more persons purchase under a contract a portion of the cigarette distribution business or stock of goods of a licensed cigarette distributor (including a distributor who quits the business for little or no monetary consideration).

Successor liability arises only in the case of the purchase and sale of a business or stock of goods under a contract providing for the payment to the predecessor (or a person designated by the predecessor) of a purchase price in money or property or providing for the assumption of liabilities of the predecessor. Successor liability does not arise in connection with other transfers of a business or stock of goods such as foreclosures, repossessions, or sales by trustees in bankruptcy, and similar involuntary transfers, but does arise in the case of a purchase and sale under contract made to avoid an imminent foreclosure, repossession, or bankruptcy.

2. How is the Purchase Price of a Business or Stock of Goods Computed?

- The purchase price of a business or stock of goods is valued in money, whether or not the purchase price is paid or to be paid in money.
- The purchase price may be paid directly or indirectly to the predecessor.
- The purchase price includes the amount of any liabilities of the predecessor that are assumed, if any, and the amount of any liabilities of the predecessor to which any assets transferred to the successor are subject. For example, consideration paid indirectly to the predecessor includes (i) the amount of any liability of the predecessor assumed by the successor, (ii) any obligations of the predecessor to which any assets transferred by the predecessor to the successor are subject, and (iii) the amount of any outstanding debt that the predecessor owes the successor, prior to the sale, if the debt is cancelled and offset against the purchase price.

3. How may a Successor Avoid Successor Liability? To avoid successor liability, a successor should request a cigarette tax clearance certificate. The successor may request the cigarette tax clearance certificate on or after the date the successor commits to purchasing the business or stock of goods and before the date of the closing (ideally at least 90 days before the date of the closing). If a properly delivered request for a cigarette tax clearance certificate is received by DRS from the successor and if the predecessor's records are made available for audit, DRS has 60 days from the *triggering date* to either issue a *cigarette tax clearance certificate* or a *notice of required withholding* to the successor.

4. What is the Triggering Date? The triggering date is the latest of the following three dates:

- The date DRS receives a properly delivered written request, including the required information, for a cigarette tax clearance certificate from the successor. See *What Information is Required to be Included in a Request for a Cigarette Tax Clearance Certificate?* and *What is a Properly Delivered Request for Cigarette Tax Clearance Certificate?* below. If the request is delivered by United States registered mail, the date of registration is the date DRS is deemed to have received the request. If the request is delivered

by United States certified mail, the date the sender's receipt is postmarked by the United States Postal Service employee is the date DRS is deemed to have received the request.

- The date of the successor's purchase of the business or stock of goods of the predecessor.
- The date the predecessor's records are made available for audit.

5. What is a Cigarette Tax Clearance Certificate? A cigarette tax clearance certificate is a letter that DRS issues to a successor releasing the successor from any obligation for the cigarette tax liability of the predecessor. A cigarette tax clearance certificate is issued by DRS if either:

- DRS determines that any cigarette tax liability of the predecessor has been paid or that no amount of cigarette tax is due from the predecessor; or
- DRS has issued a notice of required withholding to the successor, and the successor has paid the required withholding amount to DRS.

Only a successor, or a tax practitioner (attorney or accountant) representing the successor, may request a cigarette tax clearance certificate. A properly completed **Form LGL-001, *Power of Attorney***, must accompany a request from a tax practitioner.

6. What is a Notice of Required Withholding? When a successor has requested a cigarette tax clearance certificate, and DRS determines that the predecessor has an unpaid cigarette tax liability, a notice of required withholding is the letter that DRS issues to the successor notifying the successor of the amount that the successor is required to withhold from the purchase price (the required withholding amount). The notice of required withholding advises the successor that the cigarette tax clearance certificate will be issued to the successor only upon the receipt by DRS of a check from the successor for the required withholding amount.

7. What Information is Required to be Included in a Request for a Cigarette Tax Clearance Certificate? In requesting a cigarette tax clearance certificate, a successor is required to provide the following information:

- The name and address of the successor;
- The name and address of the tax practitioner, if any, representing the successor

- The successor's Connecticut Tax Registration Number, if any;
- The predecessor's name and address and Connecticut Tax Registration Number, as shown on the predecessor's cigarette distributor's license. (A cigarette distributor's license is required by law to be conspicuously displayed at the premises of the predecessor.);
- A letter signed in the original by the successor or its tax practitioner that clearly and unambiguously indicates the intent to purchase the business or stock of goods of the predecessor;
- A copy of the purchase agreement including all schedules, addenda, and attachments;
- The purchase price of the business;
- The expected closing date of the sale;
- The physical location at which the successor will operate the business or sell the stock of goods; and
- A properly executed **Form LGL-001**, if a tax practitioner is representing the successor.

8. What is a Properly Delivered Request for Cigarette Tax Clearance Certificate? A properly delivered request for cigarette tax clearance certificate includes the required information and is made by United States registered or by United States certified mail, return receipt requested. The mailing address is:

Department of Revenue Services
 Audit Division – RCA Unit
 Request for a Cigarette Tax Clearance Certificate
 25 Sigourney St.
 Hartford CT 06106

A hand-delivered request, a request sent by regular United States mail or by private delivery service, and a request sent by e-mail or fax is not a properly delivered request.

9. When will a Purchaser Receive a Cigarette Tax Clearance Certificate or Notice of Required Withholding? DRS will issue either a cigarette tax clearance certificate, or a notice of required withholding no later than the 60th day after the triggering date. Service of the cigarette tax clearance certificate or the notice of required withholding shall be complete at the time of deposit in the United States mail by DRS.

10. What if a Successor Fails to Request a Cigarette Tax Clearance Certificate or to Comply with a Notice of Required Withholding? If a successor fails to request a cigarette tax clearance certificate, or, if having requested a cigarette tax clearance certificate, fails to comply with a notice of required withholding, a successor liability assessment, not to exceed the amount of the purchase price, may be made at any time against the successor.

11. Will the Purchase of a Controlling Interest in a Corporation, Limited Liability Company, Partnership, or Limited Partnership Result in Successor Liability for the Purchaser? No. The purchase of a controlling interest in a licensed cigarette distributor that is a corporation, limited liability company, partnership, or limited partnership does not trigger successor liability because the same legal entity owns the business or stock of goods.

12. Will a Change in the Form of Ownership or Organization of a Licensed Cigarette Distributor Result in Successor Liability for the New Entity? Yes. For example, if there is a change in the form of ownership or organization from a sole proprietorship to an LLC, from a partnership to an LLC, or from a sole proprietorship to a corporation, the new entity is a successor to the old entity.

However, if a corporation that is a licensed cigarette distributor merges into another corporation (and is not the surviving corporation), the surviving corporation is not a successor but assumes, as a matter of law, the cigarette tax liability of the disappearing corporation.

13. May a Successor Protest a Successor Liability Assessment? Once a successor liability assessment has been made against a person, that person may protest the following issues (and only these issues):

- Whether the person is a successor;
- What the amount of the purchase price of the business or stock of goods was;
- Whether a written request for a cigarette tax clearance certificate was properly delivered to DRS;
- Whether DRS issued a timely notice of required withholding; or

- Whether the person complied with a notice of required withholding.

14. May a Successor Protest an Audit Deficiency Assessment made against the Predecessor? No. A successor is not liable for an audit deficiency assessment made against the predecessor. (However, a successor is liable for the required withholding amount, if any, stated in the notice of required withholding.) Therefore, the successor may not protest such an assessment.

Effect on Other Documents: None affected.

Effect of This Document: An Informational Publication addresses frequently asked questions about a current position, policy, or practice, usually in a less technical question and answer format.

For Further Information: Call DRS during business hours, Monday through Friday:

- **1-800-382-9463** (in-state), or
- **860-297-5962** (from anywhere)

TTY, TDD, and Text Telephone users only may transmit anytime by calling 860-297-4911.

Forms and Publications: Forms and publications are available anytime by:

- **Internet:** Preview and download forms and publications from the DRS Web site at www.ct.gov/DRS
 - **DRS TAX-FAX:** Call **860-297-5698** from the handset attached to your fax machine and select from the menu. Only forms (not publications) are available through TAX-FAX.
 - **Telephone:** Call **860-297-4753** (from anywhere), or **1-800-382-9463** (in-state) and select **Option 2** from a touch-tone phone.
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Paperless Filing Methods (fast, easy, free, and confidential):

- **For business returns:** Use *Fast-File* to file sales and use taxes, business use tax, room occupancy tax, estimated corporation tax, business entity tax, or withholding tax returns over the Internet. Visit the DRS Web site at www.ct.gov/DRS and click on *File/Register OnLine*.
 - **For resident income tax returns:** Use *WebFile* to file personal income tax returns over the Internet. Visit the DRS Web site at www.ct.gov/DRS and click on *File/Register OnLine*.
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