



STATE OF CONNECTICUT  
DEPARTMENT OF REVENUE SERVICES

PS 2011(1)

25 Sigourney Street Ste 2  
Hartford CT 06106-5032

POLICY STATEMENT

The Use of Commercial Cigarette-Making  
Machine in a Retail Establishment

**Purpose:** To advise the public that the use of a commercial cigarette-making machine on the premises of a retail establishment in Connecticut constitutes the illegal manufacture and sale of cigarettes, where the proprietor of the retail establishment has not secured a Connecticut cigarette manufacturer's license.

**Effective Date:** Effective upon issuance.

**Statutory Authority:** Conn. Gen. Stat. §§4-28h to 4-28r, inclusive, 12-285, 12-285b, 12-295, 12-302 to 12-305, inclusive, 12-314, 29-419, 29-420, and 42-110b.

**Definitions:** As used in this Policy Statement:

- **Tobacco product manufacturer** is, as defined in Conn. Gen. Stat. §4-28h, an entity that manufactures cigarettes anywhere which the manufacturer intends to be sold in the United States.
- **Master Settlement Agreement (MSA)** is, as defined in Conn. Gen. Stat. §4-28h, the settlement agreement executed November 23, 1998 between 46 States, including Connecticut, and the leading tobacco product manufacturers.
- **MSA qualifying statute** means the provisions of Conn. Gen. Stat. §§4-28h to 4-28j, inclusive.
- **Participating Manufacturer** is, as defined in section II(jj) of the MSA, a tobacco product manufacturer that is or becomes a signatory to the MSA.
- **Non-Participating Manufacturer (NPM)** means any tobacco product manufacturer that is not a Participating Manufacturer.

- **Connecticut cigarette manufacturer's license** means the license that every tobacco product manufacturer selling cigarettes to consumers within Connecticut, whether directly or through a distributor, dealer, or similar intermediary or intermediaries, is required to secure from the Department of Revenue Services (DRS) under Conn. Gen. Stat. §12-285b.

- **Connecticut Tobacco Directory** means the directory that lists all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Conn. Gen. Stat. §4-28l and all brand families that are listed in the certifications. The Connecticut Tobacco Directory is maintained by the Commissioner of Revenue Services and is required under Conn. Gen. Stat. §4-28m to be posted on the DRS website.

To view the Connecticut Tobacco Directory, go to [www.ct.gov/drs](http://www.ct.gov/drs), click on the *Cigarette & Tobacco Products Taxes* quick link on the left-hand menu and then click on the *Connecticut Tobacco Directory* link.

- **Connecticut Fire Safe Cigarette Directory** means the directory that lists all holders of a Connecticut cigarette manufacturer's license that have provided current certifications conforming to the requirements of Conn. Gen. Stat. §29-419 and all cigarettes that are listed in the certifications. The Connecticut Fire Safe Cigarette Directory is maintained by the State Fire Marshal and is required under Conn. Gen. Stat. §29-420 to be posted on the website of the Department of Public Safety (DPS), Office of the State Fire Marshal. To view the Connecticut Fire Safe Cigarette Directory, go to [www.ct.gov/dps](http://www.ct.gov/dps), click on the *State Fire Marshal* quick link, and then click on *Fire Safe Cigarettes*.

**Background:** A number of states have considered whether, and concluded that, the use of commercial cigarette-making machines on the premises of a retail establishment constitutes the illegal manufacture and sale of cigarettes. *See, e.g.*, Administrative Notice 10-26 (West Virginia Dept. of Revenue (September 10, 2010)); Compliance Alert 2011-6 (Ill. Dept. of Revenue (November 2010)); and Bulletin No. TT-71 (Comptroller of Maryland, March 3, 2011).

The same issue has now arisen in Connecticut. DRS has gathered the information set out below about commercial cigarette-making machines from several sources and from observations made during a visit to a retail establishment in Connecticut where a commercial cigarette-making machine for use by customers was maintained on the premises.

- The proprietor of the retail establishment is currently issued a Connecticut cigarette dealer's license and also sells packages of cigarettes to which Connecticut cigarette tax stamps have been affixed. Those cigarettes are of a brand family and of a tobacco product manufacturer included in the Connecticut Tobacco Directory.
- A customer enters the retail establishment and pays the store clerk for the "rental" of the cigarette-making machine and for the materials to make 200 cigarettes, the equivalent of a carton of cigarettes. (The DRS analysis, as will be seen, would not be affected were the proprietor of the retail establishment to charge more for the materials, and to make no or a nominal charge for the use of the machine.) The materials are 200 hollow cigarette tubes, generally in a box that holds 200 cigarette tubes, 200 cigarette filters, and about eight ounces of loose tobacco, typically from a bin—enough to fill 200 cigarette tubes. The loose tobacco is typically identified as pipe tobacco, rather than as roll-your-own tobacco, presumably because pipe tobacco is subject to a federal excise tax rate that is much lower than the federal excise tax rate applicable to roll-your-own tobacco.

With instructions from the store clerk, the customer is directed to the cigarette-making machine and "inputs" the loose tobacco, filters, and cigarette tubes, following prompts that appear on the machine's computer screen display. In approximately eight minutes, the machine "outputs" 200 cigarettes into a bin or plastic bag, and the customer generally transfers those cigarettes into the box that formerly held the 200 hollow cigarette tubes.

- The box is not labeled in conformity with the requirements of the federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§1331 to 1340, inclusive.
- Connecticut cigarette tax stamps are not affixed to the box, and the customer leaves the retail establishment without having paid the cigarette tax on the cigarettes.
- The proprietor of the retail establishment has not secured a Connecticut cigarette manufacturer's license in accordance with Conn. Gen. Stat. §12-285b.
- The cigarettes manufactured using the cigarette-making machine are not cigarettes of a brand family or of a tobacco product manufacturer included in the Connecticut Tobacco Directory or the Connecticut Fire Safe Cigarette Directory.

The following facts are not known, but are not necessary in order to determine whether the proprietor is a tobacco product manufacturer required to secure a Connecticut cigarette manufacturer's license.

- Whether the proprietor owns or has leased the cigarette-making machine;
- Whether the proprietor has applied for a federal permit to engage in business as a manufacturer of tobacco products. For federal excise tax purposes, a person may not engage in business as a manufacturer of tobacco products without a permit to engage in such business. 26 U.S.C. §5713; **and**
- Whether the proprietor has submitted a list of the ingredients in its tobacco products to the federal Food and Drug Administration (FDA) and has paid the user fees based on the volume of sales of its tobacco products. This is required under the federal Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776. The same Act also requires that each tobacco product manufacturer register its place of business with the FDA and provide and keep updated a comprehensive list of its tobacco products.

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**Whether the proprietor is a tobacco product manufacturer:** The transformation of the raw and finished materials into cigarettes that are not physically distinguishable from other mass-produced cigarettes is manufacturing. The proprietor, who controls access to and use of the machine, is a tobacco product manufacturer.

Conn. Gen. Stat. §12-285b requires every tobacco product manufacturer selling cigarettes to consumers within this state, whether directly or through a distributor, dealer, or similar intermediary or intermediaries, to secure a Connecticut cigarette manufacturer's license.

Under Conn. Gen. Stat. §4-28i, any tobacco product manufacturer selling cigarettes to consumers within this state, whether directly or through a distributor, dealer, or similar intermediary or intermediaries, is required to either (1) become a Participating Manufacturer and generally perform its financial obligations under the Master Settlement Agreement, or (2) as an NPM, place into a qualified escrow fund not later than April 15 each year, a certain amount for each of the manufacturer's cigarette sold in this state during the preceding calendar year. For example, with respect to an NPM whose cigarettes were sold to consumers within this state (whether directly or through a distributor, dealer, or similar intermediary or intermediaries) during calendar year 2010, the amount of \$0.0274350 per cigarette sold is required to be placed into a qualified escrow fund for the State of Connecticut by the NPM on or before April 15, 2011. See **Announcement 2011(4)**, *Annual Revision of Forms TPM-1, TPM-2, and TPM-3*.

DRS rejects the argument that the proprietor is not a manufacturer because the proprietor only sells the cigarette-making materials and provides customers with access to the machine. At least one court interpreting the identical MSA qualifying statute of another State has also rejected this argument and held that the proprietor is manufacturing cigarettes.

[T]he court is not persuaded by the [proprietor's] argument that it only "rents" the rolling machines. The process of selling loose untaxed tobacco, which is then immediately rolled into cigarettes retained by the customer in cigarette rolling machines conveniently located on the premises, is clearly a subterfuge to circumvent statutory requirements. Consequently, the court is satisfied that the [proprietor] is "manufacturing cigarettes" for purposes of the statute... The [proprietor's] profit from and participation in the buyer's use of the cigarette rolling machine ... as evidenced by the actual, physical creation of a cigarette inside the store is enough to deem it manufacturing.

*New Hampshire v. North of the Border Tobacco, LLC*, No. 09-E-288, slip op. at 3-4 (N.H. Super. Ct. May 14, 2010).

For the reasons stated in *North of the Border Tobacco*, DRS has determined that the proprietor of the retail establishment on whose premises a

commercial cigarette-making machine for use by customers is maintained is a tobacco product manufacturer selling cigarettes to consumers within this state. As such, the proprietor is required either to become a Participating Manufacturer (and perform its financial obligations under the MSA), or, as an NPM, be in full compliance with the escrow requirements of Conn. Gen. Stat. §4-28i. The obligations imposed on an NPM are summarized in **Special Notice 2005(1)**, *2004 Legislation Affecting Tobacco Product Manufacturers, Licensed Cigarette Distributors and Licensed Cigarette Dealers, and Licensed Distributors for Tobacco Products Tax Purposes*.

The proprietor, as a tobacco product manufacturer selling cigarettes to consumers within this state, whether directly or through a distributor, dealer, or similar intermediary or intermediaries, is required to secure and retain a cigarette manufacturer's license under Conn. Gen. Stat. §12-285c. The application process is described in **Announcement 2004(8.1)**, *Applying for a Cigarette Manufacturer's License*. The license is required to be renewed annually, and the current annual fee for the license is \$5,250.

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**Connecticut law makes it illegal to sell cigarettes the stamping of which is otherwise prohibited:** Conn. Gen. Stat. §12-304(a) makes it illegal to sell, offer for sale, display for sale, or possess with intent to sell, any cigarettes which do not bear stamps evidencing the payment of the Connecticut cigarette tax or any cigarettes the stamping of which is prohibited by Conn. Gen. Stat. §12-302(b) or 12-303(b). Any person who knowingly violates this provision will be fined not more than \$1,000, or imprisoned not more than one year, or both. (Any person who willfully attempts to evade Connecticut cigarette taxes, or the payment thereof, on 20,000 or more cigarettes will be fined not more than \$5,000, or imprisoned not less than one year nor more than five years, or both.)

- The affixing of Connecticut cigarette tax stamps to a package of cigarettes that is of a brand family or of a tobacco product manufacturer not included in the Connecticut Tobacco Directory is prohibited by Conn. Gen. Stat. §§12-302(b) and 12-303(b).
- The affixing of Connecticut cigarette tax stamps to a package of cigarettes that is not labeled in conformity with the requirements of the federal Cigarette Labeling and Advertising Act, 15 U.S.C. §§1331 to 1340, inclusive, or any other federal requirement for the placement of labels, warnings and other information, applicable to packages of cigarettes that are intended to be sold within the

United States is prohibited by Conn. Gen. Stat. §§12-302(b) and 12-303(b).

- The affixing of Connecticut cigarette tax stamps to a package of cigarettes that is of a brand family and brand style not included in the Connecticut Fire Safe Cigarette Directory is prohibited by Conn. Gen. Stat. §§12-302(b) and 12-303(b).

Conn. Gen. Stat. §4-28m(b) also makes it illegal to sell, offer, possess for sale or distribute in this state, cigarettes of a tobacco product manufacturer or brand family not included in the Connecticut Tobacco Directory. Any person violating this provision will be fined not more than \$2,000, or imprisoned not more than one year, or both. Any person violating this provision will also have engaged in an unfair and deceptive trade practice in violation of Conn. Gen. Stat. §42-110b.

Under Conn. Gen. Stat. §12-305, cigarettes of a tobacco product manufacturer or brand family not included in the Connecticut Tobacco Directory are deemed contraband goods and are subject to seizure.

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**TTB Ruling No. 2010-4:** A manufacturer of tobacco products is liable for the federal excise tax that is imposed on tobacco products manufactured in the United States. 26 U.S.C. §§5701(b), 5702(b), (c) and (d), and 5703(a). For federal excise tax purposes, every person, before commencing business as a manufacturer of tobacco products, must apply for a permit to engage in such business and file a bond. A person shall not engage in business as a manufacturer of tobacco products without a permit to engage in such business. 26 U.S.C. §§5711, 5712 and 5713.

The Alcohol and Tobacco Tax and Trade Bureau, U.S. Department of the Treasury (TTB), recently ruled that a person who is in the business of making cigarettes for others, or who facilitates the making of cigarettes by or for others by providing the use of a commercial cigarette-making machine at its premises is engaged in business as a manufacturer of tobacco products, as defined in 26 U.S.C. 5702(d). **TTB Ruling No. 2010-4** (September 30, 2010). Because TTB is presently enjoined from enforcing TTB Ruling No. 2010-4, DRS is expressly not relying on the Ruling's analysis in making its own determination.

**Effect on Other Documents:** None affected.

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**Effect of This Document:** A Policy Statement explains in depth a current DRS position, policy, or practice affecting the tax liability of taxpayers.

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

- **1-800-382-9463** (Connecticut calls outside the Greater Hartford calling area only); **or**
- **860-297-5962** (from anywhere).

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

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**Forms and Publications:** Visit the DRS website at [www.ct.gov/DRS](http://www.ct.gov/DRS) to download and print Connecticut tax forms and publications.

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**Paperless Filing/Payment Methods (fast, easy, free, and confidential):**

Business and individual taxpayers can use the **Taxpayer Service Center (TSC)** at [www.ct.gov/TSC](http://www.ct.gov/TSC) to file a variety of tax returns, update account information, and make payments online.

**File Electronically:** You can choose first-time filer information and filing assistance or log directly into the **TSC** to file returns and pay taxes.

**Pay Electronically:** You can pay taxes for tax returns that cannot be filed through the **TSC**. Log in and select the *Make Payment Only* option. Designate a payment date up to the due date of the tax and mail a paper return to complete the filing process.

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