

Affidavit Guidance

2017 Exemption Renewal Process for Public Act 188 of 2009, as amended

Background

On Tuesday January 10 and Wednesday, January 11, 2017, the Michigan Department of Health and Human Services – Tobacco Section presented two identical technical assistance conference calls on the 2017 exemption renewal process. The calls and Affidavit Guidance are intended to explain the renewal process, highlight changes to the 2017 Exemption Renewal Affidavit, and caution against common mistakes made on previous Exemption Renewal Affidavits.

This Affidavit Guidance document has been updated with Questions and Answers based upon questions received for the two technical assistance calls.

Should you have additional questions after reading this FAQ, please email Jason Osoff at OsoffJ@michigan.gov. We look forward to working with you to help you submit a complete, accurate and postmarked Exemption Renewal Affidavit by the **January 31, 2017 deadline**.

NEW in the 2017 Exemption Renewal Affidavit

1. **If your affidavit is missing any required documentation, or you answered a question incorrectly, your affidavit will be returned to you, you will be given ten (10) business days to correct any deficiencies in the affidavit (including missing documentation), and you will be assessed a \$250 processing fee for every resubmission. Your affidavit will then go to the end of the line for reprocessing. All affidavits are processed in the order received by the Michigan Department of Health and Human Services – Tobacco Section.**
2. You are now required to submit blue prints or the floor plan of your establishment.
3. You are now required to indicate if your establishment has an outdoor patio.
4. Definition for the Calculation for Total Gross Annual Income for **Tobacco Specialty Retail Stores**: Total Gross Annual Income is all revenue generated through all sources, whether it is tobacco products, smoking paraphernalia, food or beverage items, cover charges, party rentals, etc. This is not an exhaustive list.

Total Gross Annual Income for Tobacco Specialty Retail Stores = Total income from non-smoking related items + Tobacco Sales + Tobacco Paraphernalia

Total income from non-smoking related items includes food or beverages, stamps, lotto tickets, cover charges, party rentals, etc. This is not an exhaustive list.

5. New Definition for the Calculation for Total Gross Annual Income for **Cigar Bars**: Total Gross Annual Income is all revenue generated through all sources, whether it is tobacco sales, humidor rentals, food or beverage items, cover charges, party rentals, etc. This is not an exhaustive list.

Total Gross Annual Income for Cigar Bars = Total income from non-smoking related items + Cigar Sales + Humidor (or Locker) Rentals

Total income from non-smoking related items includes food service, alcohol, cover charges, party rentals, etc. This is not an exhaustive list.

6. Difference between smoking paraphernalia and tobacco products for Tobacco Specialty Retail Stores: Smoking paraphernalia includes the sale of unprepared hookah pipes, whereas a prepared hookah pipe sold to customers would be categorized as a tobacco product.
7. If you have an OTP (Other Tobacco Product) tax license, you need only submit a copy of your OTP license on the relevant affidavit page. You do not need to submit any receipts or invoices.
8. If you do not have an OTP tax license, you must submit all copies of receipts or invoices from your tobacco wholesaler and/or retailer.

Common Pitfalls and How to Avoid Them

1. **If I don't have four co-owners, do I still have to initial the pages asking for the information of co-owners? Must I initial every page, even ones that do not apply to me?**

Answer: Yes. For each question, we ask for as much information as possible. We need to be certain you have read and understand the entire document. Initials are your way of acknowledging your understanding of the document. If a question does not apply to you, please respond with "N/A" or "Not Applicable". Even if a question does not apply to you, **we still ask that you initial where told to do so.** Failure to initial where asked will be considered an incomplete affidavit. If your affidavit is missing any required documentation (including initials), your affidavit will be returned to you, you will be given ten (10) business days to correct any deficiencies in the affidavit (including missing documentation), and you will be assessed a \$250 processing fee for every resubmission.

2. **In which format must my valid State ID or Driver's License be?**

Answer: We ask for a color copy of your valid State ID or Driver's License. We also ask that the copy be the actual size of your license and not a larger or smaller copy. Finally, we ask that the copy be attached to the page asking for the Identification.

3. **Must I attach supporting paperwork to the affidavit (e.g., copy of Other Tobacco Products license, copy of Sales Tax License, copy of State ID or Driver's License, etc.)?**

Answer: Yes. Please use scotch tape and apply the copy directly over the sample on the page. Including supporting information in the correct place in the affidavit ensures the accuracy of your exemption renewal affidavit, minimizes the chances of Tobacco Section misinterpretation, and expedites the handling and processing of your affidavit. **We will return affidavits that have loose paperwork for the proper documentation to be attached** to the relevant affidavit page by the applicant, and you will be assessed a \$250 processing fee for every resubmission.

4. **If I don't operate out of a city or county that requires a smoking lounge/tobacco retailer/tobacco sales license, do I still need to initial the license page?**

Answer: Yes. Even if a question does not apply to you, we still ask that you initial where told to do so.

5. **What format must all of my licenses (Other Tobacco Products, Sales Tax, city/county tobacco retailer, etc. – and for Cigar Bars: Liquor, Food Service) be on the Exemption Renewal Affidavit?**

Answer: Please make a copy of your valid license and using scotch tape, attach it directly over the sample on the page that is asking for that specific license. A license is considered valid if it is valid on the day that you are submitting your 2017 Exemption Renewal Affidavit. **Please ensure the entire image of the license is provided, including the name and address of the location for which you are applying for an Exemption Renewal.** We will return affidavits that have loose paperwork for the proper documentation to be attached to the relevant affidavit page by the applicant, and you will be assessed a \$250 processing fee for every resubmission.

6. **Do I need to submit my entire lease agreement, and what do I do if I do not have one?**

Answer: Yes, you must submit your entire lease agreement. If you do not have a lease, we will accept a copy of your deed. If your affidavit is missing any required documentation, your affidavit will be returned to you, you will be given ten (10) business days to correct any deficiencies in the affidavit (including missing documentation), and you will be assessed a \$250 processing fee for every resubmission.

7. **What if I do not have a current certificate of occupancy?**

Answer: You must submit a current certificate of occupancy. If you do not have one, we will accept a current utility bill with the establishment's address on it. If your affidavit is missing any required documentation, your affidavit will be returned to you, you will be given ten (10) business days to correct any deficiencies in the affidavit (including missing documentation), and you will be assessed a \$250 processing fee for every resubmission.

8. **What format must my pictures be in for the Exemption Renewal Affidavit?**

Answer: All pictures must be in color on photographic paper. They must be 4 inches by 6 inches (approximately the same size as the sample pictures), and taped to the page where asked to do so directly over the sample picture. When asked for two pictures of the storefront, we are asking for two of **the same** pictures on the same page. Including supporting information in the correct place in the affidavit ensures the accuracy of your exemption renewal affidavit, minimizes the chances of Tobacco Section misinterpretation, and expedites the handling and processing of your affidavit. We will return affidavits that have loose paperwork for the proper documentation to be attached to the relevant affidavit page by the applicant, and you will be assessed a \$250 processing fee for every resubmission.

9. **Do you have any other hints for avoiding a return processing fee?**

Answer: Yes. Complete the Exemption Renewal Affidavit with plenty of time to review your affidavit. We suggest you have a second person help check for missing information. Check to ensure you have initialed all required boxes and signed required signature lines. Check that you have included all required supporting documentation. Tape (do *not* staple) required licenses and photographs to the appropriate pages. Get your affidavit notarized, and make sure the notary signs and stamps and/or seals the document. Mail your affidavit with a postmark **on or before January 31, 2017**.

Questions and Answers from the January 10 and January 11, 2017 Affidavit Renewal Technical Assistance Calls

1. **Question 50 on the Cigar Bar Exemption Renewal Affidavit (Question 51 on the TSRS Exemption Renewal Affidavit) asks me to include the 2015 State, Use and Withholding Annual Return using Form 165. In 2015, the Michigan Department of Treasury changed to Form 5081 for the Annual Return. What do I submit??**

Answer: Submit Form 5081.

2. **I had to pay \$250 for processing my exemption last year. Will I have to do that again this year?**

Answer: If you were charged a \$250 processing fee last year, it was for the processing of a sale or transfer of an Exemption. You will not be charged a \$250 processing fee for an Exemption Renewal Affidavit unless you have to resubmit your Affidavit due to incomplete or missing information.

3. **Will you accept any hand delivered submissions?**

Answer: No. All 2017 Exemption Renewal Affidavits must be mailed.

4. **Will you accept any documents electronically or do they all have to be hard-copy?**

Answer: All documents have to be hard copies submitted with your 2017 Exemption Renewal Affidavit. We will not accept any electronic files.

5. **How am I supposed to fill out the top right corner of the exemption renewal affidavit asking for my CB or TSRS #?**

Answer: The top right corner of the 2017 Exemption Renewal Affidavit is asking for your exemption number. This will be filled out by processors from the Michigan Department of Health and Human Services – Tobacco Section. Please leave this blank.

6. **How do I respond to a question that is not applicable to me? Do I still initial that section?**

Answer: If there is a question that is not applicable to you, please write “N/A” in the blank and initial where asked to do so.

7. Is there a difference between the owner and the co-holder?

Answer: The 2017 Exemption Renewal Affidavit defines an owner as the primary owner (primary holder of the exemption) of the establishment. Co-owners are defined as co-owners of the establishment (and co-holders of the exemption). Authorized Agents are defined as anyone who has the right to management and control of the 2017 Exemption, other than the primary owner or co-owner. For example, if you would like for your attorney or another non-owner to be able to speak with the Tobacco Section about your Exemption Renewal Affidavit, please list those individuals or entities as Authorized Agents on your Exemption Renewal Affidavit.

8. On my Tobacco Specialty Retail Store Exemption Renewal Affidavit, question #17 asks for information from my cigar bar. How should I respond to this question?

Answer: On Tobacco Specialty Retail Store Exemption Renewal Affidavit, question #17 has a typo. If you are filling out a Tobacco Specialty Retail Store Exemption Renewal Affidavit, please submit blueprints or floor plans for your Tobacco Specialty Retail Store.

9. My cigar bar is separated from a food establishment but is still in the same building. Do we still need to provide a food or liquor license?

Answer: If your Cigar Bar is serving food or alcohol, we will need a copy of the food or liquor license used in this service.

10. Do you want blueprints and a floor plan or will only one of these be sufficient?

Answer: If you have blueprints for your establishment, please provide us with those. If you don't have blueprints, we will accept a floor plan. You do not need to supply both items.

11. Can I submit handwritten floor plans or blueprints?

Answer: We will accept blueprints that have been created by a professional architectural draftsman or hand-drawn by the owner.

12. How am I supposed to obtain a blueprint or floor plan for my establishment?

Answer: Blueprints or floor plans can easily be obtained through an architect. You may also hand-draw the floor plan.

13. My cigar bar is only one part of an entire establishment. Do you want the blueprint/floor plan for just the cigar bar or for the entire establishment?

Answer: Please submit blueprints or floor plans for the entire establishment that the cigar bar is in.

14. How do you define a patio?

Answer: A patio is any outdoor area that is included in the lease or deed of the establishment.

15. Do you need the entire federal/state tax return forms or just a summary?

Answer: Please submit an entire copy of your 2015 Federal Income Tax Return and a copy of your 2015 State of Michigan Department of Treasury Annual Return for Sales, Use, and Withholding Taxes (Form 5081).

16. We weren't open in 2015. How should I provide my 2015 federal/state tax information?

Answer: If your establishment wasn't open in 2015, you will not need to provide 2015 federal or state tax information. Simply note the opening date of the establishment next to the question, and initial where indicated.

17. What is the definition of tobacco products, smoking paraphernalia, and non-smoking related items?

Answer: "Tobacco products" means a product that contains tobacco and is intended for human consumption. Examples include: cigarettes, cigars, shisha, roll-your-own tobacco, smokeless tobacco, hookah pipes prepared with shisha, and orange heads prepared with shisha.

"Smoking paraphernalia" means any equipment, apparatus, or furnishing that is used in — or necessary for — the activity of smoking. Examples include: pipes, ashtrays, lighters, and unprepared hookah pipes.

"Non-smoking related items" are defined as any product sold at the establishment that is not related to the smoking or burning of tobacco products. Examples include: snacks, drinks, candles, and clothing.

18. Is it appropriate to apply two 4 x 6 pictures to the same page, even if it covers some of the wording on the Exemption Renewal Affidavit?

Answer: Please attach two 4 x 6 pictures on the page asking you to do so. As instructed, you will be using tape to attach the pictures to the page. This will allow us to easily detach the pictures if need be. It does not matter if the photographs cover the text on the page.

19. What is an OTP license, and what do I do if I don't have one?

Answer: An OTP license is an Other Tobacco Product tax license. If you have a valid OTP tax license, please submit it with your 2017 Exemption Renewal Affidavit. You will not need to submit any receipts or invoices if you submit a copy of your valid OTP tax license.

For Tobacco Specialty Retail Stores without an OTP License: If you currently do not have a valid OTP tax license, you will need to submit all of your receipts and invoices for all tobacco products and smoking paraphernalia. For future reference, if you are interested in obtaining an OTP tax license, please contact the Michigan Department of Treasury at 517-636-4486.

For Cigar Bars without an OTP License: If you currently do not have a valid OTP tax license, you will need to submit all of your receipts and invoices for cigars ONLY. For future reference, if you are interested in obtaining an OTP tax license, please contact the Michigan Department of Treasury at 517-636-4486.