

# Michigan Tobacco Tax Information Guide for Licensees, Retailers and Others




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Prepared by



Michigan Department of  
**TREASURY**





**DISCLAIMER:** This *Tobacco Tax Information Guide* is intended to provide tobacco product retailers, tobacco tax licensees and others with a general background on the Michigan tobacco tax by summarizing the requirements under the Tobacco Products Tax Act (TPTA). It is not intended to be exhaustive and does not constitute a Revenue Administrative Bulletin or a Letter Ruling.

While every attempt has been made to ensure accuracy, new legislation, regulations, court decisions, notices, and announcements could affect the accuracy of this *Information Guide*. Be aware Treasury's interpretation of the law may change because of legislation, court cases and other events.

Monitor Treasury's website and other authoritative sources for changes that may affect the tobacco tax.

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**NOTE:** Defined terms will be found in **BOLD ALL CAPS** the first time they appear in this document. Definitions are in the **Glossary of Terms on pages 26-29**

# Introduction

The Michigan **TOBACCO PRODUCTS TAX ACT (TPTA)** imposes an excise tax on **TOBACCO PRODUCTS**, which is levied on the consumer of the tobacco products. In addition, it closely regulates the purchase, acquisition, **SALE**, importation, transportation, exportation, and distribution of tobacco products in, into, and/or from Michigan. Because the TPTA imposes serious and significant consequences on those who violate this law — including (but not limited to) seizures, civil penalties, criminal charges, and **LICENSE** suspension, revocation, denial, or non-renewal — it is important to understand and follow the laws and rules that apply when engaging in activities governed by the TPTA. To assist **LICENSEES**, **RETAILERS**, and other **PERSONS** that may engage in activities governed by the TPTA, **TREASURY** has prepared this Information Guide.

Tobacco tax laws and regulations are complex. For additional information or if you have questions about the TPTA, you can check Treasury's tobacco tax website at [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes) or contact Treasury directly (see the Treasury Contact Information listed on page 28).

## Tax Rates (Generally)

- **CIGARETTES**: \$0.10 (10 cents) per individual stick. [MCL 205.427(1) (a)] The tax on cigarettes, therefore, is \$2.00 per pack of 20 and \$2.50 per pack of 25.
- **OTHER TOBACCO PRODUCTS (OTP)**: tax rate is 32% of the **WHOLESALE PRICE**. [MCL 205.422(ii); 205.427(1)(b)]



**NOTE:** Products that do not contain any tobacco, even if they do contain nicotine, are not subject to the tax imposed under (or otherwise regulated by) the TPTA. For more information, please see “Letter Ruling 2015-3” at [www.michigan.gov/taxes](http://www.michigan.gov/taxes)

**NOTE:** Tax under the TPTA is generally precollected and remitted by Wholesalers and Unclassified Acquirers. Persons acting solely as retailers do not need to be licensed and do not file tobacco tax returns or remit tobacco tax.

**NOTE:** The tax rate applicable to cigars is capped at \$0.50 (50 cents) per individual cigar even if the calculated tax at 32% of the wholesale price is greater than \$0.50 (50 cents). [MCL 205.427(1)(b)]

For more information, please see “Notice Regarding Premium Cigars” at [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes)

**NOTE:** Beginning January 17, 2023, a tobacco product that has received a “modified risk” order from the FDA may be subject to a 50% or 25% reduction in the otherwise applicable tax rate under the TPTA. See MCL 205.427(2).

**NOTE:** A Michigan consumer may not purchase or otherwise acquire a tobacco product through a remote retail sale unless the seller is licensed as an unclassified acquirer.” [MCL 205.431(2)].

# LICENSEE

**NOTE:** Michigan Tobacco Products Tax Returns are filed under penalty of perjury.

**NOTE:** The due date for a wholesaler to report and pay the tobacco tax is triggered by the sale of a tobacco product. [MCL 205.427(1)].

The due date for an unclassified acquirer to report and pay the tobacco tax is triggered by the importation or acquisition of a tobacco product in or into Michigan. [MCL 205.427(8)]. See also LR 2015-4.

**NOTE:** See Glossary of Terms section on pages 26-30 for descriptions of what constitutes a manufacturer, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, transporter and more.

## Tobacco Products Tax Returns and Filing Requirements

Tobacco Products Tax Returns are due on or before the twentieth (20th) day of each calendar month. A return must be filed with Treasury by every licensee other than a retailer, **MANUFACTURER**, or **VENDING MACHINE OPERATOR**. In general, the return must state:

- (i) the wholesale price of each item of OTP purchased;
- (ii) the quantity of cigarettes purchased;
- (iii) the wholesale price charged for all OTP sold;
- (iv) the number of **INDIVIDUAL PACKAGES** of cigarettes and the number of cigarettes in those individual packages;
- (v) the number and denominations of **STAMPS** affixed to individual packages of cigarettes sold by the licensee for each **PLACE OF BUSINESS** in the preceding month; and
- (vi) the number and denomination of unaffixed stamps in the possession of the licensee at the end of the preceding calendar month. [MCL 205.427(6)]

Licensees that are **WHOLESALERS** must also report accurate inventories of cigarettes, both stamped and unstamped, at the end of the preceding calendar month. Licensees that are wholesalers and **UNCLASSIFIED ACQUIRERS** must also report accurate inventories of affixed and unaffixed stamps by denomination at the beginning and end of each calendar month and all stamps acquired during the preceding calendar month. Treasury may also require a licensee to report cigarette acquisition, purchase, and sales information in other formats and frequency. [MCL 205.427(6)]

Treasury requires all Tobacco Product Tax Returns be submitted electronically through the Michigan Motor Fuel and Tobacco System (MiMATS). You may file using one of three methods through MiMATS e-Services:

- Web Filing – Manual entry of your return directly in e-Services
- Excel Spreadsheet – An Excel spreadsheet can be uploaded to the system
- XML File Format – Return data can be uploaded using XML format

For more information on filing, please see the MiMATS e-Services instructions at [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes).

If you are both a licensed unclassified acquirer of OTP and a licensed **SECONDARY WHOLESALER** of OTP, please see the Notice to AT/ST Dual Licensees' How to File Your Tobacco Tax Returns at [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes).

## Payments

Tobacco tax payments are required to be submitted electronically within the Michigan Motor Fuel and Tobacco System (MiMATS). To make payments, go to [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes) and login to e-Services.

## Payment Deadlines

Tobacco tax payments are due on the twentieth (20th) day of each month following the reporting period. If payment is not received by Treasury by the due date, penalty and interest charges may be assessed based on provisions of the Michigan **REVENUE ACT** [MCL 205.23, MCL 205.24].

**NOTE:** If the twentieth (20th) of the month falls on a Saturday, Sunday or legal holiday, the next business day is considered the due date for filing returns and making payments.

## Licensing Requirement, License Types, License Fees

A **PERSON** may not purchase, possess, acquire for resale, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, **TRANSPORTATION COMPANY**, or **TRANSPORTER** in Michigan without a license. [MCL 205.423(1)] If a person acts in more than one (1) of these capacities at any place of business, that person must obtain a license for each capacity. [MCL 205.423(2)] A license is not assignable. [MCL 205.423(1)]

## License Types and Fees

**Manufacturer** – the fee for this license is \$100.

**Wholesaler** – may purchase TPTA tax unpaid and TPTA tax paid tobacco products. The fee for this license is \$100.

**Unclassified Acquirer** – imports or acquires TPTA tax unpaid cigarettes or OTP from a source other than a wholesaler or secondary wholesaler for its own consumption, for sale to consumers or for sale to other businesses for resale (including certain remote sales conducted through mail, internet, phone, or other means). The unclassified acquirer can purchase TPTA tax paid tobacco products for sale at retail. The fee for an unclassified acquirer of cigarettes license is \$100. The fee for an unclassified acquirer of OTP license is \$10.

**Secondary Wholesaler** – purchases Michigan TPTA tax paid cigarettes or OTP directly from a Michigan licensed wholesaler or unclassified acquirer and sells the tobacco products to other businesses for resale. The fee for this license is \$25.

**Vending Machine Operator** – purchases Michigan TPTA tax paid cigarettes or OTP only from a TPTA-licensed secondary wholesaler, unclassified acquirer, or wholesaler, and sells the tobacco products

## LICENSEE

**NOTE:** Important guidance as to who does (and does not) constitute a “manufacturer” for which a manufacturer license is required under the TPTA can be found in the April 26, 2018 decision by the Michigan Supreme Court in the following case:

- People v Shami, 501 Mich 243 (2018) explains what it means to “manufacture” or “produce” a tobacco product for purposes of MCL 205.422(p). It also addresses the scope of activities that generally constitute “manufacturing” and trigger the manufacturer’s licensure requirement under the TPTA. 2020 PA 326 limits the effect of the Shami decision by amending the “manufacturer” definition, effective January 1, 2022, to exclude certain persons from constituting “manufacturers” under the TPTA.

**NOTE:** A person who operates or otherwise uses a machine or other mechanical device, other than a cigarette making machine, to produce, roll, fill, dispense, or otherwise generate cigarettes shall not be considered a manufacturer as long as the cigarettes are produced or otherwise generated in that person’s dwelling and for that person’s self-consumption.

**NOTE:** Manufacturers of cigarettes and RYO that are NPMs must comply with the requirements under MCL 205.426c, MCL 205.426d, and 1999 PA 244 (MCL 445.2051 to 445.2052).

# LICENSEE

**NOTE:** A wholesaler or unclassified acquirer whose license is revoked, is terminated, or has expired must return all Treasury authorized OTP roller/hand stampers in its possession to Treasury within 60 days of the revocation, termination, or expiration of its license. In addition to any other fine or any civil or criminal penalty or charge allowed by law, a wholesaler or unclassified acquirer that fails to return each device in its possession as required is liable for a fine of \$500.00 for each device not timely returned. [MCL 205.426(9)].



**NOTE:** Manufacturers should refer to MCL 205.426f for the guidelines relating to removal of a tobacco product manufacturer or affiliated brand families of a manufacturer from (or refusal by Treasury to list such a manufacturer or brand family on) the PM or NPM Directory.

to consumers through one or more vending machines. The fee for a vending machine operator license is calculated as follows: \$25 for the first vending machine plus \$6.25 for each additional vending machine.

**Transportation Company** – the fee for this license is \$5.

**Transporter** – the fee for this license is \$50. Please note: a permit is required for each load, at \$1/load. (See page 11 for more information.)

For information on how to apply for these licenses, see section titled “Applying for and Renewing a License” on page 15.

## Stamps, OTP Markings and Shipping Labels

### Cigarettes

In general, cigarettes sold, offered for sale, or possessed in Michigan must be stamped. Below are specific rules regarding cigarettes:

- Each individual package of cigarettes offered for sale in Michigan must have the Treasury authorized stamp affixed to it (affixed = 90% or more of the stamp on the individual package). [MCL 205.426(11), MCL 205.426a(3)]
- Wholesalers and unclassified acquirers must place (or cause to be placed) a stamp on the bottom (unless Treasury permits another location) of each individual package of cigarettes to be sold in Michigan before delivery, sale, or transfer to any person in Michigan. [MCL 205.426a(2)]
- Retailers and licensees (other than wholesalers or unclassified acquirers) may not acquire an individual package of cigarettes or a cigarette from an individual package for resale unless that individual package has the Treasury authorized stamp affixed to it. This prohibition does not apply to a person acting as a transporter for a wholesaler or unclassified acquirer. [MCL 205.426a(4)]
- Retailers and vending machine operators may not sell (or offer for sale) an individual package to the public that does not have the Treasury authorized stamp affixed to it. An individual package of cigarettes without a stamp may not be placed or stored in a vending machine. [MCL 205.426a(5)]
- The Treasury authorized stamp may only be affixed to those cigarette brands (or brand families) that are manufactured by **PMs** and **NPMs** listed on Treasury's PM or NPM Directory available at [www.michigan.gov/taxes/0,4676,7-238-43519\\_43547-470540--,00.html](http://www.michigan.gov/taxes/0,4676,7-238-43519_43547-470540--,00.html). [MCL 205.426a(2), (11)]



- A **STAMPING AGENT** may not affix a stamp to any package of cigarettes of an NPM if the NPM is not listed on the NPM Directory or after receiving notice that the NPM has not prepaid or paid in full the equity assessment imposed under MCL 205.426d(6). Additional requirements applicable to stamping agents can be found in Rule 4 (R 205.454). A person seeking to become a stamping agent must complete and submit a "Stamping Agent Agreement" (Form 3371).

## Non-Cigarette Tobacco Products (OTP)

Unlike cigarettes, individual consumer items of OTP are not required to have a tax stamp affixed or bear a Treasury authorized marking. However, certain cases, boxes and **CONTAINERS** containing OTP must bear the "proper" marking required by Treasury. The "proper" marking may take the form of the name and address of first purchaser in Michigan (e.g., a shipping label) or the marking applied by the Treasury authorized OTP roller/hand stamper depending on the circumstances. Below are specific rules regarding OTP:

### a) Shipping Cases, Boxes, or Containers of OTP Generally

Every **SHIPPING CASE**, box or container of OTP found in a place of business or otherwise in the possession of a retailer, secondary wholesaler, transporter, unclassified acquirer, vending machine operator, or wholesaler must bear the "proper" marking required by Treasury except as otherwise explained below. [MCL 205.426(11)].

### b) Shipping Cases of OTP from Manufacturer or Person Outside Michigan

Each shipping case or container of OTP that is received or acquired in Michigan by a wholesaler or unclassified acquirer from a manufacturer or any person located outside Michigan must bear at least one of the following "markings" [MCL 205.426(7)]:

- Name and address of the person making the first purchase in Michigan (e.g., a shipping label), or
- The "marking" applied by the Treasury authorized OTP roller/hand stamper.

Licensed wholesalers and unclassified acquirers typically receive OTP in original manufacturers' shipping cases directly from manufacturers or unlicensed out-of-state distributors. Once an original manufacturer's shipping case of OTP is received or acquired in Michigan, these wholesalers and unclassified acquirers **MUST** affix the marking applied by the Treasury authorized OTP roller/hand stamper to each original manufacturer's shipping case if it does not already bear the name and address of the first purchaser in Michigan. If an original manufacturer's shipping case is purchased or otherwise acquired by a secondary wholesaler or retailer from a licensed wholesaler or unclassified acquirer, the shipping case must bear one of the above markings or it will be presumed to be contraband and subject to seizure and forfeiture as explained on pages 12 and 19 of this Information Guide.

## LICENSEE

**NOTE:** Requirements for reporting, possessing and returning unstamped cigarette inventory or stamps can be found in Rule 2 (R 205.452).

**NOTE:** A shipping case or container of OTP is not required to have either prescribed marking (e.g., name and address of first purchaser in Michigan or marking applied with the Treasury authorized OTP roller/hand stamp) while being transported into Michigan so long as the case is not received or acquired in Michigan by the licensee. Therefore, labeling or marking the shrink-wrap or other material covering a pallet or group of these cases is acceptable. However, once received or acquired in Michigan by the licensee, each shipping case or container must bear either of the markings described above or it will be in violation of the TPTA; regardless whether there is a marking on the shrink-wrap or other material covering the pallet or group of these cases or containers. Whether a case or container is deemed to be received or acquired in Michigan will be based on the particular facts and circumstances. Relevant factors include, but are not limited to, ownership of the cases or containers at the time they enter Michigan, the risk of loss, and the use of a common carrier versus the licensee's own vehicle.

# LICENSEE

**NOTE:** A retailer may possess other shipping cases, boxes or containers of OTP that do not bear the Treasury approved marking so long as the OTP was purchased or otherwise acquired from a licensed secondary wholesaler and the retailer maintains the records required by the TPTA to substantiate the purchase or acquisition of the OTP.

**NOTE:** Sales of tobacco products conducted through the Internet, by telephone, or in a mail-order transaction are subject to various requirements including, but not limited to, age verification and package labeling. See MCL 205.431 (6)-(7).

**NOTE:** A marking required by the TPTA must not be affixed to a shipping case or container of OTP in a manner that makes the marking illegible or that covers up (in whole or in part), or otherwise obstructs or makes illegible the information or markings described in MCL 205.426(7).

**Note:** 2022 PA 171, effective July 21, 2022, effectively overruled the Value, Inc v Dep't of Treasury decision in the context of seizures and forfeitures of tobacco products.

## c) Other Shipping Cases, Boxes or Containers of OTP

Wholesalers and unclassified acquirers typically ship OTP to their customers (e.g., secondary wholesalers, vending machine operators, and retailers) in smaller cases, boxes, or containers after the OTP has been broken down from the original manufacturers' shipping cases. Before shipping any such case, box, or other container of OTP (regardless whether a case, box, or container also contains other (non-tobacco) items), each must be marked by the wholesaler or unclassified acquirer using the Treasury authorized OTP roller/hand stamper [MCL 205.426(8)].

Secondary wholesalers may further break down shipping cases, boxes, or containers purchased or received from wholesalers and unclassified acquirers into other cases, boxes, or containers for their customers (e.g., retailers). Because secondary wholesalers are not permitted to possess or use the Treasury authorized OTP roller/hand stamper, OTP shipped in these cases, boxes, or containers by secondary wholesalers to their customers will NOT bear any markings. Accordingly, as long as the customer (e.g., retailer) purchased or acquired these unmarked cases, boxes, or containers from a licensed secondary wholesaler and maintains the proper invoices and other records required by the TPTA to substantiate the purchase or acquisition, the unmarked cases, boxes, or containers will not be considered contraband and will not be subject to seizure or forfeiture.

See "Application for Non-Cigarette Tobacco Products Stamp" (Form 323 Application for Other Tobacco Products Stamp) and "Internal Policy Directive 2006-11" for more information:

[www.michigan.gov/documents/treasury/ipd2006-11\\_179402\\_7.pdf](http://www.michigan.gov/documents/treasury/ipd2006-11_179402_7.pdf).

See also "Value, Inc v Dep't of Treasury," 320 Mich App 571 (2017).

## Vending Machine Disc or Marker

Each vending machine containing a tobacco product for sale must have the Treasury authorized disc or marker attached to the front of the vending machine (and visible to the public). [MCL 205.423(5)]

# Administrative Inspection of Licensees

Inspectors will present their State of Michigan identification and business card to the contact person of the establishment. They will explain the reason for the inspection, the process that will be followed, and the items that they will need to see inside the business, including (if applicable) but not limited to:

- The previous four (4) years of tobacco product invoices
- TPTA license
- Sales tax license
- Identification of business contact person
- All tobacco products
- Signage indicating sales to minors are prohibited
- Cigarette stamp inventory

Administrative inspections will occur during the licensee's regular business hours and will not be pre-scheduled or otherwise announced in advance. The inspection process is permitted by law without a search warrant or court order and may not be prevented or hindered. [MCL 205.426a(6), (8)]

All tobacco products associated with the business must be presented for inspection including tobacco products held in storage areas inside or outside of the business, vehicles, and residences.

Invoices and other records (see page 12 for a description of the invoices and other records) must be presented for the purpose of supporting the purchase or acquisition of the tobacco products for the business over the past four (4) years. These invoices and records must be located at the business and immediately accessible at the time of inspection. It is a violation of the **TPTA** for a licensee to not have these invoices on site and available for inspection.

The "ship to" address on the invoices must match the physical location where the tobacco products are being stored or offered for sale.

Tobacco shipping cases and containers will be inspected for proper markings and, where appropriate, shipping labels. Individual packages of cigarettes and cartons will also be inspected to ensure stamps are affixed to the individual packages of cigarettes.

For licensees that are unclassified acquirers, the inspector may bring the monthly tobacco tax returns filed by the licensee to assist in the inspection. The invoice information will be compared to these tobacco tax returns. This process may occur at the business or the records may be removed from the business for further examination.

The Treasury authorized OTP roller (hand stamper) assigned to the licensee will be inspected.

## LICENSEE

**NOTE:** A Licensee may not purchase, acquire, possess, or sell cigarettes acquired from (or manufactured by) a NPM that has not provided the Licensee with a copy of the certification of MSA compliance and information demonstrating compliance with the TPTA's equity assessment provisions. MCL 205.426c, MCL 204.426d

**NOTE:** For licensees, "regular business hours" refers to the Hours of Operation listed on Part 1 of the licensee's license application and any additional hours which may be displayed on the licensee's signage, advertisements or other information communicated to the general public.

**NOTE:** Inspectors will be looking for overall compliance with the TPTA.

**NOTE:** Each place of business of the licensee or other nonresidential building, office, or facility licensed under the TPTA must display the name and address of the licensee in a manner that is readily visible to the general public from outside the place of business, nonresidential building, office, or facility, as applicable. [MCL 205.423(8)].

# LICENSEE

**NOTE:** For an unclassified acquirer that does not maintain a place of business where tobacco products are sold, brought, or kept, the records required by MCL 205.426 must be kept at the physical address licensed under MCL 205.423. [MCL 205.426(1)].

## Contraband

A tobacco product held, owned, possessed, transported, or in control of a person in violation of the TPTA, and a vending machine, vehicle, and other tangible personal property containing a tobacco product in violation of the TPTA and any related books and records are contraband and may be seized and confiscated by Treasury. [MCL 205.429(1)]

The seizure and forfeiture of a tobacco product or other property does not relieve a person from a fine, imprisonment, or other penalty for violation of the TPTA. [MCL 205.429(6)]

## Recordkeeping Requirements

### Invoices and Other Records (General)

Manufacturers, secondary wholesalers, transportation companies, unclassified acquirers, vending machine operators, and wholesalers must keep a complete and accurate record of each tobacco product manufactured, purchased, or otherwise acquired. For secondary wholesalers, transportation companies, unclassified acquirers, vending machine operators, and wholesalers these records must include a written statement containing all of the following [MCL 205.426(1)]:

- Name and address of both the seller and purchaser
- Delivery date
- Quantity of each tobacco product
- Trade name or brand of each tobacco product
- Price paid for each tobacco product purchased or acquired

### Invoices and Other Records (Vending Machine Operators)

Vending machine operators must keep a detailed record of each vending machine owned for the sale of tobacco products containing all of the following information [MCL 205.426(3)]:

- Location of each vending machine
- Date the vending machine was placed on the location
- Quantity of each tobacco product placed in each vending machine
- Date when tobacco products were placed in each vending machine
- Amount of the commission paid or earned on sales through each vending machine

When filling or refilling a vending machine, vending machine operators must deliver a written statement to the owner or tenant occupying the premises where a vending machine is located with all of the following [MCL 205.426(3)]:

- Name and address of vending machine operator and name and address of owner or tenant
- Date when vending machine was filled (or refilled)
- Quantity of each brand of tobacco product sold from the vending machine since the date when the tobacco products were last placed in the vending machine.



## Transactions Involving Manufacturer Representatives

Representatives of licensed manufacturers must provide each licensee (wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer) with an invoice when exchanging tobacco products or otherwise engaged in transactions with that licensee involving tobacco products. This record must show:

- (i) the quantity and identity of the tobacco products received by the licensee;
- (ii) detail whether exchanged, received, removed, or otherwise disposed of; and
- (iii) the identity of the licensee involved.

This invoice must be retained by the licensee in the same place and for the same period of time as other records required by the TPTA. [MCL 205.428(2)]

## Records Must be Available for Inspection

A licensee must keep the written statement described above (as applicable to that license type) AND a true copy of all purchase orders, invoices, bills of lading, and other written matter substantiating the purchase or acquisition of each tobacco product at the location where the tobacco products are stored or offered for sale. For an unclassified acquirer that does not maintain a place of business where tobacco products are sold, brought, or kept, the records must be kept at the physical address licensed under MCL 205.423(2). These records must, generally, be preserved for a period of four (4) years from the date of acquisition or purchase and offered for inspection at any time upon oral or written demand by Treasury or its authorized agent. Treasury may require other documents to be retained by a licensee. [MCL 205.426(1), (5)]

## Documents Furnished with each Sale or Consignment of Tobacco Products

Manufacturers, secondary wholesalers, unclassified acquirers, and wholesalers must deliver (and retain a duplicate) with each sale or consignment of a tobacco product a written statement containing all of the following information [MCL 205.426(2)]:

- Name (or trade name) and address of both the seller and purchaser
- Delivery date
- Quantity of each tobacco product
- Trade name or brand of each tobacco product
- Price paid for each tobacco product purchased or acquired.

## LICENSEE

**NOTE:** A licensee in possession or control of a tobacco product that has not preserved its records because it claims the tobacco products were purchased or acquired more than 4 years ago bears the burden of proving (through sufficient documentation) that the tobacco products were purchased or acquired more than 4 years ago. [MCL 205.426(6)]

**NOTE:** A licensee is not in compliance with these recordkeeping requirements if the records are kept offsite, such as in the custody of an accountant (or other agent), or retained solely by the licensee's vendor.

**TIP:** Treasury may, by prior written approval, allow a licensee to maintain records in a different manner. [MCL 205.426(1)]

**NOTE:** Maintaining documents in an electronic format (rather than paper) may be acceptable as a "true copy" for purposes of the TPTA provided the documents can be delivered (either by printing out on paper or by electronic transfer - e.g., email or thumb drive) to the inspectors upon request. Having the information available only on a screen for viewing by the inspectors does not comply with the TPTA.

# LICENSEE

**NOTE:** An individual acting as a transporter is required to be licensed as a transporter. An employee must have, in his or her possession, a copy of their employer's transporter or other appropriate TPTA license when transporting, possessing or acquiring for the purpose of transporting, a tobacco product on a Michigan road or highway, or the employee will be considered an unlicensed transporter in violation of the TPTA.

**NOTE:** Labeling or marking shrink-wrap or other material covering a pallet or group of shipping cases or containers (rather than on each individual shipping case or container) does not satisfy this requirement.

**NOTE:** A tobacco product that was located in Michigan is considered to have been shipped outside Michigan if the tobacco product crossed the Michigan border regardless whether the tobacco product is delivered to or accepted by the consignee or purchaser to whom the shipment was made outside Michigan. [MCL 205.426(12)]

**NOTE:** A Michigan retailer (or other person acting on behalf of a Michigan retailer) is not required to be licensed under the TPTA to transport a tobacco product upon a Michigan public highway, road, or street for the purpose of delivering a tobacco product to a Michigan consumer if certain conditions are met. [MCL 205.426(15)]. An unclassified acquirer license is still required if the transaction constitutes a remote retail sale.

## Documents Required for Transporting Tobacco Products in Michigan

Transporters or other licensees must have in their actual possession bills of lading or invoices containing all of the following when transporting, possessing, or acquiring for purposes of transporting, a tobacco product on Michigan roads, highways, or streets [MCL 205.426(14)]:

- Name (or trade name) and address of both the seller and purchaser
- Delivery date (actual or estimated)
- Quantity of each tobacco product
- Trade name or brand of each tobacco product
- Price paid for each trade name or brand in the transporter's (or other licensee's) possession or custody
- Copy of the transporter's (or if other licensee, licensee's) TPTA license

## Shipping Tobacco Products to Locations Outside of Michigan (Exports)

Licensees located in Michigan who ship (export) tobacco products to locations outside Michigan must place the name and address of the consignee or purchaser to whom the shipment is made outside Michigan (and if the tobacco product is OTP, the marking prescribed by Treasury - e.g., OTP roll mark - unless the shipping case or container already bears that marking from the licensee) on each shipping case or other container in which the tobacco product is shipped. [MCL 205.426(12)]



# Applying for and Renewing a License

To obtain a license for the first time, an applicant must register and submit an online application in the Michigan Motor Fuel and Tobacco System (MiMATS) through the e-Services link and demonstrate the following (through satisfactory proof as determined by Treasury):

- The applicant's financial responsibility including, but not limited to, a minimum net worth of \$25,000.00.
- The applicant owns, or has an executed lease for, a secure nonresidential facility for the purpose of receiving and distributing cigarettes and/or OTP and conducting its business, if applicable. If the applicant carries on another business in conjunction with the secure nonresidential facility, the other business shall also be identified.
- United States citizenship or eligibility to obtain employment within the United States if not a citizen. If the applicant is not an individual, the controlling shareholders, partners, directors, and principal officers shall be United States citizens or eligible to obtain employment within the United States if not a citizen.

A checklist and instructions are available to help complete the application. Additional forms and documentation are required to be submitted with the completed application. Please see [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes) for more information.

A TPTA license is issued by location therefore a licensee with two or more locations needs a TPTA license for each location. A TPTA license is not assignable and expires annually thus requiring licensees to complete and submit an application each year. The license year begins on July 1 and ends on June 30.

In order to continue operating as a licensee into the new license year, an application and fee for renewal are required to be submitted to Treasury by June 30 each year. If the application is not submitted to Treasury by June 30, a person will be unable to operate as a licensee (beginning July 1) until a new license is issued. A NEW application must be submitted and will be subject to additional requirements.

## LICENSEE

A TPTA license is NOT required when a person acts solely in the capacity of a retailer.

**NOTE:** An applicant for a license may be subject to a pre-license inspection performed by Treasury or its authorized agent prior to the approval or issuance of a license.

**NOTE:** Except for a secondary wholesaler described in MCL 205.422(z) (ii), a secondary wholesaler must maintain an established place of business in Michigan where a substantial portion of the business is the sale of tobacco products and related merchandise at wholesale and, where at all times, a substantial stock of tobacco products and related merchandise is available for sale to retailers at retail.

**NOTE:** For unclassified acquirers that do not maintain a place of business where tobacco products are sold, brought, or kept, Treasury may issue a license based on the physical address of the applicant's nonresidential building, office, or other facility where the records required under this act are to be kept and maintained.

## License Hearing Procedures

Treasury may suspend, revoke, or refuse to issue or renew a license for failure to comply with the TPTA or "for any other good cause." [MCL 205.425(1)] Hearing procedures involving a suspension, revocation, or refusal to renew a license are set forth under MCL 205.425 and are summarized below:

### Hearing Before a Representative of the Treasurer or Treasurer's Designee

Before Treasury suspends, revokes, or refuses to renew a license, Treasury is required to notify the person of its intent to hold a hearing before a representative of Treasury to determine whether to suspend, revoke, or refuse to renew the license at least fourteen (14) days before the scheduled hearing date.

### Hearing Before a Hearing Referee

A person aggrieved by the suspension, revocation, or refusal to issue or renew a license may apply to Treasury's Hearings Division for a hearing within twenty (20) days after notice of the suspension, revocation, or refusal to issue or renew the license. A hearing is then held by a Hearing Referee in the same manner as provided in MCL 205.21.

For a suspension, revocation, or refusal to renew a license, the Decision of the Administrator of the Hearings Division is required to be issued within forty-five (45) days of Treasury's receipt of the request for hearing. An appeal can be taken as allowed by law.





# Administrative Inspection of Retailers (No License)

Inspectors will present their State of Michigan identification and business card to the employee contacted at the retail location. They will explain the reason for the inspection, the process that will be followed, and the items that they will need to see inside the business, including:

- Tobacco product records for the previous four (4) months
- Sales tax license
- Identification of business contact person
- All tobacco products
- Signage indicating sales to minors are prohibited

Administrative inspections will occur during the retailer's regular business hours and will not be pre-scheduled or announced in advance. The inspection process is permitted by law without a search warrant or court order and may not be prevented or hindered. [MCL 205.426a(6)(7)]

Tobacco product invoices and other records required by the TPTA covering the four (4) month period must be located on the site of the business and made available immediately at the time of the inspection. Retailers must also have the ability to provide copies of the invoices and records to the inspectors upon request.

The inspection process requires that the inspectors be provided access to all areas of the business for the following purposes:

- Determine if the invoices support the tobacco products in the store and conduct a reverse inventory verification to ensure all of the tobacco products are substantiated by invoices.
- Check that the "Ship To" address on each invoice matches the physical location of the tobacco product.
- Verify that the invoices (and other required records) are from an appropriate licensee to ensure that the TPTA tax has been paid.
- Ensure that individual packages of cigarettes are properly affixed with a valid, Treasury-authorized stamp.
- Confirm that shipping cases and containers of OTP bear the markings prescribed by the TPTA.

## RETAILER

**NOTE:** Retailers may not purchase, acquire, possess, or sell cigarettes acquired from (or manufactured by) a NPM that has not provided the Retailer with a copy of the certification of MSA compliance and information demonstrating compliance with the TPTA's equity assessment provisions. MCL 205.426c, MCL 204.426d.

**NOTE:** A retailer's regular business hours are those hours the retailer is open for business as evidenced by the retailer's commercial activity and signage, advertisements or other information communicated to the general public. [MCL 205.426a(7)]

**NOTE:** Retailers must post a sign inside their store, visible to the public, informing purchasers of cigars through catalog sales, telephone or mail orders, or Internet sales of the purchaser's liability for any applicable unpaid state taxes on those cigars and that cigars purchased in violation of the TPTA are contraband.

**NOTE:** Each place of business of a retailer must display the name and address of the retailer in a manner that is readily visible to the general public from outside the place of business. [MCL 205.423(8)].

# RETAILER

**NOTE:** A retailer in possession or control of a tobacco product that has not preserved its records because it claims the tobacco products were purchased or acquired more than 4 years ago bears the burden of proving (through sufficient documentation) that the tobacco products were purchased or acquired more than 4 years ago. [MCL 205.426(6)]

**NOTE:** A retailer may keep its records relating to purchases or acquisitions older than four (4) months off-site, including with the retailer's accountant or other agent. However, a retailer is not in compliance with these recordkeeping requirements if the records allowed to be kept off-site are not in the custody of the retailer, its accountant (or other agent), or retained solely by the retailer's vendor.

**TIP:** Treasury may, by prior written approval, allow a retailer to maintain records in a different manner. [MCL 205.426(1)]

**NOTE:** Maintaining documents in an electronic format (rather than paper) may be acceptable as a "true copy" for purposes of the TPTA provided the documents can be delivered (either by printing out on paper or by electronic transfer - e.g., email or thumb drive) to the inspectors upon request. Having the information available only on a screen for viewing by the inspectors does not comply with the TPTA.

## Recordkeeping Requirements

### Invoices and Other Records

Retailers must keep a complete and accurate record of each tobacco product purchased or otherwise acquired. These records must include a written statement containing all of the following [MCL 205.426(1)]:

- Name and address of both the seller and purchaser
- Delivery date
- Quantity of each tobacco product
- Trade name or brand of each tobacco product
- Price paid for each tobacco product purchased or acquired

### Records Available for Inspection

A retailer must keep the written statement described above AND a true copy of all purchase orders, invoices, bills of lading, and other written matter substantiating the purchase or acquisition of each tobacco product at the location where the tobacco products are stored or offered for sale for a period of four (4) months from the date of acquisition or purchase. Records must generally be preserved for a period of four (4) years from the date of acquisition or purchase and offered for inspection at any time upon oral or written demand by Treasury or its authorized agent. [MCL 205.426(1), (7)]

### Acquiring Tobacco Products

Retailers, except those that also maintain an appropriate license (e.g., unclassified acquirer - retail importer of cigarettes or OTP), must purchase all of their tobacco products from TPTA licensed wholesalers, secondary wholesalers, or unclassified acquirers (unless lawfully acquiring tobacco products from a manufacture representative). MCL 205.431(3). Each retailer is encouraged to contact Treasury to verify each source has a valid license. A licensee may provide a copy of its license to a retailer. See MCL 205.431(4)-(5).

A retailer may not sell, purchase, receive or solicit a sale of a tobacco product to be shipped, mailed, imported, or otherwise sent or brought into Michigan (including internet-based purchases and remote retail sales) unless the retailer holds an unclassified acquirer license or the tobacco product is sold through a licensed wholesaler or unclassified acquirer. [MCL 205.423(1), 205.431(1)-(5)] See also RAB 2021-8.

There are sources located outside of Michigan that have been issued a license to sell tobacco products to businesses in Michigan. These purchases may be delivered via ground transportation. Contact Treasury to determine if a source has such a license.

A representative of a licensed manufacturer must provide the retailer with an invoice when exchanging a tobacco product. This record must show: (i) the quantity and identity of the tobacco product received by the retailer; (ii) detail whether exchanged, received, removed, or otherwise disposed of, and (iii) the identity of the retailer involved. This invoice must be retained by the retailer in the same place and for the same period of time as other records required by the TPTA. [MCL 205.428(2)]

## Transferring Tobacco Inventory Between Retail Locations

Tobacco products purchased for a specific retail location for resale may not be transferred to other retail locations (i.e., those with a different physical address) even if all locations have the same owner. A secondary wholesaler license is required to transfer products between retail stores with different physical addresses. [MCL 205.422(z)(ii)]

### Contraband

A tobacco product held, owned, possessed, transported, or in control of a person in violation of the TPTA, and a vending machine, vehicle, and other tangible personal property containing a tobacco product in violation of the TPTA and any related books and records are contraband and may be seized and confiscated by Treasury. [MCL 205.429]

The seizure and forfeiture of a tobacco product or other property does not relieve a person from a fine, imprisonment, or other penalty for violation of the TPTA. [MCL 205.429(6)]



## RETAILER

**NOTE:** A person (other than a licensee) who is in control or possession of a tobacco product in violation of the TPTA (e.g., an individual package of cigarettes without a stamp), offers to sell or does sell a tobacco product for purposes of resale without the requisite license, or offers to sell at retail, or does sell at retail, an individual package of cigarettes without a stamp or any tobacco product purchased or acquired from a person that was not licensed under the TPTA as a secondary wholesaler, wholesaler, or unclassified acquirer (or was not an authorized manufacturer's representative under MCL 205.428(2)) at the time of purchase or acquisition, is personally liable for the TPTA tax plus a penalty of 500% of the amount of the TPTA tax due. [MCL 205.428(1)]

See *Vulic v Dep't of Treasury*, 321 Mich App 471 (2017).

**NOTE:** Any person who violates MCL 205.431(2) and a retailer in violation of MCL 205.431(3) is considered to be in control or possession of a tobacco product in violation of the TPTA for purposes of seizure and forfeiture under MCL 205.429 and the 500% penalty under MCL 205.428(1).

**NOTE:** Sales of tobacco products conducted through the Internet, by telephone, or in a mail-order transaction are subject to various requirements including, but not limited to, age verification and package labeling. See MCL 205.431(6)-(7).

**NOTE:** Contraband tobacco products are not eligible for tax rate reductions under MCL 205.427(2) even if they are "modified risk" products. See MCL 205.427(5).

**NOTE:** A representative is guilty of a felony, punishable by a fine of not more than \$5,000.00 or imprisonment for not more than five (5) years, or both, if they do any of the following in Michigan:

- Sell, exchange, or otherwise dispose of cigarettes or OTP that do not bear the stamp or other marking required by Treasury, and/or
- Sell, exchange, or otherwise dispose of cigarettes or OTP bearing the tax indicia of another state.

[MCL 205.428(2)]

## Manufacturer Representatives

The TPTA allows for certain activities concerning the possession and sale, exchange, or other disposition of tobacco products in Michigan by a person that is a representative of a licensed manufacturer. [MCL 205.428(2)] Below are the TPTA's requirements applicable to such representatives:

- Treasury may permit a representative whose duties require travel in Michigan to transport up to 138,000 cigarettes, of which not more than 36,000 cigarettes may bear no tax indicia or the tax indicia of another state.
- The total value of OTP carried by a representative shall not exceed a wholesale value of \$5,000.00.
- A manufacturer must notify Treasury of the manufacturer's representatives that it currently employs who carry cigarettes or OTP in performing work duties in Michigan.
- The manufacturer shall maintain a record of each transaction by the manufacturer's representative for a period of four (4) years immediately following the transaction and shall produce the records upon request of Treasury or Treasury's authorized agent.
- Each record shall identify the quantity and identity of the tobacco products, detail whether exchanged, received, removed, or otherwise disposed of and the identity of the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer involved. The representative must provide a copy of the record to the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer at the time of the exchange or disposal.
- A representative may not, within Michigan, exchange or otherwise dispose of tobacco products bearing the tax indicia of another state or receive tobacco products bearing the tax indicia of another state from retailers located in Michigan.

In addition to the statutory provisions of the TPTA, Rule 3 (R 205.453) provides that manufacturer representatives may legally possess individual packages of cigarettes if the "Tobacco Manufacturer's Representative Permission List" (Form 4857) is submitted to Treasury.

A manufacturer must promptly notify Treasury when the manufacturer's representative is no longer employed by the manufacturer or when there is any change in any representative's territory in Michigan, name, address, telephone number, or vehicle make, model, or license number. [R 205.453]

# Sales of Single Cigarettes and Games of Chance

Federal law and regulations prohibit a retailer from selling single cigarettes (“loosies”):

- Federal regulations at 21 CFR 1140.14 provide that “no retailer may break or otherwise open any cigarette . . . package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the quantity in the minimum cigarette package size defined in 1140.16(b) . . . .” The minimum cigarette package size is generally 20 per 1140.16(b). A “retailer” is defined for purposes of this regulation as “any person who sells cigarettes or smokeless tobacco to individuals for personal consumption, or who operates a facility where vending machines or self-service displays are permitted under Part 1140.”
- Michigan law provides that a person shall not possess or sell a tobacco product that violates any Federal law or regulation and that a product that does not comply with Federal law or regulation is subject to seizure. Therefore the sale of single cigarettes is a violation of the TPTA. [MCL 205.14]
- Except as otherwise provided by law, it is a violation of the TPTA to sell a cigarette separately from its individual package. [MCL 205.426a(5)].

The TPTA prohibits a person from using a device or game of chance to aid, promote or induce sales or purchases of a tobacco product or give a tobacco product in connection with a device or game of chance. [MCL 205.426(4)]

**NOTE:** More information is available at the U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau, FAQs [www.ftb.gov/tobacco/faqs-general](http://www.ftb.gov/tobacco/faqs-general)

Also see 27 CFR part 40

**NOTE:** Under MCL 722.642a, a person who sells tobacco products at retail and sells a cigarette separately from its package could be subject to a misdemeanor charge, punishable by a fine of not more than \$500 for each offense.



**NOTE:** Audit resources including Taxpayer Rights During an Audit and Audit Standards for Field Audits can be found at

[www.michigan.gov/taxes/0,4676,7-238-74531\\_43524--,00.html](http://www.michigan.gov/taxes/0,4676,7-238-74531_43524--,00.html)

## Audit

In general, the TPTA is administered by Treasury under the Revenue Act. [MCL 205.433(1)] Section 3(a) of the Revenue Act [MCL 205.3(a)] authorizes the examination of the books and records of a taxpayer to determine if the correct tax was reported and paid.

A confirmation letter will be sent giving notification that an **AUDIT** will be performed. Included in the letter will be instructions on how to obtain the "Taxpayer Rights During an Audit" brochure (Form 2315).

Treasury auditors are professionals, familiar with the application of Michigan tax law in the business environment. The auditor assigned to an audit will conduct a fair and impartial examination of the taxpayer's records. While the audit is in progress, the auditor will answer any questions that may arise.

When the audit is finished, the auditor will explain the audit findings and the alternatives available to the taxpayer if the taxpayer disagrees with the audit results. The Revenue Act requires taxpayers to furnish all records requested by the auditor that are necessary for performing a fair and impartial audit.



# Seizure Hearing Procedures

## Demand for Hearing

After property (contraband) has been seized, any person claiming an interest in the seized property may file a demand for a hearing to determine if the property was lawfully subject to seizure and forfeiture. A demand for hearing must be filed with Treasury's Hearings Division within ten (10) business days after the date of service of the Notice of Seizure and Inventory Statement of Property Seized. If a timely demand for hearing is not made or if it fails to comply with the requirements of MCL 205.429(3), the property seized is considered forfeited to the State of Michigan by operation of law and may be destroyed or sold by Treasury.

## Hearing

Upon receipt of a demand for hearing, Treasury is required to hold the hearing within fifteen (15) business days. The case will be assigned to a Hearing Referee and Treasury's Hearings Division will mail a Notice of Hearing that includes the date and time of the hearing along with instructions for how to participate in person or by telephone. The hearing is conducted in an informal manner that facilitates the exchange of information needed to determine whether the property is subject to seizure and forfeiture or is to be returned.

At the hearing before Treasury, the person who demanded the hearing is entitled to be represented by an attorney or other person, to present testimony and argument, and may submit a presentation in the form of a brief or a written statement that contains the facts, a discussion of the relevant law, and the legal arguments in favor of the person's position.

After reviewing the testimony, evidence, and written submissions, the Hearing Referee will prepare a written Recommendation to Treasury.

## Decision

Treasury, acting through the Administrator of the Hearings Division, is required to issue its decision, in the form of a Decision and Order of Determination, in writing within ten (10) business days of the hearing and shall either declare the seized property subject to seizure and forfeiture, or declare the property must be returned in whole or in part. This decision will be sent by registered mail and will be accompanied by a notice of appeal rights. Appeals must be commenced in the circuit court of the county where the seizure took place within twenty (20) days of Treasury sending the decision to the interested person(s). [MCL 205.429(4)] See also *Prime Time Int'l Distrib, et. al v Dep't of Treasury*, 322 Mich App 46 (2017).

**NOTE:** The twenty (20) day period for filing an appeal commences upon sending of the decision to the person or persons claiming an interest in the seized property. Treasury is not required by law to send a copy of the decision to an attorney or other representative of the person(s) challenging the seizure. See *K&W Wholesale, LLC et al v Dep't of Treasury*, 318 Mich App 605 (2017)

**NOTE:** Failure to make a timely appeal to the appropriate circuit court will result in the seized contraband being forfeited to the state. [MCL 205.429(4)]

# Treasury-Issued Rules, Bulletins and Other Guidance

## Administrative Rules (R205.451 through R205.455)

- R 205.451: Definitions
- R 205.452: Prescribed markings on cigarette boxes and shipping cases; resale and refund of returned cigarettes
- R 205.453: Manufacturers' representatives; permissions; limitations
- R 205.454: Stamping agents; permissions; limitations
- R 205.455: Rescission

## Audit Standards for Field Audits

- Rules 205.2001-205.20111

## Frequently Asked Questions (FAQ) on Tobacco Tax

- See [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes)

## Internal Policy Directives (IPDs)

- IPD 2006-11 (TOBACCO PRODUCTS TAX - OTP SEIZURE)

## Letter Rulings (LRs)

- LR 2015-4 (Tobacco Tax Payment Requirements for Unclassified Acquirers)
- LR 2015-3 (Non-Tobacco Products with Nicotine and the TPTA)
- LR 2013-1 (Operating Cigarette Making Machines Through Private, Nonprofit Clubs Located in Non-Commercial Settings to Produce, Roll or Generate Cigarettes in Michigan)
- LR 2002-05 (Gratis Cigarettes)

## Notices

- Notice to Stamping Agents re: Implementation of Digital Tax Stamps in Michigan (Feb 2014)
- Notice Regarding Premium Cigars (Effective Nov 1, 2012)
- Notice re: 2012 PA 188 and Cigarette Making Machines (July 2012)
- Special Notice to OTP Wholesalers, Secondary Wholesalers, and Unclassified Acquirers re: Blunt Wraps (June 2012)
- Notice re: Brand Identification on Shipping Papers and Invoices (Oct 2006)
- Notice to AT/ST Dual Licensees' How to File Your Tobacco Tax Returns
- Prevent All Cigarette Trafficking (PACT) Act Background and Notice and FAQs
- Consumer Warning Notice re: Internet Tobacco Purchases (for Retailers)
- Notice to Licensed Wholesalers and Unclassified Acquirers of Cigarettes and OTP re: MSA
- Notice re: Electronic Nicotine Delivery Systems regulated as "Cigarettes" under the PACT ACT beginning March 27, 2021 and new PACT ACT Reporting Forms (April 2021)

## Other Guidance and Resources

- Master Settlement Agreement (MSA)/NPM Enforcement
- MSA and NPM Enforcement Information and Requirements
- NPM Filing Deadlines for Escrow and Equity Assessment
- Equity Assessment Prepayment Requirement
- Equity Assessment Notice to NPMs
- List of Manufacturers Authorized to Sell Cigarettes or Roll-Your-Own (RYO) in Michigan
- Nonparticipating Manufacturer (NPM) Directory
- Participating Manufacturer (PM) Directory

## Revenue Administrative Bulletins (RABs)

- RAB 2009-2 (Tobacco Products Tax, Secondary Wholesaler Licensure)
- RAB 2021-8 (Interpretative Bulletin for Manufacturers Under 2020 PA 326)

To view the "Notices," "Other Guidance and Resources" as well as additional information, visit [www.michigan.gov/tobaccotaxes](http://www.michigan.gov/tobaccotaxes)



## Notable Court Decisions

- *S Abraham & Sons, Inc. v Dep't of Treasury*, 260 Mich App 1 (2003)
- *People v Beydoun*, 283 Mich App 314 (2009)
- *Vulic v Dep't of Treasury*, 321 Mich App. 471 (2017)
- *Value, Inc v Dep't of Treasury*, 320 Mich App 571 (2017)
- *People v Shami*, 501 Mich 243 (2018)
- *K & W Wholesale, LLC v Dep't of Treasury*, 318 Mich App. 605 (2017)
- *Prime Time Int'l Distrib, Inc v Dep't of Treasury*, 322 Mich App 46 (2017)
- *People v Assy*, 316 Mich App 302 (2016)
- *People v Shami*, 318 Mich App 316 (2016)

## Public Acts related to TPTA

- 1993 PA 327
- 1995 PA 118
- 1995 PA 131
- 1997 PA 187
- 2002 PA 503
- 2002 PA 607
- 2003 PA 285
- 2004 PA 164
- 2004 PA 474
- 2005 PA 238
- 2008 PA 458
- 2012 PA 188
- 2012 PA 325
- 2014 PA 272
- 1999 PA 244
- 2022 PA 171
- 2014 PA 298
- 2016 PA 43
- 2016 PA 86
- 2016 PA 309
- 2018 PA 639
- 2020 PA 326

**NOTE:** TPTA Administrative Rules can be found at: [https://dtmb.state.mi.us/ORRDocs/AdminCode/82\\_10078\\_AdminCode.pdf](https://dtmb.state.mi.us/ORRDocs/AdminCode/82_10078_AdminCode.pdf)

RABs, Letter Rulings and IPDs are available on Treasury's website under "Reports and Legal Resources" which is available at: [www.michigan.gov/treasury](http://www.michigan.gov/treasury)

For information describing the different types of Treasury guidance and the extent, if any, taxpayers may rely on such guidance, please see RAB 2016-20 available at: [www.michigan.gov/documents/treasury/RAB\\_2016-20\\_-\\_Issuance\\_of\\_Bulletins\\_Letter\\_Rulings\\_and\\_Other\\_Guidance\\_536827\\_7.pdf](http://www.michigan.gov/documents/treasury/RAB_2016-20_-_Issuance_of_Bulletins_Letter_Rulings_and_Other_Guidance_536827_7.pdf)



# Glossary of Terms

## AUDIT

The physical examination of a licensee's records and source documents to determine the accuracy of the reported information on the licensee's tax returns.

## CIGAR

Any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco. Cigar does not include a cigarette.

## CIGARETTE

A roll for smoking or heating that is made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, which roll has a wrapper or cover made of paper or any other material. Cigarette does not include cigars.

## CIGARETTE MAKING MACHINE

Any machine or other mechanical device which meets all of the following criteria:

- (i.) Is capable of being loaded with loose tobacco, cigarette tubes or cigarette papers, and any other components related to the production of cigarettes, including, but not limited to, cigarette filters.
- (ii.) Is designed to automatically or mechanically produce, roll, fill, dispense, or otherwise generate cigarettes.
- (iii.) Is commercial-grade or otherwise designed or suitable for commercial use.
- (iv.) Is designed to be powered or otherwise operated by a main or primary power source other than human power.

## CONTAINER OR SHIPPING CASE

An individual receptacle within which a tobacco product or group of tobacco products is placed for shipment, storage, or distribution, such as a box, case, or tote.

## HOOKAH

A device, including a waterpipe, used for smoking hookah tobacco that consists of a tube connected to a chamber where the smoke is cooled passing through water.

## HOOKAH TOBACCO

Tobacco that is designed, manufactured, or otherwise intended for consumption by smoking in a hookah and that is flavored with honey, molasses, fruit, or other natural or artificial flavors. Hookah tobacco includes those products commonly known or referred to as narghile, argileh, shisha, hubble-bubble, molasses tobacco, waterpipe tobacco, maassel, or goza.

## INDIVIDUAL PACKAGE

An individual packet or pack used to contain or to convey cigarettes to the consumer. Individual package does not include cartons, cases, or shipping or storage containers that contain smaller packaging units of cigarettes.

## LICENSE

The license described under section 3 of the TPTA, MCL 205.423.

## LICENSEE

A person licensed under the TPTA.

## MANUFACTURER

"Manufacturer" means either of the following:

- (i.) A person who manufactures or produces a tobacco product.

- To "manufacture" means to make into a product suitable for use or to make from raw materials by hand or by machinery.

- To "produce" means to give being, form or shape to.

(ii.) A person who operates or who permits any other person to operate a cigarette making machine in Michigan for the purpose of producing, filling, rolling, dispensing, or otherwise generating cigarettes.

- A person who is a manufacturer under this subparagraph constitutes a nonparticipating manufacturer.

A person doing any of the following is not a manufacturer:

(i) Mixing or blending tobacco products to create a custom mix or blend if the TPTA tax has been paid on those tobacco products and the products are finished products suitable for sale to consumers.

(ii) Creating or producing, by filling fruit with hookah tobacco, a fruit bowl or fruit head for use in a hookah.

(iii) Rolling a cigar for that person's self-consumption.

(iv) Using a machine or mechanical device (other than a cigarette making machine) to roll or generate cigarettes if rolled or generated in that person's dwelling and for that person's self-consumption.

## MASTER SETTLEMENT AGREEMENT (MSA)

As defined in 1999 PA 244, MCL 445.2051 to 445.2052.

## **NON-CIGARETTE SMOKING TOBACCO**

Tobacco sold in loose or bulk form that is intended for consumption by smoking and also includes roll-your-own cigarette tobacco, hookah tobacco, pipe tobacco, or a wrap.

## **NONPARTICIPATING MANUFACTURER (NPM)**

A manufacturer of cigarettes that is not a participating manufacturer as that term is defined in 1999 PA 244, MCL 445.2051 to 445.2052. Nonparticipating manufacturer also includes the first purchaser of cigarettes manufactured outside the United States for resale in the United States.

## **NON-CIGARETTE TOBACCO PRODUCT (OTP)**

Cigars, non-cigarette smoking tobacco, smokeless tobacco, or any other tobacco product that is not a cigarette.

## **PARTICIPATING MANUFACTURER (PM)**

As defined in 1999 PA 244, MCL 445.2051 to 445.2052.

## **PERSON**

An individual, partnership, fiduciary, association, limited liability company, corporation, or other legal entity.

## **PIPE TOBACCO**

Any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to smoke in a pipe.

## **PLACE OF BUSINESS**

A place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including but not limited to, a vessel, airplane, train, or vending machine.

## **REMOTE RETAIL SALE**

A sale of a tobacco product to a Michigan consumer if either of the following applies:

- (i) The consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mail, or the internet or other online service, or the seller is otherwise not in the physical presence of the purchaser when the request for purchase or order is made.
- (ii) The tobacco product is delivered to the purchaser by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the purchaser when the purchaser obtains possession of the tobacco product.

## **RETAILER**

A person, other than a transportation company, who operates a place of business for the purpose of making, or who does make, sales of a tobacco product at retail other than a remote retail sale. A person who directs or manages (or has control over the day-to-day operations of) the place of business for the purposes of making sales of tobacco products at retail constitutes a retailer under the TPTA even if that person does not own the place of business.

## **REVENUE ACT**

1941 PA 122, MCL 205.1 et seq.

## **ROLL-YOUR-OWN CIGARETTE TOBACCO**

Any tobacco that because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

## **SALE**

A transaction by which the ownership of tangible personal property is transferred for consideration and applies also to use, gifts, exchanges, barter, and theft.

## **SECONDARY WHOLESALER**

Either of the following persons:

- (i) A person, other than a manufacturer or a person licensed under the TPTA as a vending machine operator, wholesaler, or unclassified acquirer who engages in the sale of a tobacco product for resale.
- (ii) A retailer, not otherwise licensed under the TPTA, who transfers or exchanges a tobacco product from one place of business of the retailer to another place of business of the retailer.

## **SELF-CONSUMPTION**

As relevant to the "manufacturer" definition: Self-consumption means production for personal consumption or use and not for sale, resale, or any other profit-making endeavor.

## **SMOKELESS TOBACCO**

Snuff, snus, chewing tobacco, moist snuff, and any other tobacco that is intended to be used or consumed, whether chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested, by any means other than smoking or combustion.

## **STAMP**

A distinctive character, indication, or mark, as determined by Treasury, attached or affixed to an individual package of cigarettes by mechanical device or other means authorized by Treasury to indicate that the tax imposed under the TPTA has been paid.

## STAMPING AGENT

A wholesaler or unclassified acquirer other than a manufacturer who is licensed and authorized by Treasury to affix stamps to individual packages of cigarettes on behalf of itself and other wholesalers or unclassified acquirers other than manufacturers.

## TOBACCO PRODUCTS

Any product for human consumption containing tobacco regardless of form and includes cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco. A tobacco product does not include drugs, devices, or combination products authorized for sale as tobacco cessation products by the United States Food and Drug Administration, as those terms are defined in Subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 USC 351 to 360fff-8.

## TOBACCO PRODUCTS TAX ACT (TPTA)

1993 PA 327, MCL 205.421 et seq.

## TRANSPORTATION COMPANY

A person operating, or supplying to common carriers, cars, boats, or other vehicles for the transportation or accommodation of passengers and engaged in the sale of a tobacco product at retail.

**Note:** These definitions and abbreviations are referenced throughout this guide.

## TRANSPORTER

A person importing or transporting into Michigan, or transporting in Michigan, a tobacco product obtained from a source located outside this state, or from any person not duly licensed under the TPTA. Transporter does not include an interstate commerce carrier licensed by the interstate commerce commission (or its successor federal agency, department, or commission) to carry commodities in interstate commerce, or a licensee maintaining a warehouse or place of business outside of this state if the warehouse or place of business is licensed under the TPTA.

## TREASURY

Michigan Department of Treasury

## UNCLASSIFIED ACQUIRER

A person, except a transportation company or a purchaser at retail from a retailer licensed under the General Sales Tax Act, 1933 PA 167, MCL 205.51 to 205.78, who imports or acquires a tobacco product from a source other than a licensed wholesaler or secondary wholesaler for use, sale, or distribution in Michigan. Unclassified acquirer also means a person who purchases or receives tobacco products directly from a licensed manufacturer or from another source outside this state, which source is not licensed under the TPTA. An unclassified acquirer also includes a person not located in Michigan that sells a tobacco product, through a mail order, catalog sale, telephone order, Internet sale, or any other means, to a retailer or other person in Michigan that is not licensed under the TPTA as a wholesaler, unclassified

acquirer or secondary wholesaler. Unclassified acquirer also includes a person located within or outside Michigan that makes a remote retail sale of a tobacco product to a consumer in Michigan. Unclassified acquirer does not include a wholesaler.

## VENDING MACHINE OPERATOR

A person who operates one or more vending machines in Michigan for the sale of a tobacco product and who purchases a tobacco product.

## WHOLESALE PRICE

The actual price paid to a seller for a tobacco product, by a wholesaler or unclassified acquirer in order to acquire that tobacco product from the seller. The wholesale price generally includes any tax, fee, licensing, or other charge reflected on the invoice, bill of sale, purchase order, or other document evidencing the sale or purchase of the tobacco product.

Wholesale price does not include, if separately stated on the invoice, bill of sale, purchase order, or other document evidencing the sale of the tobacco product, shipping or handling charges for cigarettes, and reasonable shipping or handling charges for tobacco products other than cigarettes such as transportation, shipping, postage, handling, crating, or packing.

When items or products, other than tobacco products, are included in a transaction for the purchase of tobacco products by a wholesaler or unclassified acquirer, charges for those products or items that are not tobacco products, including shipping and handling charges, may be excluded from the wholesale price if separately

stated on the invoice, bill of sale, purchase order, or other document evidencing the sale or purchase.

The wholesale price shall not be reduced due to any rebate, trade allowance, licensing or exclusivity agreement, volume or other discount, or any other reduction given by the seller or passed on to or otherwise received by the wholesaler or unclassified acquirer from the seller.

If the wholesaler or unclassified acquirer fails to keep or maintain the records required under MCL 205.426, or has a relationship, as described in 26 USC 267, with the seller, Treasury may establish the wholesale price for the tobacco products based on the best available information or any other reasonable proxy for the wholesale price including, but not limited to, the wholesale price paid by other taxpayers for those tobacco products within the past four years.

#### **WHOLESALER**

A person who purchases all or part of its tobacco products from a manufacturer, who sells 75% or more of those tobacco products to others for resale, Wholesaler includes a chain of stores retailing a tobacco product to the consumer if 75% of its stock of tobacco products is purchased directly from the manufacturer.

#### **WRAP**

An individual tobacco wrapper that is made wholly or in part from tobacco, including reconstituted tobacco, whether in the form of tobacco leaf, sheet, or tube, if the wrap is designed to be offered, or is offered, for sale to consumers to crate or to use as a component part of a tobacco product.

## **Treasury Contact Information**

### **Tobacco Enforcement Discovery & Tax Enforcement**

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### **Tobacco Tax Unit**

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### **Tribal Affairs\***

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\* Licensees transacting with federally-recognized Indian tribes may contact Tribal Affairs with any related questions.

