

Procedures ~~For~~for Disposition ~~Of~~of Confiscated Tobacco Products.

(1) Tobacco Products Subject to Confiscation: Tobacco products may be confiscated by the department, its agents, or any peace officer of the state, without a warrant and delivered to the department for destruction under the following circumstances:

(a) Tobacco products imported by retail dealers and semijobbers in which a true and duplicate invoice has not been received by the department are considered contraband and subject to confiscation.

(b) Cigarettes, heated tobacco products, smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, or other taxable tobacco products found in possession of a state retailer or semijobber without either the required stamps affixed to the package of cigarettes and heated tobacco products or the purchase invoices which itemize the applicable tobacco taxes in the case of other tobacco products, are declared to be contraband goods and may be seized.

(c) Failure to acquire appropriate invoices, substantiate tax payment, or retain invoices, as required, may result in confiscation of the tobacco products.

(d) Purchases of tobacco products from an entity other than permitted or registered entities appearing on the department's website listing is subject to confiscation.

(e) Tobacco products and the vehicles used in transportation are subject to confiscation when:

1. The tobacco products are either unstamped or where the tax has not been paid or accrued by a permitted wholesaler in Alabama and the proper tobacco or transporter's permit has not been obtained prior to transporting the products.

2. If the transporter is not properly permitted.

3. Proof of the destination of tobacco products being transported does not include an invoice showing the destination for all products in the vehicle transporting tobacco in Alabama.

4. Invoices for deliveries within the state do not meet the requirements of §40-25-4, Code of Ala. 1975.

(2) Seizure of Tobacco Products Subject to Forfeiture: The following procedures must be followed in all cases of seizure of tobacco products subject to forfeiture under provisions of Title 40, Chapter 25, Code of Ala. 1975:

(a) Cigarettes, Heated Tobacco Products, and Other Tobacco Products (OTP).

1. The officer or person making the seizure shall cause a list containing a particular description of the goods, wares, merchandise or other property seized to be prepared in duplicate. The list shall be properly attested by the officer or person and a copy presented to the taxpayer or their representative at the time of seizure.

2. The department shall post a notice of the items confiscated for three weeks on its website describing the articles and stating the time and place and cause of their seizure and requiring any person claiming them to appear and make such claim in writing within 30 days from the date of the first posting of such notice.

3. Any person claiming the items seized as contraband must file with the department a claim in writing within 30 days from the date of the notice. The claim must state the person's interest in the items seized.

4. Claimants who wish to request the return of the confiscated product via circuit court, may execute a bond to the department in a penal sum equal to double the value of the goods so seized, but in no case can the bond be less than the sum of \$200, with sureties to be approved by the clerk of the circuit court in the county in which the goods are seized, conditioned that in the case of condemnation of the articles so seized, the obligors must pay to the department the full value of the goods so seized and all costs and expenses of the proceedings to obtain such condemnation, including a reasonable attorney's fee. Upon the delivery of such bond to the department, it shall transmit the same with the duplicate list or description of the goods seized to the district attorney of the circuit in which such seizure was made, and the district attorney shall file a complaint in the circuit court of the county where the seizure was made to secure the forfeiture of the goods, wares, merchandise or other property. Upon the filing of the bond, the goods shall be delivered to the claimant pending the outcome of the case; provided, that the claimant must purchase the proper stamps to be affixed

to each package of cigarettes or in the case of other tobacco products remit the appropriate tax before the goods are delivered to the claimant by the department.

5. If no claim or bond is given within the time specified, such packages of cigarettes or other tobacco products shall be forfeited without further proceedings.

6. Unclaimed products for which an appeal has not been received by the department shall be destroyed using means as determined by the department.

(b) Loose Cigarettes. Section 28-11-6, Code of Ala. 1975, prohibits the sale or distribution of cigarettes that are not sold in the original factory-wrapped container. The prohibition also applies to the sale of loose cigarettes or opened packages of cigarettes. Therefore, it shall be prima facie evidence that such cigarettes offered for sale which are not in the proper packaging shall be subject to confiscation and destruction.

1. The officer or person making the seizure shall cause a list containing a particular description of the loose cigarettes and/or opened packages of cigarettes seized to be prepared in duplicate. The list shall be properly attested by the officer or person and a copy presented to the taxpayer or their representative at the time of seizure.

2. The department shall post a notice of the items confiscated for three weeks on its website describing the articles and stating the time and place and cause of their seizure.

3. In the event that the loose cigarettes do not contain the Fire Standards Compliant marking as required per §8-17-274, Code of Ala. 1975, the trademark holder of the loose cigarette brand must be notified and permitted by the department to inspect the cigarettes prior to destruction, upon written request.

4. Loose cigarettes and improper packages of cigarettes shall be destroyed using means as determined by the department.

(c) Motor vehicles. Any vehicle, not a common carrier, used for the transportation for the purpose of sale of unstamped or untaxed articles shall be subject to confiscation and sale at public auction to the highest bidder after due advertisement and notice to the title owner of the vehicle.

Should any unstamped or untaxed tobaccos be found in any vehicle which is engaged in the sale, distribution, or delivery of taxable tobaccos, the same shall be prima facie evidence that it was there for sale.

(3) Return of Product. The department may in its discretion return any goods confiscated when it is shown that there was no intention to violate the provisions of Title 40, Chapter 25, Code of Ala. 1975. In the case of confiscated packages of cigarettes, heated tobacco products, any applicable state and/or county tax, to include the purchase of the appropriate tax stamps, interest and penalty, if applicable, must be remitted prior to the items being returned. OTP for which invoices substantiating the payment of the tax were not timely produced, loose cigarettes, and motor vehicles with unstamped tobaccos shall be prima facie evidence of intent to evade the tax. All such OTP product, loose cigarettes or motor vehicles will not be returned and shall be destroyed by the department or sold at auction, if applicable, upon due process.

(4) Proceeds of Sale. The proceeds of sale when received by the department shall be turned in to the Treasury as other revenues are required by law to be turned in. The proceedings against goods, merchandise or other property shall be considered as proceedings in rem unless otherwise provided. Should the department have to resort to the courts for collection of the tax due and assessed, no advertisement shall be made and the confiscated tobaccos may be held as evidence pending the results of court action.

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**Statutory Authority:** Code of Ala. 1975, §§40-2A-7(a)(5); 28-11-6~~+~~, Chapter 25 of Title 40~~+~~, and Chapter 17 of Title 8.

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