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During the 2019 legislative session, many changes were made that impact entities who buy and sell cigarettes, other tobacco products ("OTP"), vapor products, and alternative nicotine products. This letter is provided by the Department of Taxation ("Department") as a way of informing affected taxpayers about **some** of the major changes that became effective on May 23, 2019 or will become effective no later than January 1, 2020.

For additional information on the statutory changes made to Nevada Revised Statutes ("NRS") Chapter 370 during the 2019 legislative session, please visit the links at the bottom of this letter. As always, it is your responsibility as a participant in a highly regulated industry to remain apprised of, and in compliance with, all applicable laws. Failure to do so may result in civil penalties and license suspension or revocation.

Senate Bill ("SB") 263

Selling to minors

It remains illegal to sell cigarettes or OTP, including vapor and alternative nicotine products, to minors under the age of 18. However, effective January 1, 2020, the penalty structure was amended so that when a sale to a minor is made, in addition to monetary penalties issued directly to the clerk, the store owner may also be issued monetary fines. Additionally, please note the changes which require the implementation of age verification systems for online sellers.

Vapor and Alternative Nicotine Products Defined

Effective January 1, 2020, the definition of OTP is amended to **include** vapor and alternative nicotine products. Included, but not limited in the definition of vapor products are, the components of such products or devices (cartridges, atomizers, customizers, hookah pen etc.), even if sold separately. These products will be taxed as OTP and entities selling these products will need to obtain the proper licensing prior to the effective date.

Assembly Bill ("AB") 535

Annual Licensing Fee Requirements

Effective October 1, 2019, an annual license fee will be imposed on all new and renewed tobacco licenses. New licenses issued at any time during the year, other than on January 1, will pay a pro-rated annual fee for the remainder of the year, but not less than 25% of the annual fee. License renewal fees are due and payable on or before January 1 of each year.

- \$1,000 for each Cigarette Manufacturer's License
- \$650 for each Wholesale Dealer of Cigarettes License
- \$650 for each Wholesale Dealer of Other Tobacco Products License
- \$50 for each Tobacco Retail Dealer's License

SB 81

All Licensees

Effective May 23, 2019, no license will be issued, maintained, or renewed to a manufacturer, wholesale dealer of cigarettes (“cigarette wholesaler”), wholesale dealer of OTP (“OTP wholesaler”) and/or tobacco retail dealer (“retailer”) if:

1. The licensee is conducting operations in the same physical location as another licensee; or
2. If the location of the business operation is a residential address, storage facility, mailbox or post office box.

Effective May 23, 2019, each manufacturer, wholesaler and retailer is required to maintain with the Department a permanent mailing address and an electronic mail address for the purpose of receiving any notification from the Department pursuant to Chapter 370. If any changes are made to either of these, written notice must be provided to the Department not later than **10 days** after the change.

Cigarette and OTP Wholesalers

Effective May 23, 2019, cigarette wholesalers who maintain a location in Nevada can **only** purchase unstamped cigarettes directly from a licensed manufacturer.

If any licensed wholesaler maintains a warehouse, distribution center or utilizes a logistics company located within Nevada, these businesses must now obtain a free license from the Department by November 23, 2019 in order to continue operating.

Cigarettes that are improperly stamped are subject to seizure. Effective May 23, 2019, a pack of cigarettes is improperly stamped if it does not bear “such identifying marks as are necessary to ascertain the origin of the cigarettes and numbering in a legible manner” on the cigarette tax stamp.

Effective May 23, 2019, cigarette wholesalers may obtain refunds for damaged cigarette packs, in addition to stale cigarette packs. The requirements and language of the affidavit were updated to include information regarding when product was destroyed or sent back to the manufacturer by wholesalers. Additionally, wholesaler who cease operations must return any unused Nevada tribal stamps to the Department.

Effective May 23, 2019, the Department is required to utilize the email addresses on file to notify wholesalers and retailers of cigarettes and/or roll-your-own- (“RYO”) cigarette tobacco brands and styles which have been added to, or removed from, the Nevada Tobacco Directory. The wholesaler has 20 days after receiving the e-mailed notice to remove the delisted cigarettes and/or RYO from their inventory. Wholesalers who maintain a place of business in Nevada and who sell cigarettes out-of-state must set aside and clearly identify any delisted product intended for sale outside the State and which state the product will be sold into.

Effective May 23, 2019, the Wholesale Dealer of OTP License is valid only for the calendar year for which it is issued and must be renewed annually on or before January 1.

Effective November 23, 2019, OTP wholesaler are required to furnish a bond of not less than \$1,000. The bond must be issued for the largest amount of tax paid by the wholesale dealer in any quarter of the preceding year. The license cannot be issued or renewed until the bonding requirement has been met.

Effective May 23, 2019, OTP wholesalers who maintain a place of business in Nevada must always maintain an inventory of OTP with a wholesale value of at least \$5,000.

Effective May 23, 2019, the definition of “wholesale dealer” and “wholesale price” for OTP has changed. Please review these changes carefully as the “wholesale price” cannot be reduced by transportation costs, shipping charges, labor or service charges, advertising or special discounts, among other things.

Effective January 1, 2020, please be aware that the levy of the OTP tax will no longer be collected and remitted by the wholesaler *after* the sale or distribution of that product. While the OTP tax rate remains 30% of the wholesale price, the tax will be imposed and levied upon the wholesaler:

1. At the time OTP is first possessed or received by a wholesaler who maintain a place of business in this State;
2. At the time the OTP is sold by an out-of-state wholesaler to a retailer or ultimate consumer in this State; or
3. For OTP that is manufactured, produced, fabricated, assembled, processed, labeled, or finished in this State, at the time these products are sold to an in-state wholesaler or retailer. The tax levy is based upon the invoice amount for which the OTP is sold to a wholesaler or retailer.

OTP wholesalers who maintain a place of business in this State and have untaxed OTP in their inventory on January 1, 2020, must report that inventory on the OTP tax return for period ending January 31, 2020, and pay any taxes owed.

Effective May 23, 2019, OTP wholesalers must maintain on site, itemized invoices for all OTP purchased and/or delivered, to include: whom the product was purchased from and/or who it was sold to, the date of the purchase, the invoice number, method of delivery, and itemized quantity of each brand, type, size, and price of the OTP purchased.

Cigarette Manufacturers

If any licensed manufacturer maintains a warehouse, distribution center or utilizes a logistics company located within Nevada, these businesses must now obtain a free license from the Department by November 23, 2019 in order to continue operating.

Retail Dealers

If a company is applying for a Tobacco Retail Dealer’s License and the company operates cigarette vending machines, a list of the vending machines’ physical locations must be submitted with the application.

If any licensed retailer maintains a warehouse or distribution center(s) located within Nevada, these businesses must now obtain a free license from the Department by November 23, 2019 in order to continue operating.

Effective May 23, 2019, the Department is required to utilize the email addresses on file to notify wholesalers and retailers of cigarettes and/or roll-your-own (“RYO”) cigarette tobacco which have been added to or removed from the Nevada Tobacco Directory. Retailers have 60 days from receiving the e-mail notice to remove the delisted product from their location by either selling the product to consumers or by returning the inventory to the manufacturer or wholesaler.

Effective May 23, 2019, all retailers shall, no later than 5 calendar days after the retailer takes possession of a package of cigarettes, ensure that the cigarettes have the Nevada cigarette stamp properly affixed. A pack of cigarettes is improperly stamped if it does not bear “such identifying marks as are necessary to ascertain the origin of the cigarettes and numbering in a legible manner” on the cigarette tax stamp.

All retailers must maintain on site, itemized invoices for all OTP purchased, to include who product was purchased from, the date of the purchase, the invoice number, method of delivery, and itemized quantity of each brand, type, size, and price of the OTP purchased.

Senate Bill 62

Cigarette Manufacturers Only: Effective October 1, 2019, all cigarette and RYO manufacturers will need to certify via brand style instead of brand family. If a manufacturer currently has a brand family on the Nevada Tobacco Directory, the manufacturer will need to file a supplemental certification prior to selling any new brand styles in the State.

Overall

If any licensee is late or delinquent in the filing of any returns and/or reports or the remittance of any taxes owed, no license will be issued, maintained, or renewed, and the Department can assess penalties based on the amount of taxes originally due. Additionally, SB81, Section 32 lists examples of when the Department may move forward with issuing civil penalties, license suspension and/or revocation for violating any of the provisions of Chapter 370.

SB 81 lists six factors the Department may consider before imposing penalties, suspending and/or revoking a license. These include the licensee's actions in the previous 24 months, the timeliness of the licensee in correcting any errors, the licensee's efforts to explain any inaccuracies, if a variance exists, the brand and tax status of any cigarettes reported, any remedial measures taken by the licensee to prevent future violations, and any other mitigating factors.

For all updates and more detailed information regarding the 2019 legislative session, please review the website below and any bills related to cigarettes and other tobacco products, including vapor and alternative nicotine products. Specifically, review SB 62, SB 81, SB 263, and AB 535 at the link below.
<https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bills/List>

Please note that all licensees are responsible for complying with all laws related to taxation and tobacco products, specifically NRS Chapters 370 and 370A, as well as Nevada Administrative Code 370 and will be held accountable if found non-compliant.

If you have further questions, please contact the Tobacco Excise Unit at the Department of Taxation at the following email address: taxation-adminMSA@tax.state.nv.us

Thank You,

The Department of Taxation