

**RULES
OF
DEPARTMENT OF REVENUE**

**CHAPTER 560-8
ALCOHOL AND TOBACCO DIVISION (TOBACCO)**

**SUBJECT 560-8-3
DISTRIBUTOR PROVISIONS**

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Rule 560-8-3-01 Application for License - Distributor

- (1) To be licensed as a distributor of cigarettes, cigars, little cigars, loose tobacco or smokeless tobacco, vapor products, or alternative nicotine products each person shall apply to the Commissioner.
 - a. Such application shall be submitted before July 1 on forms provided for that purpose by the Commissioner. Using the Georgia Tax Center, accessible through the Department's website, a person must apply for a tobacco license for the state of Georgia's fiscal year and annually renew the license.
 - b. An application for an initial state license shall include:
 - i. An application fee of \$250.00.
 - ii. An additional fee of \$10.00 for those licenses that include vapor products.
 - iii. Payment of a bond, on a form provided by the Commissioner, in an amount equal to \$5,000.00.
 - c. The state license issued for a distributor shall be valid from the date of issuance until the following June 30.
 - d. A renewal application shall include:
 - i. A renewal fee of \$10.00.

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- ii. An additional fee of \$10.00 for those licenses that include vapor products.
- iii. Payment of a bond, on a form provided by the Commissioner, in an amount equal to one percent (1%) of gross sales of cigarettes, cigars, little cigars, loose tobacco or smokeless tobacco, vapor products, and alternative nicotine products during the preceding license year. In no circumstance shall the bond be less than \$1,000.

(2) A distributor shall obtain a separate license in accordance with the provisions of this regulation for all places of business it maintains.

(3) A distributor's license shall not be issued to:

- a. A person who does not maintain a warehouse, warehouse personnel, and salespersons who regularly contact and call on dealers.
- b. A vending machine operator or a vending machine owner of loose tobacco, smokeless tobacco, cigar, little cigar, or cigarette vending machines.
- c. A person who is licensed as a dealer.

Authority: O.C.G.A. §§ 42-2-12, 48-11-4, 48-11-7.

Rule 560-8-3-.02 License; Nonresident Applicant - Distributor

(1) A nonresident person of this state may be licensed to distribute loose tobacco or smokeless tobacco, cigars, little cigars, cigarettes, vapor products, or alternative nicotine products at wholesale in this state and either purchase and affix Georgia cigarette tax stamps or pay loose tobacco or smokeless tobacco, cigar, little cigar, or vapor product taxes under the alternate method provided that the state of residence of the nonresident applicant reciprocates the privilege to a resident of this state.

(2) A nonresident applicant shall agree:

- (a) In a form satisfactory to the Commissioner, to submit to the Commissioner's regulatory authority with respect to its person, activities, and place or places of business outside this state as fully and completely as if such nonresident person, its activities and its place or places of business were located in this state.
- (b) To submit all books, accounts, and records for examination by the Commissioner or a duly authorized agent during reasonable business hours.

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- (c) To comply faithfully with all rules and regulations hereafter promulgated by the Commissioner, particularly those concerning nonresident distributors, their activities, and their places of business.
- (d) To be subject to service of process in accordance with the provisions of the Code relating to any matter involving taxes imposed by the Code.
- (e) That any violation of any law of this state, or any applicable rule or regulation, shall be cause for revoking any license issued and forfeiture of the bond.

(3) A nonresident applicant shall post a bond with the Commissioner in an amount not less than \$1,000.00, as determined by the Commissioner and in a form prescribed by the Commissioner. The condition of said bond shall be payment of any tax, penalty, or interest due the state by such nonresident distributor and compliance with this regulation.

Authority: O.C.G.A. §§ 48-2-12, 48-11-5, 48-11-7.

Rule 560-8-3-.03 Representative Permit - Distributor

- (1) No individual and no employee or agent of a distributor shall engage in selling loose tobacco or smokeless tobacco, cigars, little cigars, cigarettes, vapor products, or alternative nicotine products to dealers in this state for resale unless such individual is permitted by the Commissioner.
- (2) No individual shall be a salesperson or representative of a licensed distributor unless:
 - (a) The distributor shall have notified the Department of the individual's appointment as a representative.
 - (b) The representative has completed and filed under oath an application for a representative permit in a form prescribed by the Commissioner.
 - (c) The representative has received from the Commissioner a representative permit for which the application was made by the representative. The representative permit shall expire upon notice to the Commissioner by the distributor that it no longer employs or contracts with the representative.
 - (d) No fee shall be required for the representative permit, and the representative permit shall not be transferable to any other individual.
- (3) It shall be a violation of this regulation for a representative of a licensed distributor to:

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- (a) Engage in any activity that is in violation of the laws or regulations of any federal, state, county, or municipal governing authority or regulatory agency.
- (b) Cause tobacco products, vapor products, or alternative nicotine products to be delivered to an unlicensed place of business.

(4) A representative of a licensed distributor who violates these regulations may be cited and required to show cause why a valid representative permit should not be suspended or revoked.

Authority: O.C.G.A. §§ 48-2-12, 48-11-4.

Rule 560-8-3-.04 Sale Without Tax Stamp; Notification - Distributor

- (1) No distributor shall sell or deliver to any other distributor or dealer:
 - (a) Any cigarettes which do not bear the required tax stamps.
 - (b) Any loose tobacco or smokeless tobacco, cigars, little cigars, or vapor products for which tax has not been paid under the alternate method.
- (2) Distributors may receive and stamp untaxed cigarettes from dealers provided:
 - (a) Within twenty-four (24) hours, exclusive of weekends and federal and state holidays, of receipt of untaxed cigarettes, and prior to any transaction involving untaxed cigarettes, the distributor shall notify the Commissioner of such cigarettes using the Georgia Tax Center, accessible through the Department's website.
 - (b) Dealers are required to pay distributors for all costs related to affixing the tax stamps.
 - (c) Failure by the distributor to notify the Commissioner will constitute cause for revocation of the distributor's license.

Authority: O.C.G.A. §§ 48-11-3, 48-11-8.

Rule 560-8-3-.05 Shipment by Nonresident Non-manufacturer - Distributor

Every distributor who is not a dealer in this state who receives any shipment of tobacco products vapor products, or alternative nicotine products from any nonresident who is not the manufacturer of the tobacco products, vapor products, or alternative nicotine products shall file a report of the

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shipment with the Commissioner on forms provided by the Commissioner and submitted through the Georgia Tax Center, accessible through the Department's website, no later than three business days from receipt of the shipment.

Authority: O.C.G.A. §§ 48-11-3, 48-11-5, 48-11-8, 48-11-11.

Rule 560-8-3-.06 Alternate Method of Tax for Loose Tobacco or Smokeless Tobacco, Cigars, Little Cigars, and Vapor Products - Distributor

- (1) Taxes on loose tobacco or smokeless tobacco, cigars, little cigars, and vapor products shall not be paid by affixing tax stamps thereon, but by filing monthly reports on all such products received, purchased, possessed, consumed, handled, distributed, or used within this state during such month.
- (2) Distributors and persons deemed to be distributors pursuant to O.C.G.A. § 48-11-2 shall file monthly reports using the Georgia Tax Center, accessible through the Department's website, on or before the tenth day of each month.
- (3) The report shall contain:
 - (a) The number of cigars, containers of loose tobacco or smokeless tobacco, and vapor products purchased or received during the report month.
 - (b) The wholesale cost price of all loose tobacco or smokeless tobacco, cigars, and vapor products purchased or received during the report month.
- (4) The report must be accompanied by the total payment of the taxes due, payable through the Georgia Tax Center.
- (5) The amount of tax due shall be computed on the actual sale or consumption of the tobacco product or vapor product within the state of Georgia and shall be payable when the tobacco product or vapor product leaves the control of the distributor for sale or consumption of the tobacco product or vapor product within the state of Georgia.

Authority: O.C.G.A. §§ 48-11-3, 48-11-8, 48-11-12.

Rule 560-8-3-.07 Cigarettes - Tax Stamping Methods and Discounts - Distributor

- (1) Licensed distributors of cigarettes shall use only tax stamping methods and tax stamps approved by the Commissioner.

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- (2) The Commissioner adopts one uniform single bracket for discounts concerning cigarette stamps.
- (3) For the single bracket, licensed distributors of cigarettes shall be allowed to purchase cigarette tax stamps at a discount of four percent (4%) of the face value of the cigarette stamps purchased.
- (4) Licensed distributors shall affix a certain color cigarette tax stamp, specified by the Commissioner, to a specific category of cigarette products. The categories are:
 - (a) Cigarette products produced by a manufacturer listed as a participant for tobacco manufacture and brand compliance for Master Settlement Agreement as set forth on the Georgia Attorney General's website.
 - (b) Cigarette products produced by a manufacturer listed as a non-participant for tobacco manufacture and brand compliance for Master Settlement Agreement as set forth on the Georgia Attorney General's website.
- (5) The primary color(s) of the cigarette tax stamps in subparagraph (4)(b) shall be different from the primary color(s) of the cigarette tax stamps in subparagraph (4)(a) of this regulation.
- (6) Failure to apply the appropriate cigarette tax stamp as provided for in this regulation shall result in administrative action by the Department including revocation or suspension of license.

Authority: O.C.G.A. §§ 48-2-12, 48-11-3.

Rule 560-8-3-.08 Claims for Refund or Credit - Distributor

- (1) The Commissioner will refund the cost price of stamps affixed to any package of cigarettes or will refund the tax paid on cigars, little cigars, loose tobacco or smokeless tobacco, or vapor products under the alternate method when it is shown to the Commissioner's satisfaction that any of these products:
 - (a) Have become unfit for use, consumption, or sale.
 - (b) Have been destroyed or shipped out of this state and then were destroyed.
- (2) A claim for refund or credit shall be submitted on a form provided by the Commissioner and shall be accompanied by a signed affidavit from the licensee for refund or credit

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attesting that the cigarettes, cigars, little cigars, loose tobacco or smokeless tobacco, or vapor products that were destroyed or shipped out-of-state were unfit for use, consumption, or sale based upon currently published manufacturer's standards.

- (3) A copy of the published standards shall accompany the affidavit and claim for refund or credit.
- (4) A request for a refund or credit shall be submitted to the Commissioner no later than one year from the date the tax payment was received by the Commissioner. Upon the occurrence of a rate change, a request for a refund or credit shall be received by the Commissioner no later than thirty (30) days from the effective date of the rate change.
- (5) No refund or credit of taxes related to contraband tobacco products or vapor products shall be granted to any person.

Authority: O.C.G.A. §§ 48-11-4, 48-11-14, 48-11-15.

Rule 560-8-3-.09 Report of Loss, Damage, and Refusal of Non-Tax Paid Tobacco Products and Vapor Products - Distributor

All distributors shall file within twenty-four (24) hours, exclusive of weekends and federal and state holidays, reports of all losses and damages in transit of non-tax-paid tobacco products and vapor products and of all non-tax-paid tobacco products and vapor products refused or returned to the carrier on forms, electronic or otherwise, provided by the Commissioner.

Authority: O.C.G.A. § 48-11-15.

Rule 560-8-3-.10 Conducting Business in Multiple States - Distributor

- (1) A distributor who conducts business in multiple states including Georgia and, in the course of its business, who possesses at the same location both Georgia-stamped cigarettes and cigarettes stamped for sale in another state shall store cigarettes stamped for sale in another state in a locked separate room, locker, cage, or area to prevent commingling with Georgia-stamped cigarettes.
- (2) In this state, a distributor who is licensed to sell cigarettes in multiple states is prohibited from selling over the counter any cigarettes not bearing Georgia stamps.

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(3) A distributor who conducts business in multiple states including Georgia and, in the course of its business, who possesses at the same location both tobacco products, vapor products, or alternative nicotine products for sale in Georgia and tobacco products, vapor products, or alternative nicotine products for sale in another state shall store the tobacco products, vapor products, and alternative nicotine products for sale in another state in a locked separate room, locker, cage, or area to prevent commingling with tobacco products, vapor products, and alternative nicotine products to be sold in Georgia.

Authority: O.C.G.A. §§ 48-11-3 to 48-11-5.

Rule 560-8-3-11 Promotional Activities - Distributor

(1) Every person engaged in promotional activities in this state on behalf of a distributor of tobacco products, vapor products, or alternative nicotine products shall do so only if licensed by the Commissioner.

(2) Each person shall apply for a license for a period commencing from date of issuance of the license until June 30 prior to engaging in "promotional activities."

(a) A renewal license application must be filed prior to June 15 or the application will be considered an initial application.

(b) Applications shall be completed on a form provided by the Commissioner.

(c) The license fee shall be \$10.00 per license. An additional fee of \$10.00 will be applied for each vapor license.

(d) Licenses are not transferable to any other person.

(3) Licensing hereunder shall not apply to persons employed by licensed distributors or dealers who are licensed under these regulations.

(4) Any untrue, misleading, or omitted statement or information contained in such application shall constitute cause for the denial thereof and, if any license has been granted, shall constitute cause for revocation.

(5) To protect the public interest and welfare, the Commissioner may decline to issue a state license to engage in promotional activities on behalf of a distributor of tobacco products, vapor products, or alternative nicotine products of any kind when:

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- (a) Any person determined by the Commissioner, by reason of such person's business experience, financial standing, trade associations, personal associations, records of arrests, or reputation in any community in which he has resided, to be unlikely to maintain the operation for which he is seeking a license in conformity with federal, state, or local laws, shall be deemed unqualified to receive a license to engage in promotional activity for a distributor.
- (b) Any person convicted of a felony who served any part of a criminal sentence, including probation, at any time within ten (10) years immediately preceding the date of receipt of submission of an application shall be deemed unqualified to receive a license to engage in promotional activity for a distributor.
- (c) Any person convicted of a misdemeanor who served any part of a criminal sentence, including probation, at any time within five (5) years immediately preceding the date of receipt of submission of an application shall be deemed unqualified to receive a license to engage in promotional activity for a distributor.

(6) If the Commissioner has reason to believe that an applicant is not entitled to the license for which the applicant has applied, the Commissioner shall notify the applicant. The applicant shall have thirty (30) days from the date of the notice to request in writing a hearing on the application. Upon receipt of applicant's written request, the Commissioner shall provide the applicant with due notice and opportunity for hearing on the application conducted by the Commissioner or his or her duly appointed hearing officer pursuant to Regulation 560-8-6 *et seq.* If the Commissioner, after providing notice and opportunity for a hearing, determines that the applicant is not entitled to a license, the applicant shall be advised in writing of the findings upon which such denial is based.

Authority: O.C.G.A. §§ 48-11-3, 48-11-4.