

CIGARETTE AND TOBACCO PRODUCTS TAX

STATUTORY PROVISION

Title 30, Delaware Code, Chapter 53.

COLLECTION/ADMINISTRATIVE AGENCY

The Department of Finance, Division of Revenue administers the cigarette and tobacco products tax.

GENERAL LIABILITY

Cigarettes - Every person, firm, corporation or association in Delaware who sells, stores, or receives cigarettes for the purpose of distributing them to any person, firm, corporation, or association within the state must pay a state excise tax on such cigarettes. The tax must be paid through the purchase of stamps provided by the Division of Revenue. Stamps in denominations of the amount of the tax must be affixed to each pack.

Other tobacco products - Any person engaged in the business of selling tobacco products in Delaware who brings, or causes to be brought, into the state any tobacco products for sale; any person who makes, manufacturers, or fabricates tobacco products in Delaware for sale in the state; or any person engaged in the business of selling tobacco products outside Delaware who ships or transports tobacco products to retail dealers in Delaware for sale by these retail dealers; is subject to a tax on the sale or use of tobacco products other than cigarettes.

TAX RATES

Cigarettes – 27.5 mills per cigarette (i.e., 55¢ per 20 cigarettes) through July 31, 2007.
57.5 mills per cigarette (i.e., \$1.15 per 20 cigarettes) effective August 1, 2007.

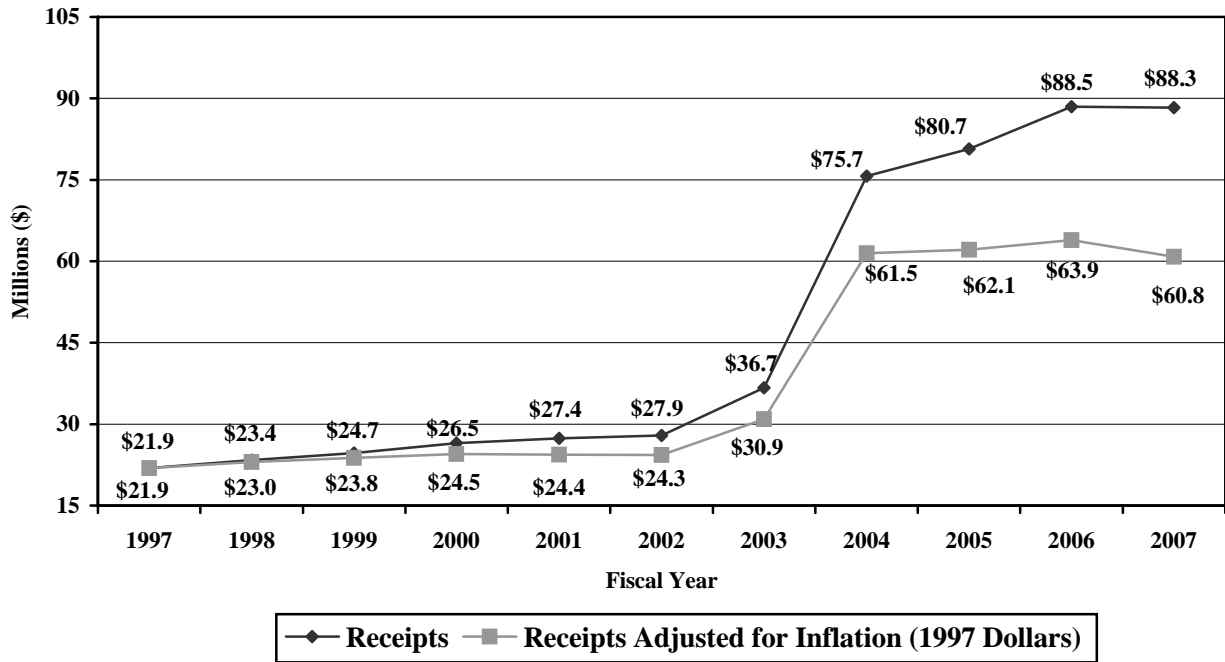
Moist Snuff - 54 cents per ounce (effective January 1, 2008)

Other Tobacco Products - 15% of the wholesale price

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TAX RECEIPTS

Cigarette and Tobacco Products Tax



LEGISLATIVE HISTORY

<u>Approved Date</u>	<u>Effective Date</u>	<u>Description of Changes</u>
-	7/1/69	Applied tax to all tobacco products; previously only cigarettes had been subject to the tax (57 Del. Laws c 136).
-	12/17/69	Court of Chancery issued a restraining order that prevented the Division of Revenue from collecting the tobacco products tax.
-	8/1/71	Increased tax rate per ten cigarettes to 7 cents from 5.5 cents (58 Del. Laws c

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<u>Approved Date</u>	<u>Effective Date</u>	<u>Description of Changes</u>
		291; HB 507).
-	3/1/84	Changed tax rate to 7 mills per cigarette from 7 cents per 10 cigarettes (64 Del. Laws c 231; HB 391).
11/30/86	3/1/87	Reinstated tobacco products tax at 15% of the wholesale price (65 Del. Laws c 441; HB 745 and 66 Del. Laws c 3; HB 23).
7/10/87	7/10/87	Increased the penalty for late filed returns to \$15 per day (66 Del. Laws c 130; HB 266).
7/2/90	8/1/90	Increased the cigarette tax to 9.5 mills per cigarette (67 Del. Laws c 280; HB 774).
7/2/90	1/1/91	Increased the cigarette tax to 12 mills per cigarette (67 Del. Laws c 280; HB 774).
8/1/91	1/1/92	Repealed various procedural provisions in light of enactment of Chapter 5 of Title 30 (68 Del. Laws c 187; HB 281).
5/6/00	5/26/00	Prohibited affixing a tax stamp onto cigarette packages that are imported into the U.S. or packages intended for export only and prohibited the sale or possession of such packages (72 Del. Laws c 301; HB 313).
7/9/01	7/9/01	Amended Delaware law to ensure cigarette excise tax stamps are not affixed to cigarettes that do not fully comply with U.S. law (73 Del. Laws c 112; HB 236).
6/30/03	6/30/03	Allowed internet sales of cigarettes under certain terms and conditions to assure cigarettes do not get in the hands of children (74 Del. Laws c 95; HB 153).
6/19/03	8/1/03	Increased cigarette tax from 24 cents to 55 cents per 20 cigarette pack. Established floor tax on inventories of cigarettes in possession on 8/1/03. Provided that if the Joint Resolution for the next fiscal year establishes a net General Fund revenue estimate in excess of 107% of the most recent Joint Resolution for the preceding fiscal year, this act shall be repealed and the cigarette tax rate will revert back to 24 cents per pack (74 Del. Laws c 54; HB 270).
7/19/05	1/1/06	Eliminated the sunset provision that would reduce cigarette taxes by 21 cents per pack if a Joint resolution for an upcoming fiscal year established a net

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<u>Approved Date</u>	<u>Effective Date</u>	<u>Description of Changes</u>
		General Fund revenue estimate in excess of 107% of the most recent Joint resolution for the preceding fiscal year (75 Del. Laws c 199; HB 303).
7/10/06	7/10/06	Required the Division of Revenue to publish, on its website, the top 100 delinquent taxpayers owing (i) personal income tax and (ii) business tax liabilities under Title 30 of the Delaware Code. Overdue liabilities subject to posting are limited to those taxes administered by the Department of Finance (75 Del. Laws c 406; HS 1 for HB 118).
7/10/06	1/1/07	Decreased the rate of interest assessed on overdue tax liabilities and paid on outstanding tax refunds from 1% to 0.5% and increased the penalties assessed on overdue liabilities from 0.5% to 1% (75 Del. Laws c 411; HB 397).
6/30/07	8/1/07	Increased cigarette tax from 55 cents to \$1.15 per 20 cigarette pack. Established floor tax on inventories of cigarettes in possession on 8/1/07.
6/30/07	1/1/08	Changes the method of taxing moist snuff from 15% of the wholesale price to a rate of 54 cents per ounce for tax periods beginning on or after January 1, 2008 (76 Del. Laws c 74; HB 245).
7/24/07	7/24/07	Removed cigars and pipe tobacco from certain information requirements pertaining to internet sales/delivery of tobacco products (76 Del. Laws c 171; SB 157).

FILING PROCEDURES FOR PERMITS AND LICENSES

The pamphlet "Responsibilities of a Cigarette Affixing Agent" outlines the requirements of the cigarette affixing agent; "Technical Information memo 86-8" outlines the requirements of the other tobacco products tax. Both documents are available from the Division of Revenue.

Affixing Agent: Every person wishing to sell cigarettes at wholesale is required to apply to the Division of Revenue for an affixing agent (permit) license to purchase and affix cigarette tobacco tax stamps. The affixing agent license is \$200 per year; only one license fee is required of any person who is both a wholesaler and an affixing agent.

Wholesaler: The Division of Revenue collects an annual license fee of \$200 from each cigarette wholesaler. A separate license is required for each place of business where the licensed wholesaler sells cigarettes to retailers.

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Retailer: For each three-year cigarette retailer license, a fee of \$15 is due to the Division of Revenue. A separate license is required for each place of business where the licensed retailer sells cigarettes to consumers.

Vending Machine Operator: Every vending machine from which cigarettes are offered for sale must have affixed a Division of Revenue identification stamp. Each vending machine stamp costs \$3.00. Where two or more tobacco product vending machines are fastened together, each set of mechanisms requires a separate vending machine license.

REPORTS

Cigarette: Every affixing agent must furnish the Division of Revenue with a monthly report on or before the 20th day of each month covering all unstamped cigarettes received during the preceding month. This report accounts for all orders of cigarettes purchased or received, all cigarettes sold, both in Delaware and outside Delaware, inventory of cigarettes at the beginning and end of each month, and the number of cigarette stamps received and affixed during the month through the wholesale dealer.

Other Tobacco Products: Every distributor must furnish the Division of Revenue a monthly report on or before the 20th day of each month. Each report lists all taxable tobacco products received during the preceding month.

PAYMENT DATES

At the time of application, and before January 1 of every taxable period.

PENALTIES

The Division of Revenue imposes strict penalties on persons, firms, or corporations who evade the tax, fail to affix stamps, resell stamps, reuse such stamps, sell untaxed tobacco products, or otherwise fail to comply with the law.

Failure to timely file the required tax return will result in a late filing penalty of \$15 per day from the due date until the date payment is received by the Division of Revenue. Failure to pay the amount of tax shown to be due on the required tax return will result in a failure-to-pay penalty of 1/2% per month, up to a maximum of 25% of the amount of tax unpaid. For tax periods beginning on or after January 1, 2007, the rate of penalty shall be increased from 1/2% to 1% per month.

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Negligence penalties are also imposed: 20% of the deficiency, or 40% if such deficiency is due to a substantial understatement of the tax. Where any part of the deficiency is due to fraud, a fraud penalty of 75% may also be imposed.