

Bulletin

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January 26, 2011

To: OTHER TOBACCO PRODUCTS (“OTP”) RETAILERS, TOBACCONISTS,
CIGARETTE RETAILERS

Subject: HOUSE BILL 88 - OTHER TOBACCO PRODUCTS LICENSES –
RETAILERS

House Bill 88, Chapter 388 of the Laws of Maryland – **Other Tobacco Products Licenses** - passed the Maryland General Assembly, and was signed by the Governor on May 4, 2010.

This bill creates a new Title 16.5 in the Business Regulation Article, Annotated Code of Maryland, establishing other tobacco products (“OTP”) licenses for manufacturers, wholesalers and retailers. The Comptroller will issue and administer the OTP manufacturer and wholesaler licenses, and the Clerks of the Court will issue and administer the OTP retailer licenses and tobacconist licenses.

The current OTP registration for wholesalers and retailers administered by the Comptroller will terminate on April 30, 2011.

Under the new law, effective May 1, 2011, any person selling OTP must have an OTP retailer license. If an OTP retailer qualifies as a “tobacconist,” then the retailer may obtain a tobacconist license instead of an OTP retailer license. A person who sells OTP to consumers in Maryland must either have an OTP retailer license or a tobacconist license.

This bulletin provides information about the new OTP retailer licenses.

A. Definitions.

Under Business Regulation Article, § 16.5-101, the following definitions apply:

(1) **OTP** is defined as “any cigar or roll for smoking, other than a cigarette, made in whole or in part of tobacco; or any other tobacco or product made primarily from tobacco, other than a cigarette, that is intended for consumption by smoking or chewing or as snuff.”

(2) An **OTP retailer** is defined as “a person who sells OTP to consumers; or holds OTP for sale to consumers.”

(3) A **tobacconist** is defined as “an OTP business that derives at least 70% of its revenues, measured by average daily receipts, from the sale of OTP and tobacco-related accessories.”

(4) **Premium cigars** are defined as “cigars that have hand-rolled wrappers made from whole tobacco leaves where the filler, binder, and wrapper are made of all tobacco, and may include adhesives or other materials used to maintain size, texture, or flavor; or are designated as premium cigars by the Comptroller by regulation.”

(5) **Pipe tobacco** is defined as “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.”

B. Requirements.

(1) The following applies to the OTP retailer license and tobacconist license:

- (a) The licenses are “annual” licenses expiring on April 30th following the effective date.
- (b) There are no application or renewal fees.
- (c) There is an annual license fee of \$15 for either license. If an OTP retailer applicant or tobacconist applicant has a cigarette retailer license or special cigarette retailer license, the license fee of \$15 is waived.
- (d) An OTP retailer will have either an OTP retailer license or a tobacconist license, but not both.
- (e) An OTP manufacturer who sells “premium cigars” or “pipe tobacco” to a licensed OTP retailer or sells OTP to a tobacconist is not required to have an OTP manufacturer’s license, unless that OTP manufacturer is located in Maryland.
- (f) An OTP retailer may purchase “premium cigars” or “pipe tobacco” on which the tobacco tax has not been paid directly from an OTP manufacturer; and a tobacconist may purchase OTP on which the tobacco tax has not been paid directly from an OTP manufacturer, provided that the OTP retailer and tobacconist file a quarterly tax return with the Comptroller and pay the tobacco tax at the rate of 15% of the invoice amount charged by the OTP manufacturer, exclusive of any discount, trade allowance, rebate, or other reduction. The quarterly tax return for the prior quarter is due on January 21st, April 21st, July 21st, and October 21st of each year. Tax returns and instructions can be found at: <http://compnet.comp.state.md.us/>
- (g) An OTP retailer who purchases premium cigars or pipe tobacco directly from an OTP manufacturer and a tobacconist must keep all invoices, bills of lading, and records of purchases and sales for 2 years.
- (h) The purchase and sale of OTP by mail or over the internet is prohibited.

(2) The following applies to the OTP retailer license:

- (a) An OTP retailer must obtain an OTP retailer license from the Clerk of the Court.
- (b) An OTP retailer may purchase “premium cigars” and “pipe tobacco” on which the tobacco tax has not been paid directly from an OTP manufacturer, and pay the tobacco tax by filing a quarterly tax return.
- (c) A licensed OTP retailer must purchase all OTP (other than “premium cigars” or “pipe tobacco”) tax-paid from a licensed OTP wholesaler. The licensed OTP wholesaler will file monthly tax returns and pay the tobacco tax at a rate of 15% of the wholesale price on OTP sold to licensed OTP retailers.

(3) The following applies to the tobacconist license:

- (a) A tobacconist must obtain a tobacconist license from the Clerk of the Court.
- (b) A tobacconist may purchase all OTP on which the tobacco tax has not been paid from an OTP manufacturer, and pay the tobacco tax by filing a quarterly tax return.

Questions about this bulletin should be directed to Licensing and Registration at 410-260-7131.

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