

CHAPTER Rev 1000 TOBACCO TAX

PART Rev 1001 DEFINITIONS

Readopt Rev 1001.01, effective 3-6-14 (Document #10536), to read as follows:

Rev 1001.01 “Bond” means an agreement between a wholesaler and a surety company authorized by the New Hampshire insurance department to do business in this state whereby the surety company, upon default of the wholesaler, pays the outstanding debt of the wholesaler to the state up to the amount of the bond.

Readopt Rev 1001.02 and 1001.03, effective 6-4-20 (Document #13049), to read as follows:

Rev 1001.02 “Cigarette” means “cigarette” as defined in RSA 78:1, I. The term includes a little cigar and roll-your-own.

Rev 1001.03 “Consumer” means “consumer” as defined in RSA 78:1, III.

Readopt Rev 1001.04, effective 3-6-14 (Document #10536), to read as follows:

Rev 1001.04 “Department” means the New Hampshire department of revenue administration.

Readopt and renumber Rev 1001.041 through Rev 1001.06, effective 6-4-20 (Document #13049), as Rev 1001.05 through Rev 1001.08 to read as follows:

Rev 1001.~~041~~**05** “E-cigarette” or “Electronic cigarette” means “electronic cigarette” as defined in RSA 78:1, III-a.

Rev 1001.~~042~~**06** “Little cigar” means “little cigar” as defined in RSA 78:1, V.

Rev 1001.~~050~~**7** “Manufacturer” means “manufacturer” as defined in RSA 78:1, VI.

Rev 1001.~~060~~**8** “Other tobacco products (OTP)” means “other tobacco products” as defined in RSA 78:1, VII. The term includes e-cigarettes and cigars other than premium cigars as defined in RSA 78:1, IX or little cigars.

Readopt and renumber Rev 1001.07 and Rev 1001.08, effective 3-6-14 (Document #10536), as Rev 1001.09 and Rev 1001.10 to read as follows:

Rev 1001.~~070~~**9** “Regular accounting quarter” means the 4 3-month periods that coincide with the taxpayer's accounting period.

Rev 1001.~~081~~**0** “Reporting period” means one calendar month, unless otherwise authorized by the department.

Readopt and renumber Rev 1001.09, effective 6-4-20 (Document #13049), as Rev 1001.11 to read as follows:

Rev 1001.~~091~~**11** “Retailer” means “retailer” as defined in RSA 78:1, X.

Readopt with amendment and renumber Rev 1001.10, effective 6-4-20 (Document #13049), as Rev 1001.12 to read as follows:

Rev 1001.~~10~~¹² “Roll-your-own (RYO)” means “roll-your-own” as defined in RSA 78:1, I(b), with 0.09 ounces of RYO tobacco being equivalent to one individual “cigarette.”

Readopt and renumber Rev 1001.11 and Rev 1001.12, effective 6-4-20 (Document #13049), as Rev 1001.13 and Rev 1001.14 to read as follows:

Rev 1001.~~11~~¹³ “Sale” or “sell” means “sale” or “sell” as defined in RSA 78:1, XI.

Rev 1001.~~12~~¹⁴ “Sampler” means “sampler” as defined in RSA 78:1, XII.

Readopt and renumber Rev 1001.13, effective 3-6-14 (Document #10536), as Rev 1001.15 to read as follows:

Rev 1001.~~13~~¹⁵ “Smoked” means inhaled and exhaled fumes from burning tobacco products.

Readopt and renumber Rev 1001.14, effective 6-4-20 (Document #13049), as Rev 1001.16 to read as follows:

Rev 1001.~~14~~¹⁶ “Smokeless tobacco”, as referenced in the definition of “tobacco products” in RSA 78:1, XIII, means any tobacco product manufactured in such a manner as to be suitable for use by any method other than inhaling and exhaling burning tobacco products, including, but not limited to, the following:

- (a) Cavendish tobacco;
- (b) Plug tobacco;
- (c) Twist and fine cut tobacco; and
- (d) Any finely cut, ground or powdered tobacco such as snus, snuff and snuff flour.

Readopt and renumber Rev 1001.15 and Rev 1001.16, effective 3-6-14 (Document #10536), as Rev 1001.17 and Rev 1001.18 to read as follows:

Rev 1001.~~15~~¹⁷ “Snuff flour” means any finely cut, ground, or powdered tobacco that is dry and not intended to be smoked.

Rev 1001.~~16~~¹⁸ “Snus and snuff” means any finely cut, ground, or powdered tobacco that is moist and not intended to be smoked.

Readopt with amendment and renumber Rev 1001.17, effective 6-4-20 (Document #13049), as Rev 1001.19 to read as follows:

Rev 1001.~~17~~¹⁹ “Tobacco products” means “tobacco products” as defined in RSA 78:1, ~~XIV~~^{XIII}.

Readopt and renumber Rev 1001.18, effective 6-4-20 (Document #13049), as Rev 1001.20 to read as follows:

Rev 1001.4820 “Taxpayer identification number” means “taxpayer identification number” as defined in Rev 2902.11.

Repeal Rev 1001.181, effective 3-6-14 (Document #10536), as follows:

~~Rev 1001.181 “Usable” means cigarettes that:~~

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- ~~— (a) Are suitable for sale, as defined in RSA 78:1, XIII;~~
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- ~~— (b) Are suitable for display;~~
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- ~~— (c) Are not outdated or stale; or~~
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- ~~— (d) Have not been manually or mechanically damaged.~~

Readopt with amendment and renumber Rev 1001.19, effective 6-4-20 (Document #13049), as Rev 1001.21 to read as follows:

Rev 1001.4921 “Wholesaler” means “wholesaler,” as defined in RSA 78:1, XIV, licensed by the department, pursuant to RSA 78.

PART Rev 1002 STAMPS

Readopt with amendment Rev 1002.01, effective 11-15-22 (Document #13490), to read as follows:

Rev 1002.01 Requirement for Use of Stamps.

(a) A wholesaler who satisfies RSA 78:2, III shall demonstrate that it paid the tax due on cigarettes and little cigars sold or distributed to a retailer in this state by affixing “A”, “B”, or “C” stamps purchased from the department to each package of 20 or 25 by a heat transfer stamp method, either manually or mechanically, before the wholesaler transfers possession to the retailer.

(b) The “A” stamp shall:

- (1) Be affixed to individual packages containing 25 cigarettes or little cigars which are purchased from manufacturers participating in the Master Settlement Agreement, pursuant to RSA 541-C:3, I(a), or from manufacturers not participating in the Master Settlement Agreement, pursuant to RSA 541-C:3, I(b); and
- (2) Have a value equal to the tax rate established in RSA 78:2, I for packages of 20 cigarettes or little cigars, multiplied by 125%.

(c) The “B” stamp shall:

- (1) Be affixed to individual packages containing 20 cigarettes or little cigars which are purchased from manufacturers participating in the Master Settlement Agreement, pursuant to RSA 541-C:3, I(a); and
- (2) Have a value equal to the tax rate established in RSA 78:2, I for packages of 20 cigarettes or little cigars.

(d) The “C” stamp shall:

(1) Be affixed to individual packages containing 20 cigarettes which are purchased from manufacturers not participating in the Master Settlement Agreement, pursuant to RSA 541-C:3, I(b); and

(2) Have a value equal to the tax rate established in RSA 78:2, I for packages of 20 cigarettes.

(e) Pursuant to RSA 78:11, II, every wholesaler shall keep on hand at each premises in this state where cigarettes or little cigars are possessed, stored, or sold, enough stamps purchased within the previous 90 days to pay the tax due on all cigarettes and little cigars present at the premises at any given time.

(f) For cigarettes and little cigars in packages of other than 20 or 25, or too small to affix a stamp, or for RYO, a wholesaler who satisfies RSA 78:2, III shall, in lieu of stamps, keep documentation to demonstrate that it paid the tax due, and ~~otherwise comply~~ **has complied** with the reporting and payment requirements for OTP, as provided in Rev 1003.

(g) Each invoice issued by a wholesaler shall state that the tax has been collected.

(h) A stamp affixed to an individual package shall be deemed to comply with this section only if:

(1) A single stamp is affixed to each package;

(2) The stamp is at least 75% visible; and

(3) The stamp’s numerical designation is legible.

PART Rev 1003 OTHER TOBACCO PRODUCTS

Readopt Rev 1003.01, effective 6-4-20 (Document #13049), to read as follows:

Rev 1003.01 Documentation of Tax Paid for OTP.

(a) No wholesaler shall sell, ship, or transport OTP to retailers located in New Hampshire without documentation of tax paid.

(b) An invoice from a wholesaler to a retailer or sampler for the purchase of OTP, pursuant to RSA 78:14, III, shall be documentation of tax paid.

(c) Every retailer and sampler shall keep on its licensed premises documentation of tax paid for all OTP on the premises, including, but not limited to, all invoices from wholesalers.

Readopt with amendment Rev 1003.02, effective 11-15-22 (Document #13490), to read as follows:

Rev 1003.02 OTP Tax Liability.

(a) Every wholesaler who satisfies RSA 78:2, III shall, pursuant to Rev ~~1009.09~~ **1008.11**, complete and file Form DP-151, “Wholesalers’ Other Tobacco Products Tax Return”, with the department:

(1) On a monthly basis; or

- (2) On a quarterly basis, if permission to file quarterly has been granted by the department in writing.
- (b) Wholesalers requesting to file a Form DP-151 for a quarterly period shall submit the request:
- (1) Electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc; or
 - (2) In writing to:

New Hampshire Department of Revenue Administration
Collections Division
P.O. Box 454
109 Pleasant Street
Concord, New Hampshire, 03302-0454.
- (c) The request made in (b) above, shall contain the following information:
- (1) The wholesaler's:
 - a. Name and address;
 - b. Tax identification number; and
 - c. License number; and
 - (2) The reasons why a change of reporting period is requested.
- (d) The department shall grant the request made in (b) above, if:
- (1) The wholesaler's average monthly tax liability is \$500.00 or less per month for the calendar quarter immediately preceding the submission of the request; and
 - (2) The wholesaler has no outstanding tax liability.
- (e) The department shall automatically revoke permission to file on a quarterly basis if:
- (1) The wholesaler fails to timely file any return or report;
 - (2) The wholesaler files a return, report, or affidavit, which is determined to be false;
 - (3) The wholesaler is not in good standing with department as provided in RSA 78:8, III, including, but not limited to, if any check is returned for nonsufficient funds;
 - (4) The wholesaler fails to comply with the requirements of RSA 78 or this chapter; or
 - (5) The wholesaler's tax liability exceeds \$500 per month, pursuant to (g) below.
- (f) The due date of quarterly returns shall be the 15th day of the month following the end of each calendar quarter.

(g) If, during any subsequent calendar quarter, the average tax liability of a wholesaler filing on a quarterly basis exceeds \$500.00 per month, the wholesaler shall commence monthly filings.

Readopt with amendment Rev 1003.03, effective 3-6-14 (Document #10536), as amended effective 5-27-15 (Document #10839), and as amended effective 6-4-20 (Document #13049), to read as follows:

Rev 1003.03 Credits or Refunds for Returned OTP for Wholesalers.

(a) Wholesalers shall obtain credits or refunds for outdated, damaged, or unsaleable returned OTP by either of the following methods:

- (1) By taking a credit of the amount due against the tax liability on their Form DP-151, "Wholesalers' Other Tobacco Products Tax Return"; or*
- (2) By mailing a written request to the department, for a refund, at:*

*New Hampshire Department of Revenue Administration
Collections Division
P.O. Box 454
109 Pleasant Street
Concord, New Hampshire 03302-0454.*

(b) The amount of credit or refund shall be calculated using the tax rate and wholesale sales price in effect at the time the tax was paid.

(c) Each wholesaler requesting a credit or refund shall also provide copies of:

- (1) Invoices showing the following:*
 - a. The name and address of the retailer returning the OTP to the wholesaler;*
 - b. The date the OTP was sent back to the wholesaler;*
 - c. The description and quantity of the OTP returned by the retailer to the wholesaler; and*
 - d. The reason the OTP was returned;*
- (2) Any documents used by the wholesaler to return the OTP to the manufacturer; and*
- (3) All affidavits from the manufacturer verifying the receipt and destruction of the OTP for which the credit or refund is being claimed.*

Readopt Rev 1003.04 through Rev 1003.06, effective 6-4-20 (Document #13049), to read as follows:

Rev 1003.04 E-cigarettes.

(a) If a container of liquid or other substance containing nicotine that is intended to be opened and used with or in an electronic smoking device is sold packaged with such a device, and the wholesale sales price is not separately stated, the entire package shall be subject to the tax as provided in RSA 78:2, II(b)(2).

(b) On or after January 1, 2021, no retailer shall possess with or without an intent to sell, e-cigarettes purchased from a wholesaler before January 1, 2020.

(c) If any e-cigarettes are found at any place in this state in violation of (b) above, they shall be contraband tobacco products subject to forfeiture, as provided in RSA 78:18.

Rev 1003.05 Wholesale Sales Price. If a wholesaler who satisfies RSA 78:2, III purchases, receives, or otherwise acquires OTP from a manufacturer or other wholesaler owned or controlled by the same person who owns the acquiring wholesaler, or otherwise related to the acquiring wholesaler, the wholesale sales price of such OTP shall be the established price for which the manufacturer or other wholesaler sells the OTP to an unrelated wholesaler, in accordance with the manufacturer's or other wholesaler's applicable list prices in effect at the time of acquisition.

Rev 1003.06 Free Tobacco Products.

(a) Prior to distributing free tobacco products to consumers for promotional purposes, a sampler shall ship them to a New Hampshire licensed wholesaler for payment of the tax.

(b) A wholesaler receiving free tobacco products pursuant to (a) above shall:

(1) Remit payment of the tax with Form DP-151, "Wholesalers' Other Tobacco Products Tax Return," pursuant to Rev 1003.02; and

(2) Provide documentation to evidence tax paid to the sampler, as provided in Rev 1003.01.

(c) The wholesaler shall be responsible for obtaining reimbursement from the sampler for the cost of the tax.

Readopt with amendment and renumber Rev 1003.021, effective 6-4-20 (Document #13049), as Rev 1003.07 to read as follows:

Rev 1003.021-07 Accounting. *Pursuant to Rev 1008.03, Everyevery* wholesaler shall file ~~an~~ *monthly* accounting of all OTP, cigarettes, and little cigars as described in Rev 1002.01(~~g~~)(f), and RYO, transferred to and from any premises in this state where such tobacco products are possessed, stored, or sold, pursuant to Rev 1009.021.

Readopt with amendment and renumber Rev 1005.01, effective 11-15-22 (Document #13490), as Rev 1004.01, cited and to read as follows:

PART ~~Rev 1005~~1004 PURCHASES OF TAX STAMPS

Rev ~~1005.01~~1004.01 Purchases of Tax Stamps. Licensed wholesalers purchasing tax stamps shall:

(a) Submit a completed Form CD-15, "Cigarette Stamp Order", to the department in accordance with Rev ~~1009.05~~1008.06;

(b) Be liable for the payment of all shipping expenses, including any insurance charges; and

(c) Be liable for the payment of the tax stamps purchased.

Readopt and renumber Rev 1005.02, effective 11-15-22 (Document #13490), as Rev 1004.02 to read as follows:

~~Rev 1005.02~~**1004.02** Independence of Transactions.

- (a) Each purchase of “A”, “B”, or “C” tax stamps shall be a separate transaction.
- (b) No credit or debit incurred in one transaction shall be applied to another transaction.

Readopt with amendment and renumber Rev 1005.03, effective 3-6-14 (Document #10536), as amended effective 6-4-20 (Document #13049), as Rev 1004.03 to read as follows:

~~Rev 1005.03~~**1004.03** Purchases of Tax Stamps on Credit.

(a) To open a credit account and charge purchases of tax stamps, wholesalers shall submit a written request to:

New Hampshire Department of Revenue Administration
Collections Division
P.O. Box 454
109 Pleasant Street
Concord N.H. 03302-0454.

(b) The request shall be accompanied by:

- (1) The wholesaler’s most recent financial statement prepared in accordance with generally accepted accounting principles;
- (2) The names, addresses and telephone numbers of 3 credit references; and
- (3) A completed Form CD-18, “Tobacco Tax Credit Bond”, in accordance with Rev ~~1009.06~~**1008.07**.

(c) *The department may require the wholesalers to provide more current information of that which is requested in (b) above when the information submitted is not the most current.*

(d) The aggregate amount of purchases charged by a wholesaler shall not exceed 75% of the wholesaler’s bond amount.

~~(d)~~(e) The coverage of the bond shall include, in addition to the outstanding balance, interest pursuant to RSA 21-J:28, penalties pursuant to RSA 21-J:33, and costs, including, but not limited to, attorney’s fees.

~~(e)~~ The coverage of the bond shall include, in addition to the outstanding balance, interest pursuant to RSA 21-J:28, penalties pursuant to RSA 21-J:33, and costs, including, but not limited to, attorney’s fees.

~~(e)~~(f) Wholesalers may pay for orders charged to their credit account *electronically through the automated clearing house (ACH) debit method by assessing the department’s Granite Tax Connect we portal at gtc.revenue.nh.gov.* ~~using a noncertified company check.~~

Readopt and renumber Rev 1005.04, effective 3-6-14 (Document #10536), as Rev 1004.04 to read as follows:

Rev ~~1005.04~~**1004.04** Payment Methods.

(a) Purchases of tax stamps shall be paid for by:

- (1) Charging the purchases to the wholesaler's credit account; or
- (2) Immediate payment for the total amount of the order by presenting the department with:
 - a. Cash;
 - b. A money order issued through a third-party payable to the State of New Hampshire;
 - c. A cashier's check payable to the State of New Hampshire; or
 - d. A certified check payable to the State of New Hampshire.

(b) Any purchase not paid in full in a timely manner shall, pursuant to RSA 21-J:28, accrue interest and penalties pursuant to RSA 21-J:33.

Readopt with amendment and renumber Rev 1005.05, effective 11-15-22 (Document #13490), as Rev 1004.05 to read as follows:

Rev ~~1005.05~~**1004.05** Refunds for Stamps on Outdated, Damaged or Unsaleable Cigarettes for Wholesalers.

(a) Wholesalers shall obtain refunds for tax paid on outdated, damaged, or unsaleable returned cigarettes or little cigars, as provided by RSA 78:12, IV, by completing a Form CD-92, "Notice of Intent to Return Damaged or Obsolete Cigarettes to Manufacturer," and filing it with the department's collections division, in accordance with Rev ~~1009.07~~**1008.08**, at least 10 business days prior to shipping the cigarettes or little cigars back to the manufacturer.

(b) Form CD-92, "Notice of Intent to Return Damaged or Obsolete Cigarettes to Manufacturer", shall be accompanied by copies of all documents used by the wholesaler to return the cigarettes or little cigars to the manufacturer.

(c) After filing Form CD-92, wholesalers shall file with the department all affidavits from the manufacturer verifying the receipt, the date, and method of destruction of the cigarettes or little cigars for which the refund is being claimed.

(d) The affidavits in (c) above, shall be submitted electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc, or e-mailed to dra.collections@dra.nh.gov, or mailed to:

New Hampshire Department of Revenue Administration
Collections Division
P. O. Box 454
109 Pleasant Street
Concord, New Hampshire 03302-0454.

(e) Upon receipt of all required documents, the department shall issue the refunds. The amount of the refund shall be calculated using the tax rate and wholesale price in effect at the time the tobacco product was purchased.

Adopt Rev 1004.06 to read as follows:

Rev 1004.06 Redemption and Refund of Unused and Unaffixed Stamps.

(a) Wholesalers may request a redemption of unused and unaffixed stamps for a refund by returning those unused and unaffixed stamps, and completing and submitting a Form CD-108, “Unaffixed Tobacco Tax Stamp Refund Request” to:

New Hampshire Department of Revenue Administration
Collections Division
P.O. Box 454
109 Pleasant Street
Concord, New Hampshire 03302-454.

(b) Each stamp returned for redemption and refund in (a) above shall be at least 75% undamaged.

(c) The amount of the refund shall be calculated using the tax rate at the time the stamps were purchased.

Readopt and renumber Rev 1006.01, effective 1-22-15 (Document #10766), as amended effective 6-4-20 (Document #13049), as Rev 1005.01, cited and to read as follows:

PART ~~Rev 1006.01~~**1005** ACCOUNTING RECORDS

~~Rev 1006.01~~**1005.01** Definitions. For purposes for this part the following definitions shall apply:

(a) “Brand families” means all styles of cigarettes and little cigars sold under the same trade mark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, “menthol,” “kings,” and “100s,” and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes or little cigars;

(b) “Non-participating manufacturer (NPM)” means any manufacturer that makes payments into a qualified escrow fund as required under RSA 541-C, but has not become a participating manufacturer as set forth in Section II(jj) of the Tobacco Master Settlement Agreement; and

(c) “Participating manufacturer (PM)” means participating manufacturer as a given term in Section II(jj) of the Tobacco Master Settlement Agreement and all amendments thereto under RSA 541-D:2, V.

Readopt with amendment and renumber Rev 1006.02, effective 11-15-12 (Document #13490), as Rev 1005.02 to read as follows:

~~Rev 1006.02~~**1005.02** Content and Maintenance of Accounting Records.

(a) Every manufacturer, wholesaler, retailer, and sampler shall keep complete and accurate records relating to all the tobacco products it manufactured, purchased, or otherwise acquired, and the sale or distribution of such tobacco products, for ~~the later of following period of time:~~ ***a period of three years, of which for the first twelve months from the date of manufacture, purchase, acquisition, sale, or distribution those records shall be located at the place of business identified in its license, or until the completion of all:***

(1) ***Audits commenced by the department;*** ~~Three years, including, for the first 12 months from the date of manufacture, purchase, acquisition, sale, or distribution, whichever is later, at the place of business identified in its license; and~~

(2) ***Administrative appeals pending before the department; and***

(3) ~~Until the resolution of any contested matters involved in an adjudicative proceeding or litigation with the department, if after a period of 3 years.~~ ***Judicial proceedings pending between the manufacturer, wholesaler, retailer, or sampler and the department.***

(b) Every manufacturer and wholesaler shall deliver with each sale or distribution of tobacco products an invoice or written statement as required by RSA 78:15, VI, and retain a duplicate.

(c) The following records shall be maintained by wholesalers to the extent applicable:

(1) Books of account, including but not limited to:

- a. The general ledger;
- b. The cash receipts;
- c. The cash disbursements; and
- d. The sales and purchase journals;

(2) Invoices for all tobacco products:

- a. Purchased;
- b. Acquired;
- c. Sold; or
- d. Exchanged;

(3) All pertinent bank statements;

(4) Purchase and sale records identifying the total number of cigarette and little cigar packages and the total count of cigarettes or little cigars per package;

(5) Records identifying the individual "A", "B" or, "C" tax stamp purchase requisitions;

(6) Documentation for all cigarettes and little cigars, by number of packages and number of cigarettes or little cigars per package, or any tobacco products returned to manufacturer indicating product returned and date returned;

(7) Bills of lading indicating date the tobacco products were received;

(8) Quarterly inventory for:

a. PMs including:

1. All stamped or unstamped cigarettes, little cigars, and RYO purchased by a resident wholesaler for New Hampshire, ~~and/or~~ other states, *or both*;

2. All New Hampshire or other states' stamped and unstamped cigarettes, little cigars, and RYO, saleable or damaged in the possession of a resident wholesaler;

3. All New Hampshire stamped cigarettes, little cigars, and RYO which are saleable or damaged in the possession of a non-resident wholesaler;

4. All New Hampshire or other states' stamped and unstamped cigarettes, little cigars, and RYO returned to the manufacturer for any reason by a resident wholesaler;

5. All New Hampshire stamped cigarettes, little cigars, and RYO sold in New Hampshire by a resident wholesaler and into New Hampshire by a non-resident wholesaler;

6. All non-taxable cigarette, little cigar, and RYO sales in New Hampshire by a resident wholesaler and into New Hampshire by a non-resident wholesaler;

7. All cigarettes, little cigars, and RYO stamped and unstamped sold into other states by a resident wholesaler; and

8. All New Hampshire stamped cigarettes, little cigars, and RYO returned to the manufacturer for any reason by a non-resident wholesaler;

b. NPMs including:

1. All stamped or unstamped cigarettes, little cigars, and RYO purchased by a resident wholesaler for New Hampshire, other states, or both;

2. All New Hampshire, other states, or both stamped and unstamped cigarettes, little cigars, and RYO, saleable or damaged in the possession of a resident wholesaler;

3. All New Hampshire stamped cigarettes, little cigars, and RYO, which are saleable or damaged, in the possession of a non-resident wholesaler;

4. All New Hampshire, other states, or both stamped and unstamped cigarettes, little cigars, and RYO returned to the manufacturer for any reason by a resident wholesaler;

5. All New Hampshire stamped cigarettes, little cigars, and RYO sold in New Hampshire by a resident wholesaler and into New Hampshire by a non-resident wholesaler;
 6. All non taxable cigarette, little cigar, and RYO sales in New Hampshire by a resident wholesaler and into New Hampshire by a non-resident wholesaler;
 7. All cigarettes, little cigars, and RYO stamped and unstamped sold into other states by a resident wholesaler; and
 8. All New Hampshire stamped cigarettes, little cigars, and RYO returned to the manufacturer for any reason by a non-resident wholesaler;
- (9) Beginning and ending quarterly inventory of all tobacco tax stamps including purchases for resident wholesalers;
 - (10) Beginning and ending quarterly inventory of New Hampshire tobacco stamps including purchases for non-resident wholesalers;
 - (11) Daily logs of cigarette and little cigar packages stamped;
 - (12) Invoices for all sample tobacco products received;
 - (13) Documentation for all OTP, by number of units returned to the manufacturer and the date returned;
 - (14) Invoices indicating New Hampshire OTP tax charged;
 - (15) Documentation showing the total OTP sales, listed by each individual taxing jurisdiction;
 - (16) Inventory of stamp rolls purchased by roll number;
 - (17) Inventory of stamp rolls purchased by individual stamp number;
 - (18) Inventory of stamped product sold by roll number;
 - (19) Inventory of stamped product sold by individual stamp number;
 - (20) Copies of monthly filed Form AU-201, "Non-Resident Wholesaler Cigarette Tax Report" or Form AU-202, "Resident Wholesaler Cigarette Tax Report";
 - (21) Accounting policy and procedures manuals relevant to cigarettes, little cigars, and tobacco tax;
 - (22) Contracts, purchase agreements, or both, with all cigarette, little cigar, or tobacco manufacturers or importers;
 - (23) Wholesaler shipment contracts;
 - (24) Rules, regulations, and bylaws relating to tobacco products;

- (25) Copies of all invoices for sales of tobacco products to all states;
- (26) All invoices for purchases of tobacco products;
- (27) Monthly inventory worksheets for tobacco products;
- (28) Monthly inventory of all stamp purchases;
- (29) Copies of all Form DP-151, "Wholesalers' Other Tobacco Products Tax Return";
- (30) Copies of any and all cigarette, little cigar, or tobacco tax returns filed with other states;
- (31) Copies of all shipping records and bills of lading;
- (32) All documents identifying the physical addresses of all warehouse locations;
- (33) Copies of all registrations or reports made pursuant to the Prevent All Cigarette Trafficking ("PACT") Act 15 U.S.C. §§375-378;
- (34) Copies of New Hampshire retail licenses for each retailer to which sales were made; and
- (35) Copies of New Hampshire manufacturers' licenses for each manufacturer from which product was purchased for sale in New Hampshire.

Readopt and renumber Rev 1006.03, effective 9-27-17 (Document #12389), as Rev 1005.03 to read as follows:

Rev ~~1006.03~~**1005.03** Records of Retail Prices for All Tobacco Products. Upon request from the department, wholesalers shall provide, from their retailer invoices, the prices charged to a retailer for all tobacco products.

Readopt and renumber Rev 1007.01, effective 1-22-15 (Document #13049), as amended effective 9-29-18 (Document #12639), and as amended effective 6-4-20 (Document #13049), as Rev 1006.01, cited and to read as follows:

PART Rev ~~1007~~**1006** REPORTS REQUIRED

Rev ~~1007.01~~**1006.01** Administration.

(a) For purposes of RSA 21-J:31 and RSA 541-C:2, X, the required cigarette, little cigar, and RYO tax reports, Form AU-202, "Resident Wholesaler Cigarette Tax Report" or Form AU-201, "Non-Resident Wholesaler Cigarette Tax Report", shall be considered a return.

(b) For purposes of RSA 21-J:29, the statute of limitations for audit purposes shall be based on the taxpayer's reporting period.

(c) For purposes of RSA 21-J:28, RSA 21-J:31, and RSA 21-J:33, Form AU-215, "Consumer Tobacco Products Tax Return," and Form DP-151, "Wholesalers' Other Tobacco Products Tax Return," shall be considered returns.

Readopt with amendment and renumber Rev 1007.02, effective 6-4-20 (Document #13049), as Rev 1006.02 to read as follows:

Rev ~~1007.02~~**1006.02** Consumer Reporting and Payment. A consumer shall complete and file Form AU-215, "Consumer Tobacco Products Tax Return," in accordance with Rev ~~1009.10~~**1008.12**, if the consumer acquires tobacco products:

- (a) From any source other than a licensed retailer; and
- (b) Without documentation to evidence tax paid.

Readopt and renumber Rev 1008.01, effective 6-4-20 (Document #13049), as Rev 1007.01, cited and to read as follows:

PART Rev ~~1008~~**1007** ADMINISTRATION

Rev ~~1008.01~~**1007.01** Confidentiality of Department Records. All information obtained from the department's records, files, or returns, or from any examination, investigation, or hearing, relating to the tobacco tax, shall be confidential and privileged pursuant to RSA 21-J:14 and Rev 2903.02, except information regarding licenses as provided in RSA 78:6, X.

Readopt and renumber Rev 1008.02, effective 3-6-14 (Document #10536), as Rev 1007.02 to read as follows:

Rev ~~1008.02~~**1007.02** Pre-Assessment Conference.

(a) The purpose of an informal pre-assessment conference shall be to discuss the audit findings with the department's audit division management personnel in an effort to reach an agreement on the issues of fact or audit results.

(b) At the conclusion of an audit, when the facts and circumstances of the audit review indicate to the department that an informal pre-assessment conference would benefit both the state and the other parties involved, the department's audit division shall provide an informal pre-assessment conference for the party(s), or its authorized representative.

(c) If a party does not agree with the department's findings, they may request a pre-assessment conference.

(d) The department shall notify the party(s) or its authorized representative by mail of:

- (1) The date, time and location for the conference; and
- (2) The advance information that the party(s) or its authorized representatives shall be required to provide to the department's audit division.

(e) The information required by (d)(2), above, shall include:

- (1) The name, address and taxpayer identification number of the party(s);
- (2) An outline of the areas of agreement and disagreement;
- (3) Documentation in support of the party's position such as:
 - a. Citations of supporting case law;
 - b. Statutory or regulatory provisions; and
 - c. Documents or correspondence from unrelated parties;
- (4) Responses to any outstanding questions raised by the department's auditor during the audit; and
- (5) The names of the individuals who shall participate in the pre-assessment conference.

(f) Upon completing the review of material provided during the pre-assessment conference, the department's audit division shall determine the appropriate disposition of the audit or review, notification of which shall begin the period for formal appeal to the commissioner under RSA 21-J:28-b and Rev 200.

Readopt and renumber Rev 1008.03, effective 6-4-20 (Document #13049), as Rev 1007.03 to read as follows:

~~Rev 1008.03~~**1007.03** Tobacco License.

(a) No manufacturer, wholesaler, retailer, or sampler shall engage in the business of selling or distributing tobacco products in this state without first:

- (1) Obtaining a license:
 - a. If a manufacturer or wholesaler, issued by the department pursuant to RSA 78:6; or
 - b. If a retailer or sampler, issued by the New Hampshire liquor commission pursuant to RSA 178; and
- (2) Registering with the New Hampshire secretary of state.

(b) Wholesalers and manufacturers shall apply for a separate license for each location where they sell tobacco products.

Readopt with amendment and renumber Rev 1008.04, effective 3-6-14 (Document #10536), as amended effective 6-4-20 (Document #13049), as Rev 1007.04 to read as follows:

~~Rev 1008.04~~**1007.04** Tobacco License Application.

(a) Manufacturers and wholesalers intending to engage in the business of selling or distributing tobacco products in this state shall:

(1) Complete and file Form DP-31, "Application for Tobacco Tax License", with the department in accordance with Rev ~~1009.08~~**1008.10**; and

(2) Remit the applicable statutory fee pursuant to RSA 78:6, IV.

Readopt and renumber Rev 1008.05, effective 6-4-20 (Document #13049), as Rev 1007.05 to read as follows:

Rev ~~1008.05~~**1007.05** Posting the License. The license shall be posted in a conspicuous place by the licensee on the premises described in the license.

Readopt and renumber Rev 1008.06, effective 11-15-12 (Document #13490), as Rev 1007.06 to read as follows:

Rev ~~1008.06~~**1007.06** Discontinuing Operations.

(a) A manufacturer or wholesaler that discontinues operations subject to the provisions of RSA 78 shall return its license to the department's collections division within 30 days after discontinuing operations by:

(1) Mailing it to:

New Hampshire Department of Revenue Administration
Collections Division
P. O. Box 454
109 Pleasant Street
Concord New Hampshire 03302-0454; or

(2) Delivering it to Governor Hugh J. Gallen Office Park South, 109 Pleasant Street, Medical and Surgical Building, Concord, NH.

(b) License fees shall not be refundable if business operations cease prior to the expiration date of the license.

(c) The tobacco tax license shall not be transferable from one business entity to another.

Readopt with amendment and renumber Rev 1008.07, effective 6-4-20 (Document #13049), as Rev 1007.07 to read as follows:

Rev ~~1008.07~~**1007.07** Denial, Suspension, or Revocation of Tobacco Tax License.

(a) The Department shall deny a manufacturer's or wholesaler's application for a license if the department finds that there is cause to refuse to issue or renew a tobacco tax license pursuant to RSA 78:9, in accordance with Rev 207.051.

(b) The department shall suspend for a period of time not to exceed 90 days, or revoke, any manufacturer's, wholesaler's, retailer's, or sampler's license pursuant to RSA 78:20, or assess an administrative fine as provided in (c) below, if the department finds that the licensee has failed to comply with the statute or the rules administering the tobacco tax, only after notice and opportunity to be heard in accordance with RSA 78:19 and Rev 207.05.

(c) The department may assess an administrative fine in addition to, or in lieu of, a period of suspension, pursuant to RSA 78:21, II, against any:

- (1) Wholesaler who satisfies RSA 78:2, III, who has sold tobacco products without indicia of tax paid; or
- (2) Retailer who has purchased tobacco products without indicia of tax paid.

Readopt with amendment and renumber Rev 1009.01, effective 3-6-14 (Document #10536), Rev 1008.01, cited and to read as follows:

PART ~~Rev 1009.1008~~ FORMS AND REPORTS

~~Rev 1009.01~~**1008.01** Availability of Tax Returns, Forms, and Related Documents. All returns, forms and related documents may be obtained by:

- (a) Accessing the department's website at: www.revenue.nh.gov;
- (b) Calling the department's forms line at 603-230-5001; or
- (c) Writing to:

New Hampshire Department of Revenue Administration
P.O. Box ~~3306~~**637**
109 Pleasant Street
Concord, New Hampshire 03302-~~3306~~**0637**.

Readopt with amendment and renumber Rev 1009.02 and Rev 1009.021, effective 11-15-12 (Document #13490), as Rev 1008.02 and Rev 1008.03 to read as follows:

~~Rev 1009.02~~**1008.02** Manufacturer's Report.

(a) On or before the 30th day following the end of each month, every manufacturer shall send the department's audit division a written report of tobacco products transported into this state containing:

- (1) Name and address of wholesaler receiving tobacco products;
- (2) Manufacturer's taxpayer identification number; and
- (3) Manufacturer's license number;
- (4) Invoice number;
- (5) Invoice date;
- (6) Shipping code;
- (7) Bill of lading;

- (8) Number of cigarettes and little cigars by package size;
- (9) Number of samples or free tobacco products, on which the tax value is to be applied by the wholesaler; and
- (10) The invoice number, invoice date, and shipping code of OTP by:
 - a. Product type;
 - b. Quantity shipped; and
 - c. List price.

(b) The report shall be submitted electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc, e-mailed to tobacco@dra.nh.gov, or mailed to:

New Hampshire Department of Revenue Administration
Audit Division
PO Box 1388
109 Pleasant Street
Concord, New Hampshire 03302-1388.

(c) All records supporting the information in the manufacturer's report shall be retained for *the later of a period of three–3* years or until the *completion of all:*

(1) Audits commenced by the department;

(2) Administrative appeals pending before the department; and

(3) Judicial proceedings pending between the manufacturer and the department. ~~resolution of any contested matters involved in an adjudicative proceeding or litigation with the department, whichever is later.~~

Rev ~~1009.021~~**1008.03** Wholesaler's Accounting.

(a) Pursuant to RSA 78:13, III, every wholesaler shall file an accounting of all OTP, cigarettes and little cigars as described in Rev 1002.01~~(g)~~**(f)**, and RYO, transferred to and from any premises in this state where such tobacco products are possessed, stored, or sold, with the department on or before the 15th day following the end of each reporting period.

(b) The accounting shall contain, at a minimum:

(1) The wholesaler's taxpayer identification number;

(2) The wholesaler's license number;

(3) The address of the premises;

(4) The name and address of all manufacturers and wholesalers that transported such tobacco products to the premises during the reporting period;

(5) The name and address of all wholesalers, retailers, and samplers that received such tobacco products from the premises during the reporting period; and

(6) A listing of all such tobacco products transferred to or from the premises during the reporting period, by invoice number, invoice date, product type, quantity shipped, and list price.

(c) The accounting shall be submitted electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc, or mailed to:

New Hampshire Department of Revenue Administration
Audit Division
PO Box 1388
109 Pleasant Street
Concord, NH 03302-1388

(d) All records supporting the information in the wholesaler's accounting shall be retained for *the later of three years* ~~3~~-years or until the *completion of all*:

(1) Audits commenced by the department;

(2) Administrative appeals pending before the department; and

(3) Judicial proceedings pending between the wholesaler and the department. ~~resolution of any contested matters involved in an adjudicative proceeding or litigation with the department, whichever is later.~~

Readopt and renumber Rev 1009.03, effective 11-15-12 (Document #13490), as Rev 1008.04 to read as follows:

~~Rev 1009.03~~**1008.04** Form AU-201, Non-Resident Wholesaler Cigarette Tax Report.

(a) Every non-resident wholesaler shall complete and file with the department's audit division Form AU-201, "Non-resident Wholesaler Cigarette Tax Report", on or before the 30th day following the end of the regular accounting quarter.

(b) Form AU-201, shall contain the dated signature of a company/corporate officer declaring "that I have examined this Report, and to the best of my belief it is true, correct and complete."

(c) The information required on Form AU-201, shall agree with the wholesaler's accounting records for the reporting period.

(d) Form AU-201 shall be filed electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc, or by mail to:

New Hampshire Department of Revenue Administration
PO Box 637
109 Pleasant Street
Concord, NH 03302-0637

Readopt with amendment and renumber Rev 1009.04 and Rev 1009.05, effective 11-15-12 (Document #13490), as Rev 1008.05 and Rev 1008.06 to read as follows:

Rev ~~1009.04~~**1008.05** Form AU-202, Resident Wholesaler Cigarette Tax Report.

(a) Every resident wholesaler shall complete and file with the department Form AU-202, “Resident Wholesaler Cigarette Tax Report”, on or before the 30th day following the end of the regular accounting quarter.

(b) Form AU-202, shall contain the dated signature of a company/corporate officer declaring “that I have examined this Report, and to the best of my belief it is true, correct, and complete.”

(c) The information required on Form AU-202, shall agree with the wholesaler’s accounting records for the reporting period.

(d) A wholesaler licensed to sell or distribute cigarettes or little cigars from more than one location in this state may request permission from the department, in writing, to file on a consolidated basis.

(e) The request shall be:

(1) Accompanied by a statement signed and dated by the wholesaler agreeing to the conditions described in (g) below; and

(2) Submitted electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc, or mailed to:

New Hampshire Department of Revenue Administration
PO Box 637
109 Pleasant Street
Concord, NH 03302-0637

(f) The request shall include the following:

(1) The wholesaler’s designation of one license number to be the master license number;

(2) The license number for each location; and

(3) The address for each location.

(g) A wholesaler filing a consolidated return shall:

(1) Comply with all the requirements of Rev ~~1009.04~~**1008.05**;

(2) Notify the department, in writing, of any additions or deletions to the consolidated group within 10 days of any change;

(3) Continue to use the designated master license number unless the department gives written permission to change the designation, pursuant to (h) below;

(4) Keep complete and accurate records pursuant to Rev ~~1006.02~~**1005.02** for each individual license; and

(5) Resume filing separate forms for each license number if notified by the department, in writing, that the wholesaler failed to comply with Rev ~~1009.04~~**1008.05**.

(h) The department shall give written permission to file on a consolidated basis if the wholesaler meets the requirements in (e)-(g) above.

Rev ~~1009.05~~**1008.06** Form CD-15, Cigarette Stamp Order. A Form CD-15, "Cigarette Stamp Order," shall:

(a) Be completed and filed with the department by licensed wholesalers to purchase tobacco tax stamps from the department via:

(1) Filing electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc;

(2) Emailing stamps@dra.nh.gov;

(3) Faxing to (603) 230-5946; or

(4) Hand delivery or mailing to:

New Hampshire Department of Revenue Administration
Collection Division
PO Box 454
109 Pleasant Street
Concord, NH 03302-0454; and

(b) Contain the dated signature of the licensed wholesaler or authorized agent and shall be accompanied by payment, made in accordance with Rev ~~1005.04~~**1004.04**.

Readopt and renumber Rev 1009.06, effective 3-6-14 (Document #10536), as Rev 1008.07 to read as follows:

Rev ~~1009.06~~**1008.07** Form CD-18, Tobacco Tax Credit Bond. Form CD-18, "Tobacco Tax Credit Bond", shall be completed and filed with the department's collections division by licensed wholesalers to establish a charge account with the department.

Readopt with amendment and renumber Rev 1009.07, effective 11-15-22 (Document #13490), as Rev 1008.08 to read as follows:

Rev ~~1009.07~~**1008.08** Form CD-92, Notice of Intent to Return Damaged or Obsolete Cigarettes to Manufacturer.

(a) A wholesaler shall complete and file Form CD-92, "Notice of Intent to Return Damaged or Obsolete Cigarettes to Manufacturer", to notify the department's collections division, at least 10 business days prior to shipping, of the wholesaler's intent to return damaged or obsolete packages of cigarettes or little cigars to the manufacturer.

(b) Form CD-92, "Notice of Intent to Return Damaged or Obsolete Cigarettes to Manufacturer", shall be accompanied by the documentation set forth in Rev ~~1005.05(b)~~**1004.05(b)**.

(c) Form CD-92, “Notice of Intent to Return Damaged or Obsolete Cigarettes to Manufacturer” shall be filed with the department by:

- (1) E-mailing to dra.collections@dra.nh.gov;
- (2) Faxing to 603-230-5946; or
- (3) Filing electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc.

Adopt Rev 1008.09 to read as follows:

Rev 1008.09 Form CD-108, Unaffixed Tobacco Tax Stamp Refund Request.

(a) A Form CD-108, “Unaffixed Tobacco Tax Stamp Refund Request”, shall be completed by the wholesaler to request redemption of unused and unaffixed tobacco tax stamps for refund, and filed with the department by mail at:

New Hampshire Department of Revenue Administration
Collections Division
P.O. Box 454
109 Pleasant Street
Concord, New Hampshire 03302-0454.

(b) The completed Form CD-108, “Unaffixed Tobacco Tax Stamp Refund Request”, shall be accompanied by the unused and unaffixed stamps, as provided in Rev 1004.06.

(c) The Form CD-108, “Unaffixed Tobacco Tax Stamp Refund Request”, shall contain the dated signature of the licensed wholesaler or authorized agent.

Readopt and renumber Rev 1009.08 and Rev 1009.09, effective 11-15-22 (Document #13490), as Rev 1008.10 and Rev 1008.11 to read as follows:

Rev ~~1009.08~~**1008.10** Form DP-31, Application for Tobacco Tax License.

(a) Form DP-31, “Application for Tobacco Tax License”, shall be completed and filed with the department for a tobacco license to sell tobacco products.

(b) Form DP-31, “Application for Tobacco Tax License”, shall contain the dated signature of an officer, owner, or member of the applicant to certify that they have examined the information contained in the form and to the best of their belief it is true, correct, and complete.

(c) Form DP-31, “Application for Tobacco Tax License”, shall be accompanied by the statutory fee, as set in RSA 78:6, IV, for the license when it is submitted.

(d) Form DP-31, “Application for Tobacco Tax License” and the statutory fee shall be submitted electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc, or by mail to:

New Hampshire Department of Revenue Administration
PO Box 637
109 Pleasant Street

Concord, NH 03302-0637

~~Rev 1009.09~~**1008.11** Form DP-151, Wholesalers' Other Tobacco Products Tax Return.

(a) Every wholesaler who sells, ships, or transports OTP, cigarettes or little cigars as described in Rev 1002.01(f), or RYO, shall complete and file Form DP-151, "Wholesalers' Other Tobacco Products Tax Return", with the department by the 15th day following the end of the reporting period, pursuant to RSA 78:3, I.

(b) Form DP-151, "Wholesalers' Other Tobacco Products Tax Return", shall be accompanied by a tax payment and shall contain the dated signature of either the taxpayer or the taxpayer's preparer with title, preparer's identification number and address to certify that they have examined the return and to the best of their belief it is true, correct, and complete.

(c) If filing an amended return, a statement shall be attached to the amended Form DP-151, "Wholesalers' Other Tobacco Products Tax Return", providing an explanation of the adjustments made to the original return.

(d) Form DP-151, "Wholesalers' Other Tobacco Products Tax Return", shall be filed and all taxes due remitted on a monthly basis, unless the commissioner has authorized the wholesaler to file quarterly pursuant to Rev 1003.02.

(e) Form DP-151, "Wholesalers Other Tobacco Products Tax Return" and the tax payment shall be submitted electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc, or by mail to:

New Hampshire Department of Revenue Administration
PO Box 637
109 Pleasant Street
Concord, NH 03302-0637

Readopt with amendment and renumber Rev 1009.10, effective 11-15-22 (Document #13490), as Rev 1008.12 to read as follows:

~~Rev 1009.10~~**1008.12** Form AU-215, Consumer Tobacco Products Tax Return.

(a) Form AU-215, "Consumer Tobacco Products Tax Return," shall be completed and filed with the department by every consumer who acquires tobacco products pursuant to Rev ~~1007.02~~**1006.02**, on or before the last day of the month following each month in which the consumer acquires such tobacco products.

(b) Form AU-215 shall be:

(1) Accompanied by payment of the tax;

(2) Signed under the penalties of perjury to certify that it is true, correct, and complete by:

a. The consumer; and

b. The consumer's preparer if Form AU-215 is completed by a preparer; and

(3) Filed electronically through the Granite Tax Connect portal located at www.revenue.nh.gov/gtc, or mailed to:

New Hampshire Department of Revenue Administration
P.O. Box 637
109 Pleasant Street
Concord, New Hampshire 03302-0637

Readopt with amendments and renumber Rev 1010, effective 3-6-14 (Document #10536), as Rev 1009 to read as follows:

PART ~~Rev 1010~~**1009** APPLICATION OF PENALTIES

~~Rev 1010.01~~**1009.01** Understatement of Taxpayer's Liability by Tax Preparer.

(a) For purposes of RSA 21-J:33-b, I, “substantial portion” means any instance where the efforts of the tax preparer have affected more than 25% of the licensee’s tax liability.

(b) An individual or company providing more than typing, reproducing or other mechanical assistance shall be deemed to be a tax preparer when the individual or company uses computer software which makes determinations about the applicability of tax laws or the allowability of deductions or credits.

(c) The penalty provided in RSA 21-J:33-b, III shall be assessed when any part of an understatement of tax is:

(1) The result of a tax preparer’s willful neglect; or

(2) Intentional disregard of the statute or department rules unless the individual or company shall have adequately disclosed the tax treatment of an item on the return or in a statement attached to the front of the return as provided in ~~Rev 1010.03~~**1009.03**.

(d) Affirmative defenses against an allegation of a tax preparer being willfully negligent, or intentionally disregarding a statute or rule, shall be:

(1) The tax preparer had substantial authority as provided in ~~Rev 1010.03~~**1009.03** for the tax treatment of the item; or

(2) The tax preparer exercised due care in an effort to apply the statute and rules to the information given to the preparer by the licensee unless the preparer knew or should have recognized that such information was incorrect or incomplete.

(e) The penalty provided in RSA 21-J:33-b, IV shall be applied when any part of an understatement of tax is the result of a preparer's willful attempt to understate the licensee's tax liability.

(f) A tax preparer shall be deemed to willfully attempt to understate a tax liability of a licensee by:

(1) Disregarding or misstating information furnished by the licensee or other person in an attempt to wrongfully reduce the tax liability; or

(2) Not making inquiries of the licensee or other person when the information provided is incorrect or incomplete, and the preparer knows or should have known that the information was incorrect or incomplete.

(g) If, in an adjudicative proceeding or a judicial decision, it is established that there was no understatement of liability and if previously paid by the preparer, then the penalty imposed by RSA 21-J:33-b shall be abated and refunded.

(h) The refund of the penalty shall be made without any consideration of any period of limitation for the issuance of a refund.

Rev ~~1010.02~~**1009.02** Aiding and Abetting an Understatement of Tax Liability.

(a) An individual or company providing more than typing, reproducing or other mechanical assistance shall be deemed to be a tax preparer, as defined in RSA 21-J:33-b, when the individual or company uses computer software which makes determinations about the applicability of tax laws or the allowability of deductions or credits.

(b) In accordance with RSA 21-J:33-c, the penalty shall be assessed against any person who aids, assists in, procures or advises in the preparation of any return or other document in connection with the tax on tobacco, RSA 78, or department rules if:

(1) The person knows that the information provided will be used in the preparation of any material document; and

(2) The person knows that if used, the information will result in an understatement of tax liability.

(c) The penalty shall not be assessed in instances where the licensee adequately disclosed the relevant facts regarding the tax treatment of the item in the manner provided in Rev ~~1010.03~~**1009.03**.

(d) If, in an adjudicative proceeding or a judicial decision, it is established that there was no understatement of liability and if previously paid by the preparer, then the penalty imposed by RSA 21-J:33-c shall be abated and refunded.

(e) The refund of the penalty shall be made without any consideration of any period of limitation for the issuance of a refund.

Rev ~~1010.03~~**1009.03** Adequate Disclosure and Substantial Authority Requirements.

(a) For purposes of meeting the requirements of RSA 21-J:33-b and RSA 21-J:33-c, ~~a licensee shall have adequately disclosed~~**disclosure of** the tax treatment of an item on the return or in a statement attached to the front of the return ~~if~~**occurs when** all of the following criteria are met:

(1) The statement contains a prominent caption identifying the statement as a disclosure of the tax treatment for the understatement of taxpayer's liability by tax preparer penalty provided in RSA 21-J:33-b and the penalty for aiding and abetting an understatement of tax liability provided in RSA 21-J:33-c;

(2) The item for which the disclosure is made is clearly identified;

(3) The dollar amount of the item is disclosed; and

(4) The statement contains those facts affecting the tax treatment of the item that reasonably will apprise the department of the nature of the potential controversy or a concise description of the legal issues presented by the facts in question.

(b) In determining whether a licensee has substantial authority *exists*, the department shall consider the following as being authoritative sources, ***which shall be considered in the following order of review, based on the relevance of the source, the similarity of facts, and the precedential value of the source compared to the matters at issue:***

(1) ***United States and New Hampshire supreme court decisions;***

(2) The tax statutes on tobacco and any other New Hampshire statutes that have a bearing on the tax statutes;

(23) Rules issued by the department;

(34) Declaratory rulings requested by and issued to the licensee making the disclosure;

(45) Technical information releases issued by the department;

(56) Superior court and board of tax and land appeals decisions;

(67) Federal district court and first circuit court of appeals decisions;

~~(7) United States and New Hampshire supreme court decisions;~~

(8) Legislative committee reports specifying legislative intent; and

(9) Written advice from the department issued to the licensee about the tax treatment of the item in question.

(c) The following shall not be considered authoritative sources:

(1) Opinions by tax professionals;

(2) Tax publication opinions or narrative statements; or

(3) Articles contained in any professional or tax periodicals.

(d) The existence of substantial authority for a particular item shall be determined as of the date the return containing the item was filed ***or as of the last day of the period to which the return relates.***

Readopt and renumber Rev 1011.01, effective 6-4-20 (Document #13049), as Rev 1010.01, cited and to read as follows:

PART Rev ~~1011~~**1010** SEIZURE AND DESTRUCTION OF CONFISCATED TOBACCO PRODUCTS

Rev ~~1011.01~~**1010.01** Seizure, Forfeiture and Destruction of Illegal Tobacco Products.

(a) Proceedings involving the seizure, forfeiture, and destruction of illegal tobacco products pursuant to RSA 78:18 shall be conducted as provided in RSA 78:19 and Rev 207.08.

APPENDIX

RULE	STATUTE
Rev 1001.01	RSA 78:10
Rev 1001.02	RSA 78:1, I; RSA 78:27
Rev 1001.03	RSA 78:1, III; RSA 78:27
Rev 1001.04	RSA 78:27
Rev 1001.05 (formerly Rev 1001.041)	RSA 78:1, III-a; RSA 78:27
Rev 1001.06 (formerly Rev 1001.042)	RSA 78:1, V; RSA 78:27
Rev 1001.07 (formerly Rev 1001.05)	RSA 78:1, VI; RSA 78:27
Rev 1001.08 (formerly Rev 1001.06)	RSA 78:1, VII; RSA 78:27
Rev 1001.09 and Rev 1001.10 (formerly Rev 1001.07 and Rev 1001.08)	RSA 78:3
Rev 1001.11 (formerly Rev 1001.09)	RSA 78:1, X; RSA 78:27
Rev 1001.12 (formerly Rev 1001.10)	RSA 78:1, I(b); RSA 78:27
Rev 1001.13 (formerly Rev 1001.11)	RSA 78:1, XI; RSA 78:27
Rev 1001.14 (formerly Rev 1001.12)	RSA 78:1, XII; 78:27
Rev 1001.15 – Rev 1001.19 (formerly Rev 1001.13 – Rev 1001.17)	RSA 78:1, XIII; RSA 78:27
Rev 1001.20 (formerly Rev 1001.18)	RSA 78:27
Rev 1001.181 (repeal)	RSA 78:1, XIII
Rev 1001.21 (formerly Rev 1001.19)	RSA 78:1, XIV
Rev 1002.01	RSA 78:2; RSA 78:3; RSA 78:10; RSA 78:11; RSA 78:27; RSA 78:14; RSA78:7; RSA 541-C:3, I (a) and (b)
Rev 1003.01	RSA 78:2; RSA 78:13; RSA 78:14; RSA 78:15; RSA 78:27
Rev 1003.02	RSA 78:2; RSA78:3; RSA 78:27
Rev 1003.03	RSA 78:2; RSA 78:13; RSA 78:14; RSA 78:27
Rev 1003.04	RSA 78:1, III-a; RSA 78:2, II(b)(2); RSA 78:18; RSA 78:27
Rev 1003.05	RSA 78:1, XV; RSA 78:27
Rev 1003.06	RSA 78:2; RSA 78:3, I; RSA 78:27
Rev 1003.07 (formerly Rev 1003.021)	RSA 78:13, II; RSA 78:27
Rev 1004.01 - Rev 1004.03 (formerly Rev 1005.01 - Rev 1005.03)	RSA78:10; RSA 78:27
Rev 1004.04 (formerly Rev 1005.04)	RSA 78:10; RSA 21-J:28
Rev 1004.05 (formerly Rev 1005.05)	RSA 78:12; RSA78:27
Rev 1004.06	RSA 78:12; RSA78:27
Rev 1005.01 (formerly Rev 1006.01)	RSA 541-D

Rev 1005.02 (formerly Rev 1006.02)	RSA 78:6; RSA 78:10; RSA 78:13; RSA78:15; RSA 78:16; RSA 78:27
Rev 1005.03 (formerly Rev 1006.03)	RSA 78:16
Rev 1006.01 (formerly Rev 1007.01)	RSA 78:6; RSA 21-J:28, 29, 31, 33; RSA 541-C:2, X
Rev 1006.02 (formerly Rev 1007.02)	RSA 78:4; RSA 78:27
Rev 1007.01 (formerly Rev 1008.01)	RSA 21-J:14; RSA 78:6, X; RSA 78:27
Rev 1007.02 (formerly Rev 1008.02)	RSA 78:17; RSA 21-J:13
Rev 1007.03 – Rev 1007.05 (formerly Rev 1008.03 – Rev 1008.05)	RSA 78:6; RSA 78:27
Rev 1007.06 (formerly Rev 1008.06)	RSA 78:6, VI; RSA 78:6, VII
Rev 1007.07 (formerly Rev 1008.07)	RSA 78:9; RSA 78:19; RSA 78:20; RSA 78:21, II; RSA 78:27
Rev 1008.01 (formerly Rev 1009.01)	RSA 78:27
Rev 1008.02 (formerly Rev 1009.02)	RSA 78:6, VIII; RSA 78:16; RSA 78:27
Rev 1008.03 (formerly Rev 1009.021)	RSA 78:13, III; RSA 78:27
Rev 1008.04 and Rev 1008.05 (formerly Rev 1009.03 and Rev 1009.04)	RSA 78:16; RSA 78:27
Rev 1008.06 and Rev 1008.07 (formerly Rev 1009.05 and Rev 1009.06)	RSA 78:10; RSA 78:27
Rev 1008.08 (formerly Rev 1009.07) and Rev 1008.9	RSA 78:12
Rev 1008.10 (formerly Rev 1009.08)	RSA 78:6; RSA 78:27
Rev 1008.11 (formerly Rev 1009.09)	RSA 78:3, I; RSA 78:27
Rev 1008.12 (formerly Rev 1009.10)	RSA 78:4; RSA 78:27
Rev 1009.01 (formerly Rev 1010.01)	RSA 78:6; RSA 21-J:33-b
Rev 1009.02 (formerly Rev 1010.02)	RSA 78:6; RSA 21-J:33-b and c
Rev 1009.03 (formerly Rev 1010.03)	RSA 78:6; RSA 21-J:33-b and c
Rev 1010.01 (formerly Rev 1011.01)	RSA 78:18; RSA 78:19; RSA 78:27