

APPENDIX II-C

RULEMAKING NOTICE FORM

Notice Number _____ Rule Number _____ **Rev 1000**

<p>1. Agency Name & Address:</p> <p>Department of Revenue Administration 109 Pleasant Street P.O. Box 457 Concord, NH 03302-0457</p>	<p>2. RSA Authority: RSA 78:4, II; RSA 78:8, I; RSA 78:9, I(f); RSA 78:20, I(g); RSA 78:27</p> <p>3. Federal Authority: _____</p> <p>4. Type of Action:</p> <p>Adoption <u> X </u></p> <p>Repeal <u> X </u></p> <p>Readoption <u> X </u></p> <p>Readoption w/amendment <u> X </u></p>
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5. Short Title: **TOBACCO TAX**

6. (a) Summary of what the rule says and of any proposed amendments:

Rev 1000 contains the rules governing the Tobacco Tax. The Department of Revenue Administration is proposing to readopt, readopt and renumber, readopt with amendments, readopt with amendments and renumber, or repeal all of the rules in Chapter Rev 1000, relative to Tobacco Tax. Most of these rules are scheduled to expire on March 6, 2024, but are subject to extension pursuant to RSA 541-A. Rules Rev 1004.06 and Rev 1008.09 described below are adopted. Changes from the existing rules in Rev 1000 are summarized below:

- **There are editorial and substantive, clarifying amendments throughout, including renumbering some rules, to comply with the provisions of RSA 541-A;**
- **Rev 1001.041, defining “e-cigarette”, and Rev 1001.042, defining “little cigar”, are being renumbered to comply with the standard rule numbering system, by renumbering the 3-digit number after the decimal point with a 2-digit number. All other sections within this Part Rev 1001 thereafter are renumbered to follow consecutively;**
- **Part Rev 1004 was previously reserved. The rules following Part Rev 1004 are now renumbered and moved up;**
- **Rev 1001.12, currently Rev 1001.10, defining “roll-your-own (RYO)”, is amended to update the statutory reference to the definition of RSA 78:1, I(b);**
- **Rev 1001.19, currently Rev 1001.17, defining “tobacco products”, is amended to update the statutory reference to the definition of RSA 78:1, XIII;**
- **Rev 1001.181, defining “usable”, is being repealed;**
- **Rev 1001.21, currently Rev 1001.19, defining “wholesaler”, is amended to update the statutory reference to the definition of RSA 78:1, XIV;**
- **Rev 1002.01, on Requirement for Use of Stamps, is amended in paragraph (f) to clarify that in situations where stamps are not used, the wholesaler shall keep documentation that it has complied with payment and reporting requirements for other tobacco products;**

- Rev 1003.02, on Other Tobacco Products (OTP) Tax Liability, is amended in paragraph (a) to update the renumbered Rev 1009.09 to Rev 1008.11 on the completion of Form DP-151.
- Rev 1003.03, on Credits or Refunds for Returned OTP for Wholesalers, is amended by listing the methods for wholesalers to obtain credits or refunds for outdated, damages, or unsaleable returned OTP, by stating the calculation of the amount of credit or refund, and listing the documentation required to be submitted when requesting such credit or refund.
- Rev 1003.07, currently Rev 1003.021, on Accounting by Wholesalers, is renumbered to comply with the standard rule numbering system and is amended to clarify that the accounting to be filed shall be performed monthly for OTP and cigarettes and little cigars described in Rev 1002.01(f), and RYO, transferred to and from any premises in this state where such tobacco products are possessed, stored, or sold.
- Rev 1004.01, currently Rev 1005.01 on Purchases of Tax Stamps, is amended to update the renumbered Rev 1009.05 to Rev 1008.06.
- Rev 1004.03, currently Rev 1005.03, on Purchases of Tax Stamps on Credit, is amended to complete the mailing address of the Department of Revenue Administration, to update the reference to Rev 1009.06 to the renumbered Rev 1008.07, to clarify that the Department may request more current information from wholesalers if the information submitted is not the most current, to delete the duplicated paragraph (e), and to clarify the methods of payment by wholesalers for orders charged to their account.
- Rev 1004.05, currently Rev 1005.05, on Refunds for Stamps on Outdated, Damaged or Unsaleable Cigarettes for Wholesalers, is amended to update the reference to Rev 1009.07 to the renumbered Rev 1008.08 for the completion of Form CD-92;
- Rev 1004.06 on Redemption and Refund of Unused and Unaffixed Stamps, is adopted by clarifying the method for wholesalers in requesting a redemption of unused and unaffixed stamps for a refund;
- Rev 1005.02, currently Rev 1006.02, on Content and Maintenance of Accounting Records, is amended to clarify the duration of time for the retention of the accounting records relating to all tobacco products manufactured, purchased, or otherwise acquired, and the sale or distribution of such tobacco products;
- Rev 1006.02, currently Rev 1007.02, on Consumer Reporting and Payment, is amended to update the reference to Rev 1009.10 to the renumbered Rev 1008.12 for the completion of Form AU-215, “Consumer Tobacco Products Tax Return”;
- Rev 1007.04, currently Rev 1008.04, on Tobacco License Application, is amended to update the reference to Rev 1009.08 to the renumbered Rev 1008.10 for the completion of Form DP-31, “Application for Tobacco Tax License”;
- Rev 1007.07, currently Rev 1008.07, on Denial, Suspension, or Revocation of Tobacco Tax License, is amended to update the statutory reference of RSA 78:2, III, which states that the tax imposed under RSA 78:2 shall be paid by wholesalers;
- Rev 1008.01, currently Rev 1009.01, on Availability of Tax Returns, Forms, and Related Documents, is amended to clarify the mailing address of the Department;
- Rev 1008.02, currently Rev 1009.02, on Manufacturer’s Report, is amended to clarify the duration of time for the retention of records on the manufacturer's report;
- Rev 1008.03, currently Rev 1009.021, on Wholesaler’s Accounting, is amended to update the reference to Rev 1002.01(g) to the renumbered Rev 1002.01(f) for cigarettes and little cigars in packages of other than 20 or 25, or too small to affix a stamp, and to clarify the duration of time for the retention of records supporting the information in the wholesaler’s accounting;
- Rev 1008.05, currently Rev 1009.04, on Form AU-202, “Resident Wholesaler Cigarette Tax Report”, is amended to update the reference of Rev 1009.04 and Rev 1006.02 to the renumbered Rev 1008.05 and Rev 1005.02;

- Rev 1008.06, currently Rev 1009.05, on Form CD-15, “Cigarette Stamp Order”, is amended to update the referenced of Rev 1005.04 to the renumbered Rev 1004.04;
- Rev 1008.08, currently Rev 1009.07, on Form CD-92, “Notice of Intent to Return Damaged or Obsolete Cigarettes to Manufacturer”, is amended to update the reference of Rev 1005.05(b) to the renumbered Rev 1004.05(b);
- Rev 1008.09 on Form CD-108, “Unaffixed Tobacco Tax Stamp Refund Request”, is adopted to clarify the use of this form for wholesalers to request redemption of unused and unaffixed tobacco tax stamps for refund;
- Rev 1008.12, currently Rev 1009.10, on Form AU-215, “Consumer Tobacco Products Tax Return”, is amended to update the reference of Rev 1007.02 to the renumbered Rev 1006.02;
- Rev 1009.01, currently Rev 1010.01, on Understatement of Taxpayer’s Liability by Tax Preparer, is amended to update the reference of Rev 1010.03 to the renumbered Rev 1009.03;
- Rev 1009.02, currently Rev 1010.02, on Aiding and Abetting an Understatement of Tax Liability, is amended to update the reference of Rev 1010.03 to the renumbered Rev 1009.03;

Rev 1009.03, currently Rev 1010.03, on Adequate Disclosure and Substantial Authority Requirements, is amended to clarify adequate disclosure of tax treatment, and clarifying the order of review for substantial authority.

6. (b) Brief description of the groups affected:

Tobacco product manufacturers, wholesalers, sub-jobbers, retailers, and consumers.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

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

RULEMAKING NOTICE FORM - Page 2

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Keen Meng Wong** Title: **Tax Policy Counsel**
Address: **109 Pleasant Street** Phone #: **603-230-5027**
PO Box 457 Fax#: **603-230-5932**
Concord New Hampshire 03302-0457 E-mail: **keen.m.wong@dra.nh.gov**
TTY/TDD Access: Relay NH 1-800-735-2964
or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **October 13, 2023**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **October 6, 2023 at 1pm**
Place: **New Hampshire Department of Revenue Administration**
Medical and Surgical Building
109 Pleasant Street, 2nd Floor Hearings Room
Concord, NH 03301

*****The security procedures at the Department of Revenue Administration require all visitors to sign-in and present photo identification. If you plan on attending the public hearing, please bring photo identification with you.*****

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # 23-191, dated August 14, 2023

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**

- There is no difference in costs when comparing the proposed rules to the existing rules.
- Not applicable to Rev 1004.06 and Rev 1008.09 as these are new rules.
- Not applicable to Rev 1001.181 as it is being repealed.

2. **Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds. Adoption of Rev 1004.06, Rev 1008.09 and the repeal of Rev 1001.181 will not result in any additional cost or benefit.

3. Cost and benefits of the proposed rule(s):

The adoption of Rev 1004.06 and Rev 1008.09, and the repeal of Rev 1001.181 will not result in any additional cost or benefit.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rule does not mandate fees, or additional local expenditures on a political subdivision of the state and therefore does not violate Part I, Article 28-a of the NH Constitution.