



August 20, 2004

Dear Online Tobacco Retailer:

*On June 30, 2003, the Delaware General Assembly passed House Bill No. 153, creating detailed reporting standards for online tobacco retailers to follow while conducting business in Delaware. These standards were established in an attempt to protect Delaware minors from unlawfully purchasing tobacco products over the Internet, as well as to prohibit the illegal sale of unstamped cigarettes in Delaware.*

*As a result of Delaware House Bill No. 153, Subchapter VI, and as required by the federal Jenkins Act, all persons or companies who mail, ship, or otherwise deliver cigarettes in connection with a delivery sale to the state of Delaware (DE) must now comply with Delaware's reporting standards and complete the enclosed 2004 Delaware Online Tobacco Retailer Information Packet. This Packet includes a Registration Application, Payment and Reporting Forms, and a Supplemental Schedule used to report customer information. Also included in the packet is a summary of House Bill No. 153 and its location online, should you choose to read the legislation further.*

*The reporting standards set forth by Delaware House Bill No. 153 are not meant to limit the commercial activities of online tobacco retailers, nor to infringe on individual privacy rights. They are, however, required by Delaware law as a means to ensure compliance with state and federal law and best business practices. Though in the past, online tobacco retailers have questioned the authority of state-imposed requirements for Internet commerce, a recent U.S. District court case involving compliance standards between a Kentucky-based tobacco retailer selling cigarettes online and the Washington Department of Revenue, found in favor of the state. Your failure to register and to comply with the other terms of House Bill No. 153 may result in Delaware taking legal enforcement action against you.*

*Instructions have been provided for each required form in the packet, and the Delaware Division of Revenue is available should you have any questions or wish to speak with someone regarding the new reporting standards for Online Tobacco Retailers operating in Delaware.*

*We appreciate your time and cooperation regarding this matter.*

*Sincerely,*

*Patrick Carter  
Director  
Delaware Division of Revenue*

## **DIVISION OF REVENUE**

### **TECHNICAL INFORMATION MEORIANDUM 2004-2**

**DATE: AUGUST 20, 2004**

**SUBJECT: INTERNET RETAIL SALE OF ANY TOBACCO PRODUCT**

**CONTACT: Jeanne Davis, 302-577-8448, [jeanne.davis@state.de.us](mailto:jeanne.davis@state.de.us)**

House Bill 153 of the 142nd General Assembly amended Chapter 53 of Title 30 of the Delaware Code by inserting a new subchapter entitled: Subchapter VI. Delivery Sale of Cigarettes. This new subchapter will allow Internet retail sales of cigarettes and other tobacco products under certain terms and conditions.

Prior to initiating Internet retail sales of cigarettes or other tobacco products from a business location within or without Delaware or mailing, shipping, or otherwise delivering cigarettes or other tobacco products to customers within Delaware, every Internet retailer shall complete and file with the Delaware Division of Revenue the Delaware Form CRA (Combined Registration Application) to register the Internet retailer's name, trade name and address of the principal place of business and any other place of business. Internet retailers selling, mailing, shipping, or otherwise delivering cigarettes or other tobacco products to customers within Delaware from a business location outside of Delaware must complete only Part A of the Delaware Form CRA. Internet retailers selling, mailing, shipping, or otherwise delivering cigarettes or other tobacco products to customers within Delaware from a business location within Delaware must complete Parts A, Band C of Delaware Form CRA. When completing Part C of Delaware Form CRA, the Internet retailer shall be required to apply for a General Retailer license in accordance with Section 2905 of 30 Del. C. and a Cigarette Retailer license in accordance with Section 5308(b) of 30 Del. C.

Every Internet retailer accepting a purchase order for any sale of cigarettes or other tobacco products to a consumer in this State where either (i) the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or (ii) the cigarettes or other tobacco products are delivered by use of the mails or any person engaged in the commercial delivery of letters, packages, or other containers shall collect and remit to the Delaware Division of Revenue all cigarette or other tobacco product taxes imposed by this State with respect to such delivery sale. Such collection and remission shall not be required to the extent that the Internet retailer sells and ships to the Delaware consumer packages of cigarettes affixed with the Delaware tax stamp or has otherwise obtained proof that such taxes already have been paid to the State. A sale of cigarettes or other tobacco products not for personal consumption to a person who is a distributor or a retail dealer shall not be considered a delivery sale.

On or before the 10th day of each calendar month, every Internet retailer that has made a delivery sale or mailed, shipped, or otherwise delivered cigarettes or other tobacco products, either without a stamp or affixed with any state stamp, to a customer within Delaware from a

business location either within or without Delaware must, in connection with any such sale during the previous calendar month, file a completed Delaware Form 5367 C and Schedule 5367 C-A for sales of cigarettes and Delaware Form 5367- OTP and Schedule 5367 OTP-A for sales of all other tobacco products (copies attached) with the Delaware Division of Revenue. Form 5367 C is filed to remit all collected Delaware cigarette tax not previously paid before the sale and Delaware Schedule 5367 C-A is filed to individually identify all Internet retail sales for which a delivery sale has been made to a Delaware customer. Form 5367 OTP is filed to remit Delaware other tobacco products tax not previously paid before the sale and Schedule 5367 OTP-A is filed to individually identify all Internet retail sales for which a delivery sale has been made to a Delaware customer. The filing of Forms 5367 C & 5367 OTP and Schedules 5367 C-A & 5367 OTP-A are in addition to the filing requirements of a General Retailer contained in Section 2905(b)(1) of 30, Del. C..

Chapter 53 of Title 30 requires that the first vendor who has possession of unstamped tobacco products in this State for sale in this State shall be deemed an affixing agent. Any Internet seller of cigarettes, who is not located in Delaware, does not need to become an affixing agent. However, the Internet seller must either become an affixing agent in order to purchase and affix Delaware cigarette stamps or remit the tax using Form 5367 C. The Other Tobacco Products Tax is 15% of the wholesale cost of the tobacco products sold and the tax must be remitted on Form 5367 OTP. Information concerning becoming an affixing agent may be found at: [http://www.state.de.us/revenue/obtltaxtips/tt-cigarette\\_other\\_tobacco\\_products.htm](http://www.state.de.us/revenue/obtltaxtips/tt-cigarette_other_tobacco_products.htm)

House Bill 153 with House Amendment #1 was signed on June 30, 2003 and was effective on that date. Reports, returns and payment for the period beginning June 30, 2003 through August 31, 2004 are due on or before September 30, 2004. Thereafter, reports, returns and payments are due on or before the 10th day of the month following the month during which any tobacco product was delivered in this State.

Please contact Jeanne Davis, 302-577-8448, or by email [jeanne.davis@state.de.us](mailto:jeanne.davis@state.de.us), if you have any questions concerning Internet cigarette retail sales.

Patrick T. Carter

Director of Revenue



**DELAWARE DIVISION OF REVENUE  
ONLINE TOBACCO RETAILER TAX RETURN - FORM 5367OTP**

REVENUE CODE 036-04

ACCOUNT NUMBER	REPORT FOR MONTH ENDING <b>06/30/2004</b>	DUE ON OR BE FORE <b>07/12/2004</b>	BUSINESS CODE GROUP DESCRIPTION <b>202 INT TOB RT</b>
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**BUSINESS NAME AND LOCATION**

Check Here  
If A Request  
For Change  
Form Is  
Being Filed



1. TOTAL WHOLESALE PRICE OF OTHER TOBACCO PRODUCTS SHIPPED TO DELAWARE	\$
2. OTHER TOBACCO PRODUCTS TAX RATE	<b>x 15%</b>
3. TOTAL AMOUNT DUE <i>(Multiply Lines 1 and 2.)</i>	\$

MAKE ANY CHANGES ON THE REQUEST FOR CHANGE FORM. CHECK THE BOX IF YOU ARE FILING A CHANGE FORM.

**BUSINESS MAILING ADDRESS**

WEBPAGE ADDRESS \_\_\_\_\_

AUTHORIZED SIGNATURE I declare under penalties of perjury, that this is a true, correct and complete return.

DATE TELEPHONE NUMBER

**Mail This Form With Remittance Payable To:**  
Delaware Division of Revenue  
P.O. Box 8913, Wilmington, DE 19899-8913  
For questions, call (302) 577-8448

If desired, provide an e-mail address where we may contact you regarding this return.

E-MAIL ADDRESS

**DELAWARE DIVISION OF REVENUE  
ONLINE TOBACCO RETAILER TAX RETURN - FORM 5367OTP**

REVENUE CODE 036-04

ACCOUNT NUMBER	REPORT FOR MONTH ENDING <b>07/31/2004</b>	DUE ON OR BE FORE <b>8/10/2004</b>	BUSINESS CODE GROUP DESCRIPTION <b>202 INT TOB RT</b>
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**BUSINESS NAME AND LOCATION**

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If A Request  
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Being Filed



1. TOTAL WHOLESALE PRICE OF OTHER TOBACCO PRODUCTS SHIPPED TO DELAWARE	\$
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3. TOTAL AMOUNT DUE <i>(Multiply Lines 1 and 2.)</i>	\$

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**DELAWARE DIVISION OF REVENUE  
ONLINE TOBACCO RETAILER TAX RETURN - FORM 5367OTP**

REVENUE CODE 036-04

ACCOUNT NUMBER	REPORT FOR MONTH ENDING <b>08/31/2004</b>	DUE ON OR BE FORE <b>09/10/2004</b>	BUSINESS CODE GROUP DESCRIPTION <b>202 INT TOB RT</b>
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**BUSINESS NAME AND LOCATION**

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If A Request  
For Change  
Form Is  
Being Filed



1. TOTAL WHOLESALE PRICE OF OTHER TOBACCO PRODUCTS SHIPPED TO DELAWARE	\$
2. OTHER TOBACCO PRODUCTS TAX RATE	<b>x 15%</b>
3. TOTAL AMOUNT DUE <i>(Multiply Lines 1 and 2.)</i>	\$

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**DELAWARE DIVISION OF REVENUE  
ONLINE TOBACCO RETAILER TAX RETURN - FORM 5367OTP**

REVENUE CODE 036-04

ACCOUNT NUMBER	REPORT FOR MONTH ENDING <b>09/30/04</b>	DUE ON OR BE FORE <b>10/11/2004</b>	BUSINESS CODE GROUP DESCRIPTION <b>202 INT CIG RT</b>
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**BUSINESS NAME AND LOCATION**

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Being Filed



1. TOTAL WHOLESALE PRICE OF OTHER TOBACCO PRODUCTS SHIPPED TO DELAWARE	\$
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3. TOTAL AMOUNT DUE <i>(Multiply Lines 1 and 2.)</i>	\$

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**DELAWARE DIVISION OF REVENUE  
ONLINE TOBACCO RETAILER TAX RETURN - FORM 5367OTP**

REVENUE CODE 036-04

ACCOUNT NUMBER	REPORT FOR MONTH ENDING <b>10/31/2004</b>	DUE ON OR BE FORE <b>11/10/2004</b>	BUSINESS CODE GROUP DESCRIPTION <b>202 INT TOB RT</b>
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**BUSINESS NAME AND LOCATION**

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Form Is  
Being Filed



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3. TOTAL AMOUNT DUE <i>(Multiply Lines 1 and 2.)</i>	\$

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**DELAWARE DIVISION OF REVENUE  
ONLINE TOBACCO RETAILER TAX RETURN - FORM 5367OTP**

REVENUE CODE 036-04

ACCOUNT NUMBER	REPORT FOR MONTH ENDING <b>11/30/2004</b>	DUE ON OR BE FORE <b>12/10/2004</b>	BUSINESS CODE GROUP DESCRIPTION <b>202 INT TOB RT</b>
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Being Filed



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For questions, call (302) 577-8448

**DELAWARE DIVISION OF REVENUE**  
**ONLINE TOBACCO RETAILER TAX RETURN - FORM 5367OTP**

REVENUE CODE 036-04

ACCOUNT NUMBER	REPORT FOR MONTH ENDING <b>12/31/2004</b>	DUE ON OR BE FORE <b>01/10/2005</b>	BUSINESS CODE GROUP DESCRIPTION <b>202 INT CIG RT</b>
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**BUSINESS NAME AND LOCATION**

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3. TOTAL AMOUNT DUE <i>(Multiply Lines 1 and 2.)</i>	\$

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 For questions, call (302) 577-8448

**INSTRUCTIONS**

**Registration Application  
 for Online Retailers of Other Tobacco Products  
 Operating in the State of Delaware**

**PART A**

- Line 1.** Enter your Federal Employer Identification Number or Social Security number, whichever is used for federal purposes. If you are an employer or your business ownership is not that of a Sole Proprietorship, you must have a Federal Employer Identification number. You can apply for a number using Federal Form SS-4. (Call your nearest IRS office.) If you have applied for a Federal Employer Identification number, please enter "APPLIED FOR" on Line 1 and the Division of Revenue will assign a temporary number until your Federal Identification number has been received. Notify the Business Master File Unit at (302) 577-8778, when your Federal Employer Identification Number is obtained. All your tax returns should be filed under ONE identification number. If you are a sole proprietor and you have a federal identification number, you must enter both numbers on Line 1 of Part A and Part C.
- Line 2.** Enter the name of the business (individual, partnership, corporate name, governmental agency, etc.).
- Line 3.** Enter the trade name of your business if different from the primary business name on Line 2.
- Line 4.** Enter the address of your primary business location. (A Post Office Box is NOT an acceptable location address.)
- Line 5.** Enter the address to which correspondence should be mailed if different from your primary business location. If you have a PO Box, enter that information here.
- Line 6.** If incorporated, enter the State in which incorporated.
- Line 7.** If incorporated, enter the date on which incorporated.
- Line 8.** Check the appropriate box which describes your legal form of business. If you are a sole proprietor and you have a federal identification number, please ensure that you have entered both numbers on Line 1.
- Line 9.** Enter the date you first delivered, or you plan to deliver other tobacco products to Delaware.
- Line 10.** Enter whether or not your business currently owns or leases real and/or tangible property in Delaware. Real property includes buildings, structures and/or land, while tangible property refers to any items exhibiting material or monetary worth.

**PART B**

All Online Tobacco Retailers that answered "Yes" to Question 10 of the Registration Form are subject to a \$75.00 licensing fee. If you started doing business in Delaware after February 1st, however, you may prorate this fee for your initial year, i.e. if you started doing business in Delaware in the month of April, you are required to pay \$75.00 x .75, which is \$56.25.

The Computation of Fee formula under Part B will determine the initial cost for your annual license. Using the chart provided, establish the percentage of the license fee you must pay based on the month you began doing business in Delaware. Multiply this percentage by \$75.00 to calculate your fee. Remit payment.

**PART C**

All online retailers of other tobacco products, regardless of whether or not a business license is required, must sign Part C to complete the required Registration Form.





STATE OF DELAWARE  
DEPARTMENT OF FINANCE  
DIVISION OF REVENUE  
820 N. French Street  
Wilmington, DE 19801  
(302) 577-8778

# Registration Application for Online Retailers of Other Tobacco Products Operating in the State of Delaware

DO NOT WRITE OR STAPLE IN THIS AREA

IN ACCORDANCE WITH SUBCHAPTER VI, CHAPTER 53 OF TITLE 30 OF THE DELAWARE CODE, AND ADDITIONALLY DESCRIBED IN THE FEDERAL JENKINS ACT, ALL PERSONS OR COMPANIES WHO MAIL, SHIP, OR OTHERWISE DELIVER TOBACCO PRODUCTS IN CONNECTION WITH A DELIVERY SALE TO THE STATE OF DELAWARE (DE) MUST COMPLETE THIS REGISTRATION FORM.

**FAILURE TO COMPLETE ALL QUESTIONS WILL BE CONSIDERED AN ACT OF NONCOMPLIANCE ACCORDING TO DELAWARE LAW.**

### A. TO BE COMPLETED BY ALL TAXPAYERS

<b>1</b>	Enter Employee Identification Number 1 - <input type="text"/> <input type="text"/> - <input type="text"/> or Social Security Number 2 - <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	
<b>2</b>	Name <input type="text"/>	<b>5</b>
<b>3</b>	Business Name (If different from above) <input type="text"/>	<b>6</b>
<b>4</b>	Primary Location Address <input type="text"/>	<b>7</b>
<b>4</b>	City <input type="text"/> County <input type="text"/>	<b>7</b>
<b>4</b>	State <input type="text"/> Zip Code <input type="text"/>	<b>7</b>
<b>4</b>	City <input type="text"/> County <input type="text"/>	<b>7</b>
<b>4</b>	State <input type="text"/> Zip Code <input type="text"/>	<b>7</b>
<b>8</b>	Type of Ownership (Check Appropriate Box): 01 <input type="checkbox"/> Sole Proprietorship      09 <input type="checkbox"/> Cooperative      30 <input type="checkbox"/> LLC - Partnership 02 <input type="checkbox"/> Partnership      10 <input type="checkbox"/> Other: Explain _____      31 <input type="checkbox"/> LLC - Corporation 03 <input type="checkbox"/> Non-Profit Corporation      12 <input type="checkbox"/> Professional Association      32 <input type="checkbox"/> LLC - Non-Elect 04 <input type="checkbox"/> Corporation      23 <input type="checkbox"/> Limited Liability Company      33 <input type="checkbox"/> LLC - Non-Elect Individual 06 <input type="checkbox"/> Sub-Chapter S Corporation      24 <input type="checkbox"/> Limited Liability Partnership      34 <input type="checkbox"/> QSSS	
<b>9</b>	When did you or when will you begin delivering tobacco products to Delaware? MO <input type="text"/> DAY <input type="text"/> YEAR <input type="text"/>	<b>10</b>
<b>9</b>	Does your business currently own or lease any real and/or tangible property in Delaware? YES <input type="text"/> NO <input type="text"/>	<b>10</b>

**IF YOU ANSWERED "YES" TO QUESTION 10, YOU MUST COMPLETE BOTH SECTIONS B AND C, AND PAY THE ASSOCIATED LICENSING FEES. BY LAW, ANY TOBACCO COMPANY WHO OWNS OR LEASES REAL AND/OR TANGIBLE PROPERTY IN DELAWARE MUST MAINTAIN BOTH A RETAIL LICENSE (\$75/YEAR) AND A TOBACCO LICENSE (\$15 FOR THREE YEARS). THESE FEES WILL ALLOW YOUR ONLINE TOBACCO RETAIL BUSINESS TO LEGALLY OPERATE IN DELAWARE. THE RETAIL LICENSE FEE IS PRORATED FOR THE FIRST YEAR BASED ON THE MONTH YOU BEGAN DELIVERING TOBACCO PRODUCTS TO DELAWARE. THE TOBACCO LICENSE FEE IS NOT PRORATED AND IS DUE IN FULL EVERY THREE YEARS. IF YOU ANSWERED "NO" TO QUESTION 10, PLEASE DISREGARD SECTION B, SIGN SECTION C AND REMIT THIS FORM.**

### B. COMPUTATION OF LICENSING FEES

Multiply Annual Fee by Respective Month Percentage:

Jan - 100%	Mar - 83%	May - 67%	Jul - 50%	Sep - 33%	Nov - 17%
Feb - 92%	Apr - 75%	Jun - 58%	Aug - 42%	Oct - 25%	Dec - 8%

  

\$ <input type="text" value="75.00"/>	x	<input type="text"/>	=	\$ <input type="text"/>	+	\$ <input type="text" value="15.00"/>	=	\$ <input type="text"/>
Annual Retail License Fee		Prorated Percentage		Retail License Fee Due		Cigarette License Fee		Total Amount Due

### C. AMOUNT DUE MUST BE REMITTED WITH THIS APPLICATION. (Total Amount Due from Part B.)

SIGNATURE	TITLE	DATE
<i>I declare under penalties as provided by law that the information on this application is true, correct and complete to the best of my knowledge.</i>		

MAKE CHECK PAYABLE AND MAIL TO: Delaware Division of Revenue  
P.O. Box 8913  
Wilmington, DE 19899-8750