

Description of Proposed Changes to Chapter 64C and Certain Related Sections

Chapter / Section Number	Section Heading	Summary Description of Recommended Changes
10, §30B	Suspension of license to sell lottery tickets due to suspension or revocation of cigar or tobacco license	1. Adds to underlying tobacco-related offenses which, when they cause a 64C license suspension/revocation, will cause a lottery license to be suspended. These include (a) new offense in 64C, §10 related to using cash to purchase tobacco products for resale, (b) offense in 64C, §10 for purchasing tobacco products (including smokeless tobacco and cigarettes as well as cigars and smoking tobacco) for resale from a non-licensee, (c) offense related to forged cigarette stamps, and (d) offense related to unauthorized selling of genuine cigarette stamps. 2. Changes section references to take into account proposed changes to 64C, §§1, 7B, and 10.
14, §6	Commissioner; additional powers and duties	1. Amends subsection 10 to expand the categories of persons authorized by the DOR to sell tobacco products that DOR must list on its website. 2. Deletes reference in subsection 10 to transportation company and changes section references to take into account proposed changes to 64C, §51 and 7B.
62C, §5	Returns; filing; declaration covering perjury; improper filings	Amends section to provide that electronic signatures on returns or other documents filed with DOR containing declarations that they are made under penalty of perjury are treated for all civil and criminal purposes like physical signatures on paper returns. There is a similar provision in federal law. Effective in late November, all tobacco tax returns will be required to be filed electronically; the change from paper returns will have the unintended effect of downgrading filing a false return from a felony to a misdemeanor. Note that this amendment would affect returns and documents relating to all taxes.
62C, §16	Filing of returns by taxpayers subject to chapters 64A and 64C, 64E to 64J, 64L to 64M and 138	1. Consolidates filing provisions for cigar distributors and other licensees and puts cigar distributors on the same monthly filing schedule as other licensees. 2. Changes filing schedule for licensed unclassified acquirers to monthly to reflect current practice.
62C, §21	Disclosure of Tax Information	Amends paragraph (19), which currently permits reasonable disclosure re enforcement of 3 criminal sections of 64C, to include such disclosure relative to sections of 64C with criminal penalties, thus encompassing the proposed new offenses in sections 10 and 37A, , and existing sections re counterfeit cigarette stamps and unlawful sale of cigarette stamps.
62C, §67	Licenses and registration certificates of taxpayers under chapters 64A, 64C, 64E to 64J or 64M	1. Increases bases for denying license applications of persons seeking licenses under chapter 64C. 2. Changes phrase "cancelled for cause" to "revoked or cancelled for cause" in (k)(1) and (k)(2). 3. Adds willful failure to comply with any provision of state tax laws or regulations (which is currently a basis for license suspension / revocation)as a basis for license/registration denial for all categories of licenses/registrations covered by this section . 4. Deletes references to transportation companies, a licensing category proposed to be eliminated. 5. Adds paragraph letters, and changes spelled-out section and chapter numbers to numerals for consistency throughout. 6. For all licensees, (a) adds provision to allow license denial when Commissioner believes the application is a subterfuge for the real party in interest who is unidentified, and (b) makes admissions to sufficient facts equivalent to convictions. 7. For tobacco licensees, (a) expands definition of crimes that are bases for license denial, (b) makes admissions to sufficient facts equivalent to convictions, and (c) adds lookback period for admissions/convictions - 5 years for misdemeanors/10 years for felonies, and (d) clarifies language about civil penalties. 8. Clarifies that affidavit requirement for wholesalers' licenses does not apply to cigar distributors' licenses (consistent with current law) Note: substantive changes are to subsection (b), and to (k) (1), and (2) , and addition of (k)(6 1/2)
62C, §68	Suspension or revocation of license or registration; appeal; reissuance of registration	1. Increases bases for suspending or revoking licenses under chapter 64C (new subsection 4 1/2); expands definition of crimes that are bases for license denial, makes admissions to sufficient facts equivalent to convictions, and adds lookback period for admissions/convictions - 5 years for misdemeanors/10 years for felonies. 2. Clarifies that a stamper's appointment may be suspended or revoked for any reason is a basis for license/registration suspension or revocation under this section, as well as for reasons specified in 94F, §5(b) and for willful misuse of stamping equipment 3. Expands (and for 64C, §7B changes section reference for) the underlying tobacco offenses which, when they cause a 64C license suspension/revocation , will trigger a notice to the state lottery and cause a lottery license suspension. See 10, §30B above. 4. Changes the section reference for a cigar retailer to reflect proposed move of definition from 64C, §7B to §1.
62C, §76	Failure to Possess License or Registration as Required by §67	Specifies that penalty for acting as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in 64C, §1, is set forth in 64C, §10(a).
64C, §1	Definitions	1. Alphabetizes definitions and places in separate clauses 2.Consolidates definitions from other sections of 64C, including cigar definitions which are moved from section 7B. 3.Changes the definition of tobacco products to include cigars and smoking tobacco. 4. Takes smokeless tobacco out of the cigarette definition. 5. Adds definitions of "other tobacco products", "stamp," "units," "unstamped cigarettes," "untaxed other tobacco products," and "untaxed tobacco products." 6. Includes cigar retailers in the general retailer definition, and includes cigar distributors in the general wholesaler definition. 7. Adds leaf tobacco to the smoking tobacco definition. 8. Amends the definitions of "cigar", "cigarette," "licensee," "place of business," "smokeless tobacco," "smoking tobacco," "taxed cigars and smoking tobacco," "untaxed cigars and smoking tobacco," and "vending machine operators." 9. Deletes the definition of "transportation company" (an obsolete licensing category)and deletes that phrase wherever it appears.
64C, §2	Vendors' licenses; display	1. Adds references to cigar distributors and cigar retailers [consolidated from separate provision currently in 64C, §7B(h)] 2. Changes phrase from "disc or marker" to "decals" to reflect current practice.

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64C, §5	Records and statements required of vendors and purchasers	<ol style="list-style-type: none"> Organizes existing requirements into separate paragraphs for ease of comprehension. Requires, wholesalers (including cigar distributors), vending machine operators, and unclassified acquirers to maintain the most recent year's records on-site. Authorizes commissioner's agents to examine stock of tobacco products and equipment as well as records, and specifies that inspections are to occur during the business's normal business hours. Authorizes civil penalty of up to \$5000+C19 to be assessed against anyone who hinders, obstructs, or prevents authorized examinations or who otherwise violates the provisions of the section. Adds requirement that commissioner conduct inspections/examinations regularly, to address regularity aspect of Supreme Court decisions re what is necessary to qualify for exception to warrant requirement.
64C, §5A	Collection of excises imposed on residents purchasing cigarettes and tobacco products in interstate commerce; statements of sellers and shipping invoices	<ol style="list-style-type: none"> Adds a specific statement of liability as to residents purchasing untaxed tobacco products. Updates terminology to reflect changes to Massachusetts definitions and federal PACT act. Changes the DOR reporting frequency on tobacco collection from residents from semi-annual to annual.
64C, §6	Payment of excise; reports and examination of records of carriers, warehousemen, etc.; amount credited to Commonwealth Care Trust Fund	<ol style="list-style-type: none"> Consolidates excises for cigarettes & smokeless tobacco in former sections 6, 7A & 7C into one section. Redrafts section 6 generally to delete surplus provisions. [Note rule for cigarettes w/o nicotine now in 7A. Are there any cigarettes without nicotine?] Prior rules directing portions of revenue to various funds are updated and consolidated in amendment to section 28. Clarifies (a) when and upon which products excises are imposed, (b) that all in possession of untaxed products (not just licensees) are liable for payment, and (c) when payment by non-licensees is due. Adds provision (similar to provision in 7B re cigars/smoking tobacco) that failure to produce invoice from a licensed wholesaler or licensed unclassified acquirer is prima facie evidence of liability for payment of excise. Adds provision (in current law but nearly incomprehensible) specifying that excise is due only one on the same cigarettes/smokeless
64C, §7A	Additional cigarette excise tax; credit to Children's and Seniors' Health Care Assistance Fund; exemption	Repealed; fund has been repealed, excise rate consolidated into 64C, §6.
64C, §7B	Cigars and smoking tobacco; payment and rate of excise tax; liability of distributors, retailers and residents; nonresident cigar distributors; licenses; violations and penalties	<ol style="list-style-type: none"> Deletes definitions, which have been moved into 64C, §1. Deletes subsection (h), which has been incorporated into 64C, 2. Deletes subsections (i) through (k) as obsolete or as providing obsolete cross-references. Deletes subsection (l), the provisions of which have been incorporated into revised 64C, §10. Changes "presumptive" to "prima facie". Clarifies that cigar retailer is liable for the payment of, rather than the collection of, the excise tax on untaxed cigars and smoking tobacco. <p>[Note: current paragraphs (b) - (g) are re-lettered as paragraphs (a) - (f)]</p>
64C, §7C	Additional payment of excise; credit to Health Protection Fund	Repealed; fund has been repealed, excise rate consolidated into 64C, §6.
64C, §8	Prosecution for illegal possession, etc.	Repealed as obsolete: cigarettes "which have not been returned and are not returnable" appear to pre-date stamping requirement, warrant procedure predates c. 276, and forfeiture procedure is circa 1933. Updated forfeiture procedure is set forth in new section 64C, §38B.
64C, §10	Regulation of vending machines; penalties for particular offenses; sales to children	<ol style="list-style-type: none"> Organizes many of the existing violations and provisions into separate paragraphs for ease of comprehension. Generally increases penalties for existing provisions, and in some instances creates enhanced penalties for those previously convicted of a similar offense. Adds new clause to existing offense specific to purchases of tobacco products by retailers from unlicensed/unauthorized persons. Adds new offense for cash purchases of tobacco products for resale. Deletes provisions relative to sales of tobacco products to children as duplicative of [and inconsistent in penalty with] c 270, §6. Deletes provision relative to filing a false return or other document as duplicative of 62C, §73(f)(1) and (g). Changes phrase from "disc or marker" to "decal" to reflect current practice. Authorizes civil penalties for violations of this section, currently authorized under 64C, §7B only in relation to cigars and smoking tobacco. Removes provision that police "shall, at the request of the commissioner" enforce the section.
64C, §11	Records and reports of purchases and sales; investigation, examination and search	<ol style="list-style-type: none"> Organizes existing requirements into separate paragraphs for ease of comprehension. Requires that the most recent year's records be maintained on-site. Authorizes commissioner's agents to examine stock of tobacco products as well as records, and specifies that inspections are to occur during the business's normal business hours. Adds "vehicle" as area in addition to premises subject to investigation, examination, or search if cigarettes or tobacco products are possessed or stored in or sold from that vehicle. Adds requirement that commissioner conduct inspections/examinations regularly, to address regularity aspect of Supreme Court decisions re what is necessary to qualify for exception to warrant requirement. Authorizes civil penalty of up to \$5000/\$25,000 for subseq offense, to be assessed against anyone who hinders, obstructs, or prevents authorized examinations or who otherwise violates the provisions of the section.
64C, §13	Definitions of cost and sale terms	Deletes reference to "transportation company," an obsolete licensing category
64C, §28	Disposition of sums received	This section reflects the funds and percentages of revenue to which the 64C excise on cigarettes is currently directed, consolidates and updates provisions from former sections 6 and 7A.

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64C, §29	Payment of tax through use of adhesive stamps	<ol style="list-style-type: none"> 1. Clarifies that excise on cigarettes is the one paid through stamps (since other excises imposed by this chapter currently are not paid through stamps). 2. Provides exception for payment of excise through other method if authorized by the commissioner, to reflect current practice. 3. Deletes term "adhesive," which is unnecessary given proposed definition of stamp.
64C, §30	Stamper; purchase and use of stamps; appointment; compensation; payment for stamps	Adds a prohibition against use/operation of stamping equipment in any manner that violates written instructions of the commissioner, and authorizes civil penalty of up to \$5000/\$25,000 for subseq offense, for willful violations.
64C, §33	Unstamped cigarettes or stamps; prohibition of sale, etc.; examination and replacement of unstamped or improperly stamped packages	<ol style="list-style-type: none"> 1. Requires that licensees'/stamper's authorization from the commissioner to sell or exchange stamps be obtained in advance and in writing, and requires requests for such authorization to be made 30 days before proposed transaction. 2. Requires that non-stamper licensees' authorization from the commissioner accept delivery of unstamped/improperly stamped cigarettes be obtained in advance and in writing, 3. Authorizes civil penalty of up to \$5000/\$25,000 for subseq offense, for violations of the section.
64C, §34	Possession, sale, etc., of unstamped cigarettes; penalty; prima facie evidence; presumptions	<ol style="list-style-type: none"> 1. Increases penalties, making possession of any quantity of unstamped cigarettes a felony, with enhanced penalties for offenses involving 30,000 or more unstamped cigarettes. 2. Provides for house of correction alternative sentence to facilitate prosecution in district court. 3. Deletes obsolete reference to "transportation company." 4. Requires any authorization to sell, etc. unstamped cigarettes to be in writing. 5. Adds requirement that the crime be committed "knowingly," consistent with 64C, §35. 6. Substitutes, newly-defined phrase "unstamped cigarettes" with more wordy existing language. 7. As to criminal cases, either deletes or converts to prima facie evidence unconstitutional presumptions. 8. Provides that existing civil penalty is to be assessed at the rate of \$10 per pack for first offense, authorizes civil penalty of up to \$25,000 for subsequent offenses.
64C, §35	Possession or transportation of unstamped cigarettes; penalty; arrest, search and seizure; forfeitures	<ol style="list-style-type: none"> 1. Increases penalties, making possession of any quantity of unstamped cigarettes a felony, with enhanced penalties for offenses involving 30,000 or more unstamped cigarettes. 2. Provides for house of correction alternative sentence to facilitate prosecution in district court. 3. Deletes obsolete reference to "transportation company." 4. Requires any authorization to possess, etc. unstamped cigarettes to be in writing. 5. Adds applicable provisions relative to warrantless arrest and seizure from existing 64C, 8 (currently referenced in this section, but proposed to be repealed). 6. Deletes current references to outdated forfeiture procedures. 7. Provides that existing civil penalty is to be assessed at the rate of \$10 per pack for first offense, authorizes civil penalty of up to \$25,000 for subsequent offenses.
64C, §36	Possession or transportation of unstamped cigarettes; necessity of invoices or delivery tickets; prima facie evidence	Clarifies and expands existing requirements relative to documentation that a person delivering or transporting unstamped cigarettes must possess in order not to be subject to prosecution under 64C, 35 (providing criminal penalties for transporting or delivering unstamped cigarettes). Specifically, adds language regarding bills of lading for common carriers, derived from federal CCTA, and requires that the purchaser or consignee be a person licensed or authorized in this or another jurisdiction to possess unstamped cigarettes.
64C, §37	Forgery, alteration, etc., of excise stamps; unauthorized use of metering machine; penalties; forfeitures	<ol style="list-style-type: none"> 1. Organizes existing crimes into subsections for ease of comprehension. 2. Increases fine and provides for house of correction alternative sentence to facilitate prosecution in district court. 3. Deletes obsolete references to "metering" and "die or device" and replaces "suffer" with "suffer or permit." 4. Adds possession of physical or electronic copy or image of stamp to types of prima facie evidence specified. 5. Deletes references to forfeiture, which have been consolidated into 64C, 38A.
64C, §37A	[new section] - Selling, etc. Untaxed Other Tobacco Products; Evasion	<ol style="list-style-type: none"> 1. New section providing criminal and civil penalties for selling, transporting or delivering, etc. untaxed other tobacco products, and for evasion of excise on other tobacco products. 2. The offenses in the first and second subsections are modeled on 64C, §§34 and 35, relating to unstamped cigarettes, and the tiered penalties are consistent with the penalties in those sections. The offenses in these subsections only apply to unlicensed persons, because licensees are permitted to possess non-tax-paid other tobacco products. 3. The offense in the third subsection is an effort to enable prosecution of licensed individuals who evade the tax. 4. Provides for a civil penalty consistent with those in 64C, §§34 and 35.
64C, §37B	[new section] - Transportation of untaxed other tobacco products; necessity of invoices or delivery tickets; prima facie evidence	New section, modeled on 64, §36 (relative to transporting unstamped cigarettes) specifying the documentation that a person delivering or transporting untaxed other tobacco products is required to possess in order not to be subject to prosecution under 64C, §37A (relative to selling, etc. untaxed other tobacco products).
64C, §38	Unauthorized use of excise stamps; penalty	<ol style="list-style-type: none"> 1. Clarifies meaning of "authorized agent". 2. Increases fine, provides for a house of correction sentence to facilitate prosecution in district court.
64C, §38A	Seizure, forfeiture and sale of unstamped cigarettes and smokeless tobacco on which tax has not been paid	<ol style="list-style-type: none"> 1. Clarifies and expands the circumstances under which unstamped cigarettes and other tobacco products are subject to seizure, reflecting new proposed offenses. 2. Consolidates provisions from 64C, §37 re seizure of forged and unauthorized stamps and unauthorized stamping equipment. 3. Specifies that procedures in new section 64C, §38B are to be followed. 4. Deletes phrase "or a police officer."

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64C, §38B	[new section] - Forfeiture of property	1. New section relating to forfeiture, modeled after c. 94C, §47. 2. Creates an Illegal Tobacco Task Force Trust Fund, to which forfeiture proceeds will be deposited, and which can be expended for law enforcement purposes including costs related to protracted investigations, equipment, etc.
218, §26	General provisions [re district court criminal jurisdiction]	Amended to include the 10 year felonies in sections 34, 35, and 37A