

62C, §21 – Disclosure of Tax Information

[XX] Paragraph 19 of section 21 of chapter 62C, as appearing in the 2014 Official Edition, is hereby amended by striking out the phrase

“sections 33A, 34 and 35 of chapter 64C”

inserting in place thereof the following phrase:

“sections 10, 33A, 34, 35, 37, 37A, and 38 of chapter 64C”

[XX] Paragraph 28 of section 21 of chapter 62C, as inserted by section 68 of chapter 46 of the acts of 2015 is hereby amended by inserting after the phrase “chapter 64C”

the phrase:

“or to task force member agency personnel described in paragraph (ii) of subsection (b) of said section 40”

[XX] Paragraph 28 of section 21 of chapter 62C, as inserted by section 68 of chapter 46 of the acts of 2015 is hereby further amended by inserting after the phrase “federal law enforcement”

the phrase:

“or to revenue or law enforcement officials from another state”

So that the relevant portions of the section as amended shall read:

Section 21. (a) The disclosure by the commissioner, or by any deputy, assistant, clerk or assessor, or other employee of the commonwealth or of any city or town therein, to any person but the taxpayer or his representative, of any information contained in or set forth by any return or document filed with the commissioner, except in proceedings or other activities to determine or collect the tax or for the purpose of criminal prosecution under this chapter, chapters sixty A, sixty-two to sixty-five C, inclusive, section ten of chapter one hundred and twenty-one A and section twenty-one of chapter one hundred and thirty-eight, is prohibited.

(b) Nothing herein shall be construed to prevent

. . .

(19) the disclosure of such information as is reasonable and appropriate to the implementation and enforcement of sections 10, 33A, 34, 35, 37, 37A, and 38 of chapter 64C.

. . .

(28) the disclosure of information to members of the multi-agency illegal tobacco task force established in section 40 of chapter 64C [or to task force member agency personnel described in paragraph \(ii\) of subsection \(b\) of said section 40](#) or to federal law enforcement or to revenue or law enforcement officials from another state for the purpose of investigating or prosecuting criminal offenses relative to contraband tobacco distribution or conducting other enforcement actions relative to contraband tobacco distribution.

64C, §33 – Unstamped cigarettes or stamps; prohibition of sale, etc; examination and replacement of unstamped or improperly stamped packages

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 33, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 33. Unstamped cigarettes or stamps; prohibition of sale, etc.; examination and replacement of unstamped or improperly stamped packages

Licensees and stampers shall not sell, borrow, loan or exchange unstamped cigarettes or stamps to, from or with other such licensees or stampers unless previously authorized in writing by the commissioner, and licensees and stampers proposing to engage in such a transaction involving the sale, borrowing, loan or exchange of unstamped cigarettes shall submit a written request for the commissioner's authorization not less than thirty days before the date of the proposed transaction;

provided however that, notwithstanding the thirty-day requirement set forth above, in an emergency situation caused by the failure or malfunction of stamping equipment where that requirement would cause undue hardship, licensees and stampers may submit a written request for expedited authorization for a sale, borrowing, loan or exchange of unstamped cigarettes or stamps between stampers, and the commissioner may grant such authorization. Licensees, unless they are also appointed as stampers, shall not

accept deliveries of unstamped or improperly stamped packages of cigarettes except as previously authorized in writing by the commissioner. Every licensed retailer and licensed vending machine operator shall immediately examine all packages of cigarettes

received by them and shall immediately return to their supplier any and all packages of cigarettes that are unstamped or improperly stamped. Such supplier shall replace them with packages of cigarettes upon which stamps have been properly affixed. In addition to other remedies provided by law, the commissioner may assess a civil penalty of not more than \$5,000 for a first violation of this section or not more than \$25,000 for each subsequent violation.

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64C, §38A - Seizure, and forfeiture and sale of unstamped cigarettes and smokeless other tobacco products on which tax has not been paid; warrants

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 38A, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 38A. Seizure, and forfeiture and sale of unstamped cigarettes and smokeless other tobacco products on which tax has not been paid; warrants

(a) Whenever the commissioner discovers:

~~(b)~~(1) any unstamped cigarettes subject to tax under this chapter which are found in the possession of any person other than a stamper, a common carrier transporting such cigarettes under a proper bill of lading or freight bill which states the quantity, source and designation or destination of such cigarettes, or other person transporting unstamped cigarettes in actual possession of the documents required by section 36, or a person authorized in writing by the commissioner to possess such unstamped cigarettes; or

~~(c)~~(2) any unstamped cigarettes or other tobacco products that are being stored or appear to be stored at a location that has not been reported by any licensee, as required by section 2, as premises at which tobacco products are currently held, placed, or stored.

~~(d)~~(3) any such unstamped cigarettes or other tobacco products that are otherwise held, purchased, possessed, imported or acquired in violation of

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paragraphs (a), (b), (c), (d), (f), or (g) of section 10 or of sections 34, 35, 37, or 37A; or

~~(e)~~(4) more than ten thousand units of other tobacco products in the possession of a licensed wholesaler or licensed cigar distributor under circumstances that provide reason to believe that such licensee possesses such other tobacco products with the intent to evade any of the excises imposed by this chapter on such other tobacco products or payment thereof; provided that such circumstances shall include but not be limited to such licensee's history in two or more recent periods of failure to file returns and pay excise relative to other tobacco products of the type such licensee is found to be in possession of or of reporting sales and paying excise on sales of other tobacco products corresponding to quantities substantially below the quantities such licensee is found to be in possession of or is known to have purchased or otherwise acquired during those periods; or

~~(f)~~(5) any falsely made, fraudulently made, forged, altered or counterfeited cigarette excise stamps and any cigarette excise stamps otherwise not prescribed or authorized by the commissioner; or

~~(g)~~(6) any un-affixed genuine cigarette excise stamps found in the possession of anyone not being a stamper or a person otherwise authorized by the commissioner to possess such stamps; or

~~(h)~~(7) any machines or devices for affixing stamps not prescribed or authorized by the commissioner;

he may seize and take possession of such unstamped cigarettes, other tobacco products, stamps, and machines or devices, together with any vending machine or other receptacle in which the unstamped cigarettes or other tobacco products are

contained, and forfeiture proceedings shall be pursued in accordance with the provisions of section 38B.

(b) If the commissioner believes that any of the items described in paragraph subject to seizure under subsection (a) above as being subject to seizure of this section are being kept, stored, sold or concealed in a store, warehouse, building, vehicle, vessel or other place anywhere in the commonwealth or territorial waters thereof, the commissioner or his authorized agent or designee may make a complaint on oath to a district court justice or superior court justice authorized to issue search warrants in criminal cases setting forth the basis for his belief and describing the place to he seeks to search and the items and property he seeks to search for and seize. The justice, if satisfied that there is probable cause for such belief, may issue a warrant describing the place to be searched, identifying the property to be searched for, and authorizing the search for and seizure of such property. In addition to authorizing the search for and seizure of the items described in paragraph (a), a warrant may authorize search for and seizure of documents, records or other items relevant to the origin of tobacco products seized or to be seized, the payment or non-payment of tax on such tobacco products, and the possession or control of the place to be searched. Search warrants issued pursuant to this section shall be issued in the manner provided in sections 2, 2A, and 2B of chapter 276, in so far as they are applicable, and return of such warrants shall be in the manner provided in section 3A of chapter 276. Nothing in this paragraph shall be construed to prevent warrantless entries and administrative inspections pursuant to sections 5 and 11, nor shall it be construed to prevent warrantless seizures of property authorized by paragraph (a) above in connection with such inspections, nor shall it be construed to prevent warrantless entries and seizures in any other situations in which a warrant is not required by the laws or constitution of the commonwealth.

64C, §38B [new section] - Forfeiture of Property

[XX] Chapter 64C, as appearing in the 2014 Official Edition, is hereby amended by inserting after section 38A the following section:

Section 38B. Forfeiture of Property

(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) Any unstamped cigarettes subject to tax under this chapter which are found in the possession of any person other than a stamper, a common carrier transporting such unstamped cigarettes under a proper bill of lading or freight bill which states the quantity, source and designation or destination of such cigarettes or other person transporting such unstamped cigarettes in actual possession of the documents required by section 36, or a person authorized in writing by the commissioner to possess such unstamped cigarettes; any such unstamped cigarettes or other tobacco products that are being stored or appear to be stored at a location that has not been reported by any licensee, as required by section 2, as premises at which tobacco products are currently held, placed, or stored; any such unstamped cigarettes and other tobacco products which are otherwise held, purchased, possessed, imported or acquired in violation of paragraphs (a), (b), (c), (d), (f), or (g) of section 10 or of sections 34, 35, 37, or 37A; any falsely made, fraudulently made, forged, altered or counterfeited cigarette excise stamps and any cigarette excise stamps otherwise not prescribed or authorized by the commissioner; any un-affixed genuine cigarette excise stamps found in the possession of anyone not being a stamper or a person otherwise authorized by the commissioner to possess such stamps.

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), and (7) of subsection (a) shall, upon motion of the attorney general or district attorney or the commissioner, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Unless the court for good cause shown orders otherwise, regardless of the final disposition of such related criminal proceeding, if any, Property property subject to forfeiture under subparagraph (1) of subsection (a) shall be turned over to the commissioner if not already in his possession and destroyed, ~~regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise~~ provided that the commissioner may authorize the use of such property for law enforcement purposes.
