Chapter X - Excise Tax on Cigarettes and Tobacco Products

Sections:
1.  Applicability of Chapter
2.  Intent and Purpose of this Chapter
3.  Definitions
4.  Tax on Cigarettes
5.  Tax on Other Tobacco Products
6.  Exemptions
7.  Registration
8.  Tax Returns
9.  Involuntary Returns
10. Amended Tax Returns
11. Penalties for Violations
12. Tax Lien
13. Interest on Unpaid Tax; Administrative Costs
14. Inspection and Maintenance of Documents and Records
15. Administrative Regulations

1. Applicability of Chapter
Unless provided otherwise, this chapter shall apply to the taxation of all cigarettes and tobacco products brought into or acquired in the ________________ [municipality, borough].

2. Intent and Purpose of this Chapter
It is the intent and purpose of this chapter to improve public health by reducing consumption of tobacco products by collecting the tax from the person who:
1. First acquires the cigarettes or other tobacco products within the ________________ [city, borough];
2. Brings or causes cigarettes or other tobacco products to be brought into the ________________ [city, borough];
3. Makes, manufactures, or fabricates cigarettes or other tobacco products in the ________________ [city, borough]; or
4. Ships or transports cigarettes or other tobacco products into the ________________ [city, borough].

Notwithstanding anything to the contrary contained in this chapter, the taxpayer shall be those persons described in this section and no others.

3. Definitions
The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Cigarette” means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether or not the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than pure or nearly pure tobacco; and also includes any roll for smoking containing tobacco, however wrapped, that weighs less than three and a half pounds per thousand, unless it is wrapped entirely in whole tobacco leaf and does not have a filter.

“Department” means the finance department of the [city, borough].
“Distributor” means a person who brings cigarettes or other tobacco products, or causes them to be brought, into the [city, borough], and who sells or distributes them to others in the [city, borough].

"Tobacco product" means any product that is made from or derived from tobacco, or that contains nicotine or a similar substance, and that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means. “Tobacco product” is defined to include, but not be limited to, any cigarette, cigar, cigarillo, pipe tobacco, loose tobacco, electronic cigarette, bidi, clove cigarette; and smokeless or spit tobacco in any forming, such as dip, chew, snuff, snus, or dissolvable. Under this definition, all nicotine products are derived from tobacco unless proven otherwise. “Tobacco product” does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration for the purposes of tobacco cessation, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

“Other tobacco product” means:
1. An article or product made wholly or in part of tobacco or a tobacco substitute or otherwise containing nicotine that is expected or intended for human consumption, but not including a tobacco substitute prescribed by a licensed physician or a product that has been approved by the United States Food and Drug Administration for sale as a tobacco use cessation product or for other medical purposes and which is being marketed and sold solely for that approved purpose.
2. A cigar;
3. A cheroot;
4. An electronic smoking device
5. A stogie;
6. A perique;
7. Snuff and snuff flour;
8. Smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;
9. Chewing tobacco, including Cavendish, twist, plug, scrap, and tobacco suitable for chewing; or

“Electronic smoking device” means any electronic product that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a product, whether or not sold separately. Electronic smoking device does not include drugs, devices, or combination products approved for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

“Manufacturer” means a person who makes, fashions, or produces cigarettes or other tobacco products for sale to distributors or other persons. This includes owners of retail outlets that support the patron in rolling cigarettes or other plant based products or mixing or preparing vapor solutions.

“Person” includes an individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), corporation, syndicate, or political subdivision of this state, or combination acting as a unit including individuals who are employees or officers of any of the such entities who
are under a duty to perform an act concerning which a violation of this chapter could occur. It is the intent of this chapter that such persons be personally liable for unremitted taxes.

“Sale” means a sale, barter, exchange, and every other manner of transferring the tobacco products ownership of personal property.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.

“Vapor product” means any vapor cartridge or other similar container which contains nicotine in a solution or other form that is intended to be used with an electronic smoking device or similar vapor producing device. It also includes an electronic cigarette kit when the kit contains vapor cartridge(s) and a disposable electronic cigarette or similar device sold for one time use. All vapor products are presumed to contain nicotine that is tobacco derived, unless proven otherwise by the Manufacturer and approved by the Finance Department. If it can be documented that the nicotine has been derived from sources other than tobacco, it would not be taxable as a tobacco product.

“Wholesale price” means the price the distributor pays for a tobacco product, after deduction of a discount or other reduction received by the distributor for quantity or cash.

4. Tax on Cigarettes
A. The [municipality, borough] hereby levies an excise tax of $2.00, adjusted annually as provided in subsection B of this section, on each pack of cigarettes brought into the [city, borough] beginning on [effective date of tax]. Cigarettes upon which the tax is imposed are not again subject to the tax when acquired by another person.

B. The annual Consumer Price Index adjustment shall be based on the August release date of the semiannual report for the municipality of XXX from the United States Department of Labor Statistics and determined to be the percent change to the current year from the average of the first and second halves of the prior year, and will be effective January 1st of each year following the August release date. The first such adjustment date shall be January 1, [year].

5. Tax on Other Tobacco Products
An excise tax of 75 percent of the wholesale price is levied on other tobacco products, other than cigarettes, brought into the [city, borough] or sold within [city, borough]. The tax is levied [effective date or tax]. Tobacco products upon which this tax is imposed are not again subject to this tax when acquired by another person.

6. Exemptions
The tax imposed under this chapter does not apply to:
1. Cigarettes or other tobacco products sold in the [city, borough] by an exchange, commissary, or ship’s store operated by one of the uniformed services of the United States as defined in Section 5 USC 2101.

2. Cigarettes or other tobacco products if the United States Constitution, the Alaska Constitution, or other federal or state laws prohibit the levying of the tax on the product by the [city, borough].

7. Registration
   A. No person may sell, purchase, possess, bring or transport cigarettes or other tobacco products into the [municipality, borough] as a distributor without first registering with the [municipality, borough]., and obtaining a certificate of registration. The registration shall be on a form provided by the department and must include the information requested by the department. Registration constitutes the person's consent to the [municipality, borough].filing of a lien under applicable section of this chapter on the person's real and personal property for delinquent taxes and related interest, penalties and administrative fees and costs.
   B. The registration required by this chapter is in addition to any other registration or license required by law.
   C. The nonrefundable fee for registration or renewal is $100.00. A certificate is subject to renewal every year.
   D. A distributor shall display the certificate of registration prominently at the distributor's place of business. A certificate of registration is not assignable or transferable.
   E. The department may suspend or revoke a certificate of registration if a distributor fails to comply with the provisions of this chapter.
   F. Any appeal from the department's failure to issue or renew a certificate of registration, or the department's suspension or revocation of a certificate, must be filed within 30 days of the date of mailing of the department's notification to the distributor,

8. Tax Returns
   (A) On or before the last day of each calendar month a distributor shall submit to the department a tax return, upon forms provided by the department, and submit payment for the taxes due on cigarettes and other tobacco products.

   (B) A tax return must be filed by all distributors of cigarettes and other tobacco products even if there were no cigarettes or other tobacco products manufactured, brought into or acquired in the [city, borough] during the preceding month.

   (C) The taxes imposed under this chapter and the return required by this section must be received by the department or postmarked on or before the last day of each calendar month following the month covered by the return.

9. Involuntary Returns
   If a distributor fails to file a return as required by this chapter, or if the department finds that a return is not supported by the records required to be maintained pursuant to this chapter, the department may prepare and file a return on behalf of the distributor. Involuntary returns filed under this section may be premised upon any information that is available to the department, including, among other things, comparative data for similar businesses. A distributor for whom an involuntary return is filed under this section shall be subject to liability for the tax stated in the return, as well as subject to the
penalties and interest provided for in this chapter. A return prepared by the department is, prima facie, good and sufficient for all legal purposes. However, nothing prevents the distributor from presenting evidence on an appeal to rebut the presumed sufficiency of a return prepared by the department, nor does the presumption of sufficiency alter the parties’ respective burdens of proof once the distributor has presented evidence to rebut that presumption.

10. Amended Tax Returns
(A) Any tax return filed hereunder may be amended by the distributor within one year after the due date of the tax return being amended. No amendment by the distributor shall be allowed after this one year period.

(B) Any tax return prepared and filed by the department on behalf of the distributor may be amended by the distributor within one year of the date filed by the department. No amendment by the distributor shall be allowed after this one year period.

11. Penalties for Violations
(A) A penalty of six percent of the taxes due shall be incurred automatically when a person fails to pay the full amount of the tax due under this chapter within seven calendar days following its due date. An additional penalty of six percent of the taxes due shall be incurred automatically when a person fails to file a tax return or report within seven calendar days following its due date under this chapter. If a person fails to pay the full amount of the tax due and/or file a tax return or report required under this chapter within 16 calendar days after its due date, the six percent penalties incurred above shall be increased automatically to 15 percent. The penalty shall be computed on the unpaid balance of the tax liability as determined by the department.

(B) A distributor who does not provide required records upon request as listed in section 13 shall incur a civil penalty of $1,000.00.

12. Tax Lien
(A) If any person who is liable to pay a tax under this chapter neglects or refuses to pay the tax after demand, the amount, including interest, additional amounts, or assessable penalty together with costs, is a lien in favor of the [city, borough] upon all property and rights to property, real or personal, belonging to that person.

(B) The lien imposed by this section arises upon delinquency and continues until the amount is paid or a judgment against the person arising out of the liability is satisfied.

(C) A lien arising out of a tax due under this chapter, including the penalties and interest on the tax, is, subject to A.S. 29.45.300, a lien prior, paramount, and superior to all other liens, mortgages, hypothecation, conveyances, and assignments, upon all real and personal property of the person liable for the tax and upon all the real and personal property used with the permission of the owner to carry on the business which is subject to the tax.

(D) The lien on personal and real property may be enforced as provided in A.S. 29.45.300 – 29.45.480 for enforcement of real and personal property tax liens.

13. Interest on Unpaid Tax; Administrative Costs
A. In addition to any penalties imposed by this chapter, interest at the rate of 12 percent per annum shall be charged on the unpaid balance of delinquent taxes.

B. In addition to any other penalties imposed under this article, a distributor shall pay any administrative fees, outside collection agency fees, attorney fees, and other costs and fees incurred by the [city, borough] or its agent(s) in connection with any collection, or attempted collection, from the seller of any unremitted tax, unpaid interest, and/or unpaid penalties due under this article.

14. Inspection and Maintenance of Documents and Records
(A) Every person subject to this chapter shall keep a complete and accurate record of all cigarettes and other tobacco products manufactured, purchased, sold, brought into, transported outside of, or acquired in the [city, borough] by such person.
   (1) Except in the case of a manufacturer, the records shall include a statement containing the name and address of the person from whom cigarettes or other tobacco products were purchased or acquired, the date of delivery, the quantity of cigarettes and other tobacco products, the trade name and brand, and the price paid for other tobacco products purchased.
   (2) Each invoice or other documentation of the sale of cigarettes or other tobacco products within the [city, borough] shall state whether the tax imposed under this chapter has been paid.
   (3) Persons subject to this chapter shall keep such other documents and records as the department prescribes.
   (4) All documents and records required by this section shall be preserved by persons subject to this chapter for three years. All records and documents required by this chapter to be kept or retained are subject to inspection within the [city, borough] upon demand by the department.

(B) A distributor transferring or selling cigarettes or other tobacco products to a cardholder must keep a record of cigarettes and other tobacco products transferred or sold to such person, including the serial number of the exemption card.

(C) The chief fiscal officer or designee may, during business hours, enter the business premises of a distributor or cardholder where cigarettes or other tobacco products are kept or stored, so far as it may be necessary for the purpose of examining such products and the related business records.

15. Administrative Regulations
The finance director, or his or her designee, may adopt regulations providing for the application and interpretation of this chapter and providing methods and forms for assessing, reporting and collecting the tax imposed by this chapter.