

810-7-1-.31 Procedures for Disposition of Confiscated Tobacco Products

(1) Title 40, Chapter 25, Code of Alabama 1975, provides that tobacco products may be confiscated under the following circumstances by the Department of Revenue, or its agents or by any peace officer of the State of Alabama, without a warrant and the goods shall be delivered to the Department of Revenue for destruction:

(a) Section 40-25-7, Code of Alabama 1975, provides that tobacco products imported by retail dealers and semijobbers in which a true and duplicate invoice has not been received by the Department are considered contraband and subject to confiscation.

(b) Section 40-25-8, Code of Alabama 1975, provides that any cigarettes, smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable pursuant to Title 40, Chapter 25, Code of Alabama 1975, found within the State of Alabama, in possession of any retailer or semijobber not having affixed to the package of cigarettes the required stamps or in the case of other tobacco products, purchase invoices which itemize the applicable tobacco taxes are not available, are declared to be contraband goods and may be seized.

(c) Section 40-25-13, Code of Alabama 1975, provides that failure to acquire appropriate invoices, substantiate tax payment or retain invoices, as required, may result in confiscation of the tobacco products.

(d) Section 40-25-16.1, Code of Alabama 1975, provides that purchases of tobacco products from an entity other than permitted or registered entities appearing on the Department's web site listing shall be subject to confiscation.

(2) The following procedures shall be followed in all cases of seizure of tobacco products subject to forfeiture under provisions of Title 40, Chapter 25, Code of Alabama 1975:

(a) Cigarettes and Other Tobacco Products (OTP).

1. The officer or person making the seizure shall cause a list containing a particular description of the goods, wares, merchandise or other property seized to be prepared in duplicate. The list shall be properly attested by the officer or person.

2. The Department of Revenue shall post a notice of the items confiscated for three weeks on its web site describing the articles and stating the time and place and cause of their seizure and requiring any person claiming them to appear and make such claim in writing within 30 days from the date of the first posting of such notice.

3. Any person claiming the items seized as contraband must file with the Department of Revenue a claim in writing within 30 days from the date of the notice. The claim must state the person's interest in the items seized.

4. Claimants who wish to request the return of the confiscated product via circuit court, may execute a bond to the Department of Revenue in a penal sum equal to double the value of the goods so seized, but in no case shall the bond be less than the sum of \$200, with sureties to be approved by the clerk of the circuit court in the county in which the goods are seized, conditioned that in the case of condemnation of the articles so seized, the obligors shall pay to the Department of Revenue the full value of the goods so seized and all costs and expenses of the proceedings to obtain such condemnation, including a reasonable attorney's fee. Upon the delivery of such bond to the Department of Revenue, it shall transmit the same with the duplicate list or description of the goods seized to the district attorney of the circuit in which such seizure was made, and the district attorney shall file a complaint in the circuit court of the county where the seizure was made to secure the forfeiture of the goods, wares, merchandise or other property. Upon the filing of the bond, the goods shall be delivered to the claimant pending the outcome of the case; provided, that the claimant must purchase the proper stamps to be affixed to each package of cigarettes or in the case of other tobacco products remit the appropriate tax before the goods are delivered to the claimant by the Department of Revenue.

5. If no claim or bond is given within the time specified, such packages of cigarettes or other tobacco products shall be forfeited without further proceedings.

6. Unclaimed products for which an appeal has not been received by the Department shall be destroyed using means as determined by the Department of Revenue.

(b) Loose Cigarettes. Section 28-11-6, Code of Alabama 1975, prohibits the sale or distribution of cigarettes that are not sold in the original factory-wrapped container. The prohibition also applies to the sale of loose cigarettes or opened packages of cigarettes. Therefore, it shall be prima facie evidence that such cigarettes offered for sale which are not in the proper packaging shall be subject to confiscation and destruction.

1. The officer or person making the seizure shall cause a list containing a particular description of the loose cigarettes and/or opened packages of cigarettes seized to be prepared in duplicate. The list shall be properly attested by the officer.

2. The Department of Revenue shall post a notice of the items confiscated for three weeks on its web site describing the articles and stating the time and place and cause of their seizure.

3. In the event that the loose cigarettes do not contain the Fire Standards Compliant marking as required per Section 8-17-274, Code of Alabama 1975, the trademark holder of the loose cigarette brand shall be notified and permitted by the Department to inspect the cigarettes prior to destruction, upon written request.

4. Loose cigarettes and improper packages of cigarettes shall be destroyed using means as determined by the Department of Revenue.

(c) Motor vehicles. Per Section 40-25-8, Code of Alabama 1975, any vehicle, not a common carrier, used for the transportation for the purpose of sale of unstamped articles shall be subject to confiscation and sale at public auction to the highest bidder after due advertisement and notice to the title owner of the vehicle. Should any unstamped tobaccos be found in any vehicle which is engaged in the sale, distribution, or delivery of taxable tobaccos, the same shall be prima facie evidence that it was there for sale.

(3) Return of Product. Per Section 40-25-10, Code of Alabama 1975, the Department may in its discretion return any goods confiscated when it is shown that there was no intention to violate the provisions of Title 40, Chapter 25, Code of Alabama 1975. In the case of confiscated packages of cigarettes, any applicable state and/or county tax, to include the purchase of the appropriate tax stamps, interest and penalty, if applicable, must be remitted prior to the items being returned. OTP for which invoices substantiating the payment of the tax were not produced, loose cigarettes, and motor vehicles with unstamped tobaccos shall be prima facie evidence of intent to evade the tax. All such OTP product, loose cigarettes or motor vehicles will not be returned and shall be destroyed by the Department or sold at auction, if applicable, upon due process.

(4) Proceeds of Sale. The proceeds of sale when received by the Department of Revenue shall be turned in to the Treasury as other revenues are required by law to be turned in. The proceedings against goods, merchandise or other property shall be considered as proceedings in rem unless otherwise provided. Should the Department of Revenue have to resort to the courts for collection of the tax due and assessed, no advertisement shall be made and the confiscated tobaccos may be held as evidence pending the results of court action.

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Authority: Sections 40-2A-7(a)(5), 28-11-6, Chapter 25 of Title 40, and Chapter 17 of Title 8, Code of Alabama 1975.

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