

## **REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 7654 REVISING THE EXCISE TAX BASE ON CIGARS AND CIGARETTES AMENDING FOR THE PURPOSE SECTION 142 OF THE NATIONAL INTERNAL REVENUE CODE A...**

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SECTION 1. Scope. — These Revenue Regulations are hereby promulgated pursuant to Sections 4 and 245 of the NIRC in relation to Section 5 of Republic Act No. 7654 to implement the provisions of said Act which amended Section 142 of the same Code revising the excise tax on cigars and cigarettes.

SECTION 2. Words and Phrases Explained.

2.1 Constructive manufacturer's or importer's wholesale price. — Means the price, including the amount of excise tax imposed under Section 142, and the amount of the value added tax imposed under Title IV, both of the NIRC, at which locally manufactured or imported cigars and cigarettes are offered for sale to the wholesalers or distributors as fixed by the manufacturer or importer and registered with the Bureau of Internal Revenue plus a mark up of twenty percent (20%) of such price.

The twenty percent (20%) mark up and the minimum taxes provided in this R.A. 7654 shall be automatically increased in 1996 by ten percent (10%).

2.2 Actual manufacturer's or importer's wholesale price. — Means the price at which the purchaser actually pays or is obligated to pay to the manufacturer or importer in consideration of the sale, barter, or exchange of cigars and cigarettes.

2.3 Wholesaler/distributor of Purchaser. — Means any person, natural or juridical, with whom and in which the manufacturer or importer has no proprietary interest, directly or indirectly, who purchases cigars/cigarettes from a manufacturer for purposes of resale or subsequent distribution.

2.4 Brand of cigars/cigarettes. — Means such brand which has been duly registered with the Bureau of Internal Revenue as required by these Regulations.

2.5 New brand of cigars/cigarettes. — Means such brand of cigars/cigarettes registered with the Bureau of Internal Revenue after May 31, 1993.

2.6 Variant defined. — A variant is a brand of cigars/cigarettes bearing the same name of an existing registered brand, with comparable quality, blend, and cost of production as the main brand. (Example, A regular "X" brand manufactured as "X" light, "X" menthol, "X" filter, etc.)

SECTION 3. Excise Taxes. —

a Cigars. — There shall be levied, assessed and collected on cigars a tax of ten percent (10%) of the constructive manufacturer's or importer's wholesale price or the actual manufacturer's or importer's wholesale price, whichever is higher.

b Cigarettes packed by hand. — There shall be levied, assessed and collected on cigarettes packed by hand a tax of fifteen percent (15%) of the constructive manufacturer's wholesale price or the actual manufacturer's wholesale

price, whichever is higher.

c Cigarettes packed by machine. — There shall be levied, assessed and collected on cigarettes packed by machine a tax at the rates prescribed below based on the constructive manufacturer's wholesale price or the actual manufacturer's wholesale price, whichever is higher.

- On locally manufactured cigarettes which are currently classified and taxes at fifty-five percent (55%) or the exportation of which is not authorized by contract or otherwise, fifty-five percent (55%) provided that the minimum tax shall not be less than Five pesos (P5.00) per pack.

- On other locally manufactured cigarettes, forty-five percent (45%) provided that the minimum tax shall not be less than Three pesos (P3.00) per pack.

Duly registered or existing brands of cigarettes or new brands thereof packed by machine shall only be packed in twenties.

When the registered manufacturer's wholesale price or the actual manufacturer's wholesale price whichever is higher of existing brands of cigarettes, including the amounts intended to cover the taxes, of cigarettes packed in twenties does not exceed Four pesos and eighty centavos (P4.80) per pack, the rate shall be twenty percent (20%).

A variant of an existing brand of cigars or cigarettes that shall be manufactured after the effectivity of R.A. 7654 (3 July 1993) shall be taxed at the same level as the main brand regardless of its declared wholesale price.

Any new brand of cigars or cigarettes as defined in Section 2.5 with comparable quality, blend, cost of production and other relevant facts as existing brands and with a registered wholesale price of Three pesos (P3.00) or more per pack, which shall be manufactured after the effectivity of R.A 7654 (3 July 1993) shall be taxed at the highest rate regardless of its declared wholesale price.

d Imported cigarettes. — If the cigarettes are of foreign manufacture, regardless of the contents per pack, there shall be levied, assessed and collected a tax of fifty-five percent (55%) of the constructive importer's wholesale price or the actual importer's wholesale price, whichever is higher.

#### SECTION 4. Computation of Excise Tax.

##### 4.1 On locally manufactured cigars and cigarettes. —

#### **ILLUSTRATION:**

(a) Compute the amount of excise tax due on one (1) case of "XXX CIGARETTES" containing fifty (50) cartons often (10) packs each carton. These are locally manufactured cigarettes, packed by machine, and taxable under the ad valorem tax rate of fifty-five percent (55%). It is registered with the BIR for sale, at wholesale, at P10.00 per pack. The actual wholesale price at the time of removal from the place of production is, however, already at P11.00 per pack.

#### **COMPUTATIONS:**

- Compute the constructive wholesale price thereof per pack;
- Compare the same with the actual wholesale price thereof;
- Apply whichever is the higher amount;
- Compute the excise tax based on the said higher amount and;

- Compare the tax amount with the floor tax;
- Apply whichever is the higher tax amount as the tax due per pack.

#### 4.1.1. Computation of constructive wholesale price/pack:

Wholesale price

per BIR registration

P10.00/pack

Add: 20% mark-up

2.00

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Constructive

Wholesale Price

P12.00/pack

Tax due thereon (55%)

P 6.60

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Actual wholesale price

P11.00

Tax due thereon (55%)

P 6.05

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Floor tax per pack

P 5.00

In this case, since applying the tax rate on the manufacturer's constructive wholesale price of P=12.00 per pack results in a higher tax take, the determination of the ad valorem tax for one case of cigars/cigarettes to be removed from factory premises shall be based on the constructive wholesale price.

#### 4.1.2 Computation of the Ad valorem Tax:

50 cartoons multiplied by 10 packs 500 packs

per carton

500 packs multiplied 6,000.00

by P12/pack

Tax due thereon (P6,000.00 multiplied by 55%) P3,300.00

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(b) Compute the amount of excise tax due on one (1) case of "YYY Cigarettes" containing fifty (50) cartons of ten (10) packs per carton. These are locally manufactured cigarettes packed by machine and taxable at the rate of 55%. The minimum tax shall not be less than P5.00 per pack. The registered wholesale price per pack is P7.50 but the actual manufacturer's wholesale price is P8.50 per pack.

### COMPUTATION

Take the higher amount as tax base which is P9.00 (P7.50 + 20% thereof = constructive manufacturer's wholesale price).

#### COMPUTATION OF EXCISE TAX DUE:

Constructive Price per Pack

P9.00

Times Tax Rate

55%

Excise Tax Due Per Pack

P4.95

Floor Tax Per Pack

P5.00

NOTE: Apply the higher tax in the computation of excise tax due.

Total number of packs in one case

500

Multiplied by applicable tax per pack

P5.00

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Excise (Specific) Tax due thereon

P2,500.00

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4.2 On imported cigarettes. — The ad valorem tax shall be computed based on the constructive importer's wholesale price or the actual importer's wholesale price, whichever is higher. No floor tax is considered in the computation of excise tax pertaining to imported cigarettes.

**ILLUSTRATION:**

"Y CORPORATION", a domestic corporation, is a duly BIR-registered importer of "ABC CIGARETTES". Its BIR-registered wholesale price for the said imported brand of cigarettes is at P25.00 per pack.

Compute the ad valorem tax due if Y CORPORATION imported 20 cases of "ABC CIGARETTES", each case containing fifty (50) cartons of ten (10) packs per carton. At the time of importation, Y CORPORATION'S actual wholesale price is P29.00 per pack.

**COMPUTATIONS:****4.2.1 Computation of constructive wholesale price:**

Wholesale price

per BIR registration P25.00/pack

Add: 20% mark-up 5.00

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CONSTRUCTIVE

WHOLESALE PRICE P30.00/pack

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In this case, the constructive wholesale price of P30.00 per pack shall be taken because it is higher in amount compared with the actual wholesale price of only P29.00 per pack.

**4.2.2 Computation of the Ad Valorem tax:**

20 cases multiplied

by 50 cartons/case

1,000 cartons

1,000 cartons multiplied

by 10 packs/carton

10,000 packs

10,000 packs multiplied

by P30/pack

P300,000.00

Tax due thereon

(P300,000 multiplied by 55%)

P165,000.00

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**SECTION 5. Accrual and Payment of Excise Taxes on Cigars and Cigarettes**

5.1 When tax accrues. — This tax accrues at the time of removal of the cigars/cigarettes from the place of production. In case of importation, the tax accrues at the time of removal from the custody of the Bureau of Customs.

5.2 Locally manufactured. — The excise taxes on cigars and cigarettes shall be paid upon the removal thereof from the manufacturer's place of manufacture or production.

5.3 Imported. — The excise taxes on imported cigars and cigarettes shall be paid upon the removal thereof from the custody of the Bureau of Customs.

5.4 Filing of Manufacturer's Sworn Statement. — Every manufacturer of cigarettes, cigars and other products of tobacco is required to file with the Commissioner daily, two sworn statements, one showing the quantity of raw materials such as leaf tobacco or partially manufactured tobacco and cigarette paper bobbins received by the factory and the total quantity of such raw materials used during the day's operations; the total quantity produced according to brands and tax classification; and two, the corresponding wholesale price thereof and the ad valorem tax payment made thereon. Attached to the second certificate shall be copies of the corresponding invoice of sale to the buyers of the cigarettes so removed indicating name, address and taxpayer's account number. Both sworn statements shall be signed by the owner if it is a single proprietorship, by the President or General Manager or their Attorney-in-fact, if it is a juridical entity and attested and confirmed as true and correct by the manufacturer's internal and/or external auditor.

A monthly summary of the herein-required Manufacturer's Sworn Statements duly certified by the external auditor of the manufacturer shall be submitted to the Commissioner of Internal Revenue or on before the 10th day of the succeeding month.

The criminal liability for any falsity or mis-declaration in the two sworn statements hereinabove provided for shall be the personal responsibility of the owner, president or general manager of the manufacturer concerned and the external auditor in the case of the monthly report.

5.5 Importer's Import Entry. — The importer shall file the import entry declaration on imported cigars and cigarettes as required by the rules and regulations of the Bureau of Customs and shall pay the excise tax thereon upon removal of the same from Customs custody.

#### SECTION 6. Sworn Declaration. —

6.1 Manufacturer's Sworn Declaration. — On or before the end of the year, or for every proposed registration of a new brand of cigars/cigarettes, the manufacturer shall submit a sworn declaration (BIR Form No. 31.03) showing the following information:

- Name, address, TIN and Assessment number of the manufacturer;
- Name of cigars/cigarettes brands;
- Name of the new brand of cigars/cigarettes;
- Registered wholesale price.
- Production costs, e.g., material, labor, overhead, and tax burdens.

6.2 Amended sworn declaration on registered wholesale price. — The manufacturer shall file an amended sworn declaration on the registered wholesale price of any brand of cigars/cigarettes whenever there is change on the actual wholesale price thereof provided, however, that no reduction or undervaluation of the manufacturer's or importer's registered wholesale price shall be allowed.

The aforementioned amended sworn declaration shall be filed before the aforesaid brand/s of cigars/cigarettes be removed from the place of manufacture or production for sale to wholesalers/distributors at the new registered wholesale price.

6.3 Importer's Sworn Declaration. — Any person first engaging in the business of importing cigars/cigarettes shall file with the Commissioner or his duly authorized representative a sworn declaration on the (a) brand/s of cigars/cigarettes to be imported, and (b) on the wholesale price thereof.

6.4 Verification of Sworn Declaration. — The excise tax shall be computed based on the sworn declaration: Provided, That the Commissioner of Internal Revenue or his duly authorized representative may determine its correctness and/or accuracy; and Provided further, That the Commission of Internal Revenue or his duly authorized representative may, for this purpose, examine, and/or require the production of the manufacturer's or importer's books or other such documents from which the accuracy and correctness of the sworn declaration may be determined: and Provided finally, That in case it is determined that the sworn declaration does not accurately and correctly reflect the price of the cigars/cigarettes, the taxpayer shall be assessed the deficiency excise tax inclusive of 25% surcharge and 20% interest per annum.

SECTION 7. Records to be Kept, or Control Measures to be Observed by the Manufacturers, Producers or Importers of Cigars and Cigarettes. — Manufacturers, producers or importers of cigars and cigarettes shall, in addition to other records required under existing Revenue Regulations for Internal Revenue Tax purposes, maintain the following records:

(a) Cigarette paper registry book showing, on the debit entries, the date the cigarette paper is received; the date of the authority issued by the Commissioner of Internal Revenue, the name and address of person from whom received; and the number, brand and color of bobbins or rolls received; showing also the length in meters of each. The credit entries of the cigarette paper registry book should contain information regarding the date of disposal or use of the cigarette paper; and the number, brand, and color of bobbins or rolls disposed of or used, showing also the length in meters of each.

b) Subsidiary books covering:

- Inventories of imported leaf tobacco showing its volume and value;
- Inventories of local leaf tobacco showing its volume and value;
- Cost of manufacture for each brand of cigarettes, and
- Inventories of cigarettes produced on a per brand basis showing their respective volumes and values.

7.1 The manufacturer shall reconcile the amount of excise tax paid on cigars and cigarettes removed from the place of manufacture or production during the taxable year employed for tax purposes with the gross sales reported for income tax purposes. In case of discrepancy, the delinquent excise tax account shall be collected from the manufacturer, inclusive of twenty five (25%) percent surcharge. The total of the tax plus the twenty five (25%) percent surcharge shall also be levied with twenty (20%) percent interest per annum computed from due date of the tax until the date of payment. The reckoning date of the delinquency interest shall be from the date the manufacturer changed his wholesale price for the cigarettes sold without, however, amending his sworn declaration on the constructive wholesale price thereof. Should the manufacturer refuse to disclose the true date of the undeclared change in wholesale price, or in the absence of evidence showing the same, the interest shall be computed on the basis of the best evidence obtainable from which the date of change in wholesale price may be determined [such as, but not limited to, invoices, statements of persons with personal knowledge, price tags, etc.]

7.2 If at any time it is determined by the Bureau of Internal Revenue that the wholesaler/distributor or purchaser does not fall under the definition stated in Sec. 2.3, the tax shall be computed at the selling price of such wholesaler/distributor or purchaser.

SECTION 8. Incremental Revenue Allotment. — From the incremental revenue to be generated under and by virtue of Republic Act No. 7654 revising the excise tax base the following amounts shall be allocated and disbursed, to wit:

a Fifty percent (50%) of the increment in total revenue collected under this Act for a period of one (1) year from its effectivity shall be allocated and disbursed solely for purposes of providing emergency productive employment to workers displaced by the present electricity power crisis.

b Twenty-five (25%) of the increment in total revenue collected in 1995 shall be collected and segregated as a trust fund to be disbursed solely for funding the National Health Insurance Program as may hereafter be mandated by law.

c The incremental revenue collected under this Act shall be excluded from the revenue base as provided under Republic Act No. 7171.

SECTION 9. Unlawful Practices — (a) Reduction or undervaluation of the manufacturer's or importer's registered wholesale price.

(b) Any violation of Section 1 of R.A. 7654 which will reduce the excise tax imposed therein, or the payment thereof.

(c) Importation or manufacture of cigarette paper without first securing the required permit from the Commissioner of Internal Revenue.

(d) Willful misdeclaration or misrepresentation by the manufacturer or importer in his or its sworn statement herein required of any pertinent data or information.

(e) Any downward reclassification, reduction or undervaluation of the categories of any existing brand of cigars and cigarettes duly registered with the Bureau of Internal Revenue at the time of the effectivity of R.A. No. 7654.

SECTION 10. Civil and/or Criminal Penalties. —

(a) Any manufacturer or importer who, in violation of Section 1 of R.A. No. 7654, knowingly misdeclares or misrepresents in his or its sworn declaration any pertinent data or information or reduces or undervalues or downgrades the classification of any existing brand of cigars and cigarettes duly registered with the Bureau of Internal Revenue at the time of the effectivity of R.A. No. 7654 shall, upon discovery, be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as manufacturer or importer of cigars or cigarettes.

(b) Any corporation, association, or partnership liable for any of the acts or omissions in violation of Section 1 of R.A. No. 7654 shall be fined treble the amount of deficiency taxes, surcharges, and interests which may be assessed pursuant to the aforesaid Section.

(c) Any person liable for any of the acts or omissions prohibited under Section 1 of R.A. No. 7654 shall be criminally liable and penalized under Section 253 of the National Internal Revenue Code.

(d) Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.

e) If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence without further proceedings for deportation.

SECTION 11. Repealing Clause. — The provision of any Internal Revenue issuance or issuances which is inconsistent with any of the provision of these Revenue Regulations shall be considered repealed, amended, or modified accordingly.

SECTION 12. Effectivity. — These Revenue Regulations shall take effect immediately.

(Sgd.) ERNEST C. LEUNG

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Acting Secretary of Finance

Commissioner of Internal Revenue

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