

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act Relating to Uncollectible Cigarette and Tobacco Taxes

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA §4366-A, sub-§4-B is enacted to read:

4-B. Credit for worthless account. Tax paid by a licensed distributor pursuant to this section with regard to stamps affixed to cigarettes sold to a retailer on credit for which payment has not been received may, if and to the extent that the account is charged off as uncollectible on the books of the distributor, be credited against the amount of tax due for stamps purchased subsequently by the distributor.

The credit allowed by this subsection is allowed only for debts charged off on or after July 1, 2007 and the credit must be claimed within one year of the charge-off. If a licensed distributor subsequently collects all or part of a debt with respect to which the distributor has claimed a credit under this subsection, the distributor shall remit the amount collected, to the extent of the credit, to the assessor within 60 days or upon the distributor's next purchase of cigarette tax stamps, whichever occurs sooner.

For the purposes of determining eligibility for a credit under this subsection, a partial payment by a payor to a distributor must be chronologically applied to the earliest debt arising from taxes imposed under this chapter and chapter 704 that is owed by that payor before the payment is applied to any other debt owed by the payor to the distributor.

A credit claimed pursuant to this subsection must be made on a form prescribed and furnished by the assessor and must include:

- A. A copy of the original invoice documenting the sale of cigarettes to the retailer;
- B. Evidence acceptable to the assessor that the cigarettes described in the invoice were delivered to the retailer that ordered them;
- C. Evidence acceptable to the assessor that the retailer who ordered and received the cigarettes did not pay the distributor for the cigarettes and that the distributor used commercially reasonable collection practices in attempting to collect the debt; and
- D. Any other information reasonably required by the assessor.

Sec. 2. 36 MRSA §4404, as amended by PL 2005, c. 627, §10, is repealed and the following enacted in its place:

§ 4404. Returns; payment of tax and penalty; credits

1. Generally; monthly reports; records. Every distributor subject to the licensing requirement of section 4402 shall on or before the last day of each month submit, on a form prescribed and furnished by the State Tax Assessor, a report together with payment of the tax due under this chapter stating the quantity and the wholesale sales price of all tobacco products held, purchased, manufactured, brought in or caused to be brought in from outside the State or shipped or transported to retailers within the State during the preceding calendar month. The monthly report must contain such further information as the assessor may require. Every distributor shall keep complete and accurate records at its principal place of business to substantiate all receipts and sales of tobacco products.

2. Credits allowed. A licensed distributor is entitled to a credit against tobacco taxes paid as follows.

A. A licensed distributor that has paid tax on tobacco products that are returned to a manufacturer because they have become unfit for use, sale or consumption is entitled to a credit for that tax on a subsequent return upon receipt of the credit notice from the original supplier. The credit allowed by this paragraph must be claimed on a form prescribed and furnished by the assessor and must be submitted to the assessor within 90 days of the return of the unsalable tobacco products to the manufacturer.

B. A licensed distributor that has paid tax on tobacco products that are sold to a retailer on credit for which payment has not been received is entitled to a credit for that tax to the extent that the account is charged off as uncollectible on the books of the distributor. The credit allowed by this paragraph is allowed only for debts charged off on or after July 1, 2007 and the credit must be claimed within one year of the charge-off. If a licensed distributor subsequently collects all or part of a debt with respect to which the distributor has claimed a credit under this paragraph, the distributor must remit the amount collected, to the extent of the credit, to the assessor on its next monthly return. For the purposes of determining eligibility for a credit under this paragraph, a partial payment by a payor to a distributor must be chronologically applied to the earliest debt arising from taxes imposed under chapter 703 and this chapter that is owed by that payor before the payment is applied to any other debt owed by the payor to the distributor.

A credit claimed pursuant to this paragraph must be made on a form prescribed and furnished by the assessor and must include:

- (1) A copy of the original invoice documenting the sale of tobacco products to the retailer;
- (2) Evidence acceptable to the assessor that the tobacco products described in the invoice were delivered to the retailer that ordered them;
- (3) Evidence acceptable to the assessor that the retailer who ordered and received the tobacco products did not pay the distributor for the tobacco products and that the distributor used commercially reasonable collection practices in attempting to collect the debt; and

(4) Any other information reasonably required by the assessor.

3. Unlicensed distributors. A person who is not a distributor licensed pursuant to this chapter who imports, receives or otherwise acquires tobacco products for use or consumption in the State from a person other than a licensed distributor shall file, on or before the last day of the month following each month in which tobacco products were acquired, a return on a form prescribed by the assessor together with payment of the tax imposed by this chapter at the rate provided in section 4403. The return must report the quantity of tobacco products imported, received or otherwise acquired from a person other than a licensed distributor or retailer during the previous calendar month and additional information the assessor may require.

SUMMARY

This bill provides a mechanism for distributors of tobacco products and cigarettes who pay the cigarette tax up front to receive a credit for the tax paid by them on products for which the distributor is not paid and the distributor has been unable to reclaim.