

Ken Lawson, Secretary

Rick Scott, Governor

MEMORANDUM

TO: **Licensed Distributors of Tobacco Products**

FROM: **Ben Pridgeon**
Chief of Bureau of Auditing

SUBJECT: **Tax Matters Regarding Homogenized Tobacco Wrap Products**

DATE: **April 11, 2016**

On April 6, 2016, the First District Court of Appeal affirmed an administrative determination that homogenized tobacco wrap products, otherwise known as “blunt wraps,” are not loose tobacco and do not qualify as tobacco products for tax assessment purposes under current Florida law. **Based on the court’s opinion, the Division of Alcoholic Beverages and Tobacco will no longer assess excise taxes or surcharge on homogenized tobacco wrap products.**

The Division has prepared the frequently asked questions below to assist your business in understanding the updated requirements and procedures applicable to your licensed activities in Florida following this court decision.

What is a homogenized tobacco wrap product as considered by the First District Court of Appeal’s recent opinion?

Homogenized tobacco wraps, like rolling papers, are designed to be used as the outer wrappers of homemade cigars. Unlike whole leaf wraps, homogenized wraps combine tobacco, wood pulp, and other materials into a manufactured product that is distinct, cohesive and uniform. Homogenized wraps appear uniform – often like coarse paper – and are generally cut to a specific, predetermined shape.

How will the Division’s assessments of these products change following the court’s opinion?

Effective April 6, 2016, the Division will no longer assess excise taxes or surcharge on homogenized tobacco wrap products. Distributors shall not include homogenized tobacco wrap products brought or caused to be brought into Florida for sale, or made manufactured, or fabricated in Florida for sale in the state, on the monthly return required pursuant to section 210.55, Florida Statutes.

Whole leaf, non-homogenized tobacco products were not analyzed by the court. Accordingly, licensed distributors must continue to report whole leaf non-homogenized tobacco wrap products for purposes of taxation through the required monthly return.

How will the Division address outstanding assessment matters which preceded the court’s opinion?

The Division will dismiss any outstanding assessment which solely concerns homogenized tobacco wrap products. If the outstanding assessment concerns both homogenized tobacco wrap products and tobacco products which remain subject to

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excise tax and surcharge, the Division will revise the assessment and provide an updated notice of assessment to the licensed distributor.

How do I know whether the product I am distributing is a homogenized tobacco wrap product or a whole leaf, non-homogenized tobacco product?

Licensed distributors should consider the composition of the product and seek clarification from the product manufacturer if necessary. In cases of uncertainty regarding the product composition, the Division will contact the taxpayer for relevant product information such as product composition.

What license is required in Florida for a distributor or vendor who sells only homogenized tobacco wrap products if the products do not qualify as tobacco products for tax assessment purposes?

Distributors and vendors dealing only in homogenized tobacco wrap products must obtain the tobacco wholesale dealer permit or the retail tobacco dealer permit, respectively, to engage in the sale of these products in Florida. While the products do not qualify as tobacco products for tax assessment purposes under chapter 210, Florida Statutes, the products remain within the scope of tobacco products defined in chapter 569, Florida Statutes, as products made in whole or in part from tobacco leaves.

As necessary, the Division will continue to post information regarding these updates on the Division's website or through the Electronic Data Submission system utilized for monthly returns. In the meantime, please contact the Division's district office serving your area for further assistance regarding this matter or other tax and surcharge inquiries related to tobacco products.

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