

**11 GCA FINANCE & TAXATION
CH. 6 TOBACCO CONTROL ACT OF 2006**

**CHAPTER 6
TOBACCO CONTROL ACT OF 2006**

2017 NOTE: Section numbers in this chapter were renumbered to adhere to the Compiler's general codification scheme pursuant to authority granted by 1 GCA § 1606.

- Article 1. General Provisions.
- Article 2. Licenses.
- Article 3. Issuance of Licenses.
- Article 4. Sale or Distribution to Minors Prohibited.
- Article 5. Enforcement.
- Article 6. Prohibition on Importation.
- Article 7. Cigarette Stamp Tax Law.
- Article 8. Stamping of Cigarettes.

**ARTICLE 1
GENERAL PROVISIONS**

2017 NOTE: Past publications of the GCA included §§ 6105, 6108, and 6115; however, these provisions were repealed by P.L. 29-002:V:1 (May 18, 2007).

- § 6101. Title.
- § 6102. Definitions.
- § 6103. Applicability of Commercial Licenses Provisions and Requirements.

§ 6101. Title.

This Chapter shall be known and cited as the 'Tobacco Control Act of 2006.'

SOURCE: Added by P.L. 24-078:3 (Oct. 15, 1998) as § 6100. Repealed and reenacted by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6102. Definitions.

Unless the context otherwise requires, the definitions set forth herein shall govern the construction and interpretation of this Chapter.

- (a) 'Director' means the Director of Revenue and Taxation.

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(b) 'License' means Retail License and Wholesale License for sales of tobacco products, as defined under this Section.

(c) 'Minor' means any person under eighteen (18) years of age.

(d) 'Person' means any individual, company, corporation, firm, partnership, organization, estate, trust, limited liability company, limited liability partnership or other legal entity.

(e) 'Retail' means the sale of tangible personal property for consumption or use by the purchaser and not for resale.

(f) 'Retail License' means a license issued by the Director of Revenue and Taxation for the retail sale of tobacco products or sale through a vending machine.

(g) 'Tobacco product' means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other means of ingestion.

(h) 'Vending Machine' means any mechanical, electrical or electronic device that, on insertion of money, tokens or any other form of payment, automatically dispenses tobacco products.

(i) 'Wholesale' means the importation into or purchase on Guam from a manufacturer or other wholesale licensee of tangible personal property not for consumption or use by the purchaser but solely for resale or retail wholesale or retail sellers.

(j) 'Wholesale License' means a license issued by the Director of Revenue and Taxation for the wholesale sale of tobacco products to retailers.

(k) 'Bona fide Importer/Exporter' means one having no predisposition otherwise in having possession of such imported or exported tobacco.

(l) Electronic cigarettes, also known as e-cigarettes,

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are battery-operated products designed to deliver nicotine, flavor, and other chemicals. They turn nicotine, which is highly addictive, and other chemicals into a vapor that is inhaled by the user. For the purposes of this Chapter, and the prohibition pertaining solely to a person under the minimum age of legal access pursuant to §§ 6401 and 6406 of Article 4 of this Chapter, tobacco products shall also be deemed to include and shall be similarly applicable to electronic cigarettes, including any refill, cartridge, and any other component of an electronic cigarette.

SOURCE: Added by P.L. 24-078:3 (Oct. 15, 1998) as § 6101. Repealed and reenacted by P.L. 28-170:1 (Jan. 29, 2007). Subsection (k) added by P.L. 31-090:1 (Sept. 30, 2011). Subsection (l) added by P.L. 34-001:1 (Mar. 23, 2017), effective Jan. 1, 2018. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

2017 NOTE: P.L. 34-001:1 erroneously indicated that it was amending subsection (l); however, subsection (l) did not previously exist in law, and therefore was added by P.L. 34-001. This manifest error is corrected pursuant to 1 GCA § 1606.

§ 6103. Applicability of Commercial Licenses Provisions and Requirements.

Provisions and requirements of Chapters 70 and 72 of Title 11 of the Guam Code Annotated applicable to commercial licenses shall govern this Chapter in matters and provisions not specifically provided in this Chapter and when relevant.

SOURCE: Added by P.L. 24-078:3 (Oct. 15, 1998) as § 6102. Repealed and reenacted by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

ARTICLE 2
LICENSES

- § 6201. License: Required.
- § 6202. Same: Classes and Fees.
- § 6203. Same: Term.
- § 6204. Same: Renewal.
- § 6205. Same: Vending Machines.
- § 6206. Same: Multiple.

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- § 6207. License: Privilege: Limitation.
- § 6208. Same: Limitation.
- § 6209. Display of License.

§ 6201. License: Required.

(a) It shall be a violation of this Chapter for any person to wholesale tobacco products without first obtaining a valid wholesale tobacco license.

(b) It shall be a violation of this Chapter for any person to retail tobacco products without first obtaining a valid retail tobacco license for each premises or vending machine in which tobacco products are sold.

(c) Any person directly or indirectly engaged in the business of manufacturing tobacco products may not retail tobacco products, directly or indirectly, or hold a retail or wholesale license. It shall not be a violation of this Chapter for any such person engaged in the business of manufacturing tobacco products to import, export or sell for resale tobacco products to a duly licensed tobacco wholesaler.

SOURCE: Added by P.L. 24-078:3 (Oct. 15, 1998) as § 6103. Repealed and reenacted as § 6200 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6202. Same: Fees.

The Director is authorized to issue the following classes of licenses at the following fees, which shall be paid by the applicant at the time of application:

- (a) Annual Retail License: \$ 100.00;
- (b) Annual Vending Machine
Retail License: \$ 40.00;
- (c) Annual Wholesaler License: \$ 1,000.00.

SOURCE: Added by P.L. 24-078:3 (Oct. 15, 1998) as § 6108. Repealed and reenacted as § 6201 by P.L. 28-170:1 (Jan. 29, 2007). Amended by P.L. 29-002:V:1:12 (May 18, 2007), renamed "Same: Fees." Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

2017 NOTE: P.L. 29-002:V:1:12 (May 18, 2007) contained an erroneous

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reference to § 6108. This manifest error was corrected pursuant to 1 GCA § 1606.

§ 6203. Same: Term.

Licenses shall be issued on an annual basis and shall expire on the thirty-first (31st) day of March following the date of issuance. The full fee shall be paid for any fraction of the year for which a license is issued.

SOURCE: Added by P.L. 24-078:3 (Oct. 15, 1998) as § 6104. Repealed and reenacted as § 6202 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6204. Same: Renewal.

(a) A licensee may renew his license at the expiration thereof by the payment of the annual license fee set forth in this Chapter and by filing a renewal application. A licensee who fails to renew his license on or before the thirtieth (30th) day of June of each year shall be assessed a late fee of Fifty Dollars (\$50.00) and a penalty of One Dollar (\$1.00) per each calendar day he is delinquent, which penalty shall become part of the renewal fee, and his license shall be automatically suspended, unless all payments for annual fee, late fee and the daily penalty are paid in full on or before the thirty-first (31st) day of July of that year, in which case the license may be reinstated by the Director immediately. Unless the license is so reinstated, it is automatically revoked and the Director shall not issue a license except upon a new application. Any licensee who fails to renew his or her license on or before the thirty-first (31st) day of July shall be required to discontinue sales of tobacco products.

(b) Additionally, any licensee who fails to renew his or her license on or before the thirty-first (31st) day of July shall be subject to an injunction issued by the Superior Court of Guam and to prosecution under Title 11 GCA § 70119. Such failure to renew while continuing the operation of the business shall constitute refusal and failure to obtain a license under the provisions of Division 3 of this Title.

SOURCE: Added by P.L. 24-078:3 (Oct. 15, 1998) as § 6105. Repealed and reenacted as § 6203 by P.L. 28-170:1 (Jan. 29, 2007). Amended by P.L. 29-002:V:1:13 (May 18, 2007). Renumbered to adhere to the

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Compiler's general codification scheme pursuant to 1 GCA § 1606.

2017 NOTE: P.L. 29-002:V:1:13 (May 18, 2007) contained an erroneous reference to § 6105. This manifest error was corrected pursuant to 1 GCA § 1606.

Subsection designations added/altered pursuant to the authority of 1 GCA § 1606.

§ 6205. Same: Vending Machines.

(a) The owner of a vending machine shall obtain a retail license and pay the fee required for each vending machine.

(b) The owner of a vending machine who violates Subsection (a) of this Section shall be fined Fifty Dollars (\$50.00) per violation.

SOURCE: Added by P.L. 24-078:3 (Oct. 15, 1998) as § 6106. Repealed and reenacted as § 6204 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to the authority of 1 GCA § 1606.

§ 6206. Same: Multiple.

A person applying for retail licenses to operate more than one (1) premise or more than one (1) vending machine shall obtain a separate retail license for each premise and each vending machine, and shall pay the fee prescribed for each premise and each machine.

SOURCE: Added by P.L. 24-078:3 (Oct. 15, 1998) as § 6107. Repealed and reenacted as § 6205 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6207. License: Privilege: Limitation.

A licensee is limited to the privileges conferred by the license and is not authorized to exercise any other privileges.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6206. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6208. Same: Limitation.

A licensee is limited to the premises for which the license is issued and is not authorized to exercise the privileges conferred by the license at other premises.

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SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6207. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6209. Display of License.

(a) A licensee for sales of tobacco products, excluding sales through vending machines, shall prominently display the license on each licensed premise.

(b) The licensee for vending machines sales of tobacco products shall affix a retail license decal furnished by the Director in a prominent position on each vending machine.

(c) Any licensee who violates this Section shall be fined Fifty Dollars (\$50.00) per violation.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6208. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

ARTICLE 3
ISSUANCE OF LICENSES

- § 6301. License: Restrictions.
- § 6302. Same: Same: Real Party in Interest.
- § 6303. Same: Same: Persons Under the Age of Twenty-one (21) Years.
- § 6304. Same: Same: Prior Revokee.
- § 6305. Same: Same: Unfit Person.
- § 6306. Same: Application.
- § 6307. Application: Investigation.
- § 6308. Penalties for Selling Tobacco Products without a License.

§ 6301. License: Restrictions.

(a) Except in the case of a vending machine retail license, the Director shall not issue a license to any person who then holds a license of another class.

(b) No wholesaler within or outside of Guam, nor any officer, thereof, nor any subsidiary, affiliate or other entity in

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which a wholesaler holds any ownership or interest, directly or indirectly by stock ownership, interlocking directors, trusteeship, loan, mortgage or lien on any real or personal property, shall hold any tobacco license other than a wholesaler's license in Guam.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6300. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6302. Same: Same: Real Party in Interest.

The Director shall not issue a license of any class to an applicant who is not the real party in interest.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6301. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6303. Same: Same: Persons Under the Age of Twenty-one (21) Years.

The Board *shall not* issue a license of any class to a person under twenty-one (21) years of age.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6302, entitled "Same: Same: Minors." Amended by P.L. 34-001:2 (Mar. 23, 2017), effective Jan. 1, 2018 pursuant to P.L. 34-001:4. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6304. Same: Same: Prior Revokee.

Except in the case of a license revoked for non-payment of a renewal fee, the Director shall not issue a license of any class to any person who held a license of any class which was revoked within a one (1) year period prior to the date of the application.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6303. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6305. Same: Same: Unfit Person.

The Director shall not issue a license of any class to any person the Director deems unfit to hold a license.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6304. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

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§ 6306. Same: Application.

An applicant for a license shall submit an application in writing to the Director, verified under oath and accompanied by the license fee.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6305. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6307. Application: Investigation.

Upon receipt of an application for a license and the license fee, the Director shall investigate whether the applicant and the premises qualify for a license.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6306. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6308. Penalties for Selling Tobacco Products Without a License.

In addition to any other penalties and fines that may be levied, including those under § 6405 and § 70120 of this Title, any person who violates § 6201 shall be guilty of a misdemeanor as set forth in § 70119 of this Title, and punished as follows:

(a) in the case of a first violation, by a fine of Two Hundred Fifty Dollars (\$250.00);

(b) in the case of a second violation, by a fine of Five Hundred Dollars (\$500.00);

(c) in the case of three (3) or more violations, a fine of not less than One Thousand Dollars (\$1,000.00), nor more than Two Thousand Five Hundred Dollars (\$2,500.00), and the person shall not be eligible to apply for a license for five (5) years after the date of the assessment of a fine.

SOURCE: Added by P.L. 24-078:3 (Oct. 15, 1998) as § 6114. Repealed and reenacted as § 6307 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

2017 NOTE: Internal references were altered to reflect the renumbering.

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ARTICLE 4

**SALE OR DISTRIBUTION TO PERSONS UNDER
TWENTY-ONE (21) YEARS OF AGE PROHIBITED**

2017 NOTE: Article 4 amended by P.L. 34-001:3 (Mar. 23, 2017).
Pursuant to P.L. 34-001:4:

Effective Date; Application. This Act *shall* take effect
on January 1, 2018.

- § 6401. Sale or Distribution of Tobacco Products and Electronic Cigarettes to Persons Under Twenty-one (21) Years of Age Prohibited.
- § 6402. Acceptable Forms of Identification.
- § 6403. Display of Prohibition on Sales of Tobacco Products to Persons Under Twenty-one (21) Years of Age.
- § 6404. Licensee Responsible for Employee Actions.
- § 6405. Penalties for Selling or Distributing Tobacco Products to Persons Under Twenty-one (21) Years of Age.
- § 6406. Persons Under Twenty-one (21) Years of Age Prohibited from Possession, Use, and Purchase of Tobacco Products.
- § 6407. Tobacco Education for Persons Under Twenty-one (21) Years of Age.

§ 6401. Sale or Distribution of Tobacco Products and Electronic Cigarettes to Persons Under Twenty-One (21) Years of Age Prohibited.

(a) It *shall* be a violation of this Chapter for any person to sell or distribute tobacco products or electronic cigarettes to any person under twenty-one (21) years of age.

(1) It *shall not* be a violation of this Chapter for any person to refuse to sell or distribute tobacco products or electronic cigarettes to any person whom the seller or the distributor reasonably believes to be under twenty-seven (27) years of age, and who is unable to produce acceptable photographic identification and proof that he or she is over the age of twenty-one (21) years.

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(2) The sale or distribution of electronic cigarettes to any person under twenty-one (21) years of age, or its possession by such person, is prohibited and *shall* be regulated and enforced pursuant to this Chapter.

(3) Any provision of this Chapter applicable to the regulation and prohibition of the sale or distribution of tobacco products to any person under twenty-one (21) years of age, or possession by such person, *shall* be applicable to electronic cigarettes, and any other component of an electronic cigarette, and *shall* be regulated and enforced in the same manner as tobacco products, to include the applicability of all penalties and fines.

(b) Vending machines selling tobacco products or electronic cigarettes *shall* be located so that they are accessible only to persons over the age of twenty-one (21) years, or are under the constant, direct supervision and unobstructed line of sight of the person authorizing the installation or placement of the tobacco or electronic cigarette vending machine upon the premises he or she manages or otherwise controls, or his or her agent or employee.

(1) Said supervising person, who *must* be at least twenty-one (21) years of age, *shall* ensure that persons under twenty-one (21) years of age do not purchase tobacco products or electronic cigarettes from vending machines.

(2) A person who authorizes the installation or placement of the tobacco or electronic cigarette vending machine upon premises he or she manages, or otherwise controls, and who knows or should know that the tobacco or electronic cigarette vending machine will likely be used by persons under twenty-one (21) years of age, *shall* be liable if such persons purchase tobacco products or electronic cigarettes from said machines.

(c) A licensee or an employer may distribute tobacco products or electronic cigarettes to any employee who handles tobacco products or electronic cigarettes in the course of the commercial distribution or sale of the products.

(d) In any proceeding for the suspension or revocation of

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any license, and based upon a violation of this Section, proof that the defendant licensee or his or her agent or employee demanded and was shown an identification card before furnishing any tobacco product or electronic cigarette to any person under twenty-one (21) years of age *shall* be a defense to the charges.

SOURCE: Added by 24-278:3 (Oct. 15, 1978) as § 6110. Repealed and reenacted as § 6400 by P.L. 28-170:1 (Jan. 29, 2007). Amended by P.L. 34-001:3 (Mar. 23, 2017), effective Jan. 1, 2018 pursuant to P.L. 34-001:4. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

2017 NOTE: Subsection/subitem designations added/alterd pursuant to 1 GCA § 1606.

§ 6402. Acceptable Forms of Identification.

The following are the only acceptable instruments of identification as required by § 6401:

- (a) a valid unexpired driver's license issued by any state, territory or possession of the United States;
- (b) an official identification issued by the federal or a state government with the individual's photograph and signature;
- (c) an armed forces identification card;
- (d) a valid, unexpired passport; and
- (e) an alien registration receipt card (green card).

SOURCE: Added by P.L. 24-278:3 (Oct. 15, 1978) as § 6111. Repealed and reenacted as § 6401 by P.L. 28-170:1 (Jan. 29, 2007). Amended by P.L. 34-001:3 (Mar. 23, 2017), effective Jan. 1, 2018 pursuant to P.L. 34-001:4. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

2017 NOTE: Internal reference was altered to reflect the renumbering.

§ 6402. Display of Prohibition on Sales of Tobacco Products to Persons Under Twenty-one (21) Years of Age.

All licensees shall post notice that this Chapter prohibits the sale of tobacco products to persons under twenty-one (21) years of age.

- (a) In the case of a retail operation, notices *shall* be

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publicly and conspicuously displayed in the licensee's place of business in letters at least two inches (2") in height.

(b) In the case of vending machine, the licensee *shall* affix to the front of each vending machine a sign in letters at least one-half inch (1/2") in height.

(c) Any licensee who violates this Section *shall* be fined Fifty Dollars (\$50.00) per violation.

SOURCE: Added by P.L. 24-278:3 (Oct. 15, 1978) as § 6112. Repealed and reenacted as § 6402 by P.L. 28-170:1 (Jan. 29, 2007). Amended by P.L. 34-001:3 (Mar. 23, 2017), effective Jan. 1, 2018 pursuant to P.L. 34-001:4. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6404. Licensee Responsible for Employee Actions.

Acts or omissions of an agent or employee of a licensee that violate any provisions of this Chapter *shall* be deemed to be acts or omissions of the licensee.

SOURCE: Added by P.L. 24-278:3 (Oct. 15, 1978) as § 6113. Repealed and reenacted as § 6403 by P.L. 28-170:1 (Jan. 29, 2007). Amended by P.L. 34-001:3 (Mar. 23, 2017), effective Jan. 1, 2018 pursuant to P.L. 34-001:4. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§6405. Penalties for Selling or Distributing Tobacco Products to Persons Under Twenty-one (21) Years of Age.

(a) In addition to any other penalties and fines that may be levied, any person who violates § 6401 of this Chapter shall be penalized as follows:

(1) in the case of a first violation in any five (5) year period, the person shall be fined One Thousand Dollars (\$1,000.00) and *shall* be notified, in writing, of penalties levied for further violations;

(2) in the case of a second violation in any five (5) year period, the person *shall* be fined Two Thousand Dollars (\$2,000.00) and, in the case of a licensee, the license *shall* be suspended for ninety (90) days;

(3) in the case of a third violation in any five (5) year period, the person *shall* be fined Five Thousand Dollars

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(\$5,00.00) and, in the case of a licensee, the license *shall* be suspended for one hundred eighty (180) days;

(4) in the case of four (4) or more violations within any five (5) year period, the person *shall* be fined Ten Thousand Dollars (\$10,000.00) and, in the case of a licensee, the license *shall* be revoked. The revoked retailer *shall* be ineligible to apply for a new license for two (2) years after the effective date of the revocation.

(b) Failure to pay a fine levied under this Section within thirty (30) days of the date the fine becomes effective *shall* result in suspension of the licensee's license until such fines are paid.

(c) During any suspension or revocation of a license under this Section, the licensee *shall* not sell tobacco products and *shall* remove all tobacco products from all areas covered by the suspended license. In addition, any new application for a license to sell tobacco products while a licensee is suspended under this Section *shall* be denied.

(d) All tobacco products sold over the counter *shall* be displayed and located where they *shall* be inaccessible to persons under twenty-one (21) years of age. Any vendor who violates this provision *shall* pay a penalty of Two Hundred Fifty Dollars (\$250.00).

SOURCE: Added by P.L. 24-278:3 (Oct. 15, 1978) as § 6115. Repealed and reenacted as § 6404 by P.L. 28-170:1 (Jan. 29, 2007). Subsection (d) added by P.L. 29-002:V:1:14 (May 18, 2007). Amended by P.L. 34-001:3 (Mar. 23, 2017), effective Jan. 1, 2018 pursuant to P.L. 34-001:4. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

2017 NOTE: P.L. 29-002:V:1:14 (May 18, 2007) contained an erroneous reference to § 6115. This manifest error was corrected pursuant to 1 GCA § 1606.

Internal reference was altered to reflect the renumbering.

§ 6406. Persons Under Twenty-one (21) Years of Age Prohibited from Possession, Use and Purchase of Tobacco Products.

It *shall* be a violation of this Chapter for any person under twenty-one (21) years of age to use or be in possession of

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tobacco products or to attempt to purchase tobacco products using false identification.

SOURCE: Added by P.L. 24-278:3 (Oct. 15, 1978) as § 6116. Repealed and reenacted as § 6405 by P.L. 28-170:1 (Jan. 29, 2007). Amended by P.L. 34-001:3 (Mar. 23, 2017), effective Jan. 1, 2018 pursuant to P.L. 34-001:4. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6407. Tobacco Education for Persons under Twenty-one (21) Years of Age.

Any person under twenty-one (21) years of age who violates § 6406 of this Article shall attend an education program on tobacco products to include smoking cessation information administered by the Guam Behavioral Health and Wellness Center, the Department of Public Health and Social Services, the Department of Education, or other government agencies with similar programs approved by one of these agencies.

SOURCE: Added by P.L. 24-278:3 (Oct. 15, 1978) as § 6117. Repealed and reenacted as § 6406 by P.L. 28-170:1 (Jan. 29, 2007). Amended by P.L. 34-001:3 (Mar. 23, 2017), effective Jan. 1, 2018 pursuant to P.L. 34-001:4. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

2017 NOTE: Internal reference was altered to reflect the renumbering.

ARTICLE 5
ENFORCEMENT

- § 6501. Enforcement.
- § 6502. Notice.
- § 6503. Hearing.
- § 6504. Publication and Distribution of Laws and Rules.
- § 6505. Use of Collected Fees and Penalties for Youth Programs.
- § 6506. Youth Tobacco Education and Prevention Fund.
- § 6507. Report.

§ 6501. Enforcement.

The Director shall enforce this Chapter in cooperation with the Guam Behavioral Health and Wellness Center. Any person

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may register a complaint pursuant to this Chapter with the Director. The Director shall notify any establishment or individual of a complaint made pursuant to this Chapter and shall keep a record of that notification.

(a) The Director shall conduct random, unannounced inspections at retail sites and may enlist the assistance of persons who are between twelve (12) and seventeen (17) years of age, upon written consent of their parents or legal guardians. Participation in these enforcement activities by a minor shall not constitute a violation of § 6405 of this Chapter, and the minor is immune from prosecution and penalties, or under any other provision of law prohibiting the purchase of tobacco products by minors.

(b) The Director shall enact and publish guidelines for the use of minors in inspections conducted pursuant to this Section, that shall include, but not be limited to, all of the following:

(1) the Director may, upon written consent of their parents or legal guardians, enlist the services of minors who are between twelve (12) and seventeen (17) years of age in random inspections to determine if sales of cigarettes or other tobacco products are being made to minors;

(2) a photograph or video recording of the minor shall be taken prior to each inspection or shift of inspections and retained by the Director for the purpose of verifying appearances;

(3) the Director may use video recording equipment when conducting the inspections to record and document illegal sales or attempted sales;

(4) the minor, if questioned by the licensee or his agents about his or her age, shall state his actual age and shall present a true and correct identification if verbally asked to present it. The minor's failure to provide true and correct identification, if requested, shall be a defense to any action pursuant to this Chapter.

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(5) the minor shall be supervised of a regularly employed peace officer or an adult duly authorized by the Director during the inspection;

(6) following the sale or attempted sale, the peace officer or adult supervising the minor shall reenter the retail establishment and inform the seller of the random inspection and identify the minor to the seller; and

(7) failure to comply with the procedures set forth in this Section shall be a defense to any action brought pursuant to this Chapter.

SOURCE: Added by P.L. 24-278:3 (Oct. 16, 1998) as § 6120. Repealed and reenacted as § 6500 by P.L. 28-170 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

NOTE: Pursuant to P.L. 32-024:2 (May 6, 2013) which renamed the Department of Mental Health and Substance Abuse (DMHSA) to the Guam Behavioral Health and Wellness Center, all references to DMHSA were altered to the Guam Behavioral Health and Wellness Center pursuant to P.L. 32-024:4.

§ 6502. Notice.

Prior to the revocation or suspension of a license issued under this Chapter, the Director shall provide a notice to the defendant, via certified mail, return receipt requested. The notice shall contain the following information:

- (a) the name and title of the person issuing the notice;
- (b) the date on which the fine, suspension or revocation will become effective;
- (c) the reason for the fine, revocation or suspension;
- (d) that the licensee may request a hearing regarding the fine, revocation or suspension;
- (e) that the person must request a hearing in person or in writing via certified mail, return receipt requested, and received by the Director within ten (10) days after receipt of the notice; and
- (f) that failure to appear in person or through mail received by the Director within ten (10) days after receipt of

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the notice, or by the notice's return by the U.S. Postal Service, shall be a waiver of the right to a hearing and the fine, revocation or suspension will become effective on the date specified in the notice.

SOURCE: Added as § 6118 by P.L. 24-278:3 (Oct. 16, 1998). Repealed and reenacted as § 6501 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6503. Hearing.

Except as otherwise specifically provided for herein, the Director shall conduct any proceedings required by this Chapter in accordance with the Administrative Adjudication Law, and shall have all of the powers granted in said Law.

(a) Upon receipt of the request for a hearing as provided in § 6501, supra, a hearing shall be held before a Hearing Officer appointed by the Director in accordance with the Administrative Adjudication Law. The hearing shall be conducted within forty-eight (48) hours of receipt of the request, holidays, Saturdays and Sundays not included. The hearing may be set for a later day if the applicant or licensee so requests.

(b) At the hearing the applicant, defendant or licensee may contest the denial, fine, revocation or suspension.

(c) If the Hearing Officer finds that the applicant is not eligible for a license, the Hearing Officer shall declare the license application denied. If the Hearing Officer finds that the fine, suspension or revocation is in accordance with this Chapter, the fine, suspension or revocation shall take effect immediately. The action of the Hearings Officer is final.

(d) If the applicant or licensee does not appear at the scheduled hearing in person, or through a representative as allowed by the Hearing Officer, the Hearing Officer shall affirm the denial, fine, revocation or suspension of the licensee or applicant.

SOURCE: Added as § 6119 by P.L. 24-278:3 (Oct. 16, 1998). Repealed and reenacted as § 6502 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered pursuant to 1 GCA § 1606.

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§ 6504. Publication and Distribution of Laws and Rules.

The Director shall compile and provide a copy of the laws and rules concerning retail tobacco sales to every new licensee at no charge.

SOURCE: Added as § 6121 by P.L. 24-278:3 (Oct. 16, 1998). Repealed and reenacted as § 6503 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6505. Use of Collected Fees and Penalties for Youth Programs.

All fines and fees assessed and collected under this Chapter shall be distributed and deposited in the following manner by the Director on the final working day of the months of March, June, September and December of each year:

(a) thirty percent (30%) to the Department of Parks and Recreation Off-Island Sports Fund;

(b) twenty percent (20%) to the Health and Human Services Fund; and

(c) fifty percent (50%) to the Youth Tobacco Education and Prevention Fund.

SOURCE: Added as § 6122 by P.L. 24-278:3 (Oct. 16, 1998). Repealed and reenacted as § 6504 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6506. Youth Tobacco Education and Prevention Fund.

There is created, separate and apart from any other funds of the government of Guam, under the administration and control of the Director, the Youth Tobacco Education and Prevention Fund ('YTEPF'). YTEPF shall be held in an account or accounts at a Guam financial institution, or institutions, separate and apart from all other accounts and funds of the government of Guam, and shall not be subject to the transfer authority of *I Maga'lahaen Guahan*. One hundred percent (100%) of the funds in the YTEPF shall be used by the Guam Behavioral Health and Wellness Center for youth compliance monitoring and tobacco and drug prevention and education programs.

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SOURCE: Added as § 6123 by P.L. 24-278:3 (Oct. 16, 1998). Repealed and reenacted as § 6505 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

2013 NOTE: P.L. 32-024:2 (May 6, 2013) renamed the Department of Mental Health & Substance Abuse to the Guam Behavioral Health and Wellness Center. Reference to the Department of Mental Health & Substance Abuse changed to Guam Behavioral Health and Wellness Center pursuant to P.L. 32-024:4.

§ 6507. Report.

The Director shall report monthly to the Guam Behavioral Health and Wellness Center ('DMHSA') a list of all licenses granted and renewed, including the names and street addresses of the business or the location of the vending machines, the number of violations processed and the penalties imposed, and any other information that the Director and DMHSA agree upon.

SOURCE: Added as § 6124 by P.L. 24-278:3 (Oct. 16, 1998). Repealed and reenacted as § 6506 by P.L. 28-170:1 (Jan. 29, 2007). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

2013 NOTE: P.L. 32-024:2 (May 6, 2013) renamed the Department of Mental Health & Substance Abuse to the Guam Behavioral Health and Wellness Center. Reference to the Department of Mental Health & Substance Abuse changed to Guam Behavioral Health and Wellness Center pursuant to P.L. 32-024:4.

ARTICLE 6
PROHIBITION ON IMPORTATION

- § 6601. Who May Import.
- § 6602. Prohibitions.
- § 6603. Penalty.
- § 6604. Customs and Quarantine Forfeiture Fund. [Repealed.]

§ 6601. Who May Import.

(a) General Rule. Tobacco products may be brought into Guam from without Guam for delivery or use within Guam only if the tobacco products are imported by or consigned to a

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licensed wholesaler and if the importer is licensed with the Guam Department of Revenue and Taxation and recognized as a bonded bona fide importer/exporter of tobacco.

(b) Exemptions. Tobacco products satisfying the conditions of any of the following paragraphs shall not be subject to the requirements of Subsection (a) of this Section:

(1) Personal-use tobacco products

(A) Personal use tobacco products can only be imported via passenger baggage through the means of the A.B. Won Pat International Airport, the Andersen Air Force Base Terminal, and the J.D. Leon Guerrero Commercial Port of Guam via passenger and commercial vessels. Tobacco products arriving via air cargo, the Guam Main Postal Facility, or through any type of freight courier service shall not be deemed as personal cargo.

(B) There shall be a maximum of twelve (12) packages of tobacco products and one thousand (1000) cigarettes (five (5) cartons), not more than two hundred (200) of which acquired elsewhere than in such locations, within the returning residents tariff exemption from duty and taxes or per bona fide importer/exporter that can be imported into Guam via the entry means identified in § 6601(b)(1)(A) exemptions per month. This exemption shall be applied to all air and ocean passengers, to include any airline and vessel crewmembers.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6600. Amended by P.L. 31-090:2 (Sept. 30, 2011). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

2017 NOTE: Internal reference altered to reflect the renumbering.

§ 6602. Prohibitions.

The transportation or importation into Guam for delivery or use in Guam of tobacco products without payment of the tax provided by Chapter 26, Article 6, of this Code, or contrary to the provisions of Article 6, is hereby prohibited.

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SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6601. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606.

§ 6603. Penalty.

Whoever transports or imports into Guam for delivery or use in Guam tobacco products in violation of this Article shall be penalized as follows:

(a) in the case of a first violation, the person shall be guilty of a misdemeanor and may be fined not more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than one (1) year, or both;

(b) in the case of any subsequent violation, the person shall be guilty of a felony of the third degree and shall be fined not more than Ten Thousand Dollars (\$10,000.00) or imprisoned for not more than five (5) years, or both.

(c) Any individual who imports tobacco products outside the exemptions identified in this Article shall be imposed a fine of three (3) times the taxable assessment, which shall be determined using the tax rate established in § 26603 of Article 6, Chapter 26, Title 11, Guam Code Annotated, by the Officer of the Customs and Quarantine Agency at the port of entry. The commodity shall be seized, and the violator of this Section shall be fined an additional three (3) times the value of the current value of the commodity for the cost of storage, destruction, and administrative fees for tobacco exceeding the exemption pursuant to 9 GCA § 47.70. This fee shall be deposited in the Customs Local Forfeiture Account (CLFA).

(d) The Customs and Quarantine Agency shall maintain a database of all individuals who are in violation of this Section to determine and administer subsequent violation charges.

SOURCE: Added by P.L. 28-170:1 (Jan. 29, 2007) as § 6602. Subsection (c) and (d) added by P.L. 31-090:3 (Sept. 30, 2011). Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606. Subsection (c) amended by P.L. 36-036:3 (June 11, 2021).

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§ 6604. Customs and Quarantine Forfeiture Fund.

[Repealed.]

SOURCE: Added by P.L. 31-090:4 (Sept. 30, 2011) as § 6603. Renumbered to adhere to the Compiler's general codification scheme pursuant to 1 GCA § 1606. Repealed by P.L. 36-036:4 (June 11, 2021).

2021 NOTE: This provision was repealed by PL 36-036:4 (June 11, 2021). which also established the Customs Forfeiture Fund and Asset Forfeiture, codified at 5 GCA Chapter 73, Article 4.

2017 NOTE: Internal reference altered to reflect the renumbering.

Subsection designations added pursuant to 1 GCA § 1606.

**ARTICLE 7
CIGARETTE STAMP TAX LAW**

SOURCE: Entire article added by P.L. 34-055:1 (Oct. 14, 2017) as §§ 6700-6709, renumbered by the Compiler to §§ 6701-6710 pursuant to the authority of 1 GCA § 1606.

- § 6701. Legislative Findings and Intent.
- § 6702. Supplemental Definitions.
- § 6703. Proof of Taxation.
- § 6704. Records to be Kept.
- § 6705. Wholesaler and Retailer Requirements.
- § 6706. Inspection.
- § 6707. Appeals.
- § 6708. Reports.
- § 6709. Investigation.
- § 6710. Rules and Regulations.

§ 6701. Legislative Findings and Intent.

(a) *I Liheslaturan Guåhan* finds that Public Law 2-43, signed into law by Governor Ford Q. Elvidge on July 22, 1953, established the tobacco tax, which includes the tax on cigarettes.

(b) *I Liheslatura* finds that the current system of administering the tax on cigarettes relies upon voluntary compliance by the companies which sell cigarettes. While most companies will comply with the law in the course of their

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business, companies which do not, if not caught, would unfairly benefit.

(c) *I Liheslatura*, therefore, finds that a system which has good mechanisms of accountability will level the playing field, putting those companies which comply with the law in a more fair competitive position.

(d) *I Liheslatura* further finds that utilizing cigarette tax stamps will ensure that companies which comply with Guam's tobacco tax will not be unfairly disadvantaged competitively by the very act of compliance.

(e) *I Liheslatura* finds that Guam is one (1) of only four (4) states and territories which have not authorized the use of tobacco tax stamps.

(f) *I Liheslatura* finds that the Healthy Futures Fund is a major source of funding for government investments in public health, including support for the Guam Memorial Hospital Authority and the Department of Public Health and Social Services.

(g) *I Liheslatura* further finds that the tobacco tax is the largest source of funding for the Healthy Futures Fund. In Fiscal Year 2016, approximately eighty-one percent (81%) of Healthy Futures Fund revenue came from the tobacco tax.

(h) It is, therefore, the intent of *I Liheslaturan Guahan* to establish a cigarette tax stamp system to improve collections of the tobacco tax and promote fairness for businesses which comply with Guam's laws, by the establishment of new Articles 7 and 8 of this Chapter.

SOURCE: Added by P.L. 34-055:1 (Oct. 14, 2017) as § 6700, renumbered and subsection designations added by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6702. Supplemental Definitions.

Unless the context otherwise requires, the definitions set forth herein and in 11 GCA § 6101 shall govern the construction and interpretation of this Article.

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(a) *Attorney General* means the Guam Attorney General or Assistant Attorneys General.

(b) *Business location* or *place of business* means the entire premises occupied by a retail tobacco permit applicant or an entity required to hold a retail tobacco permit under this Chapter; and *shall* include, but is not limited to, any store, stand, outlet, vehicle, cart, location, vending machine, or structure from which cigarettes or tobacco products are sold or distributed to a consumer.

(c) *Cigarette* means any rolled product for smoking made wholly or in part of tobacco, irrespective of size and shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(d) *Cigarette package* means a sealed package of cigarettes originating from the manufacturer and bearing the health warning required by law.

(e) *Consumer* means a person who acquires or possesses a cigarette or a tobacco product for personal consumption and not for resale or distribution.

(f) *Department* means the Department of Revenue and Taxation.

(g) *Distribute, distributes, or distribution* means to sell, transfer, give, or to leave, deliver to another, or exchange with another, or to offer or agree to do the same.

(h) *Entity* means one (1) or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity.

(i) *Falsely alter* means to change a stamp in any manner so that the altered stamp falsely appears or purports to have a value or validity that is not authorized or consented to by the Department.

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(j) *Falsely make* means to print, manufacture, or make what purports to be a stamp without the authority or consent of the Department.

(k) *Falsely reuse* means to affix a stamp that was previously affixed to a package of cigarettes, to another package of cigarettes.

(l) *License* means a license granted by Guam law that authorizes the holder to engage in the business of a wholesaler or retailer of cigarettes or tobacco products in Guam.

(m) *Licensee* means the holder of a license as a wholesaler or retailer granted under this Chapter.

(n) *Persons* means one (1) or more people, a company, a corporation, a partnership, or an association.

(o) *Possession* means knowingly having direct physical control at a given time, or knowingly having the power and the intention at a given time, to exercise dominion or control, either directly or through another entity.

(p) *Retailer* means an entity that engages in the practice of selling cigarettes or tobacco products to consumers, and includes the owner of a cigarette or tobacco product vending machine.

(q) *Retail price* means the ordinary, customary, or usual price paid by the consumer for the articles taxed.

(r) *Retail sale or tobacco retailing* means the practice of selling cigarettes or tobacco products to consumers, and includes the sale of cigarettes or tobacco through a vending machine.

(s) *Sale* includes every act of selling, and includes any sale or act of selling that originates from any order that is placed or submitted by means of a telephonic or other method of voice transmission, the mail, or any other delivery service, or the internet or other online service.

(t) *Ship or causes to be shipped* means to send by any means of transportation.

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(u) *Stamp* means a stamp printed, manufactured, or made by authority of the Department, as provided in this Chapter, that is issued, sold, or circulated by the Department, and by the use of which the tax levied under this Chapter is paid.

(v) *Wholesaler* means any duly Guam licensed person who imports or causes to be imported into Guam any FDA approved or compliant cigarette products which are or will be offered for sale or used for any commercial purpose; any purchaser of warehouse receipts for such cigarettes stored in a warehouse in Guam who causes such cigarettes to be removed from such warehouse; and also any person who produces, manufactures, compounds, mixes or rolls any such cigarette products within Guam for sale.

SOURCE: Added by P.L. 34-055:1 (Oct. 14, 2017) as § 6701, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6703. Proof of Taxation.

(a) The payment of taxes levied by § 26602 and § 26603(a) of Chapter 26, Title 11, Guam Code Annotated, *shall* be demonstrated by the purchase of tax stamps in Guam, which *shall* be affixed to each cigarette package. Nothing herein shall be construed as to levy any additional taxes on the sale of cigarettes, unless expressly stated by law.

(b) Payment for the purchasing of stamps to be affixed to a cigarette package *shall* be reported each month and payable *no later than* the twentieth (20th) day of the month following the month in which the stamps were purchased from the Department.

(c) The Department is responsible for and *shall* effectuate the printing, distribution, and sale of tax stamps.

(d) Any taxpayer under this Section may delay the payment of taxes in accordance with the provisions under 11 GCA § 26601(c) relative to cigarettes held and sold out of a bonded warehouse.

SOURCE: Added by P.L. 34-055:1 (Oct. 14, 2017) as § 6702, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

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§ 6704. Records to Be Kept.

(a) Each wholesaler *shall* keep a record of:

(1) every sale or use of cigarettes and tobacco products by the wholesaler;

(2) the number and wholesale price of cigarettes;

(3) the taxes payable on tobacco products sold, possessed, or used, if any; and

(4) the amounts of stamps purchased and used, in a form as the Department may prescribe. The records *shall* be offered for inspection and examination at any time upon demand by the Department or the Attorney General, and *shall* be preserved for a period of five (5) years; except, that the Department and the Attorney General, in writing, *shall* both consent to their destruction within the five (5)-year period, or either the Department or the Attorney General may require that they be kept longer. The Department, by rule, may require the wholesaler to keep such other records as it may deem necessary for the proper enforcement of this Chapter.

(b) If any wholesaler fails to keep records from which a proper determination of the taxes due under this Chapter may be made, the Department may fix the amount of the taxes for any period from the best information obtainable by it and assess the taxes as provided in this Chapter.

SOURCE: Added by P.L. 34-055:1 (Oct. 14, 2017) as § 6703, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6705. Wholesaler and Retailer Requirements.

(a) All wholesalers or distributors are required to pay the appropriate tax for each cigarette in its inventory, except as provided under 11 GCA § 26601(c) for inventory held in a warehouse under bond. Even though wholesalers are required to affix the stamps to cigarette packages prior to shipping to retail outlets, every cigarette retailer is responsible for inspecting their shipments upon receipt to ensure cigarette stamps have been properly affixed. Unstamped cigarette packages should be

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removed from inventory and set aside for return to the cigarette supplier.

(b) Any cigarette retailer that fails to properly inspect and timely return any unstamped cigarette packages to the cigarette supplier within seven (7) days *shall* assume liability for any unstamped cigarette packages and be subject to penalties under 11 GCA § 6811.

SOURCE: Added by P.L. 34-055:1 (Oct. 14, 2017) as § 6704, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

2017 NOTE: The reference in subsection (b) was altered from the original enactment to correspond to the appropriate section number.

§ 6706. Inspection.

(a) The Department and/or the Attorney General may examine all records, including tax returns and reports required to be kept or filed under this Chapter, and books, papers, and records of any person engaged in the business of wholesaling or dealing cigarettes and tobacco products, to verify the accuracy of the payment of the taxes imposed by this Chapter. Every person in possession of any books, papers, and records, and the person's agents and employees, are directed and required to give to the Department and the Attorney General the means, facilities, and opportunities for the examinations.

(b) The Department and/or the Attorney General may inspect the operations, premises, and storage areas of any entity engaged in the sale of cigarettes, or the contents of a specific vending machine, during regular business hours.

(1) This inspection *shall* include inspection of all statements, books, papers, and records in whatever format, including electronic format, pertaining to the acquisition, possession, transportation, sale, or use of packages of cigarettes and tobacco products other than cigarettes, to verify the accuracy of the payment of taxes imposed by this Chapter, and of the contents of cartons and shipping or storage containers to ascertain that all individual packages of cigarettes have an affixed stamp of proper denomination as required by this Chapter.

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(2) This inspection may also verify that all stamps were produced under the authority of the Department. Every entity in possession of any books, papers, and records, and the entity's agents and employees, are directed and required to give the Department and/or the Attorney General the means, facilities, and opportunities for the examinations.

(3) For the purposes of this Chapter, "entity" means one (1) or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity.

(c) If the Department or the Attorney General has reasonable cause to believe and does believe that cigarettes, stamps, or counterfeit stamps are being acquired, possessed, transported, kept, sold, or offered for sale in violation of this Chapter, the Department or the Attorney General may investigate or search the vehicle or premises in which the cigarettes, stamps, or counterfeit stamps are believed to be located. If cigarettes, stamps, or counterfeit stamps are found in a vehicle, premises, or vending machine in violation of this Chapter, the cigarettes, vending machine, vehicle, stamps, counterfeit stamps, or other tangible personal property containing those cigarettes, stamps, or counterfeit stamps and any books and records in possession of the entity in control or possession of the cigarettes, stamps, or counterfeit stamps may be seized by the Department or the Attorney General and are subject to forfeiture.

SOURCE: Added by P.L. 34-055:1 (Oct. 14, 2017) as § 6705, renumbered and subitem designations added by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6707. Appeals.

Any person aggrieved by any assessment of the taxes imposed by this Chapter may appeal from the assessment in the manner and within the time, and in all other respects as provided for by current tax protest procedures.

SOURCE: Added by P.L. 34-055:1 (Oct. 14, 2017) as § 6706, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6708. Reports.

On or before the twentieth (20th) day of each month, every

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wholesaler *shall* file with the Department a report showing the cigarettes and tobacco products sold, possessed, or used by the wholesaler during the preceding calendar month, and of the taxes chargeable against the taxpayer in accordance with this Chapter. Such reports are public records as defined by 5 GCA § 10102(d). The form of the report *shall* be prescribed by the Department and *shall* include:

- (a) a separate statement of the cigarettes imported into and sold within Guam;
- (b) the amount of stamps purchased and used; and
- (c) any other information that the Department may deem necessary for the proper administration of this Chapter.

SOURCE: Added by P.L. 34-055:1 (Oct. 14, 2017) as § 6707, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6709. Investigation.

(a) Any agent duly authorized by the Department to conduct any inquiry, investigation, or hearing hereunder, *shall* have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation.

(1) At any hearing ordered by the Director, the Director or the Director's agent authorized to conduct the hearing, may subpoena witnesses and require the production of books, papers, and documents pertinent to the inquiry.

(2) No witness under the subpoena authorized to be issued by this Section shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate the witness, or subject the witness to penalty or forfeiture; but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which the person *shall*, under oath, have testified or produced documentary evidence.

(b) If any person:

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(1) disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to the person by any duly authorized agent of the Department, or to produce any books and papers pursuant thereto,

(2) the duly authorized agent may apply to the Guam Superior Court setting forth such disobedience to process or refusal to answer, and

(3) the court or the judge *shall* cite such person to appear before the court or the judge to answer such question or to produce such books and papers and, upon the person's refusal to do so,

(4) *shall* commit such person to jail until the person *shall* testify, but not for a longer period than sixty (60) days. Notwithstanding the serving of the term of such commitment by any person, the Director may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify.

SOURCE: Added by P.L. 34-055:1 (Oct. 14, 2017) as § 6708, renumbered and subitem designations added by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6710. Rules and Regulations.

The administration of this Chapter is vested in the Department, and it may prescribe and enforce rules and regulations for the enforcement and administration of this Chapter.

SOURCE: Added by P.L. 34-055:1 (Oct. 14, 2017) as § 6709, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

ARTICLE 8
STAMPING OF CIGARETTES

SOURCE: Entire article added by P.L. 34-055:2 (Oct. 14, 2017) as §§ 6800-6815, renumbered by the Compiler to §§ 6801-6816 pursuant to the authority of 1 GCA § 1606.

§ 6801. Payment of Tax Through the Use of Stamps.

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- § 6802. Affixation; Required Prior to Distribution; Method and Manner.
- § 6803. Department to Furnish: Stamps, Their Designs, Specifications, and Denominations.
- § 6804. Purchase of Stamps.
- § 6805. Price.
- § 6806. Unused Stamps; Cancellation of Stamps.
- § 6807. Transfer of Stamps.
- § 6808. Unlicensed Possession or Use of Stamps.
- § 6809. Counterfeiting Stamps.
- § 6810. Sale or Purchase of Cigarette Packages Without Stamps; Fines and Penalties.
- § 6811. Vending of Unstamped Cigarettes.
- § 6812. Exemptions.
- § 6813. Forfeiture.
- § 6814. Deceptive Trade Practices.
- § 6815. Public Enforcement.
- § 6816. Private Enforcement.

§ 6801. Payment of Tax Through the Use of Stamps.

The tax imposed under this Chapter upon the sale or use of cigarettes *shall* be paid by licensees through the use of stamps.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6800, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6802. Affixation; Required Prior to Distribution; Method and Manner.

(a) A licensee or the authorized agent or designee of a licensee *shall* affix a stamp to the bottom of each individual package of cigarettes prior to distribution.

(b) No individual package of cigarettes may be sold or offered for sale to the general public unless affixed with the stamp required under this Section.

(c) No cigarette package may be placed or stored in a vending machine unless affixed with the stamp required under Subsection (a) of this Section.

(d) The Department may adopt rules regarding the method and manner of affixing stamps to a cigarette package.

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(e) For the purpose of allowing compensation for the costs necessarily incurred in affixing the proper tax stamps to each package of cigarettes prior to distribution, each licensee or authorized agent or a designee of a licensee purchasing stamps from the Department may purchase the stamps at a reduction of fourtenths of one percent (0.4%) of the denominated value of each stamp purchased. The reduction *shall* be the only discount allowed to purchasers from the Department. If a purchaser does not comply with all of the provisions of Guam law, the licensee *shall* pay the full denominated value of the stamps purchased until the licensee has complied.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6801, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6803. Department to Furnish: Stamps, Their Designs, Specifications, and Denominations.

The Department *shall* furnish stamps for sale to licensees. Stamps *shall* be of such designs and specifications, and the Department may prescribe denominations as it sees fit.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6802, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6804. Purchase of Stamps.

A licensee may enter or apply to the Department to purchase stamps beginning one hundred eighty (180) days from the date of enactment of this Act. A licensee may authorize a designee to purchase stamps. Such authorization *shall* be in writing and *shall* continue until written notice revoking the designation is provided to the Department.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6803, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6805. Price.

(a) Stamps *shall* be sold at their denominated values as provided for herein.

(b) Payment for the stamps *shall* be made *no later than* the twentieth (20th) day of the month following the month in which the stamps were purchased from the Department.

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(c) Any taxpayer under this Section may delay the payment of taxes in accordance with the provisions under 11 GCA § 26601(c) relative to cigarettes held and sold out of a bonded warehouse. Payment for the stamps for cigarettes held and sold out of a bonded warehouse *shall* be made *no later than* the twentieth (20th) day of the month following the month in which the stamps and associated cigarettes were issued and sold out of the bonded warehouse.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6804, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6806. Unused Stamps; Cancellation of Stamps.

The Department *shall* adopt rules for a refund or credit to a licensee in the amount of the denominated values of any unused stamps. The Department may provide by rule for the cancellation of stamps.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6805, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6807. Transfer of Stamps.

Unused stamps *shall not* be sold, exchanged, or in any manner negotiated or transferred by a licensee to another person. Any person who violates this Section *shall* be subject to a fine of not less than Five Hundred Dollars (\$500) and not more than One Thousand Dollars (\$1,000) for each violation.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6806, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6808. Unlicensed Possession or Use of Stamps.

A person who is not licensed under this Chapter and who knowingly possesses or uses a stamp *shall* be guilty of a third (3rd) degree felony.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6807, renumbered and subsection designations added by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6809. Counterfeiting Stamps.

A person *shall* be guilty of a third (3rd) degree felony if the person:

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(a) intentionally or knowingly makes, alters, or reuses a stamp; or

(b) knowingly possesses or distributes a stamp that has been falsely made, unauthorized, altered, or reused.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6808, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6810. Sale or Purchase of Cigarette Packages Without Stamps; Fines and Penalties.

(a) A person *shall* be guilty of a third (3rd) degree felony if the person:

(1) is not a licensee, and knowingly possesses, keeps, stores, acquires, or transports three thousand (3,000) or more cigarettes that do not have stamps affixed to the cigarette packages as required by this Article; or

(2) knowingly sells one thousand (1,000) or more cigarettes that do not have stamps affixed to the cigarette packages as required by this Article.

(b) A person *shall* be guilty of a misdemeanor if the person:

(1) is not a licensee, and knowingly possesses, keeps, stores, acquires, or transports one thousand (1,000) or more cigarettes that do not have stamps affixed to the cigarette packages as required by this Article; or

(2) knowingly sells less than one thousand (1,000) cigarettes that do not have stamps affixed to the cigarette packages as required by this Article.

(c) In addition to any other authorized disposition, a person found in violation of:

(1) Subsection (a) is subject to a fine in an amount not to exceed Fifty Thousand Dollars (\$50,000); and

(2) Subsection (b) is subject to a fine in an amount not to exceed Twenty-five Thousand Dollars (\$25,000).

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6809, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

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§ 6811. Vending of Unstamped Cigarettes.

(a) Any person who knowingly places for sale in a cigarette vending machine any cigarettes not contained in cigarette packages to which are affixed stamps as required by this Article *shall* be guilty of a third (3rd) degree felony.

(b) In addition to any other authorized disposition, a person found in violation of Subsection (a) may be fined in an amount not to exceed Fifty Thousand Dollars (\$50,000).

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6810, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6812. Exemptions.

(a) No cigarette tax stamp *shall* be required to be paid upon cigarettes that are sold for personal use at sales outlets operated under the regulations of the armed services of the United States; provided, that it *shall* be unlawful for any person, including members of the armed services of the United States, to purchase such tax-exempt cigarettes for purposes of resale.

(1) Any person who intentionally, knowingly, or recklessly resells, or offers for resale, tax-exempt cigarettes purchased at sales outlets operated under the regulations of the armed services of the United States *shall* be guilty of a violation of this Article, and punishable as provided in § 6810 or § 6811 of this Article.

(2) For the purposes of this Section, “person” means one (1) or more people, a company, a corporation, a partnership, or any combination of individuals.

(b) No cigarette tax stamp *shall* be required to be paid upon cigarettes that are sold outside of Guam, including cigarettes sold for export outside of Guam and cigarettes sold through duty free outlets located at the A.B. Won Pat International Airport Guam which are intended to be transported outside of Guam by outgoing travelers; provided, that it *shall* be unlawful for any person to purchase such tax-exempt cigarettes for purposes of resale on Guam.

(c) Unless otherwise exempt from taxes by this Chapter, it *shall* be presumed that all cigarettes are subject to the tax

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imposed by this Chapter, unless the contrary is established, and the burden of proof that they are not taxable *shall* be upon the person having possession of them.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6811, renumbered and subitem designations added by the Compiler pursuant to the authority of 1 GCA § 1606.

2017 NOTE: Internal references in subsection (a)(1) were altered to reflect the renumbering of sections.

§ 6813. Forfeiture.

Any cigarette, package of cigarettes, carton of cigarettes, or container of cigarettes unlawfully possessed, kept, stored, acquired, transported, sold, imported, offered, received, or distributed in violation of this Chapter may be seized and confiscated by any order of the Attorney General, and ordered forfeited.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6812, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6814. Deceptive Trade Practices.

Any violation of this Chapter *shall* constitute an unfair method of competition, and unfair and deceptive acts or practices in the conduct of any trade or commerce under 5 GCA § 32101 *et seq.*, and *shall* be subject to a civil penalty as provided in Guam law. Each package of cigarettes sold in violation of this Chapter *shall* constitute a separate violation.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6813, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6815. Public Enforcement.

(a) Public enforcement of this Article is under the jurisdiction of the Attorney General. The Attorney General may seek assistance in the enforcement of this Article from other law enforcement agencies. This includes:

- (1) any peace officer as defined by 8 GCA § 5.55;
and
- (2) a Citizen Assisted Police Enforcement (CAPE) volunteer as provided pursuant to 10 GCA § 77302.

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(b) The Attorney General and the Guam Police Department may seize and confiscate any cigarette, package of cigarettes, or carton of cigarettes that is possessed, kept, stored, retained, held, owned, received, transported, imported, or caused to be imported, acquired, distributed, sold, or offered for sale in violation of this Article.

(c) Any cigarette, package of cigarettes, or carton of cigarettes unlawfully possessed, kept, stored, received, held, owned, acquired, retained, transported, imported, or caused to be imported, distributed, sold, or offered for sale, in violation of this Article, *shall* be forfeited as contraband and may be seized through any legal process available to the Attorney General. Any cigarette, package of cigarettes, or carton of cigarettes forfeited as provided in this Section *shall* be ordered destroyed.

(d) Notwithstanding the existence of other remedies at law, the Attorney General may apply for a temporary or permanent injunction restraining any person from violating or continuing to violate this Article. The injunction *shall* be issued without bond.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6814, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6816. Private Enforcement.

(a) A person may bring a civil action for violation of this Article on behalf of the person and the government of Guam to enforce the fines contained herein. The action *shall only* be dismissed if the court and the Attorney General give written consent to dismissal and the reasons for the dismissal.

(1) A copy of the complaint and written disclosure of substantially all material evidence and information *shall* be served on the government of Guam pursuant to the Guam Rules of Civil Procedure. The complaint *shall* be filed in camera, *shall* remain under seal for sixty (60) days, and *shall not* be served on the named defendant until ordered by the Superior Court. The government may elect to intervene and prosecute the action within sixty (60) days after service of the complaint.

(2) The government is entitled to a one (1)-time

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extension of thirty (30) days to evaluate the complaint filed.

(b) If the government elects to intervene and proceed with the action, it *shall* have primary responsibility for prosecuting the action and *shall not* be bound by an act of the person bringing the action unless there is an exception enumerated in this law.

(1) Upon the government's assumption of the complaint, the person who filed the complaint has no further participation, except as described herein, and the government may:

(A) dismiss the action notwithstanding the objection of the person bringing the complaint as long as the person bringing the complaint has an opportunity to respond in writing;

(B) settle the action notwithstanding the objection of the person bringing the complaint as long as the Guam Superior Court finds the settlement to be fair, adequate and reasonable;

(C) pursue its claim through an alternate remedy available to the government in including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action *shall* have the same rights in such proceeding as such person would have had if the action had continued under this Section;

(D) if the government proceeds with an action brought by a person under this law, such person *shall* receive at least fifteen percent (15%) but no more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim plus their reasonable costs and attorney fees incurred in filing the complaint;

(E) if the government does not proceed with an action, the person bringing the action or settling the claim *shall* receive an amount which the Guam Superior Court decides is reasonable for collecting the

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civil penalty and damages. The amount *shall not* be less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement. Such person *shall* also in addition receive an award for their reasonable costs, fees, and attorney fees; or

(F) if the government does not proceed with the action and the person bringing the action does not prevail on the claim, the defendant is entitled to its reasonable attorney fees if the court finds in its discretion that the action was clearly frivolous, vexatious, or brought for purposes of harassment.

(c) All civil penalties and fines awarded by the court in excess of the reasonable amount awarded by the court to any private individual(s) who bring a private enforcement action of this law *shall* be deposited in the Healthy Futures Fund.

SOURCE: Added by P.L. 34-055:2 (Oct. 14, 2017) as § 6815, renumbered by the Compiler pursuant to the authority of 1 GCA § 1606.
