

October 2009



NORTH CAROLINA MAN SENT TO PRISON AND BARRED FROM TOBACCO INDUSTRY

ABINGDON, VIRGINIA -- Terence P. McLaughlin, an Ayden, North Carolina, business owner was sentenced to imprisonment for a term of one year, barred from any involvement in the tobacco industry for ten years, and ordered to forfeit \$801,495 to the United States after admitting to conspiring to avoid Federal excise tax on cigarettes removed from his factory and being part of a contraband cigarette trafficking scheme. McLaughlin's company, CLP Inc., was also sentenced today. In addition, as part of his plea agreement McLaughlin agreed to pay over \$950,000.00 in past due excise taxes.

McLaughlin, age 56, of Winterville, North Carolina, was sentenced in the United States District Court for the Western District of Virginia in Abingdon for making false statements on Federal tax returns, underreporting the number of tax stamps affixed to cigarettes, and creating false billing and shipping documents for cigarettes shipped from his factory.

Beginning in January 2007, McLaughlin and CLP began underreporting the number of tax stamps affixed to cigarettes that were to be delivered into Georgia, Kentucky, South Carolina, Tennessee and Virginia. The laws of these states require that cigarette manufacturers that were not parties to the Master Settlement Agreement of 1998 make specified annual deposits into an escrow fund based on the number of the manufacturer's cigarettes sold in the state and file annual certifications truthfully stating sales in each state and that the required escrow deposits were made. CLP was not a party to the Master Settlement Agreement.

In order to facilitate this fraud, CLP employees, under the direction of McLaughlin created shipping and billing documents for tens of millions of Bridgeton branded cigarettes that falsely identified the shipping destination as a location in New York and stated the cigarettes were "for reservation sales only" when the shipments were actually destined to locations in Virginia and Kentucky. These cigarettes were later resold in the states of Georgia, Kentucky, South Carolina, Tennessee and Virginia.

By having the number of tax stamps affixed understated, McLaughlin was able to understate the number of cigarettes actually sold in these states and decrease his annual deposits to the escrow

THIS ISSUE

Greetings! We hope that you are having a shining and relaxed month. This issue includes the conviction of a North Carolina man for tobacco violations, information on flavored cigarettes, comment period extended on the Family Smoking and Tobacco Control Act, request for comment on FDA draft guidance, request for comment on OMB review notice, request for comment on Notice No. 100 clarifying the drawback of internal revenue taxes, and finally, comment period extended for roll your own tobacco.

If you have content ideas or questions for the editors please send them to:

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fund in each state as required by state law. Using this scheme, CLP Inc. derived illegal profits of over \$800,000.

During the same time frame, CLP underreported taxable removals from their Ayden, North Carolina factory by over 48,000,000 cigarettes. Throughout 2007, McLaughlin filed false reports and returns with the Alcohol and Tobacco Tax and Trade Bureau and, as a result, failed to pay over \$950,000 in Federal taxes.

The investigation of this case was conducted by the Bureau of Alcohol, Tobacco, Firearms and Explosives; Alcohol and Tobacco Tax and Trade Bureau; Roanoke and Washington County, Virginia, Sheriff's Offices; Virginia State Police; and Office of the Attorney General for the Commonwealth of Virginia. Assistant United States Attorney Randy Ramseyer prosecuted the case for the United States.

FLAVORED CIGARETTES

The Family Smoking Prevention and Tobacco Control Act (FSPTCA) recently passed by Congress which gave the FDA authority over tobacco products included a prohibition on the manufacturing, importation, or selling of flavored cigarettes in the United States. The FDA published the notice, Enforcement of General Tobacco Standard Special Rule for Cigarettes, 48974 [E9-23144], in the Federal Register of Friday, September 25, 2009, informing the public that violations of the new prohibition on flavored cigarettes may be reported to the FDA at the following addresses:

To report tobacco products that fail to comply with section 907(a)(1)(A) of the act after September 22, 2009, please contact the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850-3229, 877-287-1373 or <http://www.fda.gov/flavoredtobacco>.

To view the FDA notice, go to: <http://edocket.access.gpo.gov/2009/E9-23866.htm>

FDA EXTENDING COMMENT PERIOD

The FDA is extending the comment period for the notice it published regarding the implementation of the Family Smoking Prevention and Tobacco Control Act. The comment period now closes on December 28, 2009.

To view the entire comment period extension notice, go to: <http://edocket.access.gpo.gov/2009/E9-23607.htm>

The TTB comment on the FDA tobacco act notice is posted at Regulations.gov as document FDA-2009-N-0294-0462.1.

To view the TTB comment as posted, go to: <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a2ff6f>

COMMENTS ACCEPTED ON FDA DRAFT GUIDANCE

The FDA, as part of its new authority under the Family Smoking Prevention and Tobacco Control Act, has issued a draft guidance entitled, "The Scope of the Prohibition Against Marketing a Tobacco Product in Combination with Another Article or Product Regulated under the Federal Food, Drug, and Cosmetic Act."

The guidance is intended for manufacturers, retailers, importers, and FDA staff. The guidance "discusses certain activities that FDA believes do or do not fall within the scope of the

prohibition.”

Comments will be accepted on the draft guidance until January 4, 2010.

To view the FDA’s Federal Register notice regarding the draft guidance, see:
<http://edocket.access.gpo.gov/2009/E9-23866.htm>

To view the draft guidance itself, go to:
<http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm184283.htm>

The FDA guidance specifically states the addition of nicotine to water, juice, or soda is prohibited under the new tobacco act.

COMMENT REQUEST NOTICE

In the Federal Register issue of September 28, 2009, the Treasury Department published a “Submission of OMB Review; Comment Request” notice on behalf of TTB covering the following TTB forms and recordkeeping requirements (by OMB Number):

- 1513–0088 (Alcohol, Tobacco, and Firearms Related Documents for Tax Returns and Claims, TTB REC 5000/24); and
- 1513–0129 (Tobacco Products and Cigarette Papers and Tubes, 2009 Tax Increase and Floor Stocks Tax, TTB F 5000.28T09).

To view the entire notice, go to: <http://edocket.access.gpo.gov/2009/pdf/E9-23274.pdf>.

NOTICE NO. 100 PROPOSES CLARIFYING THE DRAWBACK OF INTERNAL REVENUE TAXES

In a recently published notice of proposed rulemaking, TTB proposed amending its regulations to clarify the relationship between tax payment under the Internal Revenue Code of 1986 and the drawback of tax under the Tariff Act of 1930. The TTB proposal provides conforming amendments to reflect proposed Customs and Border Protection (CBP) regulations stating that domestic merchandise on which no tax is paid under the Internal Revenue Code may not be substituted for imported merchandise for purposes of claims for drawback of tax under the customs laws and regulations. Written comments to TTB’s notice of proposed rulemaking must be received on or before December 14, 2009. [See the TTB Federal Register notice](#). Written comments to CBP’s notice of proposed rulemaking (published in the same edition of the Federal Register) must be received on or before November 16, 2009. [See the CBP regulation](#).

T.D. TTB-81 EXTENDS PACKAGE USE-UP PERIOD FOR ROLL-YOUR-OWN TOBACCO. SUBMIT COMMENTS ON THIS EXTENSION VIA NOTICE NO. 99.

To view TTB Notice No. 99, go to: <http://edocket.access.gpo.gov/2009/pdf/E9-23173.pdf>

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