

STATE OF MICHIGAN

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DEPARTMENT OF TREASURY
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REVENUE ADMINISTRATIVE BULLETIN 1996 - 3

Approved: May 13, 1996

**TOBACCO PRODUCTS TAX ACT
SEIZURE OF CONTRABAND TOBACCO PRODUCTS -- ADMINISTRATIVE HEARING**

(Replaces RAB 1995 - 2)

RAB-96-3. This bulletin updates RAB 1995 - 2 to include the amendments to the Tobacco Products Tax Act by Public Act 118 of 1995. This bulletin describes the procedure by which a person from whom the Department of Treasury has seized tobacco products can request an administrative hearing. The amendments included in Public Act 118 give the person from whom Department seized the property 10 business days from the date of inventory statement or date of publication to file a request for hearing. Additionally, the Department has 15 business days from receipt of the hearing request to schedule tobacco seizure hearings. No other changes were made to the Tobacco Products Act by Public Act 118 of 1995.

Hearing for Seized Property

Not more than 5 business days after seizure of any alleged contraband, the person who seized the contraband will deliver personally or by registered mail to the person from whom the seizure was made, an inventory statement of the property seized. The inventory statement will also contain a notice stating that unless demand for hearing is made within 10 business days, the designated property is forfeited to the state, MCL 205.429(3); MSA 7.411(39)(3). A person from whom the tobacco products were seized or any person claiming an interest in the property may file a request for hearing within 10 business days of the date of service of the inventory statement or, in the case of publication, within 10 business days after the date of last publication. The request for hearing will be filed with the commissioner of revenue by registered mail, facsimile transmission, or personal service.

The Department will schedule and hold a hearing within 15 business days of the receipt of the request, unless additional time is sought by the person requesting the hearing. After receipt of the request for hearing, the Department will immediately contact the person or his or her representative by telephone or facsimile communication during normal business hours, and advise the person or his or her representative of the time and place of the hearing and the referee before whom the hearing will be held.

The hearing is not a contested case proceeding and is not subject to the Administrative Procedures Act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being MCL 24.201 et seq.; MSA 3.560(101) et seq. or the Open Meetings Act, Act No. 267 of the Public Acts of 1976, as amended, MCL 15.261 et seq.; MSA 4.1800(11) et seq.

The referee will conduct the hearing in an informal manner that facilitates the exchange of information needed to determine whether the property is subject to seizure and forfeiture under the act or is to be returnable to the person entitled to possession.

The person or persons are entitled to appear before the Department, to be represented by counsel, and to present testimony and argument. The referee will hear and receive testimony. Matters alleged as fact may be submitted in the form of affidavit or may be declared to be true under the penalties of perjury.

The person requesting the hearing may submit his or her presentation in the form of a brief or a written statement that contains the facts, a discussion of the relevant law, and the legal arguments in favor of his or her position.

If the person requesting the hearing fails to appear at the hearing, the referee may dismiss the request for hearing. A person requesting the hearing may make a sound recording of the hearing, but not a video recording, at his own expense. A formal record of the hearing will not be made.

After reviewing the testimony, evidence, comments, and written submissions, the referee will prepare a written recommendation to the department.

The Department, acting through the commissioner, will issue a decision within 10 business days after the hearing. The decision will be personally served on the person or his or her representative by registered mail.

Appeal From Administrative Decision

If a person is aggrieved by the decision of the Department, the person may appeal to the circuit court of the county where the seizure was made to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action shall be commenced within 20 days after notice of the department's determination is sent to the person or persons claiming an interest in the seized property. MCL 205.429(4); MSA 7.411(39)(4).