

Appeals and Penalties Breakout Working Group

Summary of the Commonwealth of Virginia's Appeals and Penalties Process

Penalties

- Possession of unstamped cigarettes and the failure by a stamping agent to properly affix stamps are subject to graduated penalties depending on the number of violations by the entity in a 36 month period.
- For inspections where the number of unstamped cigarette packs does not exceed 30 packs, the Department may issue a warning letter instead of assessing the penalty.
- A retailer may avoid the penalties for unstamped cigarettes by proving to the Department that they were lawfully purchased from a licensed stamping agent with physical proof such as:
 - A signed affidavit from the stamping agent;
 - Distinctive features reflecting that the cigarettes were sold by the stamping agent; or
 - Physical observation by a Department auditor.

Affidavit Process

- The retailer must request the affidavit from the stamping agent and notify the Department that he has done so within 14 days of the inspection.
 - The stamping agent then has 14 days to provide a signed affidavit.
- By signing an affidavit, the stamping agent acknowledges that he sold the unstamped product to the retailer and that he may be liable for the penalty.
 - The Department will assess the penalty to the stamping agent instead of the retailer.

Appeals Process

- Any person assessed by the Department may appeal using the administrative appeals process.
 - The Department may also accept an offer in compromise where there is reasonable cause, doubtful liability or collectibility.
- A complete appeal must be filed within 90 days of the date of the assessment.
- Collection action by the Department is discontinued a final determination on the appeal has been made.
- Any taxpayer who disagrees with the determination may, within (i) 3 years from the date of the assessment or (ii) 1 year from the determination, file an application for correction of the assessment with the circuit court.