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DEPARTMENT OF LAW OPINION NO. 69-12 (R-65)

REQUESTED BY: V. L. NIELSEN, JR., Executive Secretary
State Tax Commission of Arizona

- QUESTIONS:
1. What penalties are applicable to a retailer who fails to pay the luxury tax on tobacco products?
 2. Is any statute of limitations applicable to the imposition of penalties on a retailer who fails to pay the luxury taxes on tobacco products?

- ANSWERS:
1. See body of opinion.
 2. No, except that the general statutes of limitations on criminal actions apply to criminal penalties.

It is the obligation of the wholesaler of tobacco products to affix the stamps in the amount of the tax imposed by Chapter 7 of Title 42. When a retailer purchases any tobacco products from a person not doing business in the state which do not have the stamps affixed, he shall affix the stamps in the amount of the tax imposed by Chapter 7 on such tobacco products in his possession. Failure to do so is a misdemeanor punishable by a fine of not less than \$100.00 nor more than \$300.00, by imprisonment in the county jail for not less than 15 nor more than 60 days, or both, under the provisions of A.R.S. § 42-1212.B. If a retailer is convicted of a second violation of A.R.S. § 42-1212.B, his license shall be revoked by the Tax Commission for a period not to exceed one year.

The Tax Commission may seize any luxury products to which official stamps have not been affixed under the provisions of A.R.S. § 42-1213. The Commission shall sell the products and collect the tax together with a penalty of 50 per cent and

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costs incurred in the proceedings. Such seizure and sales shall not relieve the person liable from other penalties provided for under Chapter 7. Any retailer having in his possession any package or container of tobacco products not having the required stamps affixed thereto is guilty of a misdemeanor punishable by a fine of not less than \$25.00 nor more than \$200.00 for each offense under the provisions of A.R.S. § 42-1217.C.

Any person selling any tobacco products without the required stamps is guilty of a misdemeanor punishable by a fine of not less than \$100.00 nor more than \$500.00, by imprisonment in the county jail for not more than 90 days, or both, for each offense. A.R.S. § 42-1217.B. All of the above described penalties may be applicable to retailers of tobacco products who fail to affix the required tax stamps.

The next question is whether any statutes of limitations apply to the penalties described above. Arizona follows the common law rule that limitations do not run against the state unless there is a statute expressly so providing. State ex rel Sullivan v. Moore, 49 Ariz. 51, 62, 64 P.2d 809 (1937); State v. Martin, 59 Ariz. 438, 448, 130 P.2d 48 (1942); Shumway v. State, 63 Ariz. 400, 409, 163 P.2d 274 (1945). Chapter 7 of Title 42 contains no statute of limitations applicable to penalties for failure to pay taxes on tobacco products or affix tax stamps. The general civil statutes of limitations are set out in Chapter 5 of Title 12, Arizona Revised Statutes. That chapter has no application to these penalties, because A.R.S. § 12-510 provides:

"The state shall not be barred by the limitations of actions prescribed in this chapter."

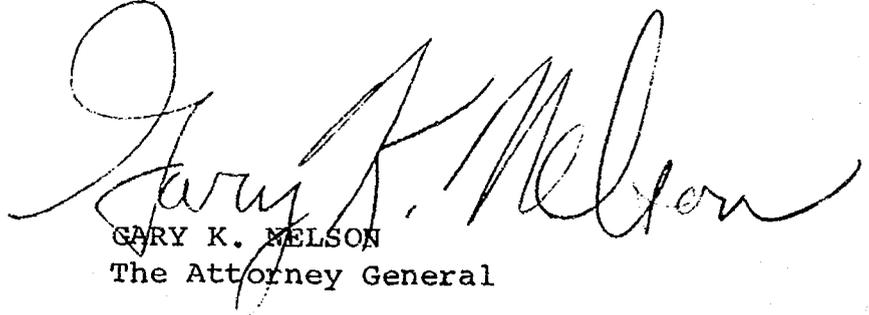
Since there is no applicable statute of limitations, the civil penalties in respect to failure to pay the tax on tobacco products or affix tax stamps can be imposed at any time after the offense has occurred. Those penalties which are designated as misdemeanors or which are punishable by imprisonment

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for any period of time are criminal penalties. Imposition of these is governed by A.R.S. § 13-107.B, which provides that an indictment for any misdemeanor shall be found, or an information filed, within one year after its commission.

The misdemeanor provisions would be barred from criminal prosecution after one year by A.R.S. § 13-106.B.

Respectfully submitted,



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The Attorney General

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