



Rep. Barbara Flynn Currie

**Filed: 1/11/2011**

09600SB0044ham008

LRB096 03720 HLH 44960 a

1 AMENDMENT TO SENATE BILL 44

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 44 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The State Finance Act is amended by adding  
5 Sections 5.786 and 6z-85 as follows:

6 (30 ILCS 105/5.786 new)

7 Sec. 5.786. The Fund for the Advancement of Education.

8 (30 ILCS 105/6z-85 new)

9 Sec. 6z-85. The Fund for the Advancement of Education;  
10 creation. The Fund for the Advancement of Education is hereby  
11 created as a special fund in the State treasury. All moneys  
12 deposited into the fund shall be appropriated to provide  
13 financial assistance for education programs. Moneys  
14 appropriated from the Fund shall supplement and not supplant  
15 the current level of education funding.

1           Section 10. The Cigarette Tax Act is amended by changing  
2 Sections 2 and 3 as follows:

3           (35 ILCS 130/2) (from Ch. 120, par. 453.2)

4           Sec. 2. Tax imposed; rate; collection, payment, and  
5 distribution; discount.

6           (a) A tax is imposed upon any person engaged in business as  
7 a retailer of cigarettes in this State at the rate of 5 1/2  
8 mills per cigarette sold, or otherwise disposed of in the  
9 course of such business in this State. In addition to any other  
10 tax imposed by this Act, a tax is imposed upon any person  
11 engaged in business as a retailer of cigarettes in this State  
12 at a rate of 1/2 mill per cigarette sold or otherwise disposed  
13 of in the course of such business in this State on and after  
14 January 1, 1947, and shall be paid into the Metropolitan Fair  
15 and Exposition Authority Reconstruction Fund or as otherwise  
16 provided in Section 29. On and after December 1, 1985, in  
17 addition to any other tax imposed by this Act, a tax is imposed  
18 upon any person engaged in business as a retailer of cigarettes  
19 in this State at a rate of 4 mills per cigarette sold or  
20 otherwise disposed of in the course of such business in this  
21 State. Of the additional tax imposed by this amendatory Act of  
22 1985, \$9,000,000 of the moneys received by the Department of  
23 Revenue pursuant to this Act shall be paid each month into the  
24 Common School Fund. On and after the effective date of this

1 amendatory Act of 1989, in addition to any other tax imposed by  
2 this Act, a tax is imposed upon any person engaged in business  
3 as a retailer of cigarettes at the rate of 5 mills per  
4 cigarette sold or otherwise disposed of in the course of such  
5 business in this State. On and after the effective date of this  
6 amendatory Act of 1993, in addition to any other tax imposed by  
7 this Act, a tax is imposed upon any person engaged in business  
8 as a retailer of cigarettes at the rate of 7 mills per  
9 cigarette sold or otherwise disposed of in the course of such  
10 business in this State. On and after December 15, 1997, in  
11 addition to any other tax imposed by this Act, a tax is imposed  
12 upon any person engaged in business as a retailer of cigarettes  
13 at the rate of 7 mills per cigarette sold or otherwise disposed  
14 of in the course of such business of this State. All of the  
15 moneys received by the Department of Revenue pursuant to this  
16 Act and the Cigarette Use Tax Act from the additional taxes  
17 imposed by this amendatory Act of 1997, shall be paid each  
18 month into the Common School Fund. On and after July 1, 2002,  
19 in addition to any other tax imposed by this Act, a tax is  
20 imposed upon any person engaged in business as a retailer of  
21 cigarettes at the rate of 20.0 mills per cigarette sold or  
22 otherwise disposed of in the course of such business in this  
23 State. Beginning on March 1, 2011, in addition to any other tax  
24 imposed by this Act, a tax is imposed upon any person engaged  
25 in business as a retailer of cigarettes at the rate of 38 mills  
26 per cigarette sold or otherwise disposed of in the course of

1 such business in this State. Beginning on March 1, 2012, in  
2 addition to any other tax imposed by this Act, a tax is imposed  
3 upon any person engaged in business as a retailer of cigarettes  
4 at the rate of 12.5 mills per cigarette sold or otherwise  
5 disposed of in the course of such business in this State. Of  
6 the moneys received by the Department of Revenue under this Act  
7 and the Cigarette Use Tax Act from the additional taxes imposed  
8 by this amendatory Act of the 96th General Assembly (i) an  
9 amount equal to 0.5 mills per cigarette sold or otherwise  
10 disposed of shall be paid each month into the Long-Term Care  
11 Provider Fund and (ii) the balance shall be paid each month  
12 into the Fund for the Advancement of Education, a special fund  
13 in the State treasury. The payment of such taxes shall be  
14 evidenced by a stamp affixed to each original package of  
15 cigarettes, or an authorized substitute for such stamp  
16 imprinted on each original package of such cigarettes  
17 underneath the sealed transparent outside wrapper of such  
18 original package, as hereinafter provided. However, such taxes  
19 are not imposed upon any activity in such business in  
20 interstate commerce or otherwise, which activity may not under  
21 the Constitution and statutes of the United States be made the  
22 subject of taxation by this State.

23       Beginning on the effective date of this amendatory Act of  
24 the 92nd General Assembly and through June 30, 2006, all of the  
25 moneys received by the Department of Revenue pursuant to this  
26 Act and the Cigarette Use Tax Act, other than the moneys that

1 are dedicated to the Common School Fund, shall be distributed  
2 each month as follows: first, there shall be paid into the  
3 General Revenue Fund an amount which, when added to the amount  
4 paid into the Common School Fund for that month, equals  
5 \$33,300,000, except that in the month of August of 2004, this  
6 amount shall equal \$83,300,000; then, from the moneys  
7 remaining, if any amounts required to be paid into the General  
8 Revenue Fund in previous months remain unpaid, those amounts  
9 shall be paid into the General Revenue Fund; then, beginning on  
10 April 1, 2003, from the moneys remaining, \$5,000,000 per month  
11 shall be paid into the School Infrastructure Fund; then, if any  
12 amounts required to be paid into the School Infrastructure Fund  
13 in previous months remain unpaid, those amounts shall be paid  
14 into the School Infrastructure Fund; then the moneys remaining,  
15 if any, shall be paid into the Long-Term Care Provider Fund. To  
16 the extent that more than \$25,000,000 has been paid into the  
17 General Revenue Fund and Common School Fund per month for the  
18 period of July 1, 1993 through the effective date of this  
19 amendatory Act of 1994 from combined receipts of the Cigarette  
20 Tax Act and the Cigarette Use Tax Act, notwithstanding the  
21 distribution provided in this Section, the Department of  
22 Revenue is hereby directed to adjust the distribution provided  
23 in this Section to increase the next monthly payments to the  
24 Long Term Care Provider Fund by the amount paid to the General  
25 Revenue Fund and Common School Fund in excess of \$25,000,000  
26 per month and to decrease the next monthly payments to the

1 General Revenue Fund and Common School Fund by that same excess  
2 amount.

3 Beginning on July 1, 2006, all of the moneys received by  
4 the Department of Revenue pursuant to this Act and the  
5 Cigarette Use Tax Act, other than the moneys that are dedicated  
6 to the Common School Fund and, beginning on the effective date  
7 of this amendatory Act of the 96th General Assembly, other than  
8 the moneys from the additional taxes imposed by this amendatory  
9 Act of the 96th General Assembly that must be paid each month  
10 into the Long-Term Care Provider Fund and the Fund for the  
11 Advancement of Education, shall be distributed each month as  
12 follows: first, there shall be paid into the General Revenue  
13 Fund an amount that, when added to the amount paid into the  
14 Common School Fund for that month, equals \$29,200,000; then,  
15 from the moneys remaining, if any amounts required to be paid  
16 into the General Revenue Fund in previous months remain unpaid,  
17 those amounts shall be paid into the General Revenue Fund; then  
18 from the moneys remaining, \$5,000,000 per month shall be paid  
19 into the School Infrastructure Fund; then, if any amounts  
20 required to be paid into the School Infrastructure Fund in  
21 previous months remain unpaid, those amounts shall be paid into  
22 the School Infrastructure Fund; then the moneys remaining, if  
23 any, shall be paid into the Long-Term Care Provider Fund.

24 When any tax imposed herein terminates or has terminated,  
25 distributors who have bought stamps while such tax was in  
26 effect and who therefore paid such tax, but who can show, to

1 the Department's satisfaction, that they sold the cigarettes to  
2 which they affixed such stamps after such tax had terminated  
3 and did not recover the tax or its equivalent from purchasers,  
4 shall be allowed by the Department to take credit for such  
5 absorbed tax against subsequent tax stamp purchases from the  
6 Department by such distributor.

7 The impact of the tax levied by this Act is imposed upon  
8 the retailer and shall be prepaid or pre-collected by the  
9 distributor for the purpose of convenience and facility only,  
10 and the amount of the tax shall be added to the price of the  
11 cigarettes sold by such distributor. Collection of the tax  
12 shall be evidenced by a stamp or stamps affixed to each  
13 original package of cigarettes, as hereinafter provided.

14 Each distributor shall collect the tax from the retailer at  
15 or before the time of the sale, shall affix the stamps as  
16 hereinafter required, and shall remit the tax collected from  
17 retailers to the Department, as hereinafter provided. Any  
18 distributor who fails to properly collect and pay the tax  
19 imposed by this Act shall be liable for the tax. Any  
20 distributor having cigarettes to which stamps have been affixed  
21 in his possession for sale on the effective date of this  
22 amendatory Act of 1989 shall not be required to pay the  
23 additional tax imposed by this amendatory Act of 1989 on such  
24 stamped cigarettes. Any distributor having cigarettes to which  
25 stamps have been affixed in his or her possession for sale at  
26 12:01 a.m. on the effective date of this amendatory Act of

1 1993, is required to pay the additional tax imposed by this  
2 amendatory Act of 1993 on such stamped cigarettes. This  
3 payment, less the discount provided in subsection (b), shall be  
4 due when the distributor first makes a purchase of cigarette  
5 tax stamps after the effective date of this amendatory Act of  
6 1993, or on the first due date of a return under this Act after  
7 the effective date of this amendatory Act of 1993, whichever  
8 occurs first. Any distributor having cigarettes to which stamps  
9 have been affixed in his possession for sale on December 15,  
10 1997 shall not be required to pay the additional tax imposed by  
11 this amendatory Act of 1997 on such stamped cigarettes.

12 Any distributor having cigarettes to which stamps have been  
13 affixed in his or her possession for sale on July 1, 2002 shall  
14 not be required to pay the additional tax imposed by this  
15 amendatory Act of the 92nd General Assembly on those stamped  
16 cigarettes. Any retailer having cigarettes in his or her  
17 possession on March 1, 2011 to which tax stamps have been  
18 affixed is not required to pay the additional tax that begins  
19 on March 1, 2011 imposed by this amendatory Act of the 96th  
20 General Assembly on those stamped cigarettes. Any distributor  
21 having cigarettes in his or her possession on March 1, 2011 to  
22 which tax stamps have been affixed is required to pay the  
23 additional tax that begins on March 1, 2011 imposed by this  
24 amendatory Act of the 96th General Assembly to the extent the  
25 calendar year 2011 average monthly volume of cigarette stamps  
26 in the distributor's possession exceeds the average monthly



1 volume of cigarette stamps purchased by the distributor in  
2 calendar year 2010. This payment, less the discount provided in  
3 subsection (b), is due when the distributor first makes a  
4 purchase of cigarette stamps on or after March 1, 2011 or on  
5 the first due date of a return under this Act occurring on or  
6 after March 1, 2011, whichever occurs first. Any retailer  
7 having cigarettes in his or her possession on March 1, 2012 to  
8 which tax stamps have been affixed is not required to pay the  
9 additional tax that begins on March 1, 2012 imposed by this  
10 amendatory Act of the 96th General Assembly on those stamped  
11 cigarettes. Any distributor having cigarettes in his or her  
12 possession on March 1, 2012 to which tax stamps have been  
13 affixed is required to pay the additional tax that begins on  
14 March 1, 2012 imposed by this amendatory Act of the 96th  
15 General Assembly to the extent the calendar year 2012 average  
16 monthly volume of cigarette stamps in the distributor's  
17 possession exceeds the average monthly volume of cigarette  
18 stamps purchased by the distributor in calendar year 2011. This  
19 payment, less the discount provided in subsection (b), is due  
20 when the distributor first makes a purchase of cigarette stamps  
21 on or after March 1, 2012 or on the first due date of a return  
22 under this Act occurring on or after March 1, 2012, whichever  
23 occurs first.

24         Distributors making sales of cigarettes to secondary  
25 distributors shall add the amount of the tax to the price of  
26 the cigarettes sold by the distributors. Secondary

1 distributors making sales of cigarettes to retailers shall  
2 include the amount of the tax in the price of the cigarettes  
3 sold to retailers. The amount of tax shall not be less than the  
4 amount of taxes imposed by the State and all local  
5 jurisdictions. The amount of local taxes shall be calculated  
6 based on the location of the retailer's place of business shown  
7 on the retailer's certificate of registration or  
8 sub-registration issued to the retailer pursuant to Section 2a  
9 of the Retailers' Occupation Tax Act. The original packages of  
10 cigarettes sold to the retailer shall bear all the required  
11 stamps, or other indicia, for the taxes included in the price  
12 of cigarettes.

13 The amount of the Cigarette Tax imposed by this Act shall  
14 be separately stated, apart from the price of the goods, by  
15 distributors, secondary distributors, and retailers, in all  
16 bills and sales invoices.

17 (b) The distributor shall be required to collect the taxes  
18 provided under paragraph (a) hereof, and, to cover the costs of  
19 such collection, shall be allowed a discount during any year  
20 commencing July 1st and ending the following June 30th in  
21 accordance with the schedule set out hereinbelow, which  
22 discount shall be allowed at the time of purchase of the stamps  
23 when purchase is required by this Act, or at the time when the  
24 tax is remitted to the Department without the purchase of  
25 stamps from the Department when that method of paying the tax  
26 is required or authorized by this Act. Prior to December 1,

1 1985, a discount equal to 1 2/3% of the amount of the tax up to  
2 and including the first \$700,000 paid hereunder by such  
3 distributor to the Department during any such year; 1 1/3% of  
4 the next \$700,000 of tax or any part thereof, paid hereunder by  
5 such distributor to the Department during any such year; 1% of  
6 the next \$700,000 of tax, or any part thereof, paid hereunder  
7 by such distributor to the Department during any such year, and  
8 2/3 of 1% of the amount of any additional tax paid hereunder by  
9 such distributor to the Department during any such year shall  
10 apply. On and after December 1, 1985, a discount equal to 1.75%  
11 of the amount of the tax payable under this Act up to and  
12 including the first \$3,000,000 paid hereunder by such  
13 distributor to the Department during any such year and 1.5% of  
14 the amount of any additional tax paid hereunder by such  
15 distributor to the Department during any such year shall apply.

16 Two or more distributors that use a common means of  
17 affixing revenue tax stamps or that are owned or controlled by  
18 the same interests shall be treated as a single distributor for  
19 the purpose of computing the discount.

20 (c) The taxes herein imposed are in addition to all other  
21 occupation or privilege taxes imposed by the State of Illinois,  
22 or by any political subdivision thereof, or by any municipal  
23 corporation.

24 (Source: P.A. 96-1027, eff. 7-12-10.)

25 (35 ILCS 130/3) (from Ch. 120, par. 453.3)

1           Sec. 3. Affixing tax stamp; remitting tax to the  
2 Department. Payment of the taxes imposed by Section 2 of this  
3 Act shall (except as hereinafter provided) be evidenced by  
4 revenue tax stamps affixed to each original package of  
5 cigarettes. Each distributor of cigarettes, before delivering  
6 or causing to be delivered any original package of cigarettes  
7 in this State to a purchaser, shall firmly affix a proper stamp  
8 or stamps to each such package, or (in case of manufacturers of  
9 cigarettes in original packages which are contained inside a  
10 sealed transparent wrapper) shall imprint the required  
11 language on the original package of cigarettes beneath such  
12 outside wrapper, as hereinafter provided.

13           No stamp or imprint may be affixed to, or made upon, any  
14 package of cigarettes unless that package complies with all  
15 requirements of the federal Cigarette Labeling and Advertising  
16 Act, 15 U.S.C. 1331 and following, for the placement of labels,  
17 warnings, or any other information upon a package of cigarettes  
18 that is sold within the United States. Under the authority of  
19 Section 6, the Department shall revoke the license of any  
20 distributor that is determined to have violated this paragraph.  
21 A person may not affix a stamp on a package of cigarettes,  
22 cigarette papers, wrappers, or tubes if that individual package  
23 has been marked for export outside the United States with a  
24 label or notice in compliance with Section 290.185 of Title 27  
25 of the Code of Federal Regulations. It is not a defense to a  
26 proceeding for violation of this paragraph that the label or

1 notice has been removed, mutilated, obliterated, or altered in  
2 any manner.

3 Only distributors licensed under this Act and  
4 transporters, as defined in Section 9c of this Act, may possess  
5 unstamped original packages of cigarettes. Prior to shipment to  
6 a secondary distributor or an Illinois retailer, a stamp shall  
7 be applied to each original package of cigarettes sold to the  
8 secondary distributor or retailer. A distributor may apply tax  
9 stamps only to original packages of cigarettes purchased or  
10 obtained directly from an in-state maker, manufacturer, or  
11 fabricator licensed as a distributor under Section 4 of this  
12 Act or an out-of-state maker, manufacturer, or fabricator  
13 holding a permit under Section 4b of this Act. A licensed  
14 distributor may ship or otherwise cause to be delivered  
15 unstamped original packages of cigarettes in, into, or from  
16 this State. A licensed distributor may transport unstamped  
17 original packages of cigarettes to a facility, wherever  
18 located, owned or controlled by such distributor; however, a  
19 distributor may not transport unstamped original packages of  
20 cigarettes to a facility where retail sales of cigarettes take  
21 place or to a facility where a secondary distributor makes  
22 sales for resale. Any licensed distributor that ships or  
23 otherwise causes to be delivered unstamped original packages of  
24 cigarettes into, within, or from this State shall ensure that  
25 the invoice or equivalent documentation and the bill of lading  
26 or freight bill for the shipment identifies the true name and

1 address of the consignor or seller, the true name and address  
2 of the consignee or purchaser, and the quantity by brand style  
3 of the cigarettes so transported, provided that this Section  
4 shall not be construed as to impose any requirement or  
5 liability upon any common or contract carrier.

6 The Department, or any person authorized by the Department,  
7 shall sell such stamps only to persons holding valid licenses  
8 as distributors under this Act. On and after July 1, 2003,  
9 payment for such stamps must be made by means of electronic  
10 funds transfer. The Department may refuse to sell stamps to any  
11 person who does not comply with the provisions of this Act.  
12 Beginning on the effective date of this amendatory Act of the  
13 92nd General Assembly and through June 30, 2002, persons  
14 holding valid licenses as distributors may purchase cigarette  
15 tax stamps up to an amount equal to 115% of the distributor's  
16 average monthly cigarette tax stamp purchases over the 12  
17 calendar months prior to the effective date of this amendatory  
18 Act of the 92nd General Assembly.

19 Prior to December 1, 1985, the Department shall allow a  
20 distributor 21 days in which to make final payment of the  
21 amount to be paid for such stamps, by allowing the distributor  
22 to make payment for the stamps at the time of purchasing them  
23 with a draft which shall be in such form as the Department  
24 prescribes, and which shall be payable within 21 days  
25 thereafter: Provided that such distributor has filed with the  
26 Department, and has received the Department's approval of, a

1 bond, which is in addition to the bond required under Section 4  
2 of this Act, payable to the Department in an amount equal to  
3 80% of such distributor's average monthly tax liability to the  
4 Department under this Act during the preceding calendar year or  
5 \$500,000, whichever is less. The Bond shall be joint and  
6 several and shall be in the form of a surety company bond in  
7 such form as the Department prescribes, or it may be in the  
8 form of a bank certificate of deposit or bank letter of credit.  
9 The bond shall be conditioned upon the distributor's payment of  
10 amount of any 21-day draft which the Department accepts from  
11 that distributor for the delivery of stamps to that distributor  
12 under this Act. The distributor's failure to pay any such  
13 draft, when due, shall also make such distributor automatically  
14 liable to the Department for a penalty equal to 25% of the  
15 amount of such draft.

16 On and after December 1, 1985 and until July 1, 2003, the  
17 Department shall allow a distributor 30 days in which to make  
18 final payment of the amount to be paid for such stamps, by  
19 allowing the distributor to make payment for the stamps at the  
20 time of purchasing them with a draft which shall be in such  
21 form as the Department prescribes, and which shall be payable  
22 within 30 days thereafter, and beginning on January 1, 2003 and  
23 thereafter, the draft shall be payable by means of electronic  
24 funds transfer: Provided that such distributor has filed with  
25 the Department, and has received the Department's approval of,  
26 a bond, which is in addition to the bond required under Section

1 4 of this Act, payable to the Department in an amount equal to  
2 150% of such distributor's average monthly tax liability to the  
3 Department under this Act during the preceding calendar year or  
4 \$750,000, whichever is less, except that as to bonds filed on  
5 or after January 1, 1987, such additional bond shall be in an  
6 amount equal to 100% of such distributor's average monthly tax  
7 liability under this Act during the preceding calendar year or  
8 \$750,000, whichever is less. The bond shall be joint and  
9 several and shall be in the form of a surety company bond in  
10 such form as the Department prescribes, or it may be in the  
11 form of a bank certificate of deposit or bank letter of credit.  
12 The bond shall be conditioned upon the distributor's payment of  
13 the amount of any 30-day draft which the Department accepts  
14 from that distributor for the delivery of stamps to that  
15 distributor under this Act. The distributor's failure to pay  
16 any such draft, when due, shall also make such distributor  
17 automatically liable to the Department for a penalty equal to  
18 25% of the amount of such draft.

19 Beginning on the effective date of this amendatory Act of  
20 the 96th General Assembly, the Department shall allow a  
21 distributor 10 days in which to make final payment of the  
22 amount to be paid for such stamps, by allowing the distributor  
23 to make payment for the stamps at the time of purchasing them  
24 with a draft, which shall be payable by means of electronic  
25 funds transfer and in such form as the Department prescribes,  
26 and which shall be payable within 10 days thereafter, provided



1 that such distributor has filed with the Department, and has  
2 received the Department's approval of, a bond, which is in  
3 addition to the bond required under Section 4 of this Act,  
4 payable to the Department in an amount equal to 100% of that  
5 distributor's average monthly tax liability to the Department  
6 under this Act during the preceding calendar year or \$750,000,  
7 whichever is less. The bond shall be joint and several and  
8 shall be in the form of a surety company bond in such form as  
9 the Department prescribes, or it may be in the form of a bank  
10 certificate of deposit or bank letter of credit. The bond shall  
11 be conditioned upon the distributor's payment of the amount of  
12 any 10-day draft which the Department accepts from that  
13 distributor for the delivery of stamps to that distributor  
14 under this Act. The distributor's failure to pay any such  
15 draft, when due, shall also make such distributor automatically  
16 liable to the Department for a penalty equal to 25% of the  
17 amount of such draft.

18 Every prior continuous compliance taxpayer shall be exempt  
19 from all requirements under this Section concerning the  
20 furnishing of such bond, as defined in this Section, as a  
21 condition precedent to his being authorized to engage in the  
22 business licensed under this Act. This exemption shall continue  
23 for each such taxpayer until such time as he may be determined  
24 by the Department to be delinquent in the filing of any  
25 returns, or is determined by the Department (either through the  
26 Department's issuance of a final assessment which has become

1 final under the Act, or by the taxpayer's filing of a return  
2 which admits tax to be due that is not paid) to be delinquent  
3 or deficient in the paying of any tax under this Act, at which  
4 time that taxpayer shall become subject to the bond  
5 requirements of this Section and, as a condition of being  
6 allowed to continue to engage in the business licensed under  
7 this Act, shall be required to furnish bond to the Department  
8 in such form as provided in this Section. Such taxpayer shall  
9 furnish such bond for a period of 2 years, after which, if the  
10 taxpayer has not been delinquent in the filing of any returns,  
11 or delinquent or deficient in the paying of any tax under this  
12 Act, the Department may reinstate such person as a prior  
13 continuance compliance taxpayer. Any taxpayer who fails to pay  
14 an admitted or established liability under this Act may also be  
15 required to post bond or other acceptable security with the  
16 Department guaranteeing the payment of such admitted or  
17 established liability.

18 Any person aggrieved by any decision of the Department  
19 under this Section may, within the time allowed by law, protest  
20 and request a hearing, whereupon the Department shall give  
21 notice and shall hold a hearing in conformity with the  
22 provisions of this Act and then issue its final administrative  
23 decision in the matter to such person. In the absence of such a  
24 protest filed within the time allowed by law, the Department's  
25 decision shall become final without any further determination  
26 being made or notice given.

1           The Department shall discharge any surety and shall release  
2 and return any bond or security deposited, assigned, pledged,  
3 or otherwise provided to it by a taxpayer under this Section  
4 within 30 days after:

5           (1) Such taxpayer becomes a prior continuous compliance  
6 taxpayer; or

7           (2) Such taxpayer has ceased to collect receipts on which  
8 he is required to remit tax to the Department, has filed a  
9 final tax return, and has paid to the Department an amount  
10 sufficient to discharge his remaining tax liability as  
11 determined by the Department under this Act. The Department  
12 shall make a final determination of the taxpayer's outstanding  
13 tax liability as expeditiously as possible after his final tax  
14 return has been filed. If the Department cannot make such final  
15 determination within 45 days after receiving the final tax  
16 return, within such period it shall so notify the taxpayer,  
17 stating its reasons therefor.

18           The Department may authorize distributors to affix revenue  
19 tax stamps by imprinting tax meter stamps upon original  
20 packages of cigarettes. The Department shall adopt rules and  
21 regulations relating to the imprinting of such tax meter stamps  
22 as will result in payment of the proper taxes as herein  
23 imposed. No distributor may affix revenue tax stamps to  
24 original packages of cigarettes by imprinting tax meter stamps  
25 thereon unless such distributor has first obtained permission  
26 from the Department to employ this method of affixation. The

1 Department shall regulate the use of tax meters and may, to  
2 assure the proper collection of the taxes imposed by this Act,  
3 revoke or suspend the privilege, theretofore granted by the  
4 Department to any distributor, to imprint tax meter stamps upon  
5 original packages of cigarettes.

6 Illinois cigarette manufacturers who place their  
7 cigarettes in original packages which are contained inside a  
8 sealed transparent wrapper, and similar out-of-State cigarette  
9 manufacturers who elect to qualify and are accepted by the  
10 Department as distributors under Section 4b(a) of this Act,  
11 shall pay the taxes imposed by this Act by remitting the amount  
12 thereof to the Department by the 5th day of each month covering  
13 cigarettes shipped or otherwise delivered in Illinois to  
14 purchasers during the preceding calendar month. Such  
15 manufacturers of cigarettes in original packages which are  
16 contained inside a sealed transparent wrapper, before  
17 delivering such cigarettes or causing such cigarettes to be  
18 delivered in this State to purchasers, shall evidence their  
19 obligation to remit the taxes due with respect to such  
20 cigarettes by imprinting language to be prescribed by the  
21 Department on each original package of such cigarettes  
22 underneath the sealed transparent outside wrapper of such  
23 original package, in such place thereon and in such manner as  
24 the Department may designate. Such imprinted language shall  
25 acknowledge the manufacturer's payment of or liability for the  
26 tax imposed by this Act with respect to the distribution of

1 such cigarettes.

2 A distributor shall not affix, or cause to be affixed, any  
3 stamp or imprint to a package of cigarettes, as provided for in  
4 this Section, if the tobacco product manufacturer, as defined  
5 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,  
6 that made or sold the cigarettes has failed to become a  
7 participating manufacturer, as defined in subdivision (a)(1)  
8 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,  
9 or has failed to create a qualified escrow fund for any  
10 cigarettes manufactured by the tobacco product manufacturer  
11 and sold in this State or otherwise failed to bring itself into  
12 compliance with subdivision (a)(2) of Section 15 of the Tobacco  
13 Product Manufacturers' Escrow Act.

14 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10;  
15 96-1027, eff. 7-12-10.)

16 Section 15. The Cigarette Use Tax Act is amended by  
17 changing Sections 2, 3, and 12 as follows:

18 (35 ILCS 135/2) (from Ch. 120, par. 453.32)

19 Sec. 2. A tax is imposed upon the privilege of using  
20 cigarettes in this State, at the rate of 6 mills per cigarette  
21 so used. On and after December 1, 1985, in addition to any  
22 other tax imposed by this Act, a tax is imposed upon the  
23 privilege of using cigarettes in this State at a rate of 4  
24 mills per cigarette so used. On and after the effective date of

1 this amendatory Act of 1989, in addition to any other tax  
2 imposed by this Act, a tax is imposed upon the privilege of  
3 using cigarettes in this State at the rate of 5 mills per  
4 cigarette so used. On and after the effective date of this  
5 amendatory Act of 1993, in addition to any other tax imposed by  
6 this Act, a tax is imposed upon the privilege of using  
7 cigarettes in this State at a rate of 7 mills per cigarette so  
8 used. On and after December 15, 1997, in addition to any other  
9 tax imposed by this Act, a tax is imposed upon the privilege of  
10 using cigarettes in this State at a rate of 7 mills per  
11 cigarette so used. On and after July 1, 2002, in addition to  
12 any other tax imposed by this Act, a tax is imposed upon the  
13 privilege of using cigarettes in this State at a rate of 20.0  
14 mills per cigarette so used. Beginning on March 1, 2011, in  
15 addition to any other tax imposed by this Act, a tax is imposed  
16 upon the privilege of using cigarettes in this State at a rate  
17 of 38 mills per cigarette so used. Beginning on March 1, 2012,  
18 in addition to any other tax imposed by this Act, a tax is  
19 imposed upon the privilege of using cigarettes in this State at  
20 a rate of 12.5 mills per cigarette so used. The taxes herein  
21 imposed shall be in addition to all other occupation or  
22 privilege taxes imposed by the State of Illinois or by any  
23 political subdivision thereof or by any municipal corporation.

24 When any tax imposed herein terminates or has terminated,  
25 distributors who have bought stamps while such tax was in  
26 effect and who therefore paid such tax, but who can show, to

1 the Department's satisfaction, that they sold the cigarettes to  
2 which they affixed such stamps after such tax had terminated  
3 and did not recover the tax or its equivalent from purchasers,  
4 shall be allowed by the Department to take credit for such  
5 absorbed tax against subsequent tax stamp purchases from the  
6 Department by such distributors.

7 When the word "tax" is used in this Act, it shall include  
8 any tax or tax rate imposed by this Act and shall mean the  
9 singular of "tax" or the plural "taxes" as the context may  
10 require.

11 Any distributor having cigarettes to which stamps have been  
12 affixed in his possession for sale on the effective date of  
13 this amendatory Act of 1989 shall not be required to pay the  
14 additional tax imposed by this amendatory Act of 1989 on such  
15 stamped cigarettes. Any distributor having cigarettes to which  
16 stamps have been affixed in his or her possession for sale at  
17 12:01 a.m. on the effective date of this amendatory Act of  
18 1993, is required to pay the additional tax imposed by this  
19 amendatory Act of 1993 on such stamped cigarettes. This payment  
20 shall be due when the distributor first makes a purchase of  
21 cigarette tax stamps after the effective date of this  
22 amendatory Act of 1993, or on the first due date of a return  
23 under this Act after the effective date of this amendatory Act  
24 of 1993, whichever occurs first. Once a distributor tenders  
25 payment of the additional tax to the Department, the  
26 distributor may purchase stamps from the Department. Any

1 distributor having cigarettes to which stamps have been affixed  
2 in his possession for sale on December 15, 1997 shall not be  
3 required to pay the additional tax imposed by this amendatory  
4 Act of 1997 on such stamped cigarettes.

5 Any distributor having cigarettes to which stamps have been  
6 affixed in his or her possession for sale on July 1, 2002 shall  
7 not be required to pay the additional tax imposed by this  
8 amendatory Act of the 92nd General Assembly on those stamped  
9 cigarettes. Any retailer having cigarettes in his or her  
10 possession on March 1, 2011 to which tax stamps have been  
11 affixed is not required to pay the additional tax that begins  
12 on March 1, 2011 imposed by this amendatory Act of the 96th  
13 General Assembly on those stamped cigarettes. Any distributor  
14 having cigarettes in his or her possession on March 1, 2011 to  
15 which tax stamps have been affixed is required to pay the  
16 additional tax that begins on March 1, 2011 imposed by this  
17 amendatory Act of the 96th General Assembly to the extent the  
18 calendar year 2011 average monthly volume of cigarette stamps  
19 in the distributor's possession exceeds the average monthly  
20 volume of cigarette stamps purchased by the distributor in  
21 calendar year 2010. This payment, less the discount provided in  
22 Section 3, is due when the distributor first makes a purchase  
23 of cigarette stamps on or after March 1, 2011 or on the first  
24 due date of a return under this Act occurring on or after March  
25 1, 2011, whichever occurs first. Any retailer having cigarettes  
26 in his or her possession on March 1, 2012 to which tax stamps



1 have been affixed is not required to pay the additional tax  
2 that begins on March 1, 2012 imposed by this amendatory Act of  
3 the 96th General Assembly on those stamped cigarettes. Any  
4 distributor having cigarettes in his or her possession on March  
5 1, 2012 to which tax stamps have been affixed is required to  
6 pay the additional tax that begins on March 1, 2012 imposed by  
7 this amendatory Act of the 96th General Assembly to the extent  
8 the calendar year 2012 average monthly volume of cigarette  
9 stamps in the distributor's possession exceeds the average  
10 monthly volume of cigarette stamps purchased by the distributor  
11 in calendar year 2011. This payment, less the discount provided  
12 in Section 3, is due when the distributor first makes a  
13 purchase of cigarette stamps on or after March 1, 2012 or on  
14 the first due date of a return under this Act occurring on or  
15 after March 1, 2012, whichever occurs first.

16 (Source: P.A. 92-536, eff. 6-6-02.)

17 (35 ILCS 135/3) (from Ch. 120, par. 453.33)

18 Sec. 3. Stamp payment. The tax hereby imposed shall be  
19 collected by a distributor maintaining a place of business in  
20 this State or a distributor authorized by the Department  
21 pursuant to Section 7 hereof to collect the tax, and the amount  
22 of the tax shall be added to the price of the cigarettes sold  
23 by such distributor. Collection of the tax shall be evidenced  
24 by a stamp or stamps affixed to each original package of  
25 cigarettes or by an authorized substitute for such stamp

1     imprinted on each original package of such cigarettes  
2     underneath the sealed transparent outside wrapper of such  
3     original package, except as hereinafter provided. Each  
4     distributor who is required or authorized to collect the tax  
5     herein imposed, before delivering or causing to be delivered  
6     any original packages of cigarettes in this State to any  
7     purchaser, shall firmly affix a proper stamp or stamps to each  
8     such package, or (in the case of manufacturers of cigarettes in  
9     original packages which are contained inside a sealed  
10    transparent wrapper) shall imprint the required language on the  
11    original package of cigarettes beneath such outside wrapper as  
12    hereinafter provided. Such stamp or stamps need not be affixed  
13    to the original package of any cigarettes with respect to which  
14    the distributor is required to affix a like stamp or stamps by  
15    virtue of the Cigarette Tax Act, however, and no tax imprint  
16    need be placed underneath the sealed transparent wrapper of an  
17    original package of cigarettes with respect to which the  
18    distributor is required or authorized to employ a like tax  
19    imprint by virtue of the Cigarette Tax Act.

20         No stamp or imprint may be affixed to, or made upon, any  
21    package of cigarettes unless that package complies with all  
22    requirements of the federal Cigarette Labeling and Advertising  
23    Act, 15 U.S.C. 1331 and following, for the placement of labels,  
24    warnings, or any other information upon a package of cigarettes  
25    that is sold within the United States. Under the authority of  
26    Section 6, the Department shall revoke the license of any

1 distributor that is determined to have violated this paragraph.  
2 A person may not affix a stamp on a package of cigarettes,  
3 cigarette papers, wrappers, or tubes if that individual package  
4 has been marked for export outside the United States with a  
5 label or notice in compliance with Section 290.185 of Title 27  
6 of the Code of Federal Regulations. It is not a defense to a  
7 proceeding for violation of this paragraph that the label or  
8 notice has been removed, mutilated, obliterated, or altered in  
9 any manner.

10 Only distributors licensed under this Act and  
11 transporters, as defined in Section 9c of the Cigarette Tax  
12 Act, may possess unstamped original packages of cigarettes.  
13 Prior to shipment to an Illinois retailer or secondary  
14 distributor, a stamp shall be applied to each original package  
15 of cigarettes sold to the retailer or secondary distributor. A  
16 distributor may apply a tax stamp only to an original package  
17 of cigarettes purchased or obtained directly from an in-state  
18 maker, manufacturer, or fabricator licensed as a distributor  
19 under Section 4 of this Act or an out-of-state maker,  
20 manufacturer, or fabricator holding a permit under Section 7 of  
21 this Act. A licensed distributor may ship or otherwise cause to  
22 be delivered unstamped original packages of cigarettes in,  
23 into, or from this State. A licensed distributor may transport  
24 unstamped original packages of cigarettes to a facility,  
25 wherever located, owned or controlled by such distributor;  
26 however, a distributor may not transport unstamped original

1 packages of cigarettes to a facility where retail sales of  
2 cigarettes take place or to a facility where a secondary  
3 distributor makes sales for resale. Any licensed distributor  
4 that ships or otherwise causes to be delivered unstamped  
5 original packages of cigarettes into, within, or from this  
6 State shall ensure that the invoice or equivalent documentation  
7 and the bill of lading or freight bill for the shipment  
8 identifies the true name and address of the consignor or  
9 seller, the true name and address of the consignee or  
10 purchaser, and the quantity by brand style of the cigarettes so  
11 transported, provided that this Section shall not be construed  
12 as to impose any requirement or liability upon any common or  
13 contract carrier.

14 Distributors making sales of cigarettes to secondary  
15 distributors shall add the amount of the tax to the price of  
16 the cigarettes sold by the distributors. Secondary  
17 distributors making sales of cigarettes to retailers shall  
18 include the amount of the tax in the price of the cigarettes  
19 sold to retailers. The amount of tax shall not be less than the  
20 amount of taxes imposed by the State and all local  
21 jurisdictions. The amount of local taxes shall be calculated  
22 based on the location of the retailer's place of business shown  
23 on the retailer's certificate of registration or  
24 sub-registration issued to the retailer pursuant to Section 2a  
25 of the Retailers' Occupation Tax Act. The original packages of  
26 cigarettes sold by the retailer shall bear all the required

1 stamps, or other indicia, for the taxes included in the price  
2 of cigarettes.

3 Stamps, when required hereunder, shall be purchased from  
4 the Department, or any person authorized by the Department, by  
5 distributors. On and after July 1, 2003, payment for such  
6 stamps must be made by means of electronic funds transfer. The  
7 Department may refuse to sell stamps to any person who does not  
8 comply with the provisions of this Act. Beginning on June 6,  
9 2002 and through June 30, 2002, persons holding valid licenses  
10 as distributors may purchase cigarette tax stamps up to an  
11 amount equal to 115% of the distributor's average monthly  
12 cigarette tax stamp purchases over the 12 calendar months prior  
13 to June 6, 2002.

14 Prior to December 1, 1985, the Department shall allow a  
15 distributor 21 days in which to make final payment of the  
16 amount to be paid for such stamps, by allowing the distributor  
17 to make payment for the stamps at the time of purchasing them  
18 with a draft which shall be in such form as the Department  
19 prescribes, and which shall be payable within 21 days  
20 thereafter: Provided that such distributor has filed with the  
21 Department, and has received the Department's approval of, a  
22 bond, which is in addition to the bond required under Section 4  
23 of this Act, payable to the Department in an amount equal to  
24 80% of such distributor's average monthly tax liability to the  
25 Department under this Act during the preceding calendar year or  
26 \$500,000, whichever is less. The bond shall be joint and

1 several and shall be in the form of a surety company bond in  
2 such form as the Department prescribes, or it may be in the  
3 form of a bank certificate of deposit or bank letter of credit.  
4 The bond shall be conditioned upon the distributor's payment of  
5 the amount of any 21-day draft which the Department accepts  
6 from that distributor for the delivery of stamps to that  
7 distributor under this Act. The distributor's failure to pay  
8 any such draft, when due, shall also make such distributor  
9 automatically liable to the Department for a penalty equal to  
10 25% of the amount of such draft.

11 On and after December 1, 1985 and until July 1, 2003, the  
12 Department shall allow a distributor 30 days in which to make  
13 final payment of the amount to be paid for such stamps, by  
14 allowing the distributor to make payment for the stamps at the  
15 time of purchasing them with a draft which shall be in such  
16 form as the Department prescribes, and which shall be payable  
17 within 30 days thereafter, and beginning on January 1, 2003 and  
18 thereafter, the draft shall be payable by means of electronic  
19 funds transfer: Provided that such distributor has filed with  
20 the Department, and has received the Department's approval of,  
21 a bond, which is in addition to the bond required under Section  
22 4 of this Act, payable to the Department in an amount equal to  
23 150% of such distributor's average monthly tax liability to the  
24 Department under this Act during the preceding calendar year or  
25 \$750,000, whichever is less, except that as to bonds filed on  
26 or after January 1, 1987, such additional bond shall be in an

1 amount equal to 100% of such distributor's average monthly tax  
2 liability under this Act during the preceding calendar year or  
3 \$750,000, whichever is less. The bond shall be joint and  
4 several and shall be in the form of a surety company bond in  
5 such form as the Department prescribes, or it may be in the  
6 form of a bank certificate of deposit or bank letter of credit.  
7 The bond shall be conditioned upon the distributor's payment of  
8 the amount of any 30-day draft which the Department accepts  
9 from that distributor for the delivery of stamps to that  
10 distributor under this Act. The distributor's failure to pay  
11 any such draft, when due, shall also make such distributor  
12 automatically liable to the Department for a penalty equal to  
13 25% of the amount of such draft.

14 Beginning on the effective date of this amendatory Act of  
15 the 96th General Assembly, the Department shall allow a  
16 distributor 10 days in which to make final payment of the  
17 amount to be paid for such stamps, by allowing the distributor  
18 to make payment for the stamps at the time of purchasing them  
19 with a draft, which shall be payable by means of electronic  
20 funds transfer and in such form as the Department prescribes,  
21 and which shall be payable within 10 days thereafter, provided  
22 that such distributor has filed with the Department, and has  
23 received the Department's approval of, a bond, which is in  
24 addition to the bond required under Section 4 of this Act,  
25 payable to the Department in an amount equal to 100% of that  
26 distributor's average monthly tax liability to the Department

1 under this Act during the preceding calendar year or \$750,000,  
2 whichever is less. The bond shall be joint and several and  
3 shall be in the form of a surety company bond in such form as  
4 the Department prescribes, or it may be in the form of a bank  
5 certificate of deposit or bank letter of credit. The bond shall  
6 be conditioned upon the distributor's payment of the amount of  
7 any 10-day draft which the Department accepts from that  
8 distributor for the delivery of stamps to that distributor  
9 under this Act. The distributor's failure to pay any such  
10 draft, when due, shall also make such distributor automatically  
11 liable to the Department for a penalty equal to 25% of the  
12 amount of such draft.

13 Every prior continuous compliance taxpayer shall be exempt  
14 from all requirements under this Section concerning the  
15 furnishing of such bond, as defined in this Section, as a  
16 condition precedent to his being authorized to engage in the  
17 business licensed under this Act. This exemption shall continue  
18 for each such taxpayer until such time as he may be determined  
19 by the Department to be delinquent in the filing of any  
20 returns, or is determined by the Department (either through the  
21 Department's issuance of a final assessment which has become  
22 final under the Act, or by the taxpayer's filing of a return  
23 which admits tax to be due that is not paid) to be delinquent  
24 or deficient in the paying of any tax under this Act, at which  
25 time that taxpayer shall become subject to the bond  
26 requirements of this Section and, as a condition of being



1 allowed to continue to engage in the business licensed under  
2 this Act, shall be required to furnish bond to the Department  
3 in such form as provided in this Section. Such taxpayer shall  
4 furnish such bond for a period of 2 years, after which, if the  
5 taxpayer has not been delinquent in the filing of any returns,  
6 or delinquent or deficient in the paying of any tax under this  
7 Act, the Department may reinstate such person as a prior  
8 continuance compliance taxpayer. Any taxpayer who fails to pay  
9 an admitted or established liability under this Act may also be  
10 required to post bond or other acceptable security with the  
11 Department guaranteeing the payment of such admitted or  
12 established liability.

13 Any person aggrieved by any decision of the Department  
14 under this Section may, within the time allowed by law, protest  
15 and request a hearing, whereupon the Department shall give  
16 notice and shall hold a hearing in conformity with the  
17 provisions of this Act and then issue its final administrative  
18 decision in the matter to such person. In the absence of such a  
19 protest filed within the time allowed by law, the Department's  
20 decision shall become final without any further determination  
21 being made or notice given.

22 The Department shall discharge any surety and shall release  
23 and return any bond or security deposited, assigned, pledged,  
24 or otherwise provided to it by a taxpayer under this Section  
25 within 30 days after:

26 (1) such Taxpayer becomes a prior continuous

1 compliance taxpayer; or

2 (2) such taxpayer has ceased to collect receipts on  
3 which he is required to remit tax to the Department, has  
4 filed a final tax return, and has paid to the Department an  
5 amount sufficient to discharge his remaining tax liability  
6 as determined by the Department under this Act. The  
7 Department shall make a final determination of the  
8 taxpayer's outstanding tax liability as expeditiously as  
9 possible after his final tax return has been filed. If the  
10 Department cannot make such final determination within 45  
11 days after receiving the final tax return, within such  
12 period it shall so notify the taxpayer, stating its reasons  
13 therefor.

14 At the time of purchasing such stamps from the Department  
15 when purchase is required by this Act, or at the time when the  
16 tax which he has collected is remitted by a distributor to the  
17 Department without the purchase of stamps from the Department  
18 when that method of remitting the tax that has been collected  
19 is required or authorized by this Act, the distributor shall be  
20 allowed a discount during any year commencing July 1 and ending  
21 the following June 30 in accordance with the schedule set out  
22 hereinbelow, from the amount to be paid by him to the  
23 Department for such stamps, or to be paid by him to the  
24 Department on the basis of monthly remittances (as the case may  
25 be), to cover the cost, to such distributor, of collecting the  
26 tax herein imposed by affixing such stamps to the original

1 packages of cigarettes sold by such distributor or by placing  
2 tax imprints underneath the sealed transparent wrapper of  
3 original packages of cigarettes sold by such distributor (as  
4 the case may be): (1) Prior to December 1, 1985, a discount  
5 equal to 1-2/3% of the amount of the tax up to and including  
6 the first \$700,000 paid hereunder by such distributor to the  
7 Department during any such year; 1-1/3% of the next \$700,000 of  
8 tax or any part thereof, paid hereunder by such distributor to  
9 the Department during any such year; 1% of the next \$700,000 of  
10 tax, or any part thereof, paid hereunder by such distributor to  
11 the Department during any such year; and 2/3 of 1% of the  
12 amount of any additional tax paid hereunder by such distributor  
13 to the Department during any such year or (2) On and after  
14 December 1, 1985, a discount equal to 1.75% of the amount of  
15 the tax payable under this Act up to and including the first  
16 \$3,000,000 paid hereunder by such distributor to the Department  
17 during any such year and 1.5% of the amount of any additional  
18 tax paid hereunder by such distributor to the Department during  
19 any such year.

20 Two or more distributors that use a common means of  
21 affixing revenue tax stamps or that are owned or controlled by  
22 the same interests shall be treated as a single distributor for  
23 the purpose of computing the discount.

24 Cigarette manufacturers who are distributors under Section  
25 7(a) of this Act, and who place their cigarettes in original  
26 packages which are contained inside a sealed transparent

1 wrapper, shall be required to remit the tax which they are  
2 required to collect under this Act to the Department by  
3 remitting the amount thereof to the Department by the 5th day  
4 of each month, covering cigarettes shipped or otherwise  
5 delivered to points in Illinois to purchasers during the  
6 preceding calendar month, but a distributor need not remit to  
7 the Department the tax so collected by him from purchasers  
8 under this Act to the extent to which such distributor is  
9 required to remit the tax imposed by the Cigarette Tax Act to  
10 the Department with respect to the same cigarettes. All taxes  
11 upon cigarettes under this Act are a direct tax upon the retail  
12 consumer and shall conclusively be presumed to be precollected  
13 for the purpose of convenience and facility only. Cigarette  
14 manufacturers that are distributors licensed under Section  
15 7(a) of this Act and who place their cigarettes in original  
16 packages which are contained inside a sealed transparent  
17 wrapper, before delivering such cigarettes or causing such  
18 cigarettes to be delivered in this State to purchasers, shall  
19 evidence their obligation to collect and remit the tax due with  
20 respect to such cigarettes by imprinting language to be  
21 prescribed by the Department on each original package of such  
22 cigarettes underneath the sealed transparent outside wrapper  
23 of such original package, in such place thereon and in such  
24 manner as the Department may prescribe; provided (as stated  
25 hereinbefore) that this requirement does not apply when such  
26 distributor is required or authorized by the Cigarette Tax Act

1 to place the tax imprint provided for in the last paragraph of  
2 Section 3 of that Act underneath the sealed transparent wrapper  
3 of such original package of cigarettes. Such imprinted language  
4 shall acknowledge the manufacturer's collection and payment of  
5 or liability for the tax imposed by this Act with respect to  
6 such cigarettes.

7 The Department shall adopt the design or designs of the tax  
8 stamps and shall procure the printing of such stamps in such  
9 amounts and denominations as it deems necessary to provide for  
10 the affixation of the proper amount of tax stamps to each  
11 original package of cigarettes.

12 Where tax stamps are required, the Department may authorize  
13 distributors to affix revenue tax stamps by imprinting tax  
14 meter stamps upon original packages of cigarettes. The  
15 Department shall adopt rules and regulations relating to the  
16 imprinting of such tax meter stamps as will result in payment  
17 of the proper taxes as herein imposed. No distributor may affix  
18 revenue tax stamps to original packages of cigarettes by  
19 imprinting meter stamps thereon unless such distributor has  
20 first obtained permission from the Department to employ this  
21 method of affixation. The Department shall regulate the use of  
22 tax meters and may, to assure the proper collection of the  
23 taxes imposed by this Act, revoke or suspend the privilege,  
24 theretofore granted by the Department to any distributor, to  
25 imprint tax meter stamps upon original packages of cigarettes.

26 The tax hereby imposed and not paid pursuant to this

1 Section shall be paid to the Department directly by any person  
2 using such cigarettes within this State, pursuant to Section 12  
3 hereof.

4 A distributor shall not affix, or cause to be affixed, any  
5 stamp or imprint to a package of cigarettes, as provided for in  
6 this Section, if the tobacco product manufacturer, as defined  
7 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,  
8 that made or sold the cigarettes has failed to become a  
9 participating manufacturer, as defined in subdivision (a)(1)  
10 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,  
11 or has failed to create a qualified escrow fund for any  
12 cigarettes manufactured by the tobacco product manufacturer  
13 and sold in this State or otherwise failed to bring itself into  
14 compliance with subdivision (a)(2) of Section 15 of the Tobacco  
15 Product Manufacturers' Escrow Act.

16 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

17 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

18 Sec. 12. Declaration of possession of cigarettes on which  
19 tax not paid.

20 (a) When cigarettes are acquired for use in this State by a  
21 person (including a distributor as well as any other person),  
22 who did not pay the tax herein imposed to a distributor, the  
23 person, within 30 days after acquiring the cigarettes, shall  
24 file with the Department a return declaring the possession of  
25 the cigarettes and shall transmit with the return to the

1 Department the tax imposed by this Act.

2 (b) On receipt of the return and payment of the tax as  
3 required by paragraph (a), the Department may furnish the  
4 person with a suitable tax stamp to be affixed to the package  
5 of cigarettes upon which the tax has been paid if the  
6 Department determines that the cigarettes still exist.

7 (c) The return referred to in paragraph (a) shall contain  
8 the name and address of the person possessing the cigarettes  
9 involved, the location of the cigarettes and the quantity,  
10 brand name, place, and date of the acquisition of the  
11 cigarettes.

12 (d) Nothing in this Section shall permit a secondary  
13 distributor to purchase unstamped original packages of  
14 cigarettes or to purchase original packages of cigarettes from  
15 a person other than a licensed distributor.

16 (e) The provisions of this Section are not subject to the  
17 Uniform Penalty and Interest Act.

18 (Source: P.A. 96-1027, eff. 7-12-10.)

19 Section 20. The Tobacco Products Tax Act of 1995 is amended  
20 by changing Sections 10-5, 10-10, and 10-30 as follows:

21 (35 ILCS 143/10-5)

22 Sec. 10-5. Definitions. For purposes of this Act:

23 "Business" means any trade, occupation, activity, or  
24 enterprise engaged in, at any location whatsoever, for the

1 purpose of selling tobacco products.

2 "Cigarette" has the meaning ascribed to the term in Section  
3 1 of the Cigarette Tax Act.

4 "Correctional Industries program" means a program run by a  
5 State penal institution in which residents of the penal  
6 institution produce tobacco products for sale to persons  
7 incarcerated in penal institutions or resident patients of a  
8 State operated mental health facility.

9 "Department" means the Illinois Department of Revenue.

10 "Distributor" means any of the following:

11 (1) Any manufacturer or wholesaler in this State  
12 engaged in the business of selling tobacco products who  
13 sells, exchanges, or distributes tobacco products to  
14 retailers or consumers in this State.

15 (2) Any manufacturer or wholesaler engaged in the  
16 business of selling tobacco products from without this  
17 State who sells, exchanges, distributes, ships, or  
18 transports tobacco products to retailers or consumers  
19 located in this State, so long as that manufacturer or  
20 wholesaler has or maintains within this State, directly or  
21 by subsidiary, an office, sales house, or other place of  
22 business, or any agent or other representative operating  
23 within this State under the authority of the person or  
24 subsidiary, irrespective of whether the place of business  
25 or agent or other representative is located here  
26 permanently or temporarily.



1           (3) Any retailer who receives tobacco products on which  
2           the tax has not been or will not be paid by another  
3           distributor.

4           "Distributor" does not include any person, wherever  
5           resident or located, who makes, manufactures, or fabricates  
6           tobacco products as part of a Correctional Industries program  
7           for sale to residents incarcerated in penal institutions or  
8           resident patients of a State operated mental health facility.

9           "Manufacturer" means any person, wherever resident or  
10          located, who manufactures and sells tobacco products, except a  
11          person who makes, manufactures, or fabricates tobacco products  
12          as a part of a Correctional Industries program for sale to  
13          persons incarcerated in penal institutions or resident  
14          patients of a State operated mental health facility.

15          "Moist snuff" means any finely cut, ground, or powdered  
16          tobacco that is not intended to be smoked, but shall not  
17          include any finely cut, ground, or powdered tobacco that is  
18          intended to be placed in the nasal cavity.

19          "Person" means any natural individual, firm, partnership,  
20          association, joint stock company, joint venture, limited  
21          liability company, or public or private corporation, however  
22          formed, or a receiver, executor, administrator, trustee,  
23          conservator, or other representative appointed by order of any  
24          court.

25          "Place of business" means and includes any place where  
26          tobacco products are sold or where tobacco products are

1 manufactured, stored, or kept for the purpose of sale or  
2 consumption, including any vessel, vehicle, airplane, train,  
3 or vending machine.

4 "Retailer" means any person in this State engaged in the  
5 business of selling tobacco products to consumers in this  
6 State, regardless of quantity or number of sales.

7 "Sale" means any transfer, exchange, or barter in any  
8 manner or by any means whatsoever for a consideration and  
9 includes all sales made by persons.

10 "Tobacco products" means any cigars; cheroots; stogies;  
11 periques; granulated, plug cut, crimp cut, ready rubbed, and  
12 other smoking tobacco; snuff (including moist snuff) or snuff  
13 flour; cavendish; plug and twist tobacco; fine-cut and other  
14 chewing tobaccos; shorts; refuse scraps, clippings, cuttings,  
15 and sweeping of tobacco; and other kinds and forms of tobacco,  
16 prepared in such manner as to be suitable for chewing or  
17 smoking in a pipe or otherwise, or both for chewing and  
18 smoking; but does not include cigarettes or tobacco purchased  
19 for the manufacture of cigarettes by cigarette distributors and  
20 manufacturers defined in the Cigarette Tax Act and persons who  
21 make, manufacture, or fabricate cigarettes as a part of a  
22 Correctional Industries program for sale to residents  
23 incarcerated in penal institutions or resident patients of a  
24 State operated mental health facility.

25 "Wholesale price" means the established list price for  
26 which a manufacturer sells tobacco products to a distributor,

1 before the allowance of any discount, trade allowance, rebate,  
2 or other reduction. In the absence of such an established list  
3 price, the manufacturer's invoice price at which the  
4 manufacturer sells the tobacco product to unaffiliated  
5 distributors, before any discounts, trade allowances, rebates,  
6 or other reductions, shall be presumed to be the wholesale  
7 price.

8 "Wholesaler" means any person, wherever resident or  
9 located, engaged in the business of selling tobacco products to  
10 others for the purpose of resale.

11 (Source: P.A. 92-231, eff. 8-2-01.)

12 (35 ILCS 143/10-10)

13 Sec. 10-10. Tax imposed. On the first day of the third  
14 month after the month in which this Act becomes law and until  
15 March 1, 2011, a tax is imposed on any person engaged in  
16 business as a distributor of tobacco products, as defined in  
17 Section 10-5, at the rate of 18% of the wholesale price of  
18 tobacco products sold or otherwise disposed of to retailers or  
19 consumers located in this State. Beginning on March 1, 2011, a  
20 tax is imposed on any person engaged in business as a  
21 distributor of tobacco products, as defined in Section 10-5, at  
22 the rate of (i) 18% of the wholesale price of tobacco products,  
23 other than moist snuff, sold or otherwise disposed of to  
24 retailers or consumers located in this State and (ii) \$0.20 per  
25 ounce of moist snuff, and a proportionate tax at the like rate

1 on all fractional parts of an ounce, sold or otherwise disposed  
2 of to retailers or consumers located in this State. The tax is  
3 in addition to all other occupation or privilege taxes imposed  
4 by the State of Illinois, by any political subdivision thereof,  
5 or by any municipal corporation. However, the tax is not  
6 imposed upon any activity in that business in interstate  
7 commerce or otherwise, to the extent to which that activity may  
8 not, under the Constitution and Statutes of the United States,  
9 be made the subject of taxation by this State. The tax is also  
10 not imposed on sales made to the United States or any entity  
11 thereof.

12 Beginning on March 1, 2011, the tax rate imposed per ounce  
13 of moist snuff may not exceed 11% of the tax imposed upon a  
14 package of 20 cigarettes pursuant to the Cigarette Tax Act.

15 All moneys received by the Department under this Act shall  
16 be paid into the Long-Term Care Provider Fund of the State  
17 Treasury.

18 (Source: P.A. 92-231, eff. 8-2-01.)

19 (35 ILCS 143/10-30)

20 Sec. 10-30. Returns. Every distributor shall, on or before  
21 the 15th day of each month, file a return with the Department  
22 covering the preceding calendar month. The return shall  
23 disclose the wholesale price for all tobacco products and the  
24 quantity of moist snuff sold or otherwise disposed of and other  
25 information that the Department may reasonably require. The

1 return shall be filed upon a form prescribed and furnished by  
2 the Department.

3 At the time when any return of any distributor is due to be  
4 filed with the Department, the distributor shall also remit to  
5 the Department the tax liability that the distributor has  
6 incurred for transactions occurring in the preceding calendar  
7 month.

8 (Source: P.A. 89-21, eff. 6-6-95.)

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law."