



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB3141

Introduced 2/15/2018, by Sen. Karen McConnaughay

SYNOPSIS AS INTRODUCED:

See Index

Amends the Use Tax Act, the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, the Cigarette Tax Act, and the Cigarette Use Tax Act. Provides that a taxpayer is prohibited from introducing into evidence in a proceeding before the Department of Revenue, Tax Tribunal, or court any books or records that the taxpayer failed to produce to the Department for examination, unless the books and records are received by the Department no less than 5 business days prior to seeking introduction of the books and records in the proceeding. Sets forth penalties for failure to keep or produce certain books and records. Requires distributors and secondary distributors who purchase cigarettes for shipment into Illinois from a point outside this State to make the invoices available for inspection upon demand by a duly authorized employee of the Department. Provides that the Department may assess taxes, penalties, and interest on original packages of cigarettes that do not contain property tax stamps. Provides that, if a person fails to produce records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the records so required. Provides that the sale of individual or loose cigarettes is prohibited. Amends the Tobacco Products Tax Act of 1995 to make changes concerning penalties for failure to keep and produce books and records. Effective immediately.

LRB100 20670 HLH 36122 b

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Use Tax Act is amended by changing Section
5 11 as follows:

6 (35 ILCS 105/11) (from Ch. 120, par. 439.11)

7 Sec. 11. Every retailer required or authorized to collect
8 taxes hereunder and every person using in this State tangible
9 personal property purchased at retail from a retailer on or
10 after the effective date hereof shall keep such records,
11 receipts, invoices and other pertinent books, documents,
12 memoranda and papers as the Department shall require, in such
13 form as the Department shall require. The Department may adopt
14 rules that establish requirements, including record forms and
15 formats, for records required to be kept and maintained by
16 taxpayers. For purposes of this Section, "records" means all
17 data maintained by the taxpayer, including data on paper,
18 microfilm, microfiche or any type of machine-sensible data
19 compilation. For the purpose of administering and enforcing the
20 provisions hereof, the Department, or any officer or employee
21 of the Department designated, in writing, by the Director
22 thereof, may hold investigations and hearings concerning any
23 matters covered herein and may examine any books, papers,

1 records, documents or memoranda of any retailer or purchaser
2 bearing upon the sales or purchases of tangible personal
3 property, the privilege of using which is taxed hereunder, and
4 may require the attendance of such person or any officer or
5 employee of such person, or of any person having knowledge of
6 the facts, and may take testimony and require proof for its
7 information.

8 A taxpayer is prohibited from introducing into evidence in
9 a proceeding before the Department, Tax Tribunal, or court any
10 books or records that the taxpayer failed to produce to the
11 Department for examination as required by this Section and the
12 rules adopted by the Department unless the books and records
13 are received by the Department no less than 5 business days
14 prior to seeking introduction of the books and records in the
15 proceeding.

16 Any person who fails to keep books and records or fails to
17 produce books and records for examination as required by this
18 Section and the rules adopted by the Department, including any
19 officer or director of any corporation, any partner or member
20 of any partnership, any manager or member of any limited
21 liability company, or any other person responsible for filing
22 returns, shall be liable to pay to the Department, for deposit
23 into the Tax Compliance and Administration Fund, a penalty of
24 \$1,000 for the first failure to keep or produce such books and
25 records and penalty of \$3,000 for each subsequent failure to
26 keep or produce such books and records. The Department may

1 adopt rules to administer the penalties under this Section.

2 (Source: P.A. 88-480.)

3 Section 10. The Service Use Tax Act is amended by changing
4 Section 11 as follows:

5 (35 ILCS 110/11) (from Ch. 120, par. 439.41)

6 Sec. 11. Every serviceman required or authorized to collect
7 taxes hereunder and every user who is subject to the tax
8 imposed by this Act shall keep such records, receipts, invoices
9 and other pertinent books, documents, memoranda and papers as
10 the Department shall require, in such form as the Department
11 shall require. The Department may adopt rules that establish
12 requirements, including record forms and formats, for records
13 required to be kept and maintained by taxpayers. For purposes
14 of this Section, "records" means all data maintained by the
15 taxpayer, including data on paper, microfilm, microfiche or any
16 type of machine-sensible data compilation. For the purpose of
17 administering and enforcing the provisions hereof, the
18 Department, or any officer or employee of the Department
19 designated, in writing, by the Director thereof, may hold
20 investigations and hearings concerning any matters covered
21 herein and not otherwise delegated to the Illinois Independent
22 Tax Tribunal and may examine any relevant books, papers,
23 records, documents or memoranda of any serviceman or any
24 taxable purchaser for use hereunder, and may require the

1 attendance of such person or any officer or employee of such
2 person, or of any person having knowledge of the facts, and may
3 take testimony and require proof for its information.

4 A taxpayer is prohibited from introducing into evidence in
5 a proceeding before the Department, Tax Tribunal, or court any
6 books or records that the taxpayer failed to produce to the
7 Department for examination as required by this Section and the
8 rules adopted by the Department unless the books and records
9 are received by the Department no less than 5 business days
10 prior to seeking introduction of the books and records in the
11 proceeding.

12 Any person who fails to keep books and records or fails to
13 produce books and records for examination as required by this
14 Section and the rules adopted by the Department, including any
15 officer or director of any corporation, any partner or member
16 of any partnership, any manager or member of any limited
17 liability company, or any other person responsible for filing
18 returns, shall be liable to pay to the Department, for deposit
19 into the Tax Compliance and Administration Fund, a penalty of
20 \$1,000 for the first failure to keep or produce such books and
21 records and penalty of \$3,000 for each subsequent failure to
22 keep or produce such books and records. The Department may
23 adopt rules to administer the penalties under this Section.

24 (Source: P.A. 97-1129, eff. 8-28-12.)

25 Section 15. The Service Occupation Tax Act is amended by

1 changing Section 11 as follows:

2 (35 ILCS 115/11) (from Ch. 120, par. 439.111)

3 Sec. 11. Every supplier required or authorized to collect
4 taxes hereunder and every serviceman making sales of service in
5 this State on or after the effective date hereof shall keep
6 such records, receipts, invoices and other pertinent books,
7 documents, memoranda and papers as the Department shall
8 require, in such form as the Department shall require. The
9 Department may adopt rules that establish requirements,
10 including record forms and formats, for records required to be
11 kept and maintained by taxpayers. For purposes of this Section,
12 "records" means all data maintained by the taxpayer, including
13 data on paper, microfilm, microfiche or any type of
14 machine-sensible data compilation. For the purpose of
15 administering and enforcing the provisions hereof, the
16 Department, or any officer or employee of the Department
17 designated, in writing, by the Director thereof, may hold
18 investigations and hearings not otherwise delegated to the
19 Illinois Independent Tax Tribunal concerning any matters
20 covered herein and may examine any books, papers, records,
21 documents or memoranda of any supplier or serviceman bearing
22 upon the sales of services or the sales of tangible personal
23 property to servicemen, and may require the attendance of such
24 person or any officer or employee of such person, or of any
25 person having knowledge of the facts, and may take testimony

1 and require proof for its information.

2 A taxpayer is prohibited from introducing into evidence in
3 a proceeding before the Department, Tax Tribunal, or court any
4 books or records that the taxpayer failed to produce to the
5 Department for examination as required by this Section and the
6 rules adopted by the Department unless the books and records
7 are received by the Department no less than 5 business days
8 prior to seeking introduction of the books and records in the
9 proceeding.

10 Any person who fails to keep books and records or fails to
11 produce books and records for examination as required by this
12 Section and the rules adopted by the Department, including any
13 officer or director of any corporation, any partner or member
14 of any partnership, any manager or member of any limited
15 liability company, or any other person responsible for filing
16 returns, shall be liable to pay to the Department, for deposit
17 into the Tax Compliance and Administration Fund, a penalty of
18 \$1,000 for the first failure to keep or produce such books and
19 records and penalty of \$3,000 for each subsequent failure to
20 keep or produce such books and records. The Department may
21 adopt rules to administer the penalties under this Section.

22 (Source: P.A. 97-1129, eff. 8-28-12.)

23 Section 20. The Retailers' Occupation Tax Act is amended by
24 changing Section 7 as follows:

1 (35 ILCS 120/7) (from Ch. 120, par. 446)

2 Sec. 7. Every person engaged in the business of selling
3 tangible personal property at retail in this State shall keep
4 records and books of all sales of tangible personal property,
5 together with invoices, bills of lading, sales records, copies
6 of bills of sale, inventories prepared as of December 31 of
7 each year or otherwise annually as has been the custom in the
8 specific trade and other pertinent papers and documents. Every
9 person who is engaged in the business of selling tangible
10 personal property at retail in this State and who, in
11 connection with such business, also engages in other activities
12 (including, but not limited to, engaging in a service
13 occupation) shall keep such additional records and books of all
14 such activities as will accurately reflect the character and
15 scope of such activities and the amount of receipts realized
16 therefrom. The Department may adopt rules that establish
17 requirements, including record forms and formats, for records
18 required to be kept and maintained by taxpayers. For purposes
19 of this Section, "records" means all data maintained by the
20 taxpayer, including data on paper, microfilm, microfiche or any
21 type of machine-sensible data compilation.

22 All books and records and other papers and documents which
23 are required by this Act to be kept shall be kept in the
24 English language and shall, at all times during business hours
25 of the day, be subject to inspection by the Department or its
26 duly authorized agents and employees.

1 To support deductions made on the tax return form, or
2 authorized under this Act, on account of receipts from isolated
3 or occasional sales of tangible personal property, on account
4 of receipts from sales of tangible personal property for
5 resale, on account of receipts from sales to governmental
6 bodies or other exempted types of purchasers, on account of
7 receipts from sales of tangible personal property in interstate
8 commerce, and on account of receipts from any other kind of
9 transaction that is not taxable under this Act, entries in any
10 books, records or other pertinent papers or documents of the
11 taxpayer in relation thereto shall be in detail sufficient to
12 show the name and address of the taxpayer's customer in each
13 such transaction, the character of every such transaction, the
14 date of every such transaction, the amount of receipts realized
15 from every such transaction and such other information as may
16 be necessary to establish the non-taxable character of such
17 transaction under this Act.

18 Except in the case of a sale to a purchaser who will always
19 resell and deliver the property to his customers outside
20 Illinois, anyone claiming that he has made a nontaxable sale
21 for resale in some form as tangible personal property shall
22 also keep a record of the purchaser's registration number or
23 resale number with the Department.

24 It shall be presumed that all sales of tangible personal
25 property are subject to tax under this Act until the contrary
26 is established, and the burden of proving that a transaction is

1 not taxable hereunder shall be upon the person who would be
2 required to remit the tax to the Department if such transaction
3 is taxable. In the course of any audit or investigation or
4 hearing by the Department with reference to a given taxpayer,
5 if the Department finds that the taxpayer lacks documentary
6 evidence needed to support the taxpayer's claim to exemption
7 from tax hereunder, the Department is authorized to notify the
8 taxpayer in writing to produce such evidence, and the taxpayer
9 shall have 60 days subject to the right in the Department to
10 extend this period either on request for good cause shown or on
11 its own motion from the date when such notice is sent to the
12 taxpayer by certified or registered mail (or delivered to the
13 taxpayer if the notice is served personally) in which to obtain
14 and produce such evidence for the Department's inspection,
15 failing which the matter shall be closed, and the transaction
16 shall be conclusively presumed to be taxable hereunder.

17 Books and records and other papers reflecting gross
18 receipts received during any period with respect to which the
19 Department is authorized to issue notices of tax liability as
20 provided by Sections 4 and 5 of this Act shall be preserved
21 until the expiration of such period unless the Department, in
22 writing, shall authorize their destruction or disposal prior to
23 such expiration.

24 A taxpayer is prohibited from introducing into evidence in
25 a proceeding before the Department, Tax Tribunal, or court any
26 books or records that the taxpayer failed to produce to the

1 Department for examination as required by this Section and the
2 rules adopted by the Department unless the books and records
3 are received by the Department no less than 5 business days
4 prior to seeking introduction of the books and records in the
5 proceeding.

6 Any person who fails to keep books and records or fails to
7 produce books and records for examination as required by this
8 Section and the rules adopted by the Department, including any
9 officer or director of any corporation, any partner or member
10 of any partnership, any manager or member of any limited
11 liability company, or any other person responsible for filing
12 returns, shall be liable to pay to the Department, for deposit
13 into the Tax Compliance and Administration Fund, a penalty of
14 \$1,000 for the first failure to keep or produce such books and
15 records and penalty of \$3,000 for each subsequent failure to
16 keep or produce such books and records. The Department may
17 adopt rules to administer the penalties under this Section.

18 (Source: P.A. 88-480.)

19 Section 25. The Cigarette Tax Act is amended by changing
20 Sections 12, 13, 14, 15, 18b, and 18c and by adding Sections
21 13a, 15a, and 18d as follows:

22 (35 ILCS 130/12) (from Ch. 120, par. 453.12)

23 Sec. 12. Every distributor or secondary distributor who is
24 required to procure a license under this Act and who purchases

1 cigarettes for shipment into Illinois from a point outside this
2 State shall procure invoices in duplicate covering each such
3 shipment, shall make the invoices available for inspection upon
4 demand by a duly authorized employee of the Department, and
5 shall, if the Department so requires, furnish one copy of each
6 such invoice to the Department at the time of filing a return
7 or a report required by this Act.

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

9 (35 ILCS 130/13) (from Ch. 120, par. 453.13)

10 Sec. 13. Whenever any original package of cigarettes is
11 found in the place of business or in the possession of any
12 person who is not a licensed distributor under this Act without
13 proper stamps affixed thereto, or an authorized substitute
14 therefor imprinted thereon, underneath the sealed transparent
15 wrapper of such original package, as required by this Act, the
16 prima facie presumption shall arise that such original package
17 of cigarettes is kept therein or is held by such person in
18 violation of the provisions of this Act. If a presumption is
19 raised, the Department may, in addition to the penalties
20 imposed by Sections 18b and 18c of this Act and any other civil
21 or criminal penalties provided for in this Act, assess tax
22 penalty, and interest on the original packages of cigarettes.

23 (Source: Laws 1953, p. 255.)

24 (35 ILCS 130/13a new)

1 Sec. 13a. Contraband cigarettes. Whenever a retailer
2 obtains original packages of cigarettes from an in-state or
3 out-of-state distributor or person that is not licensed as a
4 distributor under this Act or the Cigarette Use Tax Act, a
5 prima facie presumption shall arise that such original packages
6 of cigarettes are contraband and are possessed by such retailer
7 or were possessed by such retailer in violation of the
8 provisions of this Act and subject to the penalties imposed by
9 Sections 18b and 18c of this Act. Invoices or other documents
10 kept in the normal course of business in the possession of a
11 retailer reflecting purchases of original packages of
12 cigarettes from an unlicensed in-state or out-of-state
13 distributor or person or invoices or other documents kept in
14 the normal course of business obtained by the Department from
15 an in-state or out-of-state distributor or person, are
16 sufficient to raise the presumption that such original packages
17 of cigarettes are contraband and are possessed, or were
18 possessed, by such retailer in violation of the provisions of
19 this Act and the retailer is subject to the penalties imposed
20 by Sections 18b and 18c. If a presumption is raised, the
21 Department may, in addition to the penalties imposed by
22 Sections 18b and 18c and any other civil or criminal penalties
23 provided for in this Act, assess tax penalty, and interest on
24 the original packages of cigarettes.

1 Sec. 14. Any person required by this Act to keep records of
2 any kind whatsoever, who shall fail to keep the records so
3 required or who shall falsify such records, shall be guilty of
4 a Class 4 felony. If a person fails to produce the records for
5 inspection by the Department upon request, a prima facie
6 presumption shall arise that the person has failed to keep the
7 records so required. A person who is unable to rebut this
8 presumption is in violation of this Act and is subject to the
9 penalties provided in this Section.

10 (Source: P.A. 83-1428.)

11 (35 ILCS 130/15) (from Ch. 120, par. 453.15)

12 Sec. 15. Any person who shall fail to safely maintain and
13 preserve the records required by Sections ~~Section~~ 11, and
14 ~~Section~~ 11a, 11b, and 11c of this Act for the period of 3 ~~three~~
15 years, as required therein, in such manner as to insure
16 permanency and accessibility for inspection by the Department,
17 shall be guilty of a business offense and may be fined up to
18 \$5,000. If a person fails to produce the records for inspection
19 by the Department upon request, a prima facie presumption shall
20 arise that the person has failed to preserve the records so
21 required. A person who is unable to rebut this presumption is
22 in violation of this Act and is subject to the penalties
23 provided in this Section.

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

1 (35 ILCS 130/15a new)

2 Sec. 15a. Failure to keep and produce books and records.

3 Any person who or any officer or director of any corporation,
4 partner, or member of any partnership, manager or member of a
5 limited liability company, or person responsible for filing
6 returns that fails to keep books and records or fails to
7 produce books and records for inspection, as required by
8 Sections 11, 11a, 11b, and 11c of this Act, shall be liable to
9 pay to the Department, for deposit in the Tax Compliance and
10 Administration Fund, a penalty of \$1,000 for the first failure
11 to keep books and records or failure to produce books and
12 records for inspection, as required by Sections 11, 11a, 11b,
13 and 11c, and \$3000 for each subsequent failure to keep books
14 and records or failure to produce books and records for
15 inspection, as required by Sections 11, 11a, 11b, and 11c. The
16 Department may adopt rules to administer the penalties under
17 this Section.

18 A taxpayer shall be prohibited from introducing into
19 evidence in a proceeding before the Department, Tax Tribunal,
20 or a court any books and records that the taxpayer failed to
21 produce to the Department for inspection as required by
22 Sections 11, 11a, 11b, and 11c unless the books and records are
23 received by the Department no less than 5 business days prior
24 to seeking introduction of the books and records into the
25 record of the proceeding.

1 (35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

2 Sec. 18b. Possession of more than 100 original packages of
3 contraband cigarettes; penalty. With the exception of licensed
4 distributors and transporters, as defined in Section 9c of this
5 Act, possessing unstamped original packages of cigarettes, and
6 licensed distributors possessing original packages of
7 cigarettes that bear a tax stamp of another state or taxing
8 jurisdiction, anyone possessing or having possessed contraband
9 cigarettes contained in original packages is liable to pay, to
10 the Department for deposit in the Tax Compliance and
11 Administration Fund, a penalty of \$25 for each such package of
12 cigarettes in excess of 100 packages, unless reasonable cause
13 can be established by the person upon whom the penalty is
14 imposed. This penalty is in addition to the taxes imposed by
15 this Act. Reasonable cause shall be determined in each
16 situation in accordance with rules adopted by the Department.
17 The provisions of the Uniform Penalty and Interest Act do not
18 apply to this Section.

19 (Source: P.A. 96-782, eff. 1-1-10.)

20 (35 ILCS 130/18c)

21 Sec. 18c. Possession of not less than 10 and not more than
22 100 original packages of contraband cigarettes; penalty. With
23 the exception of licensed distributors and transporters, as
24 defined in Section 9c of this Act, possessing unstamped
25 original packages of cigarettes, and licensed distributors

1 possessing original packages of cigarettes that bear a tax
2 stamp of another state or taxing jurisdiction, anyone
3 possessing or having possessed not less than 10 and not more
4 than 100 packages of contraband cigarettes contained in
5 original packages is liable to pay to the Department, for
6 deposit into the Tax Compliance and Administration Fund, a
7 penalty of \$15 ~~\$10~~ for each such package of cigarettes, unless
8 reasonable cause can be established by the person upon whom the
9 penalty is imposed. Reasonable cause shall be determined in
10 each situation in accordance with rules adopted by the
11 Department. The provisions of the Uniform Penalty and Interest
12 Act do not apply to this Section.

13 (Source: P.A. 96-782, eff. 1-1-10.)

14 (35 ILCS 130/18d new)

15 Sec. 18d. Cigarette package sizes; sale of individual or
16 loose cigarettes prohibited. Cigarettes may only be sold in
17 packages of 20 or 25 cigarettes. The sale of individual or
18 loose cigarettes is prohibited. Any person who violates this
19 Section of the Act shall be liable to pay to the Department,
20 for deposit in the Tax Compliance and Administration Fund, a
21 penalty of \$1,000 for the first violation and \$3,000 for any
22 subsequent violation. Any person who violates this Section
23 shall be guilty of a Class 4 felony. The Department may adopt
24 rules to administer the penalties under this Section.

1 Section 30. The Cigarette Use Tax Act is amended by
2 changing Sections 12, 22, 23, 25a, and 25b and by adding
3 Sections 8a, 23a, and 25c as follows:

4 (35 ILCS 135/8a new)

5 Sec. 8a. Contraband cigarettes. Whenever any person
6 obtains original packages of cigarettes from an in-state or
7 out-of-state distributor or person that is not licensed as a
8 distributor under this Act or the Cigarette Tax Act, a prima
9 facie presumption shall arise that such original packages of
10 cigarettes are contraband and are possessed or were possessed
11 by such person in violation of the provisions of this Act and
12 subject to the penalties imposed by Sections 25a and 25b.
13 Invoices or other documents kept in the normal course of
14 business in the possession of a person reflecting purchases of
15 original packages of cigarettes from an unlicensed in-state or
16 out-of-state distributor or person or invoices or other
17 documents kept in the normal course of business obtained by the
18 Department from an in-state or out-of-state distributor or
19 person, are sufficient to raise the presumption that such
20 original packages of cigarettes are contraband and are
21 possessed, or were possessed, by such person in violation of
22 the provisions of this Act and the person is subject to the
23 penalties imposed by Sections 25a and 25b. If a presumption is
24 raised, the Department may, in addition to the penalties
25 imposed by Sections 25a and 25b and any other civil or criminal

1 penalties provided for in this Act, assess tax penalty and
2 interest on the original packages of cigarettes.

3 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

4 Sec. 12. Declaration of possession of cigarettes on which
5 tax not paid.

6 (a) When cigarettes are acquired for use in this State by a
7 person (including a distributor as well as any other person),
8 who did not pay the tax herein imposed to a distributor, the
9 person, within 30 days after acquiring the cigarettes, shall
10 file with the Department a return declaring the possession of
11 the cigarettes and shall transmit with the return to the
12 Department the tax imposed by this Act.

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

18 (c) The return referred to in paragraph (a) shall contain
19 the name and address of the person possessing the cigarettes
20 involved, the location of the cigarettes and the quantity,
21 brand name, place, and date of the acquisition of the
22 cigarettes.

23 (d) Nothing in this Section shall permit a secondary
24 distributor to purchase unstamped original packages of
25 cigarettes or to purchase original packages of cigarettes from

1 a person other than a licensed distributor.

2 (e) Any distributor who violates this Section shall be
3 liable to pay to the Department, for deposit in the Tax
4 Compliance and Administration Fund, a penalty of \$1,000 for the
5 first violation and \$3,000 for any subsequent violation. The
6 Department may adopt rules to administer the penalties under
7 this Section. The Department may, in addition to the penalties
8 imposed by this Section, and any other civil or criminal
9 penalties provided for in this Act, assess tax, penalty, and
10 interest on the original packages of cigarettes.

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

12 (35 ILCS 135/22) (from Ch. 120, par. 453.52)

13 Sec. 22.

14 Any person required by this Act to maintain or keep records
15 of any kind whatsoever, who shall fail to keep the records so
16 required or who shall falsify such records, shall be guilty of
17 a Class 4 Felony ~~A misdemeanor~~. If a person fails to produce
18 the records for inspection by the Department upon request, a
19 prima facie presumption shall arise that the person has failed
20 to keep the records so required. A person who is unable to
21 rebut this presumption is in violation of this Act and is
22 subject to the penalties provided in this Section.

23 This Section shall not apply if the violation in a
24 particular case also constitutes a criminal violation of the
25 Cigarette Tax Act.

1 (Source: P.A. 77-2229.)

2 (35 ILCS 135/23) (from Ch. 120, par. 453.53)

3 Sec. 23. Any person who shall fail to safely preserve the
4 records required by Section 15 and Section 15a of this Act for
5 the period of three (3) years, as required therein, in such
6 manner as to insure permanency and accessibility for inspection
7 by the Department, shall be guilty of a business offense and
8 may be fined up to \$5,000 ~~One Thousand Dollars (\$1000)~~. If a
9 person fails to produce the records for inspection by the
10 Department upon request, a prima facie presumption shall arise
11 that the person has failed to keep the records so required. A
12 person who is unable to rebut this presumption is in violation
13 of this Act and is subject to the penalties provided in this
14 Section.

15 This Section shall not apply if the violation in a
16 particular case also constitutes a criminal violation of the
17 Cigarette Tax Act.

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

19 (35 ILCS 135/23a new)

20 Sec. 23a. Failure to keep and produce books and records.
21 Any person who or any officer or director of any corporation,
22 partner, or member of any partnership, manager or member of a
23 limited liability company, or person responsible for filing
24 returns that fails to keep books and records or fails to

1 produce books and records for inspection, as required by
2 Sections 15 and 15a of this Act, shall be liable to pay to the
3 Department, for deposit in the Tax Compliance and
4 Administration Fund, a penalty of \$1,000 for the first failure
5 to keep books and records or failure to produce books and
6 records for inspection, as required by Sections 15 and 15a, and
7 \$3,000 for each subsequent failure to keep books and records or
8 failure to produce books and records for inspection, as
9 required by Sections 15 and 15a. The Department may adopt rules
10 to administer the penalties under this Section.

11 A taxpayer shall be prohibited from introducing into
12 evidence in a proceeding before the Department, Tax Tribunal,
13 or a court any books and records that the taxpayer failed to
14 produce to the Department for inspection as required by
15 Sections 15 and 15a unless the books and records are received
16 by the Department no less than 5 business days prior to seeking
17 introduction of the books and records into the record of the
18 proceeding.

19 (35 ILCS 135/25a) (from Ch. 120, par. 453.55a)

20 Sec. 25a. Possession of more than 100 original packages of
21 contraband cigarettes; penalty. With the exception of licensed
22 distributors or transporters, as defined in Section 9c of the
23 Cigarette Tax Act, possessing unstamped original packages of
24 cigarettes, and licensed distributors possessing original
25 packages of cigarettes that bear a tax stamp of another state

1 or taxing jurisdiction, anyone possessing or having possessed
2 more than 100 packages of contraband cigarettes contained in
3 original packages is liable to pay, to the Department for
4 deposit into the Tax Compliance and Administration Fund, a
5 penalty of \$25 for each such package of cigarettes in excess of
6 100 packages, unless reasonable cause can be established by the
7 person upon whom the penalty is imposed. Reasonable cause shall
8 be determined in each situation in accordance with rules
9 adopted by the Department. The provisions of the Uniform
10 Penalty and Interest Act do not apply to this Section.

11 (Source: P.A. 96-782, eff. 1-1-10.)

12 (35 ILCS 135/25b)

13 Sec. 25b. Possession of not less than 10 and not more than
14 100 original packages not tax stamped or improperly tax
15 stamped; penalty. With the exception of licensed distributors
16 and transporters, as defined in Section 9c of the Cigarette Tax
17 Act, possessing unstamped packages of cigarettes, and licensed
18 distributors possessing original packages of cigarettes that
19 bear a tax stamp of another state or taxing jurisdiction,
20 anyone possessing or having possessed not less than 10 and not
21 more than 100 packages of contraband cigarettes contained in
22 original packages is liable to pay to the Department, for
23 deposit into the Tax Compliance and Administration Fund, a
24 penalty of \$20 for each such package of cigarettes, unless
25 reasonable cause can be established by the person upon whom the

1 penalty is imposed. Reasonable cause shall be determined in
2 each situation in accordance with rules adopted by the
3 Department. Any person who purchases and possesses a total of 9
4 or fewer original packages of unstamped cigarettes per month is
5 exempt from the penalties of this Section. The provisions of
6 the Uniform Penalty and Interest Act do not apply to this
7 Section.

8 (Source: P.A. 96-782, eff. 1-1-10.)

9 (35 ILCS 135/25c new)

10 Sec. 25c. Cigarette package sizes; sale of individual or
11 loose cigarettes prohibited. Cigarettes may only be sold in
12 packages of 20 or 25 cigarettes. The sale of individual or
13 loose cigarettes is prohibited. Any person who violates this
14 Section shall be liable to pay to the Department, for deposit
15 in the Tax Compliance and Administration Fund, a penalty of
16 \$1,000 for the first violation and \$3,000 for any subsequent
17 violation. Any person who violates this Section shall be guilty
18 of a Class 4 felony. This Section shall not apply if the
19 violation in a particular case also constitutes a violation of
20 the Cigarette Tax Act.

21 Section 35. The Tobacco Products Tax Act of 1995 is amended
22 by changing Sections 10-25, 10-35, 10-37, 10-40, and 10-50 and
23 by adding Sections 10-35a and 10-38 as follows:

1 (35 ILCS 143/10-25)

2 Sec. 10-25. License actions.

3 (a) The Department may, after notice and a hearing, revoke,
4 cancel, or suspend the license of any distributor or retailer
5 who violates any of the provisions of this Act, fails to keep
6 books and records as required under this Act, fails to make
7 books and records available for inspection upon demand by a
8 duly authorized employee of the Department, or violates a rule
9 or regulation of the Department for the administration and
10 enforcement of this Act. The notice shall specify the alleged
11 violation or violations upon which the revocation,
12 cancellation, or suspension proceeding is based.

13 (b) The Department may revoke, cancel, or suspend the
14 license of any distributor for a violation of the Tobacco
15 Product Manufacturers' Escrow Enforcement Act as provided in
16 Section 20 of that Act.

17 (c) If the retailer has a training program that facilitates
18 compliance with minimum-age tobacco laws, the Department shall
19 suspend for 3 days the license of that retailer for a fourth or
20 subsequent violation of the Prevention of Tobacco Use by Minors
21 and Sale and Distribution of Tobacco Products Act, as provided
22 in subsection (a) of Section 2 of that Act. For the purposes of
23 this Section, any violation of subsection (a) of Section 2 of
24 the Prevention of Tobacco Use by Minors and Sale and
25 Distribution of Tobacco Products Act occurring at the
26 retailer's licensed location, during a 24-month period, shall

1 be counted as a violation against the retailer.

2 If the retailer does not have a training program that
3 facilitates compliance with minimum-age tobacco laws, the
4 Department shall suspend for 3 days the license of that
5 retailer for a second violation of the Prevention of Tobacco
6 Use by Minors and Sale and Distribution of Tobacco Products
7 Act, as provided in subsection (a-5) of Section 2 of that Act.

8 If the retailer does not have a training program that
9 facilitates compliance with minimum-age tobacco laws, the
10 Department shall suspend for 7 days the license of that
11 retailer for a third violation of the Prevention of Tobacco Use
12 by Minors and Sale and Distribution of Tobacco Products Act, as
13 provided in subsection (a-5) of Section 2 of that Act.

14 If the retailer does not have a training program that
15 facilitates compliance with minimum-age tobacco laws, the
16 Department shall suspend for 30 days the license of a retailer
17 for a fourth or subsequent violation of the Prevention of
18 Tobacco Use by Minors and Sale and Distribution of Tobacco
19 Products Act, as provided in subsection (a-5) of Section 2 of
20 that Act.

21 A training program that facilitates compliance with
22 minimum-age tobacco laws must include at least the following
23 elements: (i) it must explain that only individuals displaying
24 valid identification demonstrating that they are 18 years of
25 age or older shall be eligible to purchase cigarettes or
26 tobacco products and (ii) it must explain where a clerk can

1 check identification for a date of birth. The training may be
2 conducted electronically. Each retailer that has a training
3 program shall require each employee who completes the training
4 program to sign a form attesting that the employee has received
5 and completed tobacco training. The form shall be kept in the
6 employee's file and may be used to provide proof of training.

7 (d) The Department may, by application to any circuit
8 court, obtain an injunction restraining any person who engages
9 in business as a distributor of tobacco products without a
10 license (either because his or her license has been revoked,
11 canceled, or suspended or because of a failure to obtain a
12 license in the first instance) from engaging in that business
13 until that person, as if that person were a new applicant for a
14 license, complies with all of the conditions, restrictions, and
15 requirements of Section 10-20 of this Act and qualifies for and
16 obtains a license. Refusal or neglect to obey the order of the
17 court may result in punishment for contempt.

18 (Source: P.A. 98-1055, eff. 1-1-16; 99-192, eff. 1-1-16.)

19 (35 ILCS 143/10-35)

20 Sec. 10-35. Record keeping.

21 (a) Every distributor, as defined in Section 10-5, shall
22 keep complete and accurate records of tobacco products held,
23 purchased, manufactured, brought in or caused to be brought in
24 from without the State, and tobacco products sold, or otherwise
25 disposed of, and shall preserve and keep all invoices, bills of

1 lading, sales records, and copies of bills of sale, the
2 wholesale price for tobacco products sold or otherwise disposed
3 of, an inventory of tobacco products prepared as of December 31
4 of each year or as of the last day of the distributor's fiscal
5 year if he or she files federal income tax returns on the basis
6 of a fiscal year, and other pertinent papers and documents
7 relating to the manufacture, purchase, sale, or disposition of
8 tobacco products. Every sales invoice issued by a licensed
9 distributor to a retailer in this State shall contain the
10 distributor's Tobacco Products License number unless the
11 distributor has been granted a waiver by the Department in
12 response to a written request in cases where (i) the
13 distributor sells little cigars or other tobacco products only
14 to licensed retailers that are wholly-owned by the distributor
15 or owned by a wholly-owned subsidiary of the distributor; (ii)
16 the licensed retailer obtains little cigars or other tobacco
17 products only from the distributor requesting the waiver; and
18 (iii) the distributor affixes the tax stamps to the original
19 packages of little cigars or has or will pay the tax on the
20 other tobacco products sold to the licensed retailer. The
21 distributor shall file a written request with the Department,
22 and, if the Department determines that the distributor meets
23 the conditions for a waiver, the Department shall grant the
24 waiver.

25 (b) Every retailer, as defined in Section 10-5, whether or
26 not the retailer has obtained a retailer's license pursuant to

1 Section 4g, shall keep complete and accurate records of tobacco
2 products held, purchased, sold, or otherwise disposed of, and
3 shall preserve and keep all invoices, bills of lading, sales
4 records, and copies of bills of sale, returns and other
5 pertinent papers and documents relating to the purchase, sale,
6 or disposition of tobacco products. Such records need not be
7 maintained on the licensed premises, but must be maintained in
8 the State of Illinois; however, if access is available
9 electronically, the records may be maintained out of state.
10 However, all original invoices or copies thereof covering
11 purchases of tobacco products must be retained on the licensed
12 premises for a period of 90 days after such purchase, unless
13 the Department has granted a waiver in response to a written
14 request in cases where records are kept at a central business
15 location within the State of Illinois or in cases where records
16 that are available electronically are maintained out of state.
17 The Department shall adopt rules regarding the eligibility for
18 a waiver, revocation of a waiver, and requirements and
19 standards for maintenance and accessibility of records located
20 at a central location out-of-State pursuant to a waiver
21 provided under this Section.

22 (c) Books, records, papers, and documents that are required
23 by this Act to be kept shall, at all times during the usual
24 business hours of the day, be subject to inspection by the
25 Department or its duly authorized agents and employees. The
26 books, records, papers, and documents for any period with

1 respect to which the Department is authorized to issue a notice
2 of tax liability shall be preserved until the expiration of
3 that period.

4 (Source: P.A. 98-1055, eff. 1-1-16; 99-192, eff. 1-1-16.)

5 (35 ILCS 143/10-35a new)

6 Sec. 10-35a. Failure to keep and produce books and
7 records. Any person who or any officer or director of any
8 corporation, partner, or member of any partnership, manager or
9 member of a limited liability company, or person responsible
10 for filing returns that fails to keep books and records or
11 fails to produce books and records for inspection, as required
12 by Section 10-35, shall be liable to pay to the Department, for
13 deposit in the Tax Compliance and Administration Fund, a
14 penalty of \$1,000 for the first failure to keep books and
15 records or failure to produce books and records for inspection,
16 as required by Section 10-35, and \$3,000 for each subsequent
17 failure to keep books and records or failure to produce books
18 and records for inspection, as required by Section 10-35. The
19 Department may adopt rules to administer the penalties under
20 this Section.

21 A taxpayer shall be prohibited from introducing into
22 evidence in a proceeding before the Department, Tax Tribunal,
23 or a court any books and records that the taxpayer failed to
24 produce to the Department for inspection as required by Section
25 10-35 unless the books and records are received by the

1 Department no less than 5 business days prior to seeking
2 introduction of the books and records into the record of the
3 proceeding.

4 (35 ILCS 143/10-37)

5 Sec. 10-37. Proof of payment of tax imposed by this Act.
6 Every licensed distributor of tobacco products in this State is
7 required to show proof of the tax having been paid as required
8 by this Act by displaying its Tobacco Products License number
9 on every sales invoice issued to a retailer in this State. No
10 retailer shall possess tobacco products without either a proper
11 invoice indicating that the tobacco products tax was paid by a
12 distributor for the tobacco products in the retailer's
13 possession or other proof that the tax was paid by the retailer
14 if it has purchased tobacco products on which tax has not been
15 paid as required by this Act. Failure to comply with the
16 provisions of this paragraph may be grounds for revocation of a
17 distributor's or retailer's license in accordance with Section
18 10-25 of this Act or Section 6 of the Cigarette Tax Act. In
19 addition, the Department may impose a civil penalty not to
20 exceed \$1,000 for the first violation and \$3,000 for each
21 subsequent violation, which shall be deposited into the Tax
22 Compliance and Administration Fund.

23 (Source: P.A. 98-1055, eff. 1-1-16.)

24 (35 ILCS 143/10-38 new)

1 Sec. 10-38. Presumption for out-of-state or unlicensed
2 distributors. Whenever any person obtains tobacco products
3 from an in-state or out-of-state distributor or person that is
4 not licensed as a distributor under this Act, a prima facie
5 presumption shall arise that the tax imposed by this Act on
6 such tobacco products has not been paid in violation of this
7 Act. Invoices or other documents kept in the normal course of
8 business in the possession of a person reflecting purchases of
9 tobacco products from an unlicensed in-state or out-of-state
10 distributor or person or invoices or other documents kept in
11 the normal course of business obtained by the Department from
12 in-state or out-of-state distributors or persons, are
13 sufficient to raise the presumption that the tax imposed by
14 this Act has not been paid. If a presumption is raised, the
15 Department may assess tax penalty and interest on the tobacco
16 products. In addition, any person who violates this Section
17 shall be liable to pay to the Department, for deposit in the
18 Tax Compliance and Administration Fund, a penalty of \$1,000 for
19 the first violation and \$3,000 for any subsequent violation.
20 The Department may adopt rules to administer the penalties
21 under this Section.

22 (35 ILCS 143/10-40)

23 Sec. 10-40. Invoices. Every distributor or other person who
24 purchases tobacco products for resale for shipment into
25 Illinois from a point outside Illinois shall procure invoices

1 in duplicate covering each shipment and shall make the invoices
2 available for inspection upon demand by a duly authorized
3 employee of the Department, and shall, if the Department so
4 requires, furnish one copy of each invoice to the Department at
5 the time of filing the return required by this Act.

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

7 (35 ILCS 143/10-50)

8 Sec. 10-50. Violations and penalties. When the amount due
9 is under \$300, any distributor who fails to file a return,
10 willfully fails or refuses to make any payment to the
11 Department of the tax imposed by this Act, or files a
12 fraudulent return, or any officer or agent of a corporation
13 engaged in the business of distributing tobacco products to
14 retailers and consumers located in this State who signs a
15 fraudulent return filed on behalf of the corporation, or any
16 accountant or other agent who knowingly enters false
17 information on the return of any taxpayer under this Act is
18 guilty of a Class 4 felony.

19 Any person who violates any provision of Section 10-20,
20 10-21, or 10-22 of this Act, fails to keep books and records as
21 required under this Act, or willfully violates a rule or
22 regulation of the Department for the administration and
23 enforcement of this Act is guilty of a Class 4 felony. A person
24 commits a separate offense on each day that he or she engages
25 in business in violation of Section 10-20, 10-21, or 10-22 of

1 this Act. If a person fails to produce the books and records
2 for inspection by the Department upon request, a prima facie
3 presumption shall arise that the person has failed to keep
4 books and records as required under this Act. A person who is
5 unable to rebut this presumption is in violation of this Act
6 and is subject to the penalties provided in this Section.

7 When the amount due is under \$300, any person who accepts
8 money that is due to the Department under this Act from a
9 taxpayer for the purpose of acting as the taxpayer's agent to
10 make the payment to the Department, but who fails to remit the
11 payment to the Department when due, is guilty of a Class 4
12 felony.

13 Any person who violates any provision of Sections 10-20,
14 10-21 and 10-22 of this Act, fails to keep books and records as
15 required under this Act, or willfully violates a rule or
16 regulation of the Department for the administration and
17 enforcement of this Act is guilty of a business offense and may
18 be fined up to \$5,000. If a person fails to produce books and
19 records for inspection by the Department upon request, a prima
20 facie presumption shall arise that the person has failed to
21 keep books and records as required under this Act. A person who
22 is unable to rebut this presumption is in violation of this Act
23 and is subject to the penalties provided in this Section. A
24 person commits a separate offense on each day that he or she
25 engages in business in violation of Sections 10-20, 10-21 and
26 10-22 of this Act.

1 When the amount due is \$300 or more, any distributor who
2 files, or causes to be filed, a fraudulent return, or any
3 officer or agent of a corporation engaged in the business of
4 distributing tobacco products to retailers and consumers
5 located in this State who files or causes to be filed or signs
6 or causes to be signed a fraudulent return filed on behalf of
7 the corporation, or any accountant or other agent who knowingly
8 enters false information on the return of any taxpayer under
9 this Act is guilty of a Class 3 felony.

10 When the amount due is \$300 or more, any person engaged in
11 the business of distributing tobacco products to retailers and
12 consumers located in this State who fails to file a return,
13 willfully fails or refuses to make any payment to the
14 Department of the tax imposed by this Act, or accepts money
15 that is due to the Department under this Act from a taxpayer
16 for the purpose of acting as the taxpayer's agent to make
17 payment to the Department but fails to remit such payment to
18 the Department when due is guilty of a Class 3 felony.

19 When the amount due is under \$300, any retailer who fails
20 to file a return, willfully fails or refuses to make any
21 payment to the Department of the tax imposed by this Act, or
22 files a fraudulent return, or any officer or agent of a
23 corporation engaged in the retail business of selling tobacco
24 products to purchasers of tobacco products for use and
25 consumption located in this State who signs a fraudulent return
26 filed on behalf of the corporation, or any accountant or other

1 agent who knowingly enters false information on the return of
2 any taxpayer under this Act is guilty of a Class A misdemeanor
3 for a first offense and a Class 4 felony for each subsequent
4 offense.

5 When the amount due is \$300 or more, any retailer who fails
6 to file a return, willfully fails or refuses to make any
7 payment to the Department of the tax imposed by this Act, or
8 files a fraudulent return, or any officer or agent of a
9 corporation engaged in the retail business of selling tobacco
10 products to purchasers of tobacco products for use and
11 consumption located in this State who signs a fraudulent return
12 filed on behalf of the corporation, or any accountant or other
13 agent who knowingly enters false information on the return of
14 any taxpayer under this Act is guilty of a Class 4 felony.

15 Any person whose principal place of business is in this
16 State and who is charged with a violation under this Section
17 shall be tried in the county where his or her principal place
18 of business is located unless he or she asserts a right to be
19 tried in another venue. If the taxpayer does not have his or
20 her principal place of business in this State, however, the
21 hearing must be held in Sangamon County unless the taxpayer
22 asserts a right to be tried in another venue.

23 Any taxpayer or agent of a taxpayer who with the intent to
24 defraud purports to make a payment due to the Department by
25 issuing or delivering a check or other order upon a real or
26 fictitious depository for the payment of money, knowing that it

1 will not be paid by the depository, is guilty of a deceptive
2 practice in violation of Section 17-1 of the Criminal Code of
3 2012.

4 A prosecution for a violation described in this Section may
5 be commenced within 3 years after the commission of the act
6 constituting the violation.

7 (Source: P.A. 100-201, eff. 8-18-17.)

8 (35 ILCS 143/10-36 rep.)

9 Section 40. The Tobacco Products Tax Act of 1995 is amended
10 by repealing Section 10-36.

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.

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2

Statutes amended in order of appearance

3	35 ILCS 105/11	from Ch. 120, par. 439.11
4	35 ILCS 110/11	from Ch. 120, par. 439.41
5	35 ILCS 115/11	from Ch. 120, par. 439.111
6	35 ILCS 120/7	from Ch. 120, par. 446
7	35 ILCS 130/12	from Ch. 120, par. 453.12
8	35 ILCS 130/13	from Ch. 120, par. 453.13
9	35 ILCS 130/13a new	
10	35 ILCS 130/14	from Ch. 120, par. 453.14
11	35 ILCS 130/15	from Ch. 120, par. 453.15
12	35 ILCS 130/15a new	
13	35 ILCS 130/18b	from Ch. 120, par. 453.18b
14	35 ILCS 130/18c	
15	35 ILCS 130/18d new	
16	35 ILCS 135/8a new	
17	35 ILCS 135/12	from Ch. 120, par. 453.42
18	35 ILCS 135/22	from Ch. 120, par. 453.52
19	35 ILCS 135/23	from Ch. 120, par. 453.53
20	35 ILCS 135/23a new	
21	35 ILCS 135/25a	from Ch. 120, par. 453.55a
22	35 ILCS 135/25b	
23	35 ILCS 135/25c new	
24	35 ILCS 143/10-25	
25	35 ILCS 143/10-35	

- 1 35 ILCS 143/10-35a new
- 2 35 ILCS 143/10-37
- 3 35 ILCS 143/10-38 new
- 4 35 ILCS 143/10-40
- 5 35 ILCS 143/10-50
- 6 35 ILCS 143/10-36 rep.