



Rep. William B. Black

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09600SB0044ham001

LRB096 03720 HLH 28232 a

1 AMENDMENT TO SENATE BILL 44

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 44 by replacing  
3 everything from line 8 on page 2 through line 11 on page 22  
4 with the following:

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

7 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

8 (Text of Section before amendment by P.A. 95-1053)

9 Sec. 1. For the purposes of this Act:

10 "Cigarette", when used in this Act, shall be construed to  
11 mean: Any roll for smoking made wholly or in part of tobacco  
12 irrespective of size or shape and whether or not such tobacco  
13 is flavored, adulterated or mixed with any other ingredient,  
14 and the wrapper or cover of which is made of paper ~~or any other~~  
15 ~~substance or material except tobacco.~~

16 "Cigarette" when used in this Act, shall also be construed

1 to mean: any roll for smoking made wholly or in part of tobacco  
2 labeled as anything other than a cigarette or not bearing a  
3 label, if it meets 2 or more of the following criteria:

4 (a) the product is sold in packs similar to cigarettes;

5 (b) the product is available for sale in cartons of 10  
6 packs;

7 (c) the product is sold in soft packs, hard packs, flip-top  
8 boxes, clam shells, or other cigarette-type boxes;

9 (d) the product is of a length and diameter found in  
10 commercially-manufactured cigarettes;

11 (e) the product has a cellulose acetate or other integrated  
12 filter;

13 (f) the product weighs less than 3 pounds per thousand  
14 sticks;

15 (g) the product is marketed or advertised to consumers as a  
16 cigarette or cigarette substitute; or

17 (h) there is other evidence that the product fits within  
18 the definition of cigarette.

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

25 "Prior Continuous Compliance Taxpayer" means any person  
26 who is licensed under this Act and who, having been a licensee

1 for a continuous period of 5 years, is determined by the  
2 Department not to have been either delinquent or deficient in  
3 the payment of tax liability during that period or otherwise in  
4 violation of this Act. Also, any taxpayer who has, as verified  
5 by the Department, continuously complied with the condition of  
6 his bond or other security under provisions of this Act for a  
7 period of 5 consecutive years shall be considered to be a  
8 "Prior continuous compliance taxpayer". In calculating the  
9 consecutive period of time described herein for qualification  
10 as a "prior continuous compliance taxpayer", a consecutive  
11 period of time of qualifying compliance immediately prior to  
12 the effective date of this amendatory Act of 1987 shall be  
13 credited to any licensee who became licensed on or before the  
14 effective date of this amendatory Act of 1987.

15 "Department" means the Department of Revenue.

16 "Sale" means any transfer, exchange or barter in any manner  
17 or by any means whatsoever for a consideration, and includes  
18 and means all sales made by any person.

19 "Original Package" means the individual packet, box or  
20 other container whatsoever used to contain and to convey  
21 cigarettes to the consumer.

22 "Distributor" means any and each of the following:

23 (1) Any person engaged in the business of selling  
24 cigarettes in this State who brings or causes to be brought  
25 into this State from without this State any original  
26 packages of cigarettes, on which original packages there is

1 no authorized evidence underneath a sealed transparent  
2 wrapper showing that the tax liability imposed by this Act  
3 has been paid or assumed by the out-of-State seller of such  
4 cigarettes, for sale or other disposition in the course of  
5 such business.

6 (2) Any person who makes, manufactures or fabricates  
7 cigarettes in this State for sale in this State, except a  
8 person who makes, manufactures or fabricates cigarettes as  
9 a part of a correctional industries program for sale to  
10 residents incarcerated in penal institutions or resident  
11 patients of a State-operated mental health facility.

12 (3) Any person who makes, manufactures or fabricates  
13 cigarettes outside this State, which cigarettes are placed  
14 in original packages contained in sealed transparent  
15 wrappers, for delivery or shipment into this State, and who  
16 elects to qualify and is accepted by the Department as a  
17 distributor under Section 4b of this Act.

18 "Place of business" shall mean and include any place where  
19 cigarettes are sold or where cigarettes are manufactured,  
20 stored or kept for the purpose of sale or consumption,  
21 including any vessel, vehicle, airplane, train or vending  
22 machine.

23 "Business" means any trade, occupation, activity or  
24 enterprise engaged in for the purpose of selling cigarettes in  
25 this State.

26 "Retailer" means any person who engages in the making of

1 transfers of the ownership of, or title to, cigarettes to a  
2 purchaser for use or consumption and not for resale in any  
3 form, for a valuable consideration. "Retailer" does not include  
4 a person:

5 (1) who transfers to residents incarcerated in penal  
6 institutions or resident patients of a State-operated  
7 mental health facility ownership of cigarettes made,  
8 manufactured, or fabricated as part of a correctional  
9 industries program; or

10 (2) who transfers cigarettes to a not-for-profit  
11 research institution that conducts tests concerning the  
12 health effects of tobacco products and who does not offer  
13 the cigarettes for resale.

14 "Retailer" shall be construed to include any person who  
15 engages in the making of transfers of the ownership of, or  
16 title to, cigarettes to a purchaser, for use or consumption by  
17 any other person to whom such purchaser may transfer the  
18 cigarettes without a valuable consideration, except a person  
19 who transfers to residents incarcerated in penal institutions  
20 or resident patients of a State-operated mental health facility  
21 ownership of cigarettes made, manufactured or fabricated as  
22 part of a correctional industries program.

23 (Source: P.A. 95-462, eff. 8-27-07.)

24 (Text of Section after amendment by P.A. 95-1053)

25 Sec. 1. For the purposes of this Act:

1 "Brand Style" means a variety of cigarettes distinguished  
2 by the tobacco used, tar and nicotine content, flavoring used,  
3 size of the cigarette, filtration on the cigarette or  
4 packaging.

5 "Cigarette", means any roll for smoking made wholly or in  
6 part of tobacco irrespective of size or shape and whether or  
7 not such tobacco is flavored, adulterated or mixed with any  
8 other ingredient, and the wrapper or cover of which is made of  
9 paper ~~or any other substance or material except tobacco.~~

10 "Cigarette" when used in this Act, shall also be construed  
11 to mean: any roll for smoking made wholly or in part of tobacco  
12 labeled as anything other than a cigarette or not bearing a  
13 label, if it meets 2 or more of the following criteria:

14 (a) the product is sold in packs similar to cigarettes;

15 (b) the product is available for sale in cartons of 10  
16 packs;

17 (c) the product is sold in soft packs, hard packs, flip-top  
18 boxes, clam shells, or other cigarette-type boxes;

19 (d) the product is of a length and diameter found in  
20 commercially-manufactured cigarettes;

21 (e) the product has a cellulose acetate or other integrated  
22 filter;

23 (f) the product weighs less than 3 pounds per thousand  
24 sticks;

25 (g) the product is marketed or advertised to consumers as a  
26 cigarette or cigarette substitute; or

1       (h) there is other evidence that the product fits within  
2 the definition of cigarette.

3       "Contraband cigarettes" means:

4           (a) cigarettes that do not bear a required tax stamp  
5 under this Act;

6           (b) cigarettes for which any required federal taxes  
7 have not been paid;

8           (c) cigarettes that bear a counterfeit tax stamp;

9           (d) cigarettes that are manufactured, fabricated,  
10 assembled, processed, packaged, or labeled by any person  
11 other than (i) the owner of the trademark rights in the  
12 cigarette brand or (ii) a person that is directly or  
13 indirectly authorized by such owner;

14           (e) cigarettes imported into the United States, or  
15 otherwise distributed, in violation of the federal  
16 Imported Cigarette Compliance Act of 2000 (Title IV of  
17 Public Law 106-476); or

18           (f) cigarettes that have false manufacturing labels.

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

25       "Prior Continuous Compliance Taxpayer" means any person  
26 who is licensed under this Act and who, having been a licensee

1 for a continuous period of 5 years, is determined by the  
2 Department not to have been either delinquent or deficient in  
3 the payment of tax liability during that period or otherwise in  
4 violation of this Act. Also, any taxpayer who has, as verified  
5 by the Department, continuously complied with the condition of  
6 his bond or other security under provisions of this Act for a  
7 period of 5 consecutive years shall be considered to be a  
8 "Prior continuous compliance taxpayer". In calculating the  
9 consecutive period of time described herein for qualification  
10 as a "prior continuous compliance taxpayer", a consecutive  
11 period of time of qualifying compliance immediately prior to  
12 the effective date of this amendatory Act of 1987 shall be  
13 credited to any licensee who became licensed on or before the  
14 effective date of this amendatory Act of 1987.

15 "Department" means the Department of Revenue.

16 "Sale" means any transfer, exchange or barter in any manner  
17 or by any means whatsoever for a consideration, and includes  
18 and means all sales made by any person.

19 "Original Package" means the individual packet, box or  
20 other container whatsoever used to contain and to convey  
21 cigarettes to the consumer.

22 "Distributor" means any and each of the following:

23 (1) Any person engaged in the business of selling  
24 cigarettes in this State who brings or causes to be brought  
25 into this State from without this State any original packages  
26 of cigarettes, on which original packages there is no

1 authorized evidence underneath a sealed transparent wrapper  
2 showing that the tax liability imposed by this Act has been  
3 paid or assumed by the out-of-State seller of such cigarettes,  
4 for sale or other disposition in the course of such business.

5 (2) Any person who makes, manufactures or fabricates  
6 cigarettes in this State for sale in this State, except a  
7 person who makes, manufactures or fabricates cigarettes as a  
8 part of a correctional industries program for sale to residents  
9 incarcerated in penal institutions or resident patients of a  
10 State-operated mental health facility.

11 (3) Any person who makes, manufactures or fabricates  
12 cigarettes outside this State, which cigarettes are placed in  
13 original packages contained in sealed transparent wrappers,  
14 for delivery or shipment into this State, and who elects to  
15 qualify and is accepted by the Department as a distributor  
16 under Section 4b of this Act.

17 "Place of business" shall mean and include any place where  
18 cigarettes are sold or where cigarettes are manufactured,  
19 stored or kept for the purpose of sale or consumption,  
20 including any vessel, vehicle, airplane, train or vending  
21 machine.

22 "Business" means any trade, occupation, activity or  
23 enterprise engaged in for the purpose of selling cigarettes in  
24 this State.

25 "Retailer" means any person who engages in the making of  
26 transfers of the ownership of, or title to, cigarettes to a

1 purchaser for use or consumption and not for resale in any  
2 form, for a valuable consideration. "Retailer" does not include  
3 a person:

4 (1) who transfers to residents incarcerated in penal  
5 institutions or resident patients of a State-operated  
6 mental health facility ownership of cigarettes made,  
7 manufactured, or fabricated as part of a correctional  
8 industries program; or

9 (2) who transfers cigarettes to a not-for-profit  
10 research institution that conducts tests concerning the  
11 health effects of tobacco products and who does not offer  
12 the cigarettes for resale.

13 "Retailer" shall be construed to include any person who  
14 engages in the making of transfers of the ownership of, or  
15 title to, cigarettes to a purchaser, for use or consumption by  
16 any other person to whom such purchaser may transfer the  
17 cigarettes without a valuable consideration, except a person  
18 who transfers to residents incarcerated in penal institutions  
19 or resident patients of a State-operated mental health facility  
20 ownership of cigarettes made, manufactured or fabricated as  
21 part of a correctional industries program.

22 "Stamp" or "stamps" mean the indicia required to be affixed  
23 on a pack of cigarettes that evidence payment of the tax on  
24 cigarettes under Section 2 of this Act (35 ILCS 130/2), or the  
25 indicia used to indicate that the cigarettes are intended for a  
26 sale or distribution within this State that is exempt from

1 State tax under any applicable provision of law.

2 "Within this State" means within the exterior limits of the  
3 State of Illinois and includes all territory within these  
4 limits owned by or ceded to the United States of America.

5 "Related party" means any person that is associated with  
6 any other person because he or she:

7 (a) is an officer or director of a business;

8 (b) is legally recognized as a partner in business; or

9 (c) is directly or indirectly controlled by another.

10 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10.)

11 (35 ILCS 130/2) (from Ch. 120, par. 453.2)

12 Sec. 2. Tax imposed; rate; collection, payment, and  
13 distribution; discount.

14 (a) A tax is imposed upon any person engaged in business as  
15 a retailer of cigarettes in this State at the rate of 5 1/2  
16 mills per cigarette sold, or otherwise disposed of in the  
17 course of such business in this State. In addition to any other  
18 tax imposed by this Act, a tax is imposed upon any person  
19 engaged in business as a retailer of cigarettes in this State  
20 at a rate of 1/2 mill per cigarette sold or otherwise disposed  
21 of in the course of such business in this State on and after  
22 January 1, 1947, and shall be paid into the Metropolitan Fair  
23 and Exposition Authority Reconstruction Fund or as otherwise  
24 provided in Section 29. On and after December 1, 1985, in  
25 addition to any other tax imposed by this Act, a tax is imposed

1 upon any person engaged in business as a retailer of cigarettes  
2 in this State at a rate of 4 mills per cigarette sold or  
3 otherwise disposed of in the course of such business in this  
4 State. Of the additional tax imposed by this amendatory Act of  
5 1985, \$9,000,000 of the moneys received by the Department of  
6 Revenue pursuant to this Act shall be paid each month into the  
7 Common School Fund. On and after the effective date of this  
8 amendatory Act of 1989, in addition to any other tax imposed by  
9 this Act, a tax is imposed upon any person engaged in business  
10 as a retailer of cigarettes at the rate of 5 mills per  
11 cigarette sold or otherwise disposed of in the course of such  
12 business in this State. On and after the effective date of this  
13 amendatory Act of 1993, in addition to any other tax imposed by  
14 this Act, a tax is imposed upon any person engaged in business  
15 as a retailer of cigarettes at the rate of 7 mills per  
16 cigarette sold or otherwise disposed of in the course of such  
17 business in this State. On and after December 15, 1997, in  
18 addition to any other tax imposed by this Act, a tax is imposed  
19 upon any person engaged in business as a retailer of cigarettes  
20 at the rate of 7 mills per cigarette sold or otherwise disposed  
21 of in the course of such business of this State. All of the  
22 moneys received by the Department of Revenue pursuant to this  
23 Act and the Cigarette Use Tax Act from the additional taxes  
24 imposed by this amendatory Act of 1997, shall be paid each  
25 month into the Common School Fund. On and after July 1, 2002,  
26 in addition to any other tax imposed by this Act, a tax is

1 imposed upon any person engaged in business as a retailer of  
2 cigarettes at the rate of 20.0 mills per cigarette sold or  
3 otherwise disposed of in the course of such business in this  
4 State. Beginning on September 1, 2009, in addition to any other  
5 tax imposed by this Act, a tax is imposed upon any person  
6 engaged in business as a retailer of cigarettes at the rate of  
7 25 mills per cigarette sold or otherwise disposed of in the  
8 course of such business in this State. Beginning on September  
9 1, 2010, in addition to any other tax imposed by this Act, a  
10 tax is imposed upon any person engaged in business as a  
11 retailer of cigarettes at the rate of 12.5 mills per cigarette  
12 sold or otherwise disposed of in the course of such business in  
13 this State. Beginning on September 1, 2011, in addition to any  
14 other tax imposed by this Act, a tax is imposed upon any person  
15 engaged in business as a retailer of cigarettes at the rate of  
16 12.5 mills per cigarette sold or otherwise disposed of in the  
17 course of such business in this State. Of the moneys received  
18 by the Department of Revenue under this Act and the Cigarette  
19 Use Tax Act from the additional taxes imposed by this  
20 amendatory Act of the 96th General Assembly: (i) \$54,167 must  
21 be paid each month into the Tax Compliance and Administration  
22 Fund for the purpose of cigarette and tobacco related  
23 enforcement, retail inspections, and prevention of internet  
24 and interstate trafficking of contraband cigarettes, and (ii)  
25 the balance must be paid each month into the Healthcare  
26 Provider Relief Fund. The payment of such taxes shall be

1 evidenced by a stamp affixed to each original package of  
2 cigarettes, or an authorized substitute for such stamp  
3 imprinted on each original package of such cigarettes  
4 underneath the sealed transparent outside wrapper of such  
5 original package, as hereinafter provided. However, such taxes  
6 are not imposed upon any activity in such business in  
7 interstate commerce or otherwise, which activity may not under  
8 the Constitution and statutes of the United States be made the  
9 subject of taxation by this State.

10 Beginning on the effective date of this amendatory Act of  
11 the 92nd General Assembly and through June 30, 2006, all of the  
12 moneys received by the Department of Revenue pursuant to this  
13 Act and the Cigarette Use Tax Act, other than the moneys that  
14 are dedicated to the Common School Fund, shall be distributed  
15 each month as follows: first, there shall be paid into the  
16 General Revenue Fund an amount which, when added to the amount  
17 paid into the Common School Fund for that month, equals  
18 \$33,300,000, except that in the month of August of 2004, this  
19 amount shall equal \$83,300,000; then, from the moneys  
20 remaining, if any amounts required to be paid into the General  
21 Revenue Fund in previous months remain unpaid, those amounts  
22 shall be paid into the General Revenue Fund; then, beginning on  
23 April 1, 2003, from the moneys remaining, \$5,000,000 per month  
24 shall be paid into the School Infrastructure Fund; then, if any  
25 amounts required to be paid into the School Infrastructure Fund  
26 in previous months remain unpaid, those amounts shall be paid

1 into the School Infrastructure Fund; then the moneys remaining,  
2 if any, shall be paid into the Long-Term Care Provider Fund. To  
3 the extent that more than \$25,000,000 has been paid into the  
4 General Revenue Fund and Common School Fund per month for the  
5 period of July 1, 1993 through the effective date of this  
6 amendatory Act of 1994 from combined receipts of the Cigarette  
7 Tax Act and the Cigarette Use Tax Act, notwithstanding the  
8 distribution provided in this Section, the Department of  
9 Revenue is hereby directed to adjust the distribution provided  
10 in this Section to increase the next monthly payments to the  
11 Long Term Care Provider Fund by the amount paid to the General  
12 Revenue Fund and Common School Fund in excess of \$25,000,000  
13 per month and to decrease the next monthly payments to the  
14 General Revenue Fund and Common School Fund by that same excess  
15 amount.

16 Beginning on July 1, 2006, all of the moneys received by  
17 the Department of Revenue pursuant to this Act and the  
18 Cigarette Use Tax Act, other than the moneys that are dedicated  
19 to the Common School Fund and, beginning on the effective date  
20 of this amendatory Act of the 96th General Assembly, other than  
21 the moneys from the additional taxes imposed by this amendatory  
22 Act of the 96th General Assembly that must be paid each month  
23 into the Tax Compliance and Administration Fund and the  
24 Healthcare Provider Relief Fund, shall be distributed each  
25 month as follows: first, there shall be paid into the General  
26 Revenue Fund an amount that, when added to the amount paid into

1 the Common School Fund for that month, equals \$29,200,000;  
2 then, from the moneys remaining, if any amounts required to be  
3 paid into the General Revenue Fund in previous months remain  
4 unpaid, those amounts shall be paid into the General Revenue  
5 Fund; then from the moneys remaining, \$5,000,000 per month  
6 shall be paid into the School Infrastructure Fund; then, if any  
7 amounts required to be paid into the School Infrastructure Fund  
8 in previous months remain unpaid, those amounts shall be paid  
9 into the School Infrastructure Fund; then the moneys remaining,  
10 if any, shall be paid into the Long-Term Care Provider Fund.

11 When any tax imposed herein terminates or has terminated,  
12 distributors who have bought stamps while such tax was in  
13 effect and who therefore paid such tax, but who can show, to  
14 the Department's satisfaction, that they sold the cigarettes to  
15 which they affixed such stamps after such tax had terminated  
16 and did not recover the tax or its equivalent from purchasers,  
17 shall be allowed by the Department to take credit for such  
18 absorbed tax against subsequent tax stamp purchases from the  
19 Department by such distributor.

20 The impact of the tax levied by this Act is imposed upon  
21 the retailer and shall be prepaid or pre-collected by the  
22 distributor for the purpose of convenience and facility only,  
23 and the amount of the tax shall be added to the price of the  
24 cigarettes sold by such distributor. Collection of the tax  
25 shall be evidenced by a stamp or stamps affixed to each  
26 original package of cigarettes, as hereinafter provided.

1           Each distributor shall collect the tax from the retailer at  
2 or before the time of the sale, shall affix the stamps as  
3 hereinafter required, and shall remit the tax collected from  
4 retailers to the Department, as hereinafter provided. Any  
5 distributor who fails to properly collect and pay the tax  
6 imposed by this Act shall be liable for the tax. Any  
7 distributor having cigarettes to which stamps have been affixed  
8 in his possession for sale on the effective date of this  
9 amendatory Act of 1989 shall not be required to pay the  
10 additional tax imposed by this amendatory Act of 1989 on such  
11 stamped cigarettes. Any distributor having cigarettes to which  
12 stamps have been affixed in his or her possession for sale at  
13 12:01 a.m. on the effective date of this amendatory Act of  
14 1993, is required to pay the additional tax imposed by this  
15 amendatory Act of 1993 on such stamped cigarettes. This  
16 payment, less the discount provided in subsection (b), shall be  
17 due when the distributor first makes a purchase of cigarette  
18 tax stamps after the effective date of this amendatory Act of  
19 1993, or on the first due date of a return under this Act after  
20 the effective date of this amendatory Act of 1993, whichever  
21 occurs first. Any distributor having cigarettes to which stamps  
22 have been affixed in his possession for sale on December 15,  
23 1997 shall not be required to pay the additional tax imposed by  
24 this amendatory Act of 1997 on such stamped cigarettes.

25           Any distributor having cigarettes to which stamps have been  
26 affixed in his or her possession for sale on July 1, 2002 shall

1 not be required to pay the additional tax imposed by this  
2 amendatory Act of the 92nd General Assembly on those stamped  
3 cigarettes. Any retailer having cigarettes in his or her  
4 possession on September 1, 2009 to which tax stamps have been  
5 affixed is not required to pay the additional tax that begins  
6 of September 1, 2009 imposed by an amendatory Act of the 96th  
7 General Assembly on those stamped cigarettes. Any distributor  
8 having cigarettes in his or her possession on September 1, 2009  
9 to which tax stamps have been affixed is required to pay the  
10 additional tax that begins on September 1, 2009 imposed by an  
11 amendatory Act of the 96th General Assembly to the extent the  
12 calendar year 2009 average monthly volume of cigarette stamps  
13 in the distributor's possession exceeds the average monthly  
14 volume of cigarette stamps purchased by the distributor in  
15 calendar year 2008. This payment, less the discount provided in  
16 subsection (b), is due when the distributor first makes a  
17 purchase of cigarette stamps on or after September 1, 2009 or  
18 on the first due date of a return under this Act occurring on  
19 or after September 1, 2009, whichever occurs first.

20 Any retailer having cigarettes in his or her possession on  
21 September 1, 2010 to which tax stamps have been affixed is not  
22 required to pay the additional tax that begins on September 1,  
23 2010 imposed by an amendatory Act of the 96th General Assembly  
24 on those stamped cigarettes. Any distributor having cigarettes  
25 in his or her possession on September 1, 2010 to which tax  
26 stamps have been affixed is required to pay the additional tax

1 that begins on September 1, 2010 imposed by an amendatory Act  
2 of the 96th General Assembly to the extent the calendar year  
3 2010 average monthly volume of cigarette stamps in the  
4 distributor's possession exceeds the average monthly volume of  
5 cigarette stamps purchased by the distributor in calendar year  
6 2009. This payment, less the discount provided in subsection  
7 (b), is due when the distributor first makes a purchase of  
8 cigarette stamps on or after September 1, 2010 or on the first  
9 due date of a return under this Act occurring on or after  
10 September 1, 2010, whichever occurs first.

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

1 September 1, 2011, whichever occurs first.

2       The amount of the Cigarette Tax imposed by this Act shall  
3 be separately stated, apart from the price of the goods, by  
4 both distributors and retailers, in all advertisements, bills  
5 and sales invoices.

6       (b) The distributor shall be required to collect the taxes  
7 provided under paragraph (a) hereof, and, to cover the costs of  
8 such collection, shall be allowed a discount during any year  
9 commencing July 1st and ending the following June 30th in  
10 accordance with the schedule set out hereinbelow, which  
11 discount shall be allowed at the time of purchase of the stamps  
12 when purchase is required by this Act, or at the time when the  
13 tax is remitted to the Department without the purchase of  
14 stamps from the Department when that method of paying the tax  
15 is required or authorized by this Act. Prior to December 1,  
16 1985, a discount equal to 1 2/3% of the amount of the tax up to  
17 and including the first \$700,000 paid hereunder by such  
18 distributor to the Department during any such year; 1 1/3% of  
19 the next \$700,000 of tax or any part thereof, paid hereunder by  
20 such distributor to the Department during any such year; 1% of  
21 the next \$700,000 of tax, or any part thereof, paid hereunder  
22 by such distributor to the Department during any such year, and  
23 2/3 of 1% of the amount of any additional tax paid hereunder by  
24 such distributor to the Department during any such year shall  
25 apply. On and after December 1, 1985, a discount equal to 1.75%  
26 of the amount of the tax payable under this Act up to and

1 including the first \$3,000,000 paid hereunder by such  
2 distributor to the Department during any such year and 1.5% of  
3 the amount of any additional tax paid hereunder by such  
4 distributor to the Department during any such year shall apply.

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

9 (c) The taxes herein imposed are in addition to all other  
10 occupation or privilege taxes imposed by the State of Illinois,  
11 or by any political subdivision thereof, or by any municipal  
12 corporation.

13 (Source: P.A. 93-839, eff. 7-30-04; 94-91, eff. 7-1-05; 94-839,  
14 eff. 6-6-06.)

15 Section 15. The Cigarette Use Tax Act is amended by  
16 changing Sections 1, 2, and 12 as follows:

17 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

18 (Text of Section before amendment by P.A. 95-1053)

19 Sec. 1. For the purpose of this Act, unless otherwise  
20 required by the context:

21 "Use" means the exercise by any person of any right or  
22 power over cigarettes incident to the ownership or possession  
23 thereof, other than the making of a sale thereof in the course  
24 of engaging in a business of selling cigarettes and shall

1 include the keeping or retention of cigarettes for use. For the  
2 purpose of this Act, "use" does not include the use of  
3 cigarettes by a not-for-profit research institution for the  
4 purpose of conducting tests concerning the health effects of  
5 tobacco products, provided the cigarettes are not offered for  
6 resale.

7 "Cigarette" means any roll for smoking made wholly or in  
8 part of tobacco irrespective of size or shape and whether or  
9 not such tobacco is flavored, adulterated or mixed with any  
10 other ingredient, and the wrapper or cover of which is made of  
11 paper ~~or any other substance or material except tobacco.~~

12 "Cigarette" when used in this Act, shall also be construed  
13 to mean: any roll for smoking made wholly or in part of tobacco  
14 labeled as anything other than a cigarette or not bearing a  
15 label, if it meets 2 or more of the following criteria:

16 (a) the product is sold in packs similar to cigarettes;

17 (b) the product is available for sale in cartons of 10  
18 packs;

19 (c) the product is sold in soft packs, hard packs, flip-top  
20 boxes, clam shells, or other cigarette-type boxes;

21 (d) the product is of a length and diameter found in  
22 commercially-manufactured cigarettes;

23 (e) the product has a cellulose acetate or other integrated  
24 filter;

25 (f) the product weighs less than 3 pounds per thousand  
26 sticks;

1       (g) the product is marketed or advertised to consumers as a  
2 cigarette or cigarette substitute; or

3       (h) there is other evidence that the product fits within  
4 the definition of cigarette.

5       "Person" means any natural individual, firm, partnership,  
6 association, joint stock company, joint adventure, public or  
7 private corporation, however formed, limited liability  
8 company, or a receiver, executor, administrator, trustee,  
9 guardian or other representative appointed by order of any  
10 court.

11       "Department" means the Department of Revenue.

12       "Sale" means any transfer, exchange or barter in any manner  
13 or by any means whatsoever for a consideration, and includes  
14 and means all sales made by any person.

15       "Original Package" means the individual packet, box or  
16 other container whatsoever used to contain and to convey  
17 cigarettes to the consumer.

18       "Distributor" means any and each of the following:

19       a. Any person engaged in the business of selling  
20 cigarettes in this State who brings or causes to be brought  
21 into this State from without this State any original  
22 packages of cigarettes, on which original packages there is  
23 no authorized evidence underneath a sealed transparent  
24 wrapper showing that the tax liability imposed by this Act  
25 has been paid or assumed by the out-of-State seller of such  
26 cigarettes, for sale in the course of such business.

1           b. Any person who makes, manufactures or fabricates  
2 cigarettes in this State for sale, except a person who  
3 makes, manufactures or fabricates cigarettes for sale to  
4 residents incarcerated in penal institutions or resident  
5 patients or a State-operated mental health facility.

6           c. Any person who makes, manufactures or fabricates  
7 cigarettes outside this State, which cigarettes are placed  
8 in original packages contained in sealed transparent  
9 wrappers, for delivery or shipment into this State, and who  
10 elects to qualify and is accepted by the Department as a  
11 distributor under Section 7 of this Act.

12           "Distributor" does not include any person who transfers  
13 cigarettes to a not-for-profit research institution that  
14 conducts tests concerning the health effects of tobacco  
15 products and who does not offer the cigarettes for resale.

16           "Distributor maintaining a place of business in this  
17 State", or any like term, means any distributor having or  
18 maintaining within this State, directly or by a subsidiary, an  
19 office, distribution house, sales house, warehouse or other  
20 place of business, or any agent operating within this State  
21 under the authority of the distributor or its subsidiary,  
22 irrespective of whether such place of business or agent is  
23 located here permanently or temporarily, or whether such  
24 distributor or subsidiary is licensed to transact business  
25 within this State.

26           "Business" means any trade, occupation, activity or

1 enterprise engaged in or conducted in this State for the  
2 purpose of selling cigarettes.

3 "Prior Continuous Compliance Taxpayer" means any person  
4 who is licensed under this Act and who, having been a licensee  
5 for a continuous period of 5 years, is determined by the  
6 Department not to have been either delinquent or deficient in  
7 the payment of tax liability during that period or otherwise in  
8 violation of this Act. Also, any taxpayer who has, as verified  
9 by the Department, continuously complied with the condition of  
10 his bond or other security under provisions of this Act of a  
11 period of 5 consecutive years shall be considered to be a  
12 "prior continuous compliance taxpayer". In calculating the  
13 consecutive period of time described herein for qualification  
14 as a "prior continuous compliance taxpayer", a consecutive  
15 period of time of qualifying compliance immediately prior to  
16 the effective date of this amendatory Act of 1987 shall be  
17 credited to any licensee who became licensed on or before the  
18 effective date of this amendatory Act of 1987.

19 (Source: P.A. 95-462, eff. 8-27-07.)

20 (Text of Section after amendment by P.A. 95-1053)

21 Sec. 1. For the purpose of this Act, unless otherwise  
22 required by the context:

23 "Use" means the exercise by any person of any right or  
24 power over cigarettes incident to the ownership or possession  
25 thereof, other than the making of a sale thereof in the course

1 of engaging in a business of selling cigarettes and shall  
2 include the keeping or retention of cigarettes for use. For the  
3 purpose of this Act, "use" does not include the use of  
4 cigarettes by a not-for-profit research institution for the  
5 purpose of conducting tests concerning the health effects of  
6 tobacco products, provided the cigarettes are not offered for  
7 resale.

8 "Brand Style" means a variety of cigarettes distinguished  
9 by the tobacco used, tar and nicotine content, flavoring used,  
10 size of the cigarette, filtration on the cigarette or  
11 packaging.

12 "Cigarette" means any roll for smoking made wholly or in  
13 part of tobacco irrespective of size or shape and whether or  
14 not such tobacco is flavored, adulterated or mixed with any  
15 other ingredient, and the wrapper or cover of which is made of  
16 paper ~~or any other substance or material except tobacco.~~

17 "Cigarette" when used in this Act, shall also be construed  
18 to mean: any roll for smoking made wholly or in part of tobacco  
19 labeled as anything other than a cigarette or not bearing a  
20 label, if it meets 2 or more of the following criteria:

21 (a) the product is sold in packs similar to cigarettes;

22 (b) the product is available for sale in cartons of 10  
23 packs;

24 (c) the product is sold in soft packs, hard packs, flip-top  
25 boxes, clam shells, or other cigarette-type boxes;

26 (d) the product is of a length and diameter found in

1 commercially-manufactured cigarettes;

2 (e) the product has a cellulose acetate or other integrated  
3 filter;

4 (f) the product weighs less than 3 pounds per thousand  
5 sticks;

6 (g) the product is marketed or advertised to consumers as a  
7 cigarette or cigarette substitute; or

8 (h) there is other evidence that the product fits within  
9 the definition of cigarette.

10 "Contraband cigarettes" means:

11 (a) cigarettes that do not bear a required tax stamp  
12 under this Act;

13 (b) cigarettes for which any required federal taxes  
14 have not been paid;

15 (c) cigarettes that bear a counterfeit tax stamp;

16 (d) cigarettes that are manufactured, fabricated,  
17 assembled, processed, packaged, or labeled by any person  
18 other than (i) the owner of the trademark rights in the  
19 cigarette brand or (ii) a person that is directly or  
20 indirectly authorized by such owner;

21 (e) cigarettes imported into the United States, or  
22 otherwise distributed, in violation of the federal  
23 Imported Cigarette Compliance Act of 2000 (Title IV of  
24 Public Law 106-476); or

25 (f) cigarettes that have false manufacturing labels.

26 "Person" means any natural individual, firm, partnership,

1 association, joint stock company, joint adventure, public or  
2 private corporation, however formed, limited liability  
3 company, or a receiver, executor, administrator, trustee,  
4 guardian or other representative appointed by order of any  
5 court.

6 "Department" means the Department of Revenue.

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

10 "Original Package" means the individual packet, box or  
11 other container whatsoever used to contain and to convey  
12 cigarettes to the consumer.

13 "Distributor" means any and each of the following:

14 a. Any person engaged in the business of selling  
15 cigarettes in this State who brings or causes to be brought  
16 into this State from without this State any original  
17 packages of cigarettes, on which original packages there is  
18 no authorized evidence underneath a sealed transparent  
19 wrapper showing that the tax liability imposed by this Act  
20 has been paid or assumed by the out-of-State seller of such  
21 cigarettes, for sale in the course of such business.

22 b. Any person who makes, manufactures or fabricates  
23 cigarettes in this State for sale, except a person who  
24 makes, manufactures or fabricates cigarettes for sale to  
25 residents incarcerated in penal institutions or resident  
26 patients or a State-operated mental health facility.

1           c. Any person who makes, manufactures or fabricates  
2           cigarettes outside this State, which cigarettes are placed  
3           in original packages contained in sealed transparent  
4           wrappers, for delivery or shipment into this State, and who  
5           elects to qualify and is accepted by the Department as a  
6           distributor under Section 7 of this Act.

7           "Distributor" does not include any person who transfers  
8           cigarettes to a not-for-profit research institution that  
9           conducts tests concerning the health effects of tobacco  
10          products and who does not offer the cigarettes for resale.

11          "Distributor maintaining a place of business in this  
12          State", or any like term, means any distributor having or  
13          maintaining within this State, directly or by a subsidiary, an  
14          office, distribution house, sales house, warehouse or other  
15          place of business, or any agent operating within this State  
16          under the authority of the distributor or its subsidiary,  
17          irrespective of whether such place of business or agent is  
18          located here permanently or temporarily, or whether such  
19          distributor or subsidiary is licensed to transact business  
20          within this State.

21          "Business" means any trade, occupation, activity or  
22          enterprise engaged in or conducted in this State for the  
23          purpose of selling cigarettes.

24          "Prior Continuous Compliance Taxpayer" means any person  
25          who is licensed under this Act and who, having been a licensee  
26          for a continuous period of 5 years, is determined by the

1 Department not to have been either delinquent or deficient in  
2 the payment of tax liability during that period or otherwise in  
3 violation of this Act. Also, any taxpayer who has, as verified  
4 by the Department, continuously complied with the condition of  
5 his bond or other security under provisions of this Act of a  
6 period of 5 consecutive years shall be considered to be a  
7 "prior continuous compliance taxpayer". In calculating the  
8 consecutive period of time described herein for qualification  
9 as a "prior continuous compliance taxpayer", a consecutive  
10 period of time of qualifying compliance immediately prior to  
11 the effective date of this amendatory Act of 1987 shall be  
12 credited to any licensee who became licensed on or before the  
13 effective date of this amendatory Act of 1987.

14 "Stamp" or "stamps" mean the indicia required to be affixed  
15 on a pack of cigarettes that evidence payment of the tax on  
16 cigarettes under Section 2 of this Act (35 ILCS 130/2), or the  
17 indicia used to indicate that the cigarettes are intended for a  
18 sale or distribution within this State that is exempt from  
19 State tax under any applicable provision of law.

20 "Within this State" means within the exterior limits of the  
21 State of Illinois and includes all territory within these  
22 limits owned by or ceded to the United States of America.

23 "Related party" means any person that is associated with  
24 any other person because he or she:

25 (a) is an officer or director of a business;

26 (b) is legally recognized as a partner in business; or

1 (c) is directly or indirectly controlled by another.

2 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10.)

3 (35 ILCS 135/2) (from Ch. 120, par. 453.32)

4 Sec. 2. A tax is imposed upon the privilege of using  
5 cigarettes in this State, at the rate of 6 mills per cigarette  
6 so used. On and after December 1, 1985, in addition to any  
7 other tax imposed by this Act, a tax is imposed upon the  
8 privilege of using cigarettes in this State at a rate of 4  
9 mills per cigarette so used. On and after the effective date of  
10 this amendatory Act of 1989, in addition to any other tax  
11 imposed by this Act, a tax is imposed upon the privilege of  
12 using cigarettes in this State at the rate of 5 mills per  
13 cigarette so used. On and after the effective date of this  
14 amendatory Act of 1993, in addition to any other tax imposed by  
15 this Act, a tax is imposed upon the privilege of using  
16 cigarettes in this State at a rate of 7 mills per cigarette so  
17 used. On and after December 15, 1997, in addition to any other  
18 tax imposed by this Act, a tax is imposed upon the privilege of  
19 using cigarettes in this State at a rate of 7 mills per  
20 cigarette so used. On and after July 1, 2002, in addition to  
21 any other tax imposed by this Act, a tax is imposed upon the  
22 privilege of using cigarettes in this State at a rate of 20.0  
23 mills per cigarette so used. Beginning on September 1, 2009, in  
24 addition to any other tax imposed by this Act, a tax is imposed  
25 upon the privilege of using cigarettes in this State at a rate

1 of 25 mills per cigarette so used. Beginning on September 1,  
2 2010, in addition to any other tax imposed by this Act, a tax  
3 is imposed upon the privilege of using cigarettes in this State  
4 at the rate of 12.5 mills per cigarette so used. Beginning on  
5 September 1, 2011, in addition to any other tax imposed by this  
6 Act, a tax is imposed upon the privilege of using cigarettes in  
7 this State at the rate of 12.5 mills per cigarette so used. The  
8 taxes herein imposed shall be in addition to all other  
9 occupation or privilege taxes imposed by the State of Illinois  
10 or by any political subdivision thereof or by any municipal  
11 corporation.

12 When any tax imposed herein terminates or has terminated,  
13 distributors who have bought stamps while such tax was in  
14 effect and who therefore paid such tax, but who can show, to  
15 the Department's satisfaction, that they sold the cigarettes to  
16 which they affixed such stamps after such tax had terminated  
17 and did not recover the tax or its equivalent from purchasers,  
18 shall be allowed by the Department to take credit for such  
19 absorbed tax against subsequent tax stamp purchases from the  
20 Department by such distributors.

21 When the word "tax" is used in this Act, it shall include  
22 any tax or tax rate imposed by this Act and shall mean the  
23 singular of "tax" or the plural "taxes" as the context may  
24 require.

25 Any distributor having cigarettes to which stamps have been  
26 affixed in his possession for sale on the effective date of

1 this amendatory Act of 1989 shall not be required to pay the  
2 additional tax imposed by this amendatory Act of 1989 on such  
3 stamped cigarettes. Any distributor having cigarettes to which  
4 stamps have been affixed in his or her possession for sale at  
5 12:01 a.m. on the effective date of this amendatory Act of  
6 1993, is required to pay the additional tax imposed by this  
7 amendatory Act of 1993 on such stamped cigarettes. This payment  
8 shall be due when the distributor first makes a purchase of  
9 cigarette tax stamps after the effective date of this  
10 amendatory Act of 1993, or on the first due date of a return  
11 under this Act after the effective date of this amendatory Act  
12 of 1993, whichever occurs first. Once a distributor tenders  
13 payment of the additional tax to the Department, the  
14 distributor may purchase stamps from the Department. Any  
15 distributor having cigarettes to which stamps have been affixed  
16 in his possession for sale on December 15, 1997 shall not be  
17 required to pay the additional tax imposed by this amendatory  
18 Act of 1997 on such stamped cigarettes.

19 Any distributor having cigarettes to which stamps have been  
20 affixed in his or her possession for sale on July 1, 2002 shall  
21 not be required to pay the additional tax imposed by this  
22 amendatory Act of the 92nd General Assembly on those stamped  
23 cigarettes. Any retailer having cigarettes in his or her  
24 possession on September 1, 2009 to which tax stamps have been  
25 affixed is not required to pay the additional tax that begins  
26 of September 1, 2009 imposed by an amendatory Act of the 96th

1 General Assembly on those stamped cigarettes. Any distributor  
2 having cigarettes in his or her possession on September 1, 2009  
3 to which tax stamps have been affixed is required to pay the  
4 additional tax that begins on September 1, 2009 imposed by an  
5 amendatory Act of the 96th General Assembly to the extent the  
6 calendar year 2009 average monthly volume of cigarette stamps  
7 in the distributor's possession exceeds the average monthly  
8 volume of cigarette stamps purchased by the distributor in  
9 calendar year 2008. This payment, less the discount provided in  
10 Section 3, is due when the distributor first makes a purchase  
11 of cigarette stamps on or after September 1, 2009 or on the  
12 first due date of a return under this Act occurring on or after  
13 September 1, 2009, whichever occurs first.

14 Any retailer having cigarettes in his or her possession on  
15 September 1, 2010 to which tax stamps have been affixed is not  
16 required to pay the additional tax that begins on September 1,  
17 2010 imposed by an amendatory Act of the 96th General Assembly  
18 on those stamped cigarettes. Any distributor having cigarettes  
19 in his or her possession on September 1, 2010 to which tax  
20 stamps have been affixed is required to pay the additional tax  
21 that begins on September 1, 2010 imposed by an amendatory Act  
22 of the 96th General Assembly to the extent the calendar year  
23 2010 average monthly volume of cigarette stamps in the  
24 distributor's possession exceeds the average monthly volume of  
25 cigarette stamps purchased by the distributor in calendar year  
26 2009. This payment, less the discount provided in Section 3, is

1 due when the distributor first makes a purchase of cigarette  
2 stamps on or after September 1, 2010 or on the first due date  
3 of a return under this Act occurring on or after September 1,  
4 2010, whichever occurs first.

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

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

23 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

24 Sec. 12. Declaration of possession of cigarettes on which  
25 tax not paid.

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

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

13           (c) The return referred to in paragraph (a) shall contain  
14 the name and address of the person possessing the cigarettes  
15 involved, the location of the cigarettes and the quantity,  
16 brand name, place, and date of the acquisition of the  
17 cigarettes.

18           (d) The provisions of this Section are not subject to the  
19 Uniform Penalty and Interest Act.

20           (Source: P.A. 92-322, eff. 1-1-02.)

21           Section 95. No acceleration or delay. Where this Act makes  
22 changes in a statute that is represented in this Act by text  
23 that is not yet or no longer in effect (for example, a Section  
24 represented by multiple versions), the use of that text does  
25 not accelerate or delay the taking effect of (i) the changes

1 made by this Act or (ii) provisions derived from any other  
2 Public Act.".