

# HB1731



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB1731

by Rep. Karen A. Yarbrough

#### SYNOPSIS AS INTRODUCED:

35 ILCS 143/10-5  
35 ILCS 143/10-10  
35 ILCS 143/10-30

Amends the Tobacco Products Tax Act of 1995. Defines "little cigar". Provides that little cigars shall be taxed at a rate per cigar that is equal to the rate imposed per cigarette under the Cigarette Tax Act. Provides that a distributor shall disclose the quantity of little cigars sold or otherwise disposed of.

LRB097 10208 PJG 50404 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

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

6 (35 ILCS 143/10-5)

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

8 "Business" means any trade, occupation, activity, or  
9 enterprise engaged in, at any location whatsoever, for the  
10 purpose of selling tobacco products.

11 "Cigarette" has the meaning ascribed to the term in Section  
12 1 of the Cigarette Tax Act.

13 "Correctional Industries program" means a program run by a  
14 State penal institution in which residents of the penal  
15 institution produce tobacco products for sale to persons  
16 incarcerated in penal institutions or resident patients of a  
17 State operated mental health facility.

18 "Department" means the Illinois Department of Revenue.

19 "Distributor" means any of the following:

20 (1) Any manufacturer or wholesaler in this State  
21 engaged in the business of selling tobacco products who  
22 sells, exchanges, or distributes tobacco products to  
23 retailers or consumers in this State.

1           (2) Any manufacturer or wholesaler engaged in the  
2 business of selling tobacco products from without this  
3 State who sells, exchanges, distributes, ships, or  
4 transports tobacco products to retailers or consumers  
5 located in this State, so long as that manufacturer or  
6 wholesaler has or maintains within this State, directly or  
7 by subsidiary, an office, sales house, or other place of  
8 business, or any agent or other representative operating  
9 within this State under the authority of the person or  
10 subsidiary, irrespective of whether the place of business  
11 or agent or other representative is located here  
12 permanently or temporarily.

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

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

21           "Little cigar" means any roll for smoking, made wholly or  
22 in part of tobacco, if such product uses an integrated  
23 cellulose acetate or other similar filter and is wrapped in any  
24 substance containing tobacco, other than natural leaf tobacco.

25           "Manufacturer" means any person, wherever resident or  
26 located, who manufactures and sells tobacco products, except a

1 person who makes, manufactures, or fabricates tobacco products  
2 as a part of a Correctional Industries program for sale to  
3 persons incarcerated in penal institutions or resident  
4 patients of a State operated mental health facility.

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

11 "Place of business" means and includes any place where  
12 tobacco products are sold or where tobacco products are  
13 manufactured, stored, or kept for the purpose of sale or  
14 consumption, including any vessel, vehicle, airplane, train,  
15 or vending machine.

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

19 "Sale" means any transfer, exchange, or barter in any  
20 manner or by any means whatsoever for a consideration and  
21 includes all sales made by persons.

22 "Tobacco products" means any cigars, including little  
23 cigars; cheroots; stogies; periques; granulated, plug cut,  
24 crimp cut, ready rubbed, and other smoking tobacco; snuff or  
25 snuff flour; cavendish; plug and twist tobacco; fine-cut and  
26 other chewing tobaccos; shorts; refuse scraps, clippings,

1 cuttings, and sweeping of tobacco; and other kinds and forms of  
2 tobacco, prepared in such manner as to be suitable for chewing  
3 or smoking in a pipe or otherwise, or both for chewing and  
4 smoking; but does not include cigarettes or tobacco purchased  
5 for the manufacture of cigarettes by cigarette distributors and  
6 manufacturers defined in the Cigarette Tax Act and persons who  
7 make, manufacture, or fabricate cigarettes as a part of a  
8 Correctional Industries program for sale to residents  
9 incarcerated in penal institutions or resident patients of a  
10 State operated mental health facility.

11 "Wholesale price" means the established list price for  
12 which a manufacturer sells tobacco products to a distributor,  
13 before the allowance of any discount, trade allowance, rebate,  
14 or other reduction. In the absence of such an established list  
15 price, the manufacturer's invoice price at which the  
16 manufacturer sells the tobacco product to unaffiliated  
17 distributors, before any discounts, trade allowances, rebates,  
18 or other reductions, shall be presumed to be the wholesale  
19 price.

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

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

24 (35 ILCS 143/10-10)

25 Sec. 10-10. Tax imposed. On the first day of the third

1 month after the month in which this Act becomes law, a tax is  
2 imposed on any person engaged in business as a distributor of  
3 tobacco products. The tax on tobacco products, other than  
4 little cigars, as defined in Section 10-5, is at the rate of  
5 18% of the wholesale price of tobacco products sold or  
6 otherwise disposed of to retailers or consumers located in this  
7 State. The tax on little cigars, as defined in Section 10-5, is  
8 at a rate per little cigar that is equal to the total taxes  
9 imposed per cigarette under Section 2 of the Cigarette Tax Act,  
10 as such Section may be amended from time to time, or under any  
11 successor provisions taxing cigarettes. The tax is in addition  
12 to all other occupation or privilege taxes imposed by the State  
13 of Illinois, by any political subdivision thereof, or by any  
14 municipal corporation. However, the tax is not imposed upon any  
15 activity in that business in interstate commerce or otherwise,  
16 to the extent to which that activity may not, under the  
17 Constitution and Statutes of the United States, be made the  
18 subject of taxation by this State. The tax is also not imposed  
19 on sales made to the United States or any entity thereof.

20 All moneys received by the Department under this Act shall  
21 be paid into the Long-Term Care Provider Fund of the State  
22 Treasury.

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

24 (35 ILCS 143/10-30)

25 Sec. 10-30. Returns. Every distributor shall, on or before

1 the 15th day of each month, file a return with the Department  
2 covering the preceding calendar month. The return shall  
3 disclose the wholesale price for tobacco products and the  
4 quantity of little cigars sold or otherwise disposed of and  
5 other information that the Department may reasonably require.  
6 The return shall be filed upon a form prescribed and furnished  
7 by the Department.

8 At the time when any return of any distributor is due to be  
9 filed with the Department, the distributor shall also remit to  
10 the Department the tax liability that the distributor has  
11 incurred for transactions occurring in the preceding calendar  
12 month.

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