



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3533

Introduced 2/24/2011, by

SYNOPSIS AS INTRODUCED:

35 ILCS 130/1
35 ILCS 135/1

from Ch. 120, par. 453.1
from Ch. 120, par. 453.31

Amends the Cigarette Tax Act and the Cigarette Use Tax Act. Defines "Manufacturer's sales representative". Provides that a manufacturer's sales representative may be licensed as a secondary distributor provided that (i) the representative does not possess a quantity in excess of 125 cartons of stamped packages of cigarettes for resale to retailers and (ii) a representative licensed as a secondary distributor is subject to recordkeeping requirements and other restrictions.

LRB097 08896 HLH 49028 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 Cigarette Tax Act is amended by changing
5 Section 1 as follows:

6 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

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 "Contraband cigarettes" means:

18 (a) cigarettes that do not bear a required tax stamp
19 under this Act;

20 (b) cigarettes for which any required federal taxes
21 have not been paid;

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

23 (d) cigarettes that are manufactured, fabricated,

1 assembled, processed, packaged, or labeled by any person
2 other than (i) the owner of the trademark rights in the
3 cigarette brand or (ii) a person that is directly or
4 indirectly authorized by such owner;

5 (e) cigarettes imported into the United States, or
6 otherwise distributed, in violation of the federal
7 Imported Cigarette Compliance Act of 2000 (Title IV of
8 Public Law 106-476);

9 (f) cigarettes that have false manufacturing labels;

10 (g) cigarettes identified in Section 3-10(a)(1) of
11 this Act; or

12 (h) cigarettes that are improperly tax stamped,
13 including cigarettes that bear a tax stamp of another state
14 or taxing jurisdiction.

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

21 "Prior Continuous Compliance Taxpayer" means any person
22 who is licensed under this Act and who, having been a licensee
23 for a continuous period of 5 years, is determined by the
24 Department not to have been either delinquent or deficient in
25 the payment of tax liability during that period or otherwise in
26 violation of this Act. Also, any taxpayer who has, as verified

1 by the Department, continuously complied with the condition of
2 his bond or other security under provisions of this Act for a
3 period of 5 consecutive years shall be considered to be a
4 "Prior continuous compliance taxpayer". In calculating the
5 consecutive period of time described herein for qualification
6 as a "prior continuous compliance taxpayer", a consecutive
7 period of time of qualifying compliance immediately prior to
8 the effective date of this amendatory Act of 1987 shall be
9 credited to any licensee who became licensed on or before the
10 effective date of this amendatory Act of 1987.

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 (1) 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 packages
22 of cigarettes, on which original packages there is no
23 authorized evidence underneath a sealed transparent wrapper
24 showing that the tax liability imposed by this Act has been
25 paid or assumed by the out-of-State seller of such cigarettes,
26 for sale or other disposition in the course of such business.

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

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

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

18 "Business" means any trade, occupation, activity or
19 enterprise engaged in for the purpose of selling cigarettes in
20 this State.

21 "Retailer" means any person who engages in the making of
22 transfers of the ownership of, or title to, cigarettes to a
23 purchaser for use or consumption and not for resale in any
24 form, for a valuable consideration. "Retailer" does not include
25 a person:

26 (1) who transfers to residents incarcerated in penal

1 institutions or resident patients of a State-operated
2 mental health facility ownership of cigarettes made,
3 manufactured, or fabricated as part of a correctional
4 industries program; or

5 (2) who transfers cigarettes to a not-for-profit
6 research institution that conducts tests concerning the
7 health effects of tobacco products and who does not offer
8 the cigarettes for resale.

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

18 "Manufacturer's sales representative" means any natural
19 individual employed by a person that makes, manufactures, or
20 fabricates cigarettes outside this State and who is engaged in
21 the business of calling on retailers for the purpose of
22 selling, placing orders for sale, or distributing stamped
23 cigarette packages of the manufacturer's brands to retailers
24 for resale.

25 "Secondary distributor" means any person engaged in the
26 business of selling cigarettes who purchases stamped original

1 packages of cigarettes from a licensed distributor under this
2 Act or the Cigarette Use Tax Act, sells 75% or more of those
3 cigarettes to retailers for resale, and maintains an
4 established business where a substantial stock of cigarettes is
5 available to retailers for resale. A manufacturer's sales
6 representative may be licensed as a secondary distributor
7 provided that: (i) the individual does not possess, at any one
8 time, a quantity in excess of 125 cartons of stamped packages
9 of cigarettes for resale to retailers and (ii) any
10 manufacturer's sales representative licensed as a secondary
11 distributor is subject to all recordkeeping requirements and
12 other restrictions under this Act.

13 "Stamp" or "stamps" mean the indicia required to be affixed
14 on a pack of cigarettes that evidence payment of the tax on
15 cigarettes under Section 2 of this Act.

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

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

19 (b) is legally recognized as a partner in business.

20 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;
21 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

22 Section 10. The Cigarette Use Tax Act is amended by
23 changing Section 1 as follows:

24 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

3 "Use" means the exercise by any person of any right or
4 power over cigarettes incident to the ownership or possession
5 thereof, other than the making of a sale thereof in the course
6 of engaging in a business of selling cigarettes and shall
7 include the keeping or retention of cigarettes for use, except
8 that "use" does not include the use of cigarettes by a
9 not-for-profit research institution conducting tests
10 concerning the health effects of tobacco products, provided the
11 cigarettes are not offered for resale.

12 "Brand Style" means a variety of cigarettes distinguished
13 by the tobacco used, tar and nicotine content, flavoring used,
14 size of the cigarette, filtration on the cigarette or
15 packaging.

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

21 "Contraband cigarettes" means:

22 (a) cigarettes that do not bear a required tax stamp
23 under this Act;

24 (b) cigarettes for which any required federal taxes
25 have not been paid;

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

1 (d) cigarettes that are manufactured, fabricated,
2 assembled, processed, packaged, or labeled by any person
3 other than (i) the owner of the trademark rights in the
4 cigarette brand or (ii) a person that is directly or
5 indirectly authorized by such owner;

6 (e) cigarettes imported into the United States, or
7 otherwise distributed, in violation of the federal
8 Imported Cigarette Compliance Act of 2000 (Title IV of
9 Public Law 106-476);

10 (f) cigarettes that have false manufacturing labels;

11 (g) cigarettes identified in Section 3-10(a)(1) of
12 this Act; or

13 (h) cigarettes that are improperly tax stamped,
14 including cigarettes that bear a tax stamp of another state
15 or taxing jurisdiction.

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

22 "Department" means the Department of Revenue.

23 "Sale" means any transfer, exchange or barter in any manner
24 or by any means whatsoever for a consideration, and includes
25 and means all sales made by any person.

26 "Original Package" means the individual packet, box or

1 other container whatsoever used to contain and to convey
2 cigarettes to the consumer.

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

4 a. Any person engaged in the business of selling
5 cigarettes in this State who brings or causes to be brought
6 into this State from without this State any original
7 packages of cigarettes, on which original packages there is
8 no authorized evidence underneath a sealed transparent
9 wrapper showing that the tax liability imposed by this Act
10 has been paid or assumed by the out-of-State seller of such
11 cigarettes, for sale in the course of such business.

12 b. Any person who makes, manufactures or fabricates
13 cigarettes in this State for sale, except a person who
14 makes, manufactures or fabricates cigarettes for sale to
15 residents incarcerated in penal institutions or resident
16 patients or a State-operated mental health facility.

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

23 "Distributor" does not include any person who transfers
24 cigarettes to a not-for-profit research institution that
25 conducts tests concerning the health effects of tobacco
26 products and who does not offer the cigarettes for resale.

1 "Distributor maintaining a place of business in this
2 State", or any like term, means any distributor having or
3 maintaining within this State, directly or by a subsidiary, an
4 office, distribution house, sales house, warehouse or other
5 place of business, or any agent operating within this State
6 under the authority of the distributor or its subsidiary,
7 irrespective of whether such place of business or agent is
8 located here permanently or temporarily, or whether such
9 distributor or subsidiary is licensed to transact business
10 within this State.

11 "Business" means any trade, occupation, activity or
12 enterprise engaged in or conducted in this State for the
13 purpose of selling cigarettes.

14 "Prior Continuous Compliance Taxpayer" means any person
15 who is licensed under this Act and who, having been a licensee
16 for a continuous period of 5 years, is determined by the
17 Department not to have been either delinquent or deficient in
18 the payment of tax liability during that period or otherwise in
19 violation of this Act. Also, any taxpayer who has, as verified
20 by the Department, continuously complied with the condition of
21 his bond or other security under provisions of this Act of a
22 period of 5 consecutive years shall be considered to be a
23 "prior continuous compliance taxpayer". In calculating the
24 consecutive period of time described herein for qualification
25 as a "prior continuous compliance taxpayer", a consecutive
26 period of time of qualifying compliance immediately prior to

1 the effective date of this amendatory Act of 1987 shall be
2 credited to any licensee who became licensed on or before the
3 effective date of this amendatory Act of 1987.

4 "Secondary distributor" means any person engaged in the
5 business of selling cigarettes who purchases stamped original
6 packages of cigarettes from a licensed distributor under this
7 Act or the Cigarette Tax Act, sells 75% or more of those
8 cigarettes to retailers for resale, and maintains an
9 established business where a substantial stock of cigarettes is
10 available to retailers for resale.

11 "Secondary distributor maintaining a place of business in
12 this State", or any like term, means any secondary distributor
13 having or maintaining within this State, directly or by a
14 subsidiary, an office, distribution house, sales house,
15 warehouse, or other place of business, or any agent operating
16 within this State under the authority of the secondary
17 distributor or its subsidiary, irrespective of whether such
18 place of business or agent is located here permanently or
19 temporarily, or whether such secondary distributor or
20 subsidiary is licensed to transact business within this State.
21 However, any manufacturer's sales representative licensed as a
22 secondary distributor may consider and register the motor
23 vehicle licensed to that individual or manufacturer as an
24 office, distribution house, or other place of business.

25 "Stamp" or "stamps" mean the indicia required to be affixed
26 on a pack of cigarettes that evidence payment of the tax on

1 cigarettes under Section 2 of this Act.

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

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

5 (b) is legally recognized as a partner in business.

6 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;
7 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)