

1 AMENDMENT TO SENATE BILL 449

2 AMENDMENT NO. _____. Amend Senate Bill 449, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Tobacco Products Tax Act of 1995 is
6 amended by changing Sections 10-5, 10-10, and 10-35 as
7 follows:

8 (35 ILCS 143/10-5)

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

10 "Business" means any trade, occupation, activity, or
11 enterprise engaged in for the purpose of selling tobacco
12 products in this State.

13 "Cigarette" has the meaning ascribed to the term in
14 Section 1 of the Cigarette Tax Act.

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

20 "Department" means the Department of Revenue.

21 "Distributor" means any of the following:

22 (1) Any manufacturer or wholesaler in this State

1 engaged in the business of selling tobacco products who
2 sells, exchanges, or distributes tobacco products to
3 retailers or consumers in this State.

4 (2) Any manufacturer or wholesaler located outside
5 of Illinois engaged in the business of selling tobacco
6 products who sells, exchanges, distributes, ships, or
7 transports tobacco products to retailers or consumers in
8 this State, so long as that manufacturer or wholesaler
9 has or maintains within this State, directly or by
10 subsidiary, an office, sales house, or other place of
11 business, or any agent or other representative operating
12 within this State under the authority of the person or
13 subsidiary, irrespective of whether the place of business
14 or agent or other representative is located here
15 permanently or temporarily.

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

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

24 "Manufacturer" means any person, wherever resident or
25 located, who manufactures and sells tobacco products, except
26 a person who makes, manufactures, or fabricates tobacco
27 products as a part of a Correctional Industries program for
28 sale to persons incarcerated in penal institutions or
29 resident patients of a State operated mental health facility.

30 "Person" means any natural individual, firm, partnership,
31 association, joint stock company, joint venture, limited
32 liability company, or public or private corporation, however
33 formed, or a receiver, executor, administrator, trustee,
34 conservator, or other representative appointed by order of

1 any court.

2 "Place of business" means and includes any place where
3 tobacco products are sold or where tobacco products are
4 manufactured, stored, or kept for the purpose of sale or
5 consumption, including any vessel, vehicle, airplane, train,
6 or vending machine.

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

10 "Sale" means any transfer, exchange, or barter in any
11 manner or by any means whatsoever for a consideration and
12 includes all sales made by persons.

13 "Snuff" means any finely cut, ground, or powdered tobacco
14 that is intended to be placed in the oral cavity.

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

30 "Wholesale price" means the established list price for
31 which a manufacturer sells tobacco products to a distributor,
32 before the allowance of any discount, trade allowance,
33 rebate, or other reduction. In the absence of such an
34 established list price, the manufacturer's invoice price at

1 which the manufacturer sells the tobacco product to
2 unaffiliated distributors, before any discounts, trade
3 allowances, rebates, or other reductions, shall be presumed
4 to be the wholesale price.

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

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

9 (35 ILCS 143/10-10)

10 Sec. 10-10. Tax imposed.

11 (a) On the first day of the third month after the month
12 in which this Act becomes law, a tax is imposed on any person
13 engaged in business as a distributor of tobacco products
14 other than snuff, as defined in Section 10-5, at the rate of
15 18% of the wholesale price of tobacco products sold or
16 otherwise disposed of in this State.

17 (b) A tax is imposed on any person engaged in business
18 as a distributor of snuff, as defined in Section 10-5, as
19 follows:

20 (1) For sales of snuff after the effective date of
21 this amendatory Act of the 92nd General Assembly but on
22 or before December 31, 2002:

23 Upon each can or package of snuff with a wholesale
24 price equal to or greater than \$2.20, at the rate of \$.37
25 per ounce, with a proportionate tax at the like rate on
26 all fractional parts of an ounce. Upon each can or
27 package of snuff with a wholesale price less than \$2.20,
28 at the rate of \$.28 per ounce with a proportionate tax at
29 the like rate on all fractional parts of an ounce.

30 (2) For sales of snuff on or after January 1, 2003
31 and on or before December 31, 2003:

32 Upon each can or package of snuff with a wholesale
33 price equal to or greater than \$2.20, at the rate of \$.39

1 per ounce, with a proportionate tax at the like rate on
 2 all fractional parts of an ounce. Upon each can or
 3 package of snuff with a wholesale price less than \$2.20,
 4 at the rate of \$.30 per ounce with a proportionate tax at
 5 the like rate on all fractional parts of an ounce.

6 (3) For sales of snuff on or after January 1, 2004:

7 Upon each can or package of snuff with a wholesale
 8 price equal to or greater than \$2.20, at the rate of \$.41
 9 per ounce, with a proportionate tax at the like rate on
 10 all fractional parts of an ounce. Upon each can or
 11 package of snuff with a wholesale price less than \$2.20,
 12 at the rate of \$.32 per ounce with a proportionate tax at
 13 the like rate on all fractional parts of an ounce.

14 For purposes of the tax on snuff, the tax shall be
 15 computed based on the net weight as listed by the
 16 manufacturer.

17 (c) The tax imposed under this Act is in addition to all
 18 other occupation or privilege taxes imposed by the State of
 19 Illinois, by any political subdivision thereof, or by any
 20 municipal corporation. However, the tax is not imposed upon
 21 any activity in that business in interstate commerce or
 22 otherwise, to the extent to which that activity may not,
 23 under the Constitution and Statutes of the United States, be
 24 made the subject of taxation by this State. The tax is also
 25 not imposed on sales made to the United States or any entity
 26 thereof.

27 (d) All moneys received by the Department under this Act
 28 shall be paid into the Long-Term Care Provider Fund of the
 29 State Treasury.

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

31 (35 ILCS 143/10-35)

32 Sec. 10-35. Record keeping. Every distributor, as
 33 defined in Section 10-5, shall keep complete and accurate

1 records of tobacco products held, purchased, manufactured,
2 brought in or caused to be brought in from without the State,
3 and tobacco products sold, or otherwise disposed of, and
4 shall preserve and keep all invoices, bills of lading, sales
5 records, and copies of bills of sale, the wholesale price for
6 tobacco products sold or otherwise disposed of, an inventory
7 of tobacco products prepared as of December 31 of each year
8 or as of the last day of the distributor's fiscal year if he
9 or she files federal income tax returns on the basis of a
10 fiscal year, and other pertinent papers and documents
11 relating to the manufacture, purchase, sale, or disposition
12 of tobacco products. For sales of snuff, such records shall
13 also include the net weight as listed by the manufacturer.
14 Books, records, papers, and documents that are required by
15 this Act to be kept shall, at all times during the usual
16 business hours of the day, be subject to inspection by the
17 Department or its duly authorized agents and employees. The
18 books, records, papers, and documents for any period with
19 respect to which the Department is authorized to issue a
20 notice of tax liability shall be preserved until the
21 expiration of that period.

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

23 Section 99. Effective date. This Act takes effect on
24 January 1, 2002."