

1 AN ACT concerning taxation.

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
5 amended by adding Sections 10-55, 10-56, 10-57, and 10-58 as
6 follows:

7 (35 ILCS 143/10-55 new)

8 Sec. 10-55. Arrest; search and seizure without warrant.
9 Any duly authorized employee of the Department (i) may arrest
10 without warrant any person committing in his or her presence
11 a violation of any of the provisions of this Act, (ii) may
12 without a search warrant inspect all tobacco products located
13 in any place of business, (iii) may seize any tobacco
14 products in accordance with the provisions of this Act, and
15 (iv) may seize any vending device in which those tobacco
16 products are found. The tobacco products and vending devices
17 so seized are subject to confiscation and forfeiture as
18 provided in Sections 10-56 through 10-58.

19 (35 ILCS 143/10-56 new)

20 Sec. 10-56. Seizure and forfeiture. After seizing any
21 tobacco products or vending devices, as provided in Section
22 10-55, the Department must hold a hearing and determine
23 whether the distributor or retailer was properly licensed to
24 sell the tobacco products at the time of their seizure by the
25 Department. The Department shall give not less than 20 days'
26 notice of the time and place of the hearing to the owner of
27 the property, if the owner is known, and also to the person
28 in whose possession the property was found, if that person is
29 known and if the person in possession is not the owner of the
30 property. If neither the owner nor the person in possession

1 of the property is known, the Department must cause
2 publication of the time and place of the hearing to be made
3 at least once in each week for 3 weeks successively in a
4 newspaper of general circulation in the county where the
5 hearing is to be held.

6 If, as the result of the hearing, the Department
7 determines that the distributor or retailer was not properly
8 licensed at the time the tobacco products were seized, the
9 Department must enter an order declaring the tobacco products
10 or vending devices confiscated and forfeited to the State, to
11 be held by the Department for disposal by it as provided in
12 Section 10-58. The Department must give notice of the order
13 to the owner of the property, if the owner is known, and also
14 to the person in whose possession the property was found, if
15 that person is known and if the person in possession is not
16 the owner of the property. If neither the owner nor the
17 person in possession of the property is known, the Department
18 must cause publication of the order to be made at least once
19 in each week for 3 weeks successively in a newspaper of
20 general circulation in the county where the hearing was held.

21 (35 ILCS 143/10-57 new)

22 Sec. 10-57. Search warrant; issuance and return; process;
23 confiscation of property; forfeitures. If a peace officer of
24 this State or any duly authorized officer or employee of the
25 Department has reason to believe that any violation of this
26 Act has occurred and that the person violating the Act has in
27 that person's possession any tobacco products or vending
28 device containing tobacco products, that peace officer or
29 officer or employe of the Department may file or cause to be
30 filed his or her complaint in writing, verified by affidavit,
31 with any court within whose jurisdiction the premises to be
32 searched are situated, stating the facts upon which the
33 belief is founded, the premises to be searched, and the

1 property to be seized, and procure a search warrant and
2 execute that warrant. Upon the execution of the search
3 warrant, the peace officer, or officer or employee of the
4 Department, executing the search warrant shall make due
5 return of the warrant to the court issuing the warrant,
6 together with an inventory of the property taken under the
7 warrant. The court must then issue process against the owner
8 of the property if the owner is known; otherwise, process
9 must be issued against the person in whose possession the
10 property is found, if that person is known. In case of
11 inability to serve process upon the owner or the person in
12 possession of the property at the time of its seizure, notice
13 of the proceedings before the court must be given in the same
14 manner as required by the law governing cases of attachment.
15 Upon the return of the process duly served or upon the
16 posting or publishing of notice made, as appropriate, the
17 court or jury, if a jury is demanded, shall proceed to
18 determine whether or not the property so seized was held or
19 possessed in violation of this Act. If a violation is found,
20 judgment shall be entered confiscating the property and
21 forfeiting it to the State and ordering its delivery to the
22 Department. In addition, the court may tax and assess the
23 costs of the proceedings.

24 When any tobacco products or any vending devices are
25 declared forfeited to the State by any court and the
26 confiscated and forfeited property is delivered to the
27 Department, the Department shall sell the property for the
28 best price obtainable and shall forthwith pay over the
29 proceeds of the sale to the State Treasurer. If the value of
30 the property to be sold at any one time is \$500 or more,
31 however, the property shall be sold only to the highest and
32 best bidder on terms and conditions, and on open competitive
33 bidding after public advertisement, in a manner and for terms
34 as the Department, by rule, may prescribe.

1 (35 ILCS 143/10-58 new)

2 Sec. 10-58. Sale of forfeited tobacco products or vending
3 devices.

4 (a) When any tobacco products or any vending devices are
5 declared forfeited to the State by the Department, as
6 provided in Section 10-55, and when all proceedings for the
7 judicial review of the Department's decision have terminated,
8 the Department shall, to the extent that its decision is
9 sustained on review, sell the property for the best price
10 obtainable and shall forthwith pay over the proceeds of the
11 sale to the State Treasurer. If the value of the property to
12 be sold at any one time is \$500 or more, however, the
13 property shall be sold only to the highest and best bidder on
14 terms and conditions, and on open competitive bidding after
15 public advertisement, in a manner and for terms as the
16 Department, by rule, may prescribe.

17 (b) If no complaint for review, as provided in Section
18 12 of the Retailers' Occupation Tax Act, has been filed
19 within the time required by the Administrative Review Law,
20 and if no stay order has been entered under that Law, the
21 Department shall proceed to sell the property for the best
22 price obtainable and shall forthwith pay over the proceeds of
23 the sale to the State Treasurer. If the value of the property
24 to be sold at any one time is \$500 or more, however, the
25 property shall be sold only to the highest and best bidder on
26 terms and conditions, and on open competitive bidding after
27 public advertisement, in a manner and for terms as the
28 Department, by rule, may prescribe.

29 (c) Upon making a sale of tobacco products as provided
30 in this Section, the Department shall affix a distinctive
31 stamp to each of the tobacco products so sold indicating that
32 they are sold under this Section.

33 (d) Notwithstanding the foregoing, any tobacco products
34 seized under this Act may, at the discretion of the Director

1 of Revenue, be distributed to any eleemosynary institution
2 within the State of Illinois.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.