

AN ACT concerning revenue.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Use Tax Act is amended by changing Section 11 as follows:

(35 ILCS 105/11) (from Ch. 120, par. 439.11)

Sec. 11. Every retailer required or authorized to collect taxes hereunder and every person using in this State tangible personal property purchased at retail from a retailer on or after the effective date hereof shall keep such records, receipts, invoices and other pertinent books, documents, memoranda and papers as the Department shall require, in such form as the Department shall require. The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by taxpayers. For purposes of this Section, "records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation. For the purpose of administering and enforcing the provisions hereof, the Department, or any officer or employee of the Department designated, in writing, by the Director thereof, may hold investigations and hearings concerning any matters covered herein and may examine any books, papers,

records, documents or memoranda of any retailer or purchaser bearing upon the sales or purchases of tangible personal property, the privilege of using which is taxed hereunder, and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of the facts, and may take testimony and require proof for its information.

Any person who fails to keep books and records or fails to produce books and records for examination, as required by this Section and the rules adopted by the Department, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination as required by this Section and the rules adopted by the Department. The penalties imposed under this Section shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence. The Department may adopt rules to administer the penalties under this Section.

(Source: P.A. 88-480.)

Section 10. The Service Use Tax Act is amended by changing Section 11 as follows:

(35 ILCS 110/11) (from Ch. 120, par. 439.41)

Sec. 11. Every serviceman required or authorized to collect taxes hereunder and every user who is subject to the tax imposed by this Act shall keep such records, receipts, invoices and other pertinent books, documents, memoranda and papers as the Department shall require, in such form as the Department shall require. The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by taxpayers. For purposes of this Section, "records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation. For the purpose of administering and enforcing the provisions hereof, the Department, or any officer or employee of the Department designated, in writing, by the Director thereof, may hold investigations and hearings concerning any matters covered herein and not otherwise delegated to the Illinois Independent Tax Tribunal and may examine any relevant books, papers, records, documents or memoranda of any serviceman or any taxable purchaser for use hereunder, and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of the facts, and may take testimony and require proof for its information.

Any person who fails to keep books and records or fails to produce books and records for examination, as required by this Section and the rules adopted by the Department, is liable to pay to the Department, for deposit into the Tax Compliance and

Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination as required by this Section and the rules adopted by the Department. The penalties imposed under this Section shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence. The Department may adopt rules to administer the penalties under this Section.

(Source: P.A. 97-1129, eff. 8-28-12.)

Section 15. The Service Occupation Tax Act is amended by changing Section 11 as follows:

(35 ILCS 115/11) (from Ch. 120, par. 439.111)

Sec. 11. Every supplier required or authorized to collect taxes hereunder and every serviceman making sales of service in this State on or after the effective date hereof shall keep such records, receipts, invoices and other pertinent books, documents, memoranda and papers as the Department shall require, in such form as the Department shall require. The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by taxpayers. For purposes of this Section, "records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of

machine-sensible data compilation. For the purpose of administering and enforcing the provisions hereof, the Department, or any officer or employee of the Department designated, in writing, by the Director thereof, may hold investigations and hearings not otherwise delegated to the Illinois Independent Tax Tribunal concerning any matters covered herein and may examine any books, papers, records, documents or memoranda of any supplier or serviceman bearing upon the sales of services or the sales of tangible personal property to servicemen, and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of the facts, and may take testimony and require proof for its information.

Any person who fails to keep books and records or fails to produce books and records for examination, as required by this Section and the rules adopted by the Department, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination as required by this Section and the rules adopted by the Department. The penalties imposed under this Section shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence. The Department may adopt rules to administer the penalties under this Section.

(Source: P.A. 97-1129, eff. 8-28-12.)

Section 20. The Retailers' Occupation Tax Act is amended by changing Section 7 as follows:

(35 ILCS 120/7) (from Ch. 120, par. 446)

Sec. 7. Every person engaged in the business of selling tangible personal property at retail in this State shall keep records and books of all sales of tangible personal property, together with invoices, bills of lading, sales records, copies of bills of sale, inventories prepared as of December 31 of each year or otherwise annually as has been the custom in the specific trade and other pertinent papers and documents. Every person who is engaged in the business of selling tangible personal property at retail in this State and who, in connection with such business, also engages in other activities (including, but not limited to, engaging in a service occupation) shall keep such additional records and books of all such activities as will accurately reflect the character and scope of such activities and the amount of receipts realized therefrom. The Department may adopt rules that establish requirements, including record forms and formats, for records required to be kept and maintained by taxpayers. For purposes of this Section, "records" means all data maintained by the taxpayer, including data on paper, microfilm, microfiche or any type of machine-sensible data compilation.

All books and records and other papers and documents which are required by this Act to be kept shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.

To support deductions made on the tax return form, or authorized under this Act, on account of receipts from isolated or occasional sales of tangible personal property, on account of receipts from sales of tangible personal property for resale, on account of receipts from sales to governmental bodies or other exempted types of purchasers, on account of receipts from sales of tangible personal property in interstate commerce, and on account of receipts from any other kind of transaction that is not taxable under this Act, entries in any books, records or other pertinent papers or documents of the taxpayer in relation thereto shall be in detail sufficient to show the name and address of the taxpayer's customer in each such transaction, the character of every such transaction, the date of every such transaction, the amount of receipts realized from every such transaction and such other information as may be necessary to establish the non-taxable character of such transaction under this Act.

Except in the case of a sale to a purchaser who will always resell and deliver the property to his customers outside Illinois, anyone claiming that he has made a nontaxable sale for resale in some form as tangible personal property shall

also keep a record of the purchaser's registration number or resale number with the Department.

It shall be presumed that all sales of tangible personal property are subject to tax under this Act until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be upon the person who would be required to remit the tax to the Department if such transaction is taxable. In the course of any audit or investigation or hearing by the Department with reference to a given taxpayer, if the Department finds that the taxpayer lacks documentary evidence needed to support the taxpayer's claim to exemption from tax hereunder, the Department is authorized to notify the taxpayer in writing to produce such evidence, and the taxpayer shall have 60 days subject to the right in the Department to extend this period either on request for good cause shown or on its own motion from the date when such notice is sent to the taxpayer by certified or registered mail (or delivered to the taxpayer if the notice is served personally) in which to obtain and produce such evidence for the Department's inspection, failing which the matter shall be closed, and the transaction shall be conclusively presumed to be taxable hereunder.

Books and records and other papers reflecting gross receipts received during any period with respect to which the Department is authorized to issue notices of tax liability as provided by Sections 4 and 5 of this Act shall be preserved until the expiration of such period unless the Department, in

writing, shall authorize their destruction or disposal prior to such expiration.

Any person who fails to keep books and records or fails to produce books and records for examination, as required by this Section and the rules adopted by the Department, is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or produce books and records for examination and a penalty of \$3,000 for each subsequent failure to keep books and records or produce books and records for examination as required by this Section and the rules adopted by the Department. The penalties imposed under this Section shall not apply if the taxpayer shows that he or she acted with ordinary business care and prudence. The Department may adopt rules to administer the penalties under this Section.

(Source: P.A. 88-480.)

Section 25. The Cigarette Tax Act is amended by changing Sections 12, 13, 14, 15, 18b, and 18c and by adding Sections 13a, 15a, and 18d as follows:

(35 ILCS 130/12) (from Ch. 120, par. 453.12)

Sec. 12. Every distributor or secondary distributor who is required to procure a license under this Act and who purchases cigarettes for shipment into Illinois from a point outside this State shall procure invoices in duplicate covering each such

shipment, shall make the invoices available for inspection upon demand by a duly authorized employee of the Department, and shall, if the Department so requires, furnish one copy of each such invoice to the Department at the time of filing a return or a report required by this Act.

(Source: P.A. 96-1027, eff. 7-12-10.)

(35 ILCS 130/13) (from Ch. 120, par. 453.13)

Sec. 13. Whenever any original package of cigarettes is found in the place of business or in the possession of any person who is not a licensed distributor under this Act without proper stamps affixed thereto, or an authorized substitute therefor imprinted thereon, underneath the sealed transparent wrapper of such original package, as required by this Act, the prima facie presumption shall arise that such original package of cigarettes is kept therein or is held by such person in violation of the provisions of this Act. If a presumption is raised, the Department may, in addition to the penalties imposed by Sections 18b and 18c of this Act and any other civil or criminal penalties provided for in this Act, assess tax, penalty, and interest on the original packages of cigarettes.

(Source: Laws 1953, p. 255.)

(35 ILCS 130/13a new)

Sec. 13a. Contraband cigarettes. Whenever a retailer obtains original packages of cigarettes from an unlicensed

in-state or out-of-state distributor or person, a prima facie presumption shall arise that such original packages of cigarettes are contraband and are possessed by such retailer or were possessed by such retailer in violation of the provisions of this Act and subject to the penalties imposed by Sections 18b and 18c of this Act. Invoices or other documents kept in the normal course of business in the possession of a retailer reflecting purchases of original packages of cigarettes from an unlicensed in-state or out-of-state distributor or person or invoices or other documents kept in the normal course of business obtained by the Department from an in-state or out-of-state distributor or person, are sufficient to raise the presumption that such original packages of cigarettes are contraband and are possessed, or were possessed, by such retailer in violation of the provisions of this Act and the retailer is subject to the penalties imposed by Sections 18b and 18c. If a presumption is raised, the Department may, in addition to the penalties imposed by Sections 18b and 18c and any other civil or criminal penalties provided for in this Act, assess tax, penalty, and interest on the original packages of cigarettes.

(35 ILCS 130/14) (from Ch. 120, par. 453.14)

Sec. 14. Any person required by this Act to keep records of any kind whatsoever, who shall fail to keep the records so required or who shall falsify such records, shall be guilty of

a Class 4 felony. If a person fails to produce the records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the records so required. A person who is unable to rebut this presumption is in violation of this Act and is subject to the penalties provided in this Section.

(Source: P.A. 83-1428.)

(35 ILCS 130/15) (from Ch. 120, par. 453.15)

Sec. 15. Any person who shall fail to safely maintain and preserve the records required by Sections ~~Section~~ 11, and ~~Section~~ 11a, 11b, and 11c of this Act for the period of 3 ~~three~~ years, as required therein, in such manner as to insure permanency and accessibility for inspection by the Department, shall be guilty of a business offense and may be fined up to \$5,000.

(Source: P.A. 96-1027, eff. 7-12-10.)

(35 ILCS 130/15a new)

Sec. 15a. Failure to keep or produce books and records. Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c of this Act, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or failure to produce books and

records for inspection, as required by Sections 11, 11a, 11b, and 11c, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c. The Department may adopt rules to administer the penalties under this Section.

(35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

Sec. 18b. Possession of more than 100 original packages of contraband cigarettes; penalty. With the exception of licensed distributors and transporters, as defined in Section 9c of this Act, possessing unstamped original packages of cigarettes, and licensed distributors possessing original packages of cigarettes that bear a tax stamp of another state or taxing jurisdiction, anyone possessing or having possessed contraband cigarettes contained in original packages is liable to pay, to the Department for deposit in the Tax Compliance and Administration Fund, a penalty of \$25 for each such package of cigarettes in excess of 100 packages, unless reasonable cause can be established by the person upon whom the penalty is imposed. This penalty is in addition to the taxes imposed by this Act. Reasonable cause shall be determined in each situation in accordance with rules adopted by the Department. The provisions of the Uniform Penalty and Interest Act do not apply to this Section.

(Source: P.A. 96-782, eff. 1-1-10.)

(35 ILCS 130/18c)

Sec. 18c. Possession of not less than 10 and not more than 100 original packages of contraband cigarettes; penalty. With the exception of licensed distributors and transporters, as defined in Section 9c of this Act, possessing unstamped original packages of cigarettes, and licensed distributors possessing original packages of cigarettes that bear a tax stamp of another state or taxing jurisdiction, anyone possessing or having possessed not less than 10 and not more than 100 packages of contraband cigarettes contained in original packages is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$15 ~~\$10~~ for each such package of cigarettes, unless reasonable cause can be established by the person upon whom the penalty is imposed. Reasonable cause shall be determined in each situation in accordance with rules adopted by the Department. The provisions of the Uniform Penalty and Interest Act do not apply to this Section.

(Source: P.A. 96-782, eff. 1-1-10.)

(35 ILCS 130/18d new)

Sec. 18d. Cigarette package sizes; sale of individual or loose cigarettes prohibited. Cigarettes may only be sold in packages of 20 or 25 cigarettes. The sale of individual or loose cigarettes is prohibited. Any person who violates this

Section of the Act is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first violation and \$3,000 for any subsequent violation. Any person who violates this Section shall be guilty of a Class 4 felony. The Department may adopt rules to administer the penalties under this Section.

Section 30. The Cigarette Use Tax Act is amended by changing Sections 12, 22, 23, 25a, and 25b and by adding Sections 8a, 23a, and 25c as follows:

(35 ILCS 135/8a new)

Sec. 8a. Contraband cigarettes. Whenever any person obtains original packages of cigarettes from an unlicensed in-state or out-of-state distributor or person, a prima facie presumption shall arise that such original packages of cigarettes are contraband and are possessed or were possessed by such person in violation of the provisions of this Act and subject to the penalties imposed by Sections 25a and 25b. Invoices or other documents kept in the normal course of business in the possession of a person reflecting purchases of original packages of cigarettes from an unlicensed in-state or out-of-state distributor or person or invoices or other documents kept in the normal course of business obtained by the Department from an in-state or out-of-state distributor or person, are sufficient to raise the presumption that such

original packages of cigarettes are contraband and are possessed, or were possessed, by such person in violation of the provisions of this Act and the person is subject to the penalties imposed by Sections 25a and 25b. If a presumption is raised, the Department may, in addition to the penalties imposed by Sections 25a and 25b and any other civil or criminal penalties provided for in this Act, assess tax, penalty, and interest on the original packages of cigarettes.

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

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

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

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

(c) The return referred to in paragraph (a) shall contain the name and address of the person possessing the cigarettes

involved, the location of the cigarettes and the quantity, brand name, place, and date of the acquisition of the cigarettes.

(d) Nothing in this Section shall permit a secondary distributor to purchase unstamped original packages of cigarettes or to purchase original packages of cigarettes from a person other than a licensed distributor.

(e) Any distributor who violates this Section is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first violation and \$3,000 for any subsequent violation. The Department may adopt rules to administer the penalties under this Section. The Department may, in addition to the penalties imposed by this Section, and any other civil or criminal penalties provided for in this Act, assess tax, penalty, and interest on the original packages of cigarettes.

(Source: P.A. 96-1027, eff. 7-12-10.)

(35 ILCS 135/22) (from Ch. 120, par. 453.52)

Sec. 22. Any person required by this Act to maintain or keep records of any kind whatsoever, who shall fail to keep the records so required or who shall falsify such records, shall be guilty of a Class 4 felony ~~A misdemeanor~~. If a person fails to produce the records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the records so required. A person who is

unable to rebut this presumption is in violation of this Act and is subject to the penalties provided in this Section.

This Section shall not apply if the violation in a particular case also constitutes a criminal violation of the Cigarette Tax Act.

(Source: P.A. 77-2229.)

(35 ILCS 135/23) (from Ch. 120, par. 453.53)

Sec. 23. Any person who shall fail to safely preserve the records required by Section 15 and Section 15a of this Act for the period of three (3) years, as required therein, in such manner as to insure permanency and accessibility for inspection by the Department, shall be guilty of a business offense and may be fined up to \$5,000 ~~One Thousand Dollars (\$1000)~~.

This Section shall not apply if the violation in a particular case also constitutes a criminal violation of the Cigarette Tax Act.

(Source: P.A. 96-1027, eff. 7-12-10.)

(35 ILCS 135/23a new)

Sec. 23a. Failure to keep or produce books and records. Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Sections 15 and 15a of this Act, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and

records or failure to produce books and records for inspection, as required by Sections 15 and 15a, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Sections 15 and 15a. The Department may adopt rules to administer the penalties under this Section.

(35 ILCS 135/25a) (from Ch. 120, par. 453.55a)

Sec. 25a. Possession of more than 100 original packages of contraband cigarettes; penalty. With the exception of licensed distributors or transporters, as defined in Section 9c of the Cigarette Tax Act, possessing unstamped original packages of cigarettes, and licensed distributors possessing original packages of cigarettes that bear a tax stamp of another state or taxing jurisdiction, anyone possessing or having possessed more than 100 packages of contraband cigarettes contained in original packages is liable to pay, to the Department for deposit into the Tax Compliance and Administration Fund, a penalty of \$25 for each such package of cigarettes in excess of 100 packages, unless reasonable cause can be established by the person upon whom the penalty is imposed. Reasonable cause shall be determined in each situation in accordance with rules adopted by the Department. The provisions of the Uniform Penalty and Interest Act do not apply to this Section.

(Source: P.A. 96-782, eff. 1-1-10.)

(35 ILCS 135/25b)

Sec. 25b. Possession of not less than 10 and not more than 100 original packages not tax stamped or improperly tax stamped; penalty. With the exception of licensed distributors and transporters, as defined in Section 9c of the Cigarette Tax Act, possessing unstamped packages of cigarettes, and licensed distributors possessing original packages of cigarettes that bear a tax stamp of another state or taxing jurisdiction, anyone possessing or having possessed not less than 10 and not more than 100 packages of contraband cigarettes contained in original packages is liable to pay to the Department, for deposit into the Tax Compliance and Administration Fund, a penalty of \$20 for each such package of cigarettes, unless reasonable cause can be established by the person upon whom the penalty is imposed. Reasonable cause shall be determined in each situation in accordance with rules adopted by the Department. Any person who purchases and possesses a total of 9 or fewer original packages of unstamped cigarettes per month is exempt from the penalties of this Section. The provisions of the Uniform Penalty and Interest Act do not apply to this Section.

(Source: P.A. 96-782, eff. 1-1-10.)

(35 ILCS 135/25c new)

Sec. 25c. Cigarette package sizes; sale of individual or loose cigarettes prohibited. Cigarettes may only be sold in

packages of 20 or 25 cigarettes. The sale of individual or loose cigarettes is prohibited. Any person who violates this Section is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first violation and \$3,000 for any subsequent violation. Any person who violates this Section shall be guilty of a Class 4 felony. This Section shall not apply if the violation in a particular case also constitutes a violation of the Cigarette Tax Act.

Section 35. The Tobacco Products Tax Act of 1995 is amended by changing Sections 10-25, 10-35, 10-37, 10-40, and 10-50 and by adding Sections 10-35a and 10-38 as follows:

(35 ILCS 143/10-25)

Sec. 10-25. License actions.

(a) The Department may, after notice and a hearing, revoke, cancel, or suspend the license of any distributor or retailer who violates any of the provisions of this Act, fails to keep books and records as required under this Act, fails to make books and records available for inspection upon demand by a duly authorized employee of the Department, or violates a rule or regulation of the Department for the administration and enforcement of this Act. The notice shall specify the alleged violation or violations upon which the revocation, cancellation, or suspension proceeding is based.

(b) The Department may revoke, cancel, or suspend the license of any distributor for a violation of the Tobacco Product Manufacturers' Escrow Enforcement Act as provided in Section 20 of that Act.

(c) If the retailer has a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 3 days the license of that retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in subsection (a) of Section 2 of that Act. For the purposes of this Section, any violation of subsection (a) of Section 2 of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act occurring at the retailer's licensed location, during a 24-month period, shall be counted as a violation against the retailer.

If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 3 days the license of that retailer for a second violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in subsection (a-5) of Section 2 of that Act.

If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 7 days the license of that retailer for a third violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as

provided in subsection (a-5) of Section 2 of that Act.

If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 30 days the license of a retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, as provided in subsection (a-5) of Section 2 of that Act.

A training program that facilitates compliance with minimum-age tobacco laws must include at least the following elements: (i) it must explain that only individuals displaying valid identification demonstrating that they are 18 years of age or older shall be eligible to purchase cigarettes or tobacco products and (ii) it must explain where a clerk can check identification for a date of birth. The training may be conducted electronically. Each retailer that has a training program shall require each employee who completes the training program to sign a form attesting that the employee has received and completed tobacco training. The form shall be kept in the employee's file and may be used to provide proof of training.

(d) The Department may, by application to any circuit court, obtain an injunction restraining any person who engages in business as a distributor of tobacco products without a license (either because his or her license has been revoked, canceled, or suspended or because of a failure to obtain a license in the first instance) from engaging in that business

until that person, as if that person were a new applicant for a license, complies with all of the conditions, restrictions, and requirements of Section 10-20 of this Act and qualifies for and obtains a license. Refusal or neglect to obey the order of the court may result in punishment for contempt.

(Source: P.A. 98-1055, eff. 1-1-16; 99-192, eff. 1-1-16.)

(35 ILCS 143/10-35)

Sec. 10-35. Record keeping.

(a) Every distributor, as defined in Section 10-5, shall keep complete and accurate records of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the State, and tobacco products sold, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale, the wholesale price for tobacco products sold or otherwise disposed of, an inventory of tobacco products prepared as of December 31 of each year or as of the last day of the distributor's fiscal year if he or she files federal income tax returns on the basis of a fiscal year, and other pertinent papers and documents relating to the manufacture, purchase, sale, or disposition of tobacco products. Every sales invoice issued by a licensed distributor to a retailer in this State shall contain the distributor's Tobacco Products License number unless the distributor has been granted a waiver by the Department in response to a written request in cases where (i) the

distributor sells little cigars or other tobacco products only to licensed retailers that are wholly-owned by the distributor or owned by a wholly-owned subsidiary of the distributor; (ii) the licensed retailer obtains little cigars or other tobacco products only from the distributor requesting the waiver; and (iii) the distributor affixes the tax stamps to the original packages of little cigars or has or will pay the tax on the other tobacco products sold to the licensed retailer. The distributor shall file a written request with the Department, and, if the Department determines that the distributor meets the conditions for a waiver, the Department shall grant the waiver.

(b) Every retailer, as defined in Section 10-5, whether or not the retailer has obtained a retailer's license pursuant to Section 4g, shall keep complete and accurate records of tobacco products held, purchased, sold, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale, returns and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. Such records need not be maintained on the licensed premises, but must be maintained in the State of Illinois; however, if access is available electronically, the records may be maintained out of state. However, all original invoices or copies thereof covering purchases of tobacco products must be retained on the licensed premises for a period of 90 days after such purchase, unless

the Department has granted a waiver in response to a written request in cases where records are kept at a central business location within the State of Illinois or in cases where records that are available electronically are maintained out of state. The Department shall adopt rules regarding the eligibility for a waiver, revocation of a waiver, and requirements and standards for maintenance and accessibility of records located at a central location out-of-State pursuant to a waiver provided under this Section.

(c) Books, records, papers, and documents that are required by this Act to be kept shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The books, records, papers, and documents for any period with respect to which the Department is authorized to issue a notice of tax liability shall be preserved until the expiration of that period.

(Source: P.A. 98-1055, eff. 1-1-16; 99-192, eff. 1-1-16.)

(35 ILCS 143/10-35a new)

Sec. 10-35a. Failure to keep or produce books and records. Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Section 10-35, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or

failure to produce books and records for inspection, as required by Section 10-35, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Section 10-35. The Department may adopt rules to administer the penalties under this Section.

(35 ILCS 143/10-37)

Sec. 10-37. Proof of payment of tax imposed by this Act. Every licensed distributor of tobacco products in this State is required to show proof of the tax having been paid as required by this Act by displaying its Tobacco Products License number on every sales invoice issued to a retailer in this State. No retailer shall possess tobacco products without either a proper invoice indicating that the tobacco products tax was paid by a distributor for the tobacco products in the retailer's possession or other proof that the tax was paid by the retailer if it has purchased tobacco products on which tax has not been paid as required by this Act. Failure to comply with the provisions of this paragraph may be grounds for revocation of a distributor's or retailer's license in accordance with Section 10-25 of this Act or Section 6 of the Cigarette Tax Act. In addition, the Department may impose a civil penalty not to exceed \$1,000 for the first violation and \$3,000 for each subsequent violation, which shall be deposited into the Tax Compliance and Administration Fund.

(Source: P.A. 98-1055, eff. 1-1-16.)

(35 ILCS 143/10-38 new)

Sec. 10-38. Presumption for unlicensed distributors or persons. Whenever any person obtains tobacco products from an unlicensed in-state or out-of-state distributor or person, a prima facie presumption shall arise that the tax imposed by this Act on such tobacco products has not been paid in violation of this Act. Invoices or other documents kept in the normal course of business in the possession of a person reflecting purchases of tobacco products from an unlicensed in-state or out-of-state distributor or person or invoices or other documents kept in the normal course of business obtained by the Department from in-state or out-of-state distributors or persons, are sufficient to raise the presumption that the tax imposed by this Act has not been paid. If a presumption is raised, the Department may assess tax, penalty, and interest on the tobacco products. In addition, any person who violates this Section is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first violation and \$3,000 for any subsequent violation. The Department may adopt rules to administer the penalties under this Section.

(35 ILCS 143/10-40)

Sec. 10-40. Invoices. Every distributor or other person who

purchases tobacco products for resale for shipment into Illinois from a point outside Illinois shall procure invoices in duplicate covering each shipment and shall make the invoices available for inspection upon demand by a duly authorized employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to the Department at the time of filing the return required by this Act.

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

(35 ILCS 143/10-50)

Sec. 10-50. Violations and penalties. When the amount due is under \$300, any distributor who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by this Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under this Act is guilty of a Class 4 felony.

Any person who violates any provision of Section 10-20, 10-21, or 10-22 of this Act, fails to keep books and records as required under this Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of this Act is guilty of a Class 4 felony. A person

commits a separate offense on each day that he or she engages in business in violation of Section 10-20, 10-21, or 10-22 of this Act. If a person fails to produce the books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under this Act. A person who is unable to rebut this presumption is in violation of this Act and is subject to the penalties provided in this Section.

When the amount due is under \$300, any person who accepts money that is due to the Department under this Act from a taxpayer for the purpose of acting as the taxpayer's agent to make the payment to the Department, but who fails to remit the payment to the Department when due, is guilty of a Class 4 felony.

Any person who violates any provision of Sections 10-20, 10-21 and 10-22 of this Act, fails to keep books and records as required under this Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of this Act is guilty of a business offense and may be fined up to \$5,000. If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under this Act. A person who is unable to rebut this presumption is in violation of this Act and is subject to the penalties provided in this Section. A person commits a separate offense on each day that he or she

engages in business in violation of Sections 10-20, 10-21 and 10-22 of this Act.

When the amount due is \$300 or more, any distributor who files, or causes to be filed, a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who files or causes to be filed or signs or causes to be signed a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under this Act is guilty of a Class 3 felony.

When the amount due is \$300 or more, any person engaged in the business of distributing tobacco products to retailers and consumers located in this State who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by this Act, or accepts money that is due to the Department under this Act from a taxpayer for the purpose of acting as the taxpayer's agent to make payment to the Department but fails to remit such payment to the Department when due is guilty of a Class 3 felony.

When the amount due is under \$300, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by this Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and

consumption located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under this Act is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense.

When the amount due is \$300 or more, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by this Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and consumption located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under this Act is guilty of a Class 4 felony.

Any person whose principal place of business is in this State and who is charged with a violation under this Section shall be tried in the county where his or her principal place of business is located unless he or she asserts a right to be tried in another venue. If the taxpayer does not have his or her principal place of business in this State, however, the hearing must be held in Sangamon County unless the taxpayer asserts a right to be tried in another venue.

Any taxpayer or agent of a taxpayer who with the intent to defraud purports to make a payment due to the Department by

issuing or delivering a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository, is guilty of a deceptive practice in violation of Section 17-1 of the Criminal Code of 2012.

A prosecution for a violation described in this Section may be commenced within 3 years after the commission of the act constituting the violation.

(Source: P.A. 100-201, eff. 8-18-17.)

(35 ILCS 143/10-36 rep.)

Section 40. The Tobacco Products Tax Act of 1995 is amended by repealing Section 10-36.

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