

AN ACT concerning revenue.

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

Section 5. The Cigarette Tax Act is amended by changing Section 1 as follows:

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

Sec. 1. For the purposes of this Act:

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

Until July 1, 2012, and beginning July 1, 2013, "cigarette", means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Cigarette", beginning on and after July 1, 2012, and through June 30, 2013, means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, and the wrapper or cover of which is made of paper.

"Cigarette", beginning on and after July 1, 2012, and through June 30, 2013, also shall mean: Any roll for smoking made wholly or in part of tobacco labeled as anything other than a cigarette or not bearing a label, if it meets two or more of the following criteria:

- (a) the product is sold in packs similar to cigarettes;
- (b) the product is available for sale in cartons of ten packs;
- (c) the product is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type boxes;
- (d) the product is of a length and diameter similar to commercially manufactured cigarettes;
- (e) the product has a cellulose acetate or other integrated filter;
- (f) the product is marketed or advertised to consumers as a cigarette or cigarette substitute; or
- (g) other evidence that the product fits within the definition of cigarette.

"Contraband cigarettes" means:

- (a) cigarettes that do not bear a required tax stamp under this Act;
- (b) cigarettes for which any required federal taxes have not been paid;
- (c) cigarettes that bear a counterfeit tax stamp;
- (d) cigarettes that are manufactured, fabricated,

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

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

(f) cigarettes that have false manufacturing labels;

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

(h) cigarettes that are improperly tax stamped, including cigarettes that bear a tax stamp of another state or taxing jurisdiction, or lack a tax stamp required by any political subdivision of Illinois; or

(i) cigarettes made or fabricated by a person holding a cigarette machine operator license under Section 1-20 of the Cigarette Machine Operators' Occupation Tax Act in the possession of manufacturers, distributors, secondary distributors, manufacturer representatives or other retailers for the purpose of resale, regardless of whether the tax has been paid on such cigarettes.

"Little cigar" has the meaning ascribed to that term in the Tobacco Products Tax Act of 1995.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or

private corporation, however formed, limited liability company, or a receiver, executor, administrator, trustee, guardian or other representative appointed by order of any court.

"Prior Continuous Compliance Taxpayer" means any person who is licensed under this Act and who, having been a licensee for a continuous period of 5 years, is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period or otherwise in violation of this Act. Also, any taxpayer who has, as verified by the Department, continuously complied with the condition of his bond or other security under provisions of this Act for a period of 5 consecutive years shall be considered to be a "Prior continuous compliance taxpayer". In calculating the consecutive period of time described herein for qualification as a "prior continuous compliance taxpayer", a consecutive period of time of qualifying compliance immediately prior to the effective date of this amendatory Act of 1987 shall be credited to any licensee who became licensed on or before the effective date of this amendatory Act of 1987.

"Department" means the Department of Revenue.

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

"Original Package" means the individual packet, box or other container whatsoever used to contain and to convey

cigarettes to the consumer.

"Distributor" means any and each of the following:

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

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

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

"Place of business" shall mean and include any place where cigarettes are sold or where cigarettes are manufactured, stored or kept for the purpose of sale or consumption,

including any vessel, vehicle, airplane, train or vending machine.

"Manufacturer representative" means a director, officer, or employee of a manufacturer who has obtained authority from the Department under Section 4f to maintain representatives in Illinois that provide or sell original packages of cigarettes made, manufactured, or fabricated by the manufacturer to retailers in compliance with Section 4f of this Act to promote cigarettes made, manufactured, or fabricated by the manufacturer.

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

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

(1) who transfers to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility ownership of cigarettes made, manufactured, or fabricated as part of a correctional industries program; or

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

the cigarettes for resale.

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

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

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

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

- (a) is an officer or director of a business; or
- (b) is legally recognized as a partner in business.

(Source: P.A. 97-587, eff. 8-26-11; 97-688, eff. 6-14-12; 98-273, eff. 8-9-13.)

Public Act 099-0360

SB0509 Enrolled

LRB099 03061 HLH 23069 b

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