

**HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 476**

A bill to amend 1993 PA 327, entitled  
"Tobacco products tax act,"  
by amending sections 7 and 11 (MCL 205.427 and 205.431), section 7  
as amended by 2014 PA 298 and section 11 as amended by 2012 PA 325.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 7. (1) Beginning May 1, 1994, a tax is levied on the sale  
2 of tobacco products sold in this state as follows:

3       (a) Through July 31, 2002, for cigars, noncigarette smoking  
4 tobacco, and smokeless tobacco, 16% of the wholesale price.

5       (b) For cigarettes, 37.5 mills per cigarette.

6       (c) Beginning August 1, 2002, for cigarettes, in addition to  
7 the tax levied in subdivision (b), an additional 15 mills per  
8 cigarette.

1 (d) Beginning August 1, 2002, for cigarettes, in addition to  
2 the tax levied in subdivisions (b) and (c), an additional 10 mills  
3 per cigarette.

4 (e) Beginning July 1, 2004, for cigarettes, in addition to the  
5 tax levied in subdivisions (b), (c), and (d), an additional 37.5  
6 mills per cigarette.

7 (f) Beginning August 1, 2002 and through June 30, 2004, for  
8 cigars, noncigarette smoking tobacco, and smokeless tobacco, 20% of  
9 the wholesale price.

10 (g) Beginning July 1, 2004, for cigars, noncigarette smoking  
11 tobacco, and smokeless tobacco, 32% of the wholesale price.  
12 However, beginning November 1, 2012 and through October 31, ~~2016,~~  
13 **2021**, the amount of tax levied under this subdivision on cigars  
14 shall not exceed 50 cents per individual cigar.

15 (2) On or before the twentieth day of each calendar month,  
16 every licensee under section 3 other than a retailer, unclassified  
17 acquirer licensed as a manufacturer, or vending machine operator  
18 shall file a return with the department stating the wholesale price  
19 of each tobacco product other than cigarettes purchased, the  
20 quantity of cigarettes purchased, the wholesale price charged for  
21 all tobacco products other than cigarettes sold, the number of  
22 individual packages of cigarettes and the number of cigarettes in  
23 those individual packages, and the number and denominations of  
24 stamps affixed to individual packages of cigarettes sold by the  
25 licensee for each place of business in the preceding calendar  
26 month. The return shall also include the number and denomination of  
27 unaffixed stamps in the possession of the licensee at the end of

1 the preceding calendar month. Wholesalers shall also report  
2 accurate inventories of cigarettes, both stamped and unstamped at  
3 the end of the preceding calendar month. Wholesalers and  
4 unclassified acquirers shall also report accurate inventories of  
5 affixed and unaffixed stamps by denomination at the beginning and  
6 end of each calendar month and all stamps acquired during the  
7 preceding calendar month. The return shall be signed under penalty  
8 of perjury. The return shall be on a form prescribed by the  
9 department and shall contain or be accompanied by any further  
10 information the department requires. The department may also  
11 require licensees to report cigarette acquisition, purchase, and  
12 sales information in other formats and frequency.

13 (3) To cover the cost of expenses incurred in the  
14 administration of this act, at the time of the filing of the  
15 return, the licensee shall pay to the department the tax levied in  
16 subsection (1) for tobacco products sold during the calendar month  
17 covered by the return, less compensation equal to the following:

18 (a) One percent of the total amount of the tax due on tobacco  
19 products sold other than cigarettes.

20 (b) Through July 31, 2002, 1.25% of the total amount of the  
21 tax due on cigarettes sold.

22 (c) Beginning August 1, 2002, 1.5% of the total amount of the  
23 tax due on cigarettes sold and, beginning on June 20, 2012, for  
24 sales of untaxed cigarettes to Indian tribes in this state, an  
25 amount equal to 1.5% of the total amount of the tax due on those  
26 cigarettes sold as if those cigarette sales were taxable sales  
27 under this act.

1 (d) Beginning on the first calendar month following the  
2 implementation of the use of digital stamps as provided in section  
3 5a(2), for licensees who are stamping agents, 0.5% of the total  
4 amount of the tax due on cigarettes sold and, for sales of untaxed  
5 cigarettes to Indian tribes in this state, 0.5% of the total amount  
6 of the tax due on those cigarettes sold as if those cigarette sales  
7 were taxable sales under this act, until the stamping agent is  
8 compensated in an amount equal to the direct cost actually incurred  
9 by the stamping agent for the purchase of upgrades to technology  
10 and equipment, excluding the equipment reimbursed under subdivision  
11 (e), that are necessary to affix the digital stamp as determined by  
12 the department. Compensation under this subdivision may also be  
13 claimed by a stamping agent for the direct costs actually incurred  
14 by the stamping agent, as determined by the department and  
15 reflected in the net purchase price, for the initial and 1-time  
16 purchase of case packers or similar machines or conveyors as  
17 follows:

18 (i) Case packers or similar machines to be used exclusively to  
19 repack cigarette cartons into case boxes after digital stamps have  
20 been applied by eligible equipment to the individual packages of  
21 cigarettes contained within those cigarette cartons. Compensation  
22 under this subparagraph may only be claimed by a stamping agent if  
23 the case packers or similar machines are in addition to, and not a  
24 replacement for, 1 or more case packers or similar machines used in  
25 connection with cigarette stamping machines which do not use the  
26 digital stamp authorized under this act.

27 (ii) Conveyors to be used exclusively for that portion of a

1 cigarette stamping line that is necessary for and dedicated to  
2 cigarette stamping operations using eligible equipment to affix  
3 digital stamps to individual packages of cigarettes to be sold in  
4 this state. Compensation under this subparagraph may only be  
5 claimed by a stamping agent if the cigarette stamping line served  
6 by the conveyors is in addition to 1 or more distinct and existing  
7 cigarette stamping lines using stamping machines which do not use  
8 the digital stamp authorized under this act and that compensation  
9 shall not exceed a total of 50% of the amount reimbursed under  
10 subdivision (e) for any particular stamping agent.

11 (iii) Compensation under subparagraphs (i) and (ii) shall also  
12 include any applicable sales or use taxes paid, and shipping and  
13 crating charges actually incurred, by the stamping agent in  
14 connection with the purchase, but shall exclude any other costs  
15 incurred by the stamping agent not otherwise expressly provided for  
16 in this subdivision, including, but not limited to, charges for  
17 installation and ongoing maintenance.

18 (e) Beginning in the first calendar month following the  
19 implementation of the use of digital stamps as provided in section  
20 5a(2) and continuing for the immediately succeeding 17 months, for  
21 licensees who are stamping agents, reimbursement of direct costs  
22 actually incurred by the stamping agent, as determined by the  
23 department, for the initial purchase of eligible equipment in an  
24 amount equal to 5.55% of the total net purchase price of the  
25 eligible equipment necessary to affix the digital stamp. The  
26 reimbursement provided under this subdivision shall also include  
27 reimbursement for any applicable sales or use taxes paid and

1 shipping and crating charges actually incurred by the stamping  
2 agent for the initial purchase of eligible equipment, but shall  
3 exclude reimbursement for any other costs incurred by the stamping  
4 agent not otherwise expressly provided for in this subdivision,  
5 including, but not limited to, charges for installation and ongoing  
6 maintenance related to eligible equipment. A stamping agent may  
7 only receive reimbursement under this subdivision to the extent  
8 that the eligible equipment purchased by the stamping agent does  
9 not exceed the total number of the stamping agent's existing  
10 equipment as certified by the stamping agent on a form prescribed  
11 by the department.

12 (f) Beginning in the first calendar month following the  
13 implementation of the use of digital stamps as provided in section  
14 5a(2), for licensees who are stamping agents, reimbursement of  
15 qualified equipment costs actually incurred by the stamping agent,  
16 not otherwise compensated or reimbursed under subdivision (d) or  
17 (e), as determined by the department. The reimbursement provided  
18 under this subdivision shall not exceed \$60,000.00 for all stamping  
19 agents combined.

20 (4) Every licensee and retailer who, on August 1, 2002, has on  
21 hand for sale any cigarettes upon which a tax has been paid  
22 pursuant to subsection (1)(b) shall file a complete inventory of  
23 those cigarettes before September 1, 2002 and shall pay to the  
24 department at the time of filing this inventory a tax equal to the  
25 difference between the tax imposed in subsection (1)(b), (c), and  
26 (d) and the tax that has been paid under subsection (1)(b). Every  
27 licensee and retailer who, on August 1, 2002, has on hand for sale

1 any cigars, noncigarette smoking tobacco, or smokeless tobacco upon  
2 which a tax has been paid pursuant to subsection (1)(a) shall file  
3 a complete inventory of those cigars, noncigarette smoking tobacco,  
4 and smokeless tobacco before September 1, 2002 and shall pay to the  
5 department at the time of filing this inventory a tax equal to the  
6 difference between the tax imposed in subsection (1)(f) and the tax  
7 that has been paid under subsection (1)(a).

8 (5) Every licensee and retailer who, on July 1, 2004, has on  
9 hand for sale any cigarettes upon which a tax has been paid  
10 pursuant to subsection (1)(b), (c), and (d) shall file a complete  
11 inventory of those cigarettes before August 1, 2004 and shall pay  
12 to the department at the time of filing this inventory a tax equal  
13 to the difference between the tax imposed in subsection (1)(b),  
14 (c), (d), and (e) and the tax that has been paid under subsection  
15 (1)(b), (c), and (d). Every licensee and retailer who, on July 1,  
16 2004, has on hand for sale any cigars, noncigarette smoking  
17 tobacco, or smokeless tobacco upon which a tax has been paid  
18 pursuant to subsection (1)(f) shall file a complete inventory of  
19 those cigars, noncigarette smoking tobacco, and smokeless tobacco  
20 before August 1, 2004 and shall pay to the department at the time  
21 of filing this inventory a tax equal to the difference between the  
22 tax imposed in subsection (1)(g) and the tax that has been paid  
23 under subsection (1)(f). The proceeds derived under this subsection  
24 shall be credited to the Michigan ~~medicaid~~**MEDICAID** benefits trust  
25 fund created under section 5 of the Michigan trust fund act, 2000  
26 PA 489, MCL 12.255.

27 (6) The department may require the payment of the tax imposed

1 by this act upon the importation or acquisition of a tobacco  
2 product. A tobacco product for which the tax under this act has  
3 once been imposed and that has not been refunded if paid is not  
4 subject upon a subsequent sale to the tax imposed by this act.

5 (7) An abatement or refund of the tax provided by this act may  
6 be made by the department for causes the department considers  
7 expedient. The department shall certify the amount and the state  
8 treasurer shall pay that amount out of the proceeds of the tax.

9 (8) A person liable for the tax may reimburse itself by adding  
10 to the price of the tobacco products an amount equal to the tax  
11 levied under this act.

12 (9) A wholesaler, unclassified acquirer, or other person shall  
13 not sell or transfer any unaffixed stamps acquired by the  
14 wholesaler or unclassified acquirer from the department. A  
15 wholesaler or unclassified acquirer who has any unaffixed stamps on  
16 hand at the time its license is revoked or expires, or at the time  
17 it discontinues the business of selling cigarettes, shall return  
18 those stamps to the department. The department shall refund the  
19 value of the stamps, less the appropriate discount paid.

20 (10) If the wholesaler or unclassified acquirer has unsalable  
21 packs returned from a retailer, secondary wholesaler, vending  
22 machine operator, wholesaler, or unclassified acquirer with stamps  
23 affixed, the department shall refund the amount of the tax less the  
24 appropriate discount paid. If the wholesaler or unclassified  
25 acquirer has unaffixed unsalable stamps, the department shall  
26 exchange with the wholesaler or unclassified acquirer new stamps in  
27 the same quantity as the unaffixed unsalable stamps. An application



1 for refund of the tax shall be filed on a form prescribed by the  
2 department for that purpose, within 4 years from the date the  
3 stamps were originally acquired from the department. A wholesaler  
4 or unclassified acquirer shall make available for inspection by the  
5 department the unused or spoiled stamps and the stamps affixed to  
6 unsalable individual packages of cigarettes. The department may, at  
7 its own discretion, witness and certify the destruction of the  
8 unused or spoiled stamps and unsalable individual packages of  
9 cigarettes that are not returnable to the manufacturer. The  
10 wholesaler or unclassified acquirer shall provide certification  
11 from the manufacturer for any unsalable individual packages of  
12 cigarettes that are returned to the manufacturer.

13 (11) On or before the twentieth of each month, each  
14 manufacturer shall file a report with the department listing all  
15 sales of tobacco products to wholesalers and unclassified acquirers  
16 during the preceding calendar month and any other information the  
17 department finds necessary for the administration of this act. This  
18 report shall be in the form and manner specified by the department.

19 (12) Each wholesaler or unclassified acquirer shall submit to  
20 the department an unstamped cigarette sales report on or before the  
21 twentieth day of each month covering the sale, delivery, or  
22 distribution of unstamped cigarettes during the preceding calendar  
23 month to points outside of this state. A separate schedule shall be  
24 filed for each state, country, or province into which shipments are  
25 made. For purposes of the report described in this subsection,  
26 "unstamped cigarettes" means individual packages of cigarettes that  
27 do not bear a Michigan stamp. The department may provide the

1 information contained in this report to a proper officer of another  
2 state, country, or province reciprocating in this privilege.

3 (13) As used in subsection (3):

4 (a) "Eligible equipment" means a cigarette tax stamping  
5 machine that meets all of the following conditions:

6 (i) Was purchased by a stamping agent who was licensed as a  
7 stamping agent as of December 31, 2011.

8 (ii) Enables the stamping agent to affix digital stamps to  
9 individual packages of cigarettes in accordance with the  
10 requirements under section 6a(2).

11 (iii) Was purchased to be used for the primary purpose of  
12 permitting the stamping agent to affix digital stamps to individual  
13 packages of cigarettes to be sold in this state following the  
14 implementation of the use of digital stamps as provided in section  
15 5a(2).

16 (b) "Existing equipment" means a cigarette tax stamping  
17 machine that meets all of the following conditions:

18 (i) Was owned by a person who was licensed as a stamping agent  
19 as of December 31, 2011.

20 (ii) Was a cigarette tax stamping machine used prior to  
21 January 1, 2012 by the stamping agent to apply stamps using stamp  
22 rolls of 30,000 stamps.

23 (c) "Qualified equipment" means equipment that was placed in  
24 service by a stamping agent that included conveyors and additional  
25 associated electrical line and compressed air line before August  
26 15, 2014 in connection with the implementation of a digital  
27 stamping line under a pilot program with the department as

1 determined by the department. Qualified equipment does not include  
2 the cost of installation of a conveyor.

3       Sec. 11. (1) A person, either as principal or agent, shall not  
4 sell or solicit a sale of a tobacco product to be shipped, mailed,  
5 or otherwise sent or brought into the state, to a person not a  
6 licensed manufacturer, licensed wholesaler, licensed secondary  
7 wholesaler, licensed vending machine operator, licensed  
8 unclassified acquirer, licensed transporter, or licensed  
9 transportation company, unless the tobacco product is to be sold to  
10 or through a licensed wholesaler.

11       (2) All sales conducted through the ~~internet~~, **INTERNET**, by  
12 telephone, or in a mail-order transaction shall not be completed  
13 unless, before each delivery of cigarettes is made, whether through  
14 the mail, through a transportation company, or through any other  
15 delivery system, the seller has obtained from the purchaser an  
16 affirmation that includes a copy of a valid government-issued  
17 document that confirms the purchaser's name, address, and date of  
18 birth showing that the purchaser is at least the legal minimum age  
19 to purchase cigarettes; that the cigarettes purchased are not  
20 intended for consumption by an individual who is younger than the  
21 legal minimum age to purchase cigarettes; and a written statement  
22 signed by the purchaser that affirms the purchaser's address and  
23 that the purchaser is at least the minimum legal age to purchase  
24 cigarettes. The statement shall also confirm that the purchaser  
25 understands that signing another person's name to the affirmation  
26 is illegal; that the sale of cigarettes to individuals under the  
27 legal minimum purchase age is illegal; and that the purchase of

1 cigarettes by individuals under the legal minimum purchase age is  
2 illegal under the laws of the state of Michigan. The seller shall  
3 verify the information contained in the affirmation provided by the  
4 purchaser against a commercially available database of governmental  
5 records, or obtain a photocopy, fax copy, or other image of the  
6 valid, government-issued identification stating the date of birth  
7 or age of the purchaser.

8 (3) All invoices, bills of lading, sales receipts, or other  
9 documents related to cigarette sales conducted through the  
10 internet, by telephone, or in a mail-order transaction shall  
11 contain the current seller's valid Michigan sales tax registration  
12 number, business name and address of the seller, and a statement as  
13 to whether all sales taxes and taxes levied under this act have  
14 been paid. All packages of cigarettes shipped from a cigarette  
15 seller to purchasers who reside in Michigan shall clearly print or  
16 stamp the package with the word "CIGARETTES" on the outside of all  
17 sides of the package so it is clearly visible to the shipper. In  
18 addition, the package shall contain an externally visible and  
19 clearly legible notice located on the same side of the package as  
20 the address to which the package is delivered, as follows:

21 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER  
22 LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS  
23 REPORTED UNDER FEDERAL LAW THE SALE OF THESE CIGARETTES TO OUR  
24 STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU  
25 ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON  
26 THESE CIGARETTES."

27 If an order is made as a result of advertisement over the

1 ~~internet~~, **INTERNET**, the tobacco retailer shall request the  
2 electronic mail address of the purchaser and shall receive payment  
3 by credit card or check before shipping. This subsection and  
4 subsection (2) do not apply to sales by wholesalers and  
5 unclassified acquirers.

6 (4) The deliverer of the cigarettes is required to obtain  
7 proof from a valid government-issued document that the person  
8 signing for the cigarettes is the purchaser.

9 (5) Beginning November 1, 2012, a retailer that is **NOT**  
10 licensed as an unclassified acquirer, retail importer of tobacco  
11 products other than cigarettes, shall post a sign, visible to the  
12 public inside the retail establishment that informs purchasers of  
13 cigars through catalog sales or ~~internet~~ **INTERNET** sales of their  
14 responsibility to pay all applicable unpaid state taxes on those  
15 cigars.

16 (6) As used in this section:

17 (a) "Computer" means any connected, directly interoperable or  
18 interactive device, equipment, or facility that uses a computer  
19 program or other instructions to perform specific operations,  
20 including logical, arithmetic, or memory functions with or on  
21 computer data or a computer program, and that can store, retrieve,  
22 alter, or communicate the results of the operations to a person,  
23 computer program, computer, computer system, or computer network.

24 (b) "Computer network" means the interconnection of hardwire  
25 or wireless communication lines with a computer through remote  
26 terminals or a complex consisting of 2 or more interconnected  
27 computers.

1 (c) "Computer program" means a series of internal or external  
2 instructions communicated in a form acceptable to a computer that  
3 directs the functioning of a computer, computer system, or computer  
4 network in a manner designed to provide or produce products or  
5 results from the computer, computer system, or computer network.

6 (d) "Computer system" means related, connected or unconnected,  
7 computer equipment, devices, software, or hardware.

8 (e) "Credit card" means a card or device issued by a person  
9 licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the  
10 consumer financial services act, 1988 PA 161, MCL 487.2051 to  
11 487.2072, or issued by a depository financial institution as  
12 defined in section 1a of the mortgage brokers, lenders, and  
13 services licensing act, 1987 PA 173, MCL 445.1651a, under a credit  
14 card arrangement.

15 (f) "Device" includes, but is not limited to, an electronic,  
16 magnetic, electrochemical, biochemical, hydraulic, optical, or  
17 organic object that performs input, output, or storage functions by  
18 the manipulation of electronic, magnetic, or other impulses.

19 (g) "Internet" means the connection to the ~~world wide web~~  
20 **WORLD WIDE WEB** through the use of a computer, a computer network,  
21 or a computer system.

22 (h) "Sale conducted through the ~~internet~~-**INTERNET**" means a  
23 sale of, a solicitation to sell, a purchase of, or an offer to  
24 purchase cigarettes conducted all or in part by accessing an  
25 ~~internet~~-**INTERNET** website.