



# HOUSE BILL No. 5533

May 5, 1994 Introduced by Reps Bullard Profit Varga Shugars Kaza Palamara and Whyman and referred to the Committee on Taxation

A bill to amend sections 2, 7, and 12 of Act No 327 of the Public Acts of 1993, entitled Tobacco products tax act being sections 205 422 205 427, and 205 432 of the Michigan Compiled Laws

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 2 7 and 12 of Act No 327 of the  
2 Public Acts of 1993, being sections 205 422, 205 427, and 205 432  
3 of the Michigan Compiled Laws are amended to read as follows

4 Sec 2 As used in this act

5 (a) Cigarette" means a roll for smoking made wholly or in  
6 part of tobacco, irrespective of size or shape and irrespective  
7 of the tobacco being flavored, adulterated, or mixed with any  
8 other ingredient, which roll has a wrapper or cover made of paper  
9 or any other material Cigarette does not include cigars

- 1 (b) Commissioner means the revenue commissioner
- 2 (c) Department means the department of treasury
- 3 (d) Licensee means a person licensed under this act
- 4 (e) Manufacturer means a person who manufactures or  
5 produces ~~a tobacco product~~ CIGARETTES
- 6 (f) Noncigarette smoking tobacco" means tobacco sold in  
7 loose or bulk form that is intended for consumption by smoking
- 8 (g) Person means an individual, partnership fiduciary  
9 association, corporation, LIMITED LIABILITY COMPANY, or other  
10 legal entity
- 11 (h) Place of business' means a place where a tobacco prod-  
12 uct is sold or where a tobacco product is brought or kept for the  
13 purpose of sale or consumption, including a vessel, airplane  
14 train or vending machine
- 15 (i) Retailer means a person other than a transportation  
16 company who operates a place of business for the purpose of  
17 making sales of a tobacco product at retail
- 18 (j) Sale means a transaction by which the ownership of  
19 tangible personal property is transferred for consideration and  
20 applies also to use, gifts, exchanges, barter, and theft
- 21 (k) Secondary wholesaler means a person who sells a  
22 tobacco product for resale who purchases a tobacco product from  
23 a wholesaler licensed under this act, and who maintains an estab-  
24 lished place of business in this state WHERE SUBSTANTIALLY ALL OF  
25 THE BUSINESS IS THE SALE OF TOBACCO PRODUCTS AND RELATED MERCHAN-  
26 DISE AT WHOLESALE, AND WHERE AT ALL TIMES A SUBSTANTIAL STOCK OF

1 TOBACCO PRODUCTS AND RELATED MERCHANDISE IS AVAILABLE TO ALL  
2 RETAILERS FOR RESALE

3 (l) Smokeless tobacco' means snuff, chewing tobacco and  
4 any other tobacco that is intended to be consumed by means other  
5 than smoking

6 (m) 'Tobacco product means cigarettes, cigars noncigarette  
7 smoking tobacco, or smokeless tobacco

8 (n) Transportation company' means a person operating, or  
9 supplying to common carriers, cars, boats, or other vehicles for  
10 the transportation or accommodation of passengers and engaged in  
11 the sale of a tobacco product at retail

12 (o) Transporter means a person importing or transporting  
13 into this state or transporting in this state, a tobacco product  
14 obtained from a source located outside this state, or from any  
15 person not duly licensed under this act Transporter does not  
16 include an interstate commerce carrier licensed by the interstate  
17 commerce commission to carry commodities in interstate commerce,  
18 or a licensee maintaining a warehouse or place of business out-  
19 side of this state if the warehouse or place of business is  
20 licensed under this act

21 (p) "Unclassified acquirer means a person except a trans-  
22 portation company or a purchaser at retail from a retailer  
23 licensed under the general sales tax act, Act No 167 of the  
24 Public Acts of 1933, being sections 205 51 to 205 78 of the  
25 Michigan Compiled Laws, who imports or acquires a tobacco product  
26 from a source other than a wholesaler or secondary wholesaler  
27 licensed under this act for use, sale, or distribution

1 (q) Vending machine operator means a person who operates 1  
 2 or more vending machines for the sale of a tobacco product and  
 3 who purchases a tobacco product from a manufacturer, licensed  
 4 wholesaler or secondary wholesaler

5 (r) Wholesale price" means the actual price paid for a  
 6 tobacco product including any tax, by a wholesaler to a manufac-  
 7 turer excluding any discounts or reductions

8 (s) Wholesaler' means a person who purchases all or part of  
 9 his or her tobacco products from a ~~manufacturer~~ PERSON WHO MAN-  
 10 UFACTURES OR PRODUCES TOBACCO PRODUCTS, who sells 75% or more of  
 11 those tobacco products to others for resale, and who maintains an  
 12 established business where substantially all of the business is  
 13 the sale of tobacco products or cigarettes and related merchan-  
 14 dise at wholesale and where at all times a substantial stock of  
 15 tobacco products and related merchandise is available to retail-  
 16 ers for resale Wholesaler includes a chain of stores retailing  
 17 a tobacco product to the consumer if 75% of its stock of tobacco  
 18 products is purchased directly from the manufacturer WHOLESALER  
 19 ALSO MEANS A PERSON WHO RECEIVES CIGARS, NONCIGARETTE SMOKING  
 20 TOBACCO OR SMOKELESS TOBACCO DIRECTLY FROM A SOURCE OUTSIDE THIS  
 21 STATE AND WHO IS NOT LICENSED UNDER THIS ACT

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

24 (a) For cigars noncigarette smoking tobacco, and smokeless  
 25 tobacco, 16% of the wholesale price

26 ~~(b) For cigarettes, if the sales tax is levied at a rate of~~  
 27 ~~4% under the general sales tax act, Act No 167 of the Public~~

~~1 Acts of 1933, being sections 205 51 to 205 78 of the Michigan  
2 Compiled Laws, 20 mills per cigarette~~

3 (B) ~~(c)~~ For cigarettes, ~~if the sales tax is levied at a  
4 rate of 6% under the general sales tax act, Act No 167 of the  
5 Public Acts of 1933, being sections 205 51 to 205 78 of the  
6 Michigan Compiled Laws,~~ 37 5 mills per cigarette

7 (2) On or before the twentieth day of each calendar month,  
8 every licensee under section 3 other than a retailer, secondary  
9 wholesaler, or vending machine operator shall file a return with  
10 the department stating the amount of each tobacco product sold  
11 and specifying the wholesale price charged for all tobacco prod-  
12 ucts sold by the licensee for each place of business in the pre-  
13 ceding calendar month The return shall be signed under penalty  
14 of perjury The return shall be on a form prescribed by the  
15 department and shall contain or be accompanied by any further  
16 information the department requires

17 (3) At the time of the filing of the return, the licensee  
18 shall pay to the department the tax levied in subsection (1) for  
19 tobacco products sold during the calendar month covered by the  
20 return, less compensation equal to 1% of the total amount of the  
21 tax due to cover the cost of expenses incurred in the administra-  
22 tion of this act

23 (4) Every licensee and retailer who, on May 1 1994, has on  
24 hand for sale any cigarettes acquired after February 1, 1994 upon  
25 which a tax has been paid pursuant to Act No 265 of the Public  
26 Acts of 1947, being sections 205 501 to 205 522 of the Michigan  
27 Compiled Laws, shall file a complete inventory of those

1 cigarettes before June 1, 1994 and shall pay to the department at  
2 the time of filing this inventory a tax equal to the difference  
3 between the tax imposed in subsection (1) and the tax that has  
4 been paid pursuant to Act No 265 of the Public Acts of 1947

5 (5) The department may require the payment of the tax  
6 imposed by this act upon the importation or acquisition of a  
7 tobacco product A tobacco product for which the tax under this  
8 act has once been imposed and that has not been refunded if paid  
9 is not subject upon a subsequent sale to the tax imposed by this  
10 act

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

15 (7) A person liable for the tax may reimburse itself by  
16 adding to the price of the tobacco products an amount equal to  
17 the tax levied under this act

18 Sec 12 (1) The proceeds derived from the payment of  
19 taxes fees and penalties provided for under this act and the  
20 license fees received by the department shall be deposited with  
21 the state treasurer and disbursed only as provided in this  
22 section

23 (2) The proceeds of the tax imposed under section 7(1)(a)  
24 shall be credited to the state school aid fund established by  
25 section 11 of article IX of the state constitution of 1963

26 ~~(3) If the sales tax is levied at a rate of 4% under the~~  
27 ~~general sales tax act, Act No 167 of the Public Acts of 1933,~~

~~1 the tax imposed on cigarettes pursuant to section 7(1)(b) shall  
2 be disbursed as follows--~~

~~3 (a) The proceeds of 1 5 mills shall be credited to the  
4 health and safety fund created in the health and safety fund act,  
5 Act No 264 of the Public Acts of 1987, being sections 141 471 to  
6 141 479 of the Michigan Compiled Laws--~~

~~7 (b) The proceeds of 9 5 mills shall be credited to the gen-  
8 eral fund of this state--~~

~~9 (c) The proceeds of 8 5 mills shall be credited to the state  
10 school aid fund established by section 11 of article IX of the  
11 state constitution of 1963--~~

~~12 (d) The proceeds of 5 mills shall be distributed to city,  
13 district, and county health departments created pursuant to  
14 sections 2413, 2415, and 2421 of the public health code, Act  
15 No 368 of the Public Acts of 1978, being sections 333 2413,  
16 333 2415, and 333 2421 of the Michigan Compiled Laws, on a per  
17 capita basis according to the most recent federal decennial  
18 census-- The distribution under this subdivision shall be used  
19 only for public health prevention programs and services-- This  
20 distribution is in addition to and is not intended as a replace-  
21 ment for any other state payments to these local health  
22 departments--~~

~~23 (3) (4) If the sales tax is levied at a rate of 6% under  
24 the general sales tax act, Act No 167 of the Public Acts of  
25 1933, being sections 205 51 to 205 78 of the Michigan Compiled  
26 Laws, the THE tax imposed on cigarettes pursuant to section  
27 7(1)(c) 7(1)(B) AND 7(4) shall be disbursed as follows~~

1 (a) ~~4%~~ 5 3% of the proceeds shall be credited to the  
 2 health and safety fund created in the health and safety fund act,  
 3 Act No 264 of the Public Acts of 1987, being sections 141 471 to  
 4 141 479 of the Michigan Compiled Laws

5 (b) 25 3% of the proceeds shall be credited to the general  
 6 fund of this state

7 (c) 63 4% of the proceeds shall be credited to the state  
 8 school aid fund established by section 11 of article IX of the  
 9 state constitution of 1963

10 ~~(d) 1 3% of the proceeds shall be distributed to city, dis-~~  
 11 ~~trict, and county health departments created pursuant to~~  
 12 ~~sections 2413, 2415, and 2421 of the public health code, Act~~  
 13 ~~No 368 of the Public Acts of 1978, being sections 333 2413,~~  
 14 ~~333 2415, and 333 2421 of the Michigan Compiled Laws, on a per~~  
 15 ~~capita basis according to the most recent federal decennial~~  
 16 ~~census The distribution under this subdivision shall be used~~  
 17 ~~only for public health prevention programs and services This~~  
 18 ~~distribution is in addition to and is not intended as a replace-~~  
 19 ~~ment for any other state payments to these local health~~  
 20 ~~departments~~

21 (D) ~~(e)~~ 6% of the proceeds shall be dedicated to improving  
 22 the health care of the residents of this state

23 (4) ~~(5)~~ The proceeds of the fees and penalties provided  
 24 for in this act shall be used for the administration of this  
 25 act