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BILL ANALYSIS



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Senate Bill 883 (as introduced 2-27-96)
Sponsor: Senator Doug Carl
Committee: Finance

Date Completed: 12-2-96

CONTENT

The bill would amend the Tobacco Products Tax Act to require that a tax stamp be affixed to all individual packages of cigarettes sold in Michigan; prescribe who would have to affix the stamps, when, and where; require licensees to report specific information to the Department of Treasury each month regarding the number of cigarettes sold and tax stamps used; and provide penalties for persons who possessed cigarettes that did not have a tax stamp, and for persons who unlawfully manufactured or possessed a tax stamp. The bill would take effect June 1, 1996.

Currently, under the Act, a wholesaler is defined as a person who purchases all or part of his or her tobacco products from a manufacturer, who sells 75% or more of those tobacco products to others for resale, and who maintains an established business where substantially all of the business is the sale of tobacco products or cigarettes and related merchandise at wholesale and where at all times a substantial stock of tobacco products and related merchandise is available to retailers for resale. An unclassified acquirer is a person, except a transportation company or a person who purchases at retail from a retailer, who imports or acquires a tobacco product from a source other than a licensed wholesaler or secondary wholesaler (a person who sells a tobacco product for resale and who purchases it from a licensed wholesaler). A transporter is a person importing or transporting into the State, or transporting in the State, a tobacco product obtained from a source located outside the State, or from any person not licensed under the Act.

The bill provides that beginning June 1, 1996, within 48 hours of taking possession of cigarettes, a wholesaler or an unclassified acquirer would have to place or cause to be placed a tax stamp on each individual package of cigarettes to be sold within Michigan. The tax stamp would have to be affixed to the individual package of cigarettes in a location on the individual package as determined by the Department of Treasury. A person, other than a wholesaler, unclassified acquirer, or a transporter, could not possess, purchase, acquire for resale, or sell an individual package of cigarettes or a cigarette from an individual package unless that individual package of cigarettes had a tax stamp affixed to it as provided in the bill. "Tax stamp" would mean a distinctive character, indication, or mark, as determined by the Department, attached or affixed to an individual package of cigarettes by mechanical device or other means to indicate that the tax imposed under the Act had been paid.

Beginning April 1, 1996, a wholesaler or unclassified acquirer could apply to the Department or a "tax stamp agent" for tax stamps. (A tax stamp agent would be a person in Michigan who was authorized by the Department to sell tax stamps and collect the tobacco tax.) If the Department determined that a wholesaler or unclassified acquirer was financially sound, the Department would have to issue an amount of tax stamps up to the monthly average for that licensee of the previous

calendar year, or some other amount as determined by the Department. If the Department determined that the wholesaler or unclassified acquirer was not financially sound, it could issue tax stamps only upon the filing with the Department of a bond in an amount at least equal to the value of an estimated two-month supply of tax stamps as determined by the Department. The Department could alter the amount of the bond and impose any conditions on the bond as it considered prudent.

Currently, each month every manufacturer, wholesaler, unclassified acquirer, transportation company, or transporter must file a return with the Department stating the amount of each tobacco product sold and its wholesale price for each place of business in the preceding month. The bill provides that the return would have to include the number of individual packages of cigarettes; the number of cigarettes in those packages; the number of tax stamps affixed to individual packages; and the number of tax stamps and the serial number of each tax stamp in the licensee's possession.

The bill provides that an unlicensed person who was in control or possession of an individual package of cigarettes without a tax stamp would be personally liable for the tax imposed by the Act plus a penalty of 100% of the amount of tax due. A person who unlawfully manufactured, possessed, or used a tax stamp, or a writing or device intended to replicate a tax stamp, would be guilty of a felony punishable by imprisonment for at least six months but not more than 10 years, and a fine of up to \$10,000.

Currently, the Department may suspend, revoke, or refuse to issue or renew a license for failure to comply with the Act or for any other good cause. A person whose license is suspended, revoked, or not renewed is prohibited from selling a tobacco product during the period of suspension or revocation, or until the license is renewed. The bill provides in addition that a person whose license was suspended, revoked, or not renewed would not be eligible to purchase tax stamps.

Under the Act, licensees are required to keep detailed statements and records of the manufacturing, purchasing, transporting, and acquiring of tobacco products, including the date of delivery of the products at the various stages of their distribution. The bill specifies that both the date and time of delivery would have to be included on the statements and records.

MCL 205.422 et al.

Legislative Analyst: G. Towne

FISCAL IMPACT

It is very difficult to estimate the additional revenue that a cigarette stamp program would generate. According to cigarette tax enforcement officials, cigarette stamps primarily help reduce organized smuggling and have much less of an effect on reducing casual smuggling. It is estimated that cigarette stamps would help restore some of the revenue lost due to organized smuggling, but not all of it. Cigarette consumption declined 16% in FY 1994-95, but the most significant cause of this decline is not known. Cigarette sales may have declined for reasons other than illegal smuggling, such as (1) an increase in cigarette tax leading to a higher retail price, which caused a decrease in consumption; (2) a decline in consumption due to consumer reaction to health hazards of smoking; or (3) increased sales on military bases which are exempt from State taxes. Taking all of these factors into consideration, however, it is estimated that organized smuggling is reducing cigarette tax revenue by \$18 million. It is estimated that cigarette stamps would help recover \$10 million to \$15 million in cigarette tax revenue. Based on FY 1995-96 cigarette tax collections, this would represent a 1.7% to 2.6% increase in cigarette tax collections.

The potential administrative costs to the State depend on how the program would be administered. Assuming the Department of Treasury controlled the operations as opposed to using a tax agent, there would be costs for acquiring the stamps. The Department also would need additional resources such as storage space, computer programs, and FTEs in order to track and audit the stamps once they were distributed. This would require staff both internally and in the field. Preliminary estimates assume approximately four to eight FTEs.

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