

Act No. 503
Public Acts of 2002
Approved by the Governor
July 18, 2002
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Rep. Stallworth

ENROLLED HOUSE BILL No. 5248

AN ACT to amend 1993 PA 327, entitled "An act to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; to provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; to prescribe penalties and provide remedies for the violation of this act; and to repeal acts and parts of acts," by amending sections 7 and 12 (MCL 205.427 and 205.432), as amended by 1997 PA 187, and by adding section 6c.

The People of the State of Michigan enact:

Sec. 6c. (1) A nonparticipating manufacturer shall by April 30 of each year certify to the department that it is not a participant in the master settlement agreement and that it has performed its obligation to establish a qualified escrow account and deposited funds into that account under 1999 PA 244, MCL 445.2051 to 445.2052.

(2) The certification of compliance shall be on a form prescribed by the department, shall contain all of the information requested on the form, and shall include a list of all brand names of cigarettes sold by the nonparticipating manufacturer for consumption in this state during the calendar year immediately preceding the certification date.

(3) A nonparticipating manufacturer shall provide a copy of the certification of compliance to the attorney general and any wholesaler, unclassified acquirer, or other person to whom the nonparticipating manufacturer makes a sale of its cigarettes for subsequent sale in this state.

(4) A wholesaler, unclassified acquirer, or other person who is provided with a certification of compliance under this section shall retain the certification of compliance for not less than 4 years from the date the certification of compliance was received.

(5) A wholesaler or unclassified acquirer shall report to the department all cigarettes that it acquires that were manufactured by a nonparticipating manufacturer. A wholesaler or unclassified acquirer that has not voluntarily submitted annual reports described in this subsection for periods beginning December 28, 1999 shall file those reports with the department within 60 days of the effective date of the amendatory act that added this section. The report shall be on a form prescribed by the department and attached to the return required under section 7. A wholesaler or unclassified acquirer that has not acquired any cigarettes from a nonparticipating manufacturer shall file the report with the return required under section 7 stating that it has not purchased, acquired, exported, or returned cigarettes related to a nonparticipating manufacturer. The information contained in this report is for the purposes of enforcing 1999 PA 244, MCL 445.2051 to 445.2052, and does not constitute information obtained in connection with the administration of a tax under section 28(1)(f) of 1941 PA 122, MCL 205.28. A wholesaler or unclassified acquirer shall retain a copy of the report for not less than 4 years from the date the report was filed with the department. If a

wholesaler or unclassified acquirer does not file a report or knowingly files an incomplete or inaccurate report under this subsection, the department may do 1 or more of the following:

- (a) Assess a penalty under this section.
- (b) Prohibit the wholesaler or unclassified acquirer from obtaining cigarette stamps from the department until a complete and accurate report is filed.
- (c) Revoke the wholesaler's or unclassified acquirer's license under section 5, only after conducting a hearing.
- (6) A nonparticipating manufacturer that has not provided the certification of compliance required by this section shall not make a sale of cigarettes in this state or a sale within or outside this state to any person for sale, distribution, or consumption in this state.
- (7) A person shall not purchase, acquire, possess, or sell cigarettes acquired from or manufactured by a nonparticipating manufacturer that has not provided the certification of compliance to the department as required under this section and that has not provided the person with a copy of the certification of compliance if required to do so under subsection (3).
- (8) The department shall maintain and regularly update a list of participating manufacturers and nonparticipating manufacturers that have provided the certification of compliance required under this section. The department shall publish the list on its website and provide a copy of the list to a person upon request.
- (9) If a wholesaler or unclassified acquirer receives a certification of compliance from a nonparticipating manufacturer that is not included in the list maintained by the department, the wholesaler or unclassified acquirer shall within 10 business days after receiving the certification of compliance provide a copy of the certification of compliance and the name and address of the nonparticipating manufacturer to the department.
- (10) Thirty days after the department posts on its website and provides wholesalers and unclassified acquirers a notice of a second or subsequent knowing violation of a provision of 1999 PA 244, MCL 445.2051 to 445.2052, or a notice of a judgment the department has against a nonparticipating manufacturer, the department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by that nonparticipating manufacturer. Beginning May 1, 2003, the department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by a nonparticipating manufacturer if that nonparticipating manufacturer has not provided the certification required by this section. Seizure, confiscation, forfeiture, and sale of cigarettes under this section shall be accomplished under section 9.
- (11) The department may impose on any person a civil fine not to exceed \$1,000.00 for each violation of this section. The civil fine is in addition to all other fines or penalties imposed by this act or 1941 PA 122, MCL 205.1 to 205.31.
- (12) As used in this section:
 - (a) "Cigarette" means that term as defined in 1999 PA 244, MCL 445.2051 to 445.2052.
 - (b) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer as that term is defined in 1999 PA 244, MCL 445.2051 to 445.2052. Nonparticipating manufacturer also includes the first purchaser of cigarettes manufactured outside the United States for resale in the United States.

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

- (a) Through July 31, 2002, for cigars, noncigarette smoking tobacco, and smokeless tobacco, 16% of the wholesale price.
- (b) For cigarettes, 37.5 mills per cigarette.
- (c) Beginning August 1, 2002, for cigarettes, in addition to the tax levied in subdivision (b), an additional 15 mills per cigarette.
- (d) Beginning August 1, 2002, for cigarettes, in addition to the tax levied in subdivisions (b) and (c), an additional 10 mills per cigarette.
- (e) Beginning August 1, 2002, for cigars, noncigarette smoking tobacco, and smokeless tobacco, 20% of the wholesale price.
- (2) On or before the twentieth day of each calendar month, every licensee under section 3 other than a retailer, secondary wholesaler, unclassified acquirer licensed as a manufacturer, or vending machine operator shall file a return with the department stating the wholesale price of each tobacco product other than cigarettes purchased, the quantity of cigarettes purchased, the wholesale price charged for all tobacco products other than cigarettes sold, the number of individual packages of cigarettes and the number of cigarettes in those individual packages, and the number and denominations of stamps affixed to individual packages of cigarettes sold by the licensee for each place of business in the preceding calendar month. The return shall also include the number and denomination of unaffixed stamps in the possession of the licensee at the end of the preceding calendar month. Wholesalers shall also report accurate inventories of cigarettes, both stamped and unstamped at the end of the preceding calendar month. Wholesalers and unclassified acquirers shall also report accurate inventories of affixed and unaffixed stamps by denomination at the beginning and end of each calendar month and all stamps acquired during the preceding calendar month. The return shall be signed under penalty of perjury. The return shall be on a form prescribed by the department and shall contain or be accompanied by any further information the department requires.

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

- (a) One percent of the total amount of the tax due on tobacco products sold other than cigarettes.
- (b) Through July 31, 2002, 1.25% of the total amount of the tax due on cigarettes sold.
- (c) Beginning August 1, 2002, 1.5% of the total amount of the tax due on cigarettes sold.

(4) Every licensee and retailer who, on August 1, 2002, has on hand for sale any cigarettes upon which a tax has been paid pursuant to subsection (1)(b) shall file a complete inventory of those cigarettes before September 1, 2002 and shall pay to the department at the time of filing this inventory a tax equal to the difference between the tax imposed in subsection (1)(b), (c), and (d) and the tax that has been paid under subsection (1)(b). Every licensee and retailer who, on August 1, 2002, has on hand for sale any cigars, noncigarette smoking tobacco, or smokeless tobacco upon which a tax has been paid pursuant to subsection (1)(a) shall file a complete inventory of those cigars, noncigarette smoking tobacco, and smokeless tobacco before September 1, 2002 and shall pay to the department at the time of filing this inventory a tax equal to the difference between the tax imposed in subsection (1)(e) and the tax that has been paid under subsection (1)(a).

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

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

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

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

(9) If the wholesaler or unclassified acquirer has unsalable packs returned from a retailer, secondary wholesaler, vending machine operator, wholesaler, or unclassified acquirer with stamps affixed, the department shall refund the amount of the tax less the appropriate discount paid. If the wholesaler or unclassified acquirer has unaffixed unsalable stamps, the department shall exchange with the wholesaler or unclassified acquirer new stamps in the same quantity as the unaffixed unsalable stamps. An application for refund of the tax shall be filed on a form prescribed by the department for that purpose, within 4 years from the date the stamps were originally acquired from the department. A wholesaler or unclassified acquirer shall make available for inspection by the department the unused or spoiled stamps and the stamps affixed to unsalable individual packages of cigarettes. The department may, at its own discretion, witness and certify the destruction of the unused or spoiled stamps and unsalable individual packages of cigarettes that are not returnable to the manufacturer. The wholesaler or unclassified acquirer shall provide certification from the manufacturer for any unsalable individual packages of cigarettes that are returned to the manufacturer.

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

(11) Each wholesaler or unclassified acquirer shall submit to the department an unstamped cigarette sales report on or before the twentieth day of each month covering the sale, delivery, or distribution of unstamped cigarettes during the preceding calendar month to points outside of Michigan. A separate schedule shall be filed for each state, country, or province into which shipments are made. For purposes of the report described in this subsection, "unstamped cigarettes" means individual packages of cigarettes that do not bear a Michigan stamp. The department may provide the information contained in this report to a proper officer of another state, country, or province reciprocating in this privilege.

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

(2) The tax imposed under section 7(1)(a) shall be disbursed as follows:

(a) 94% of the proceeds shall be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(b) 6% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953.

(3) The tax imposed on cigarettes under section 7(1)(b) shall be disbursed as follows:

(a) Beginning May 1, 1994, 5.3% of the proceeds shall be credited to the health and safety fund created in the health and safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

(b) 25.3% of the proceeds shall be credited to the general fund of this state.

(c) 63.4% of the proceeds shall be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(d) 6% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953.

(4) Beginning August 1, 2002, the tax imposed on cigarettes under section 7(1)(c) shall be disbursed as follows:

(a) 74.2% of the proceeds shall be credited to the general fund of this state. However, beginning October 1, 2004 and through September 30, 2007, the proceeds described in this subdivision shall be credited to the countercyclical budget and economic stabilization fund created under section 351 of the management and budget act, 1984 PA 431, MCL 18.1351.

(b) 4.6% of the proceeds shall be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(c) 6.0% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953.

(d) 3.0% of the proceeds shall be paid to counties with a 2000 population of more than 2,000,000, to be used only for indigent health care.

(e) 12.2% of the proceeds shall be credited to the medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(5) Beginning August 1, 2002, the tax imposed under section 7(1)(e) shall be disbursed as follows:

(a) 75.6% of the proceeds shall be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(b) 6.0% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953.

(c) 18.4% of the proceeds shall be credited to the general fund of this state. However, beginning October 1, 2004 and through September 30, 2007, the proceeds described in this subdivision shall be credited to the countercyclical budget and economic stabilization fund created under section 351 of the management and budget act, 1984 PA 431, MCL 18.1351.

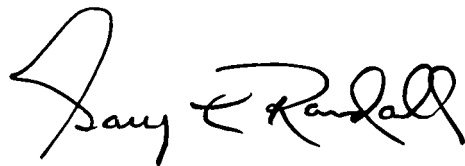
(6) Beginning August 1, 2002, the tax imposed on cigarettes under section 7(1)(d) shall be disbursed as follows:

(a) 94.0% of the proceeds shall be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

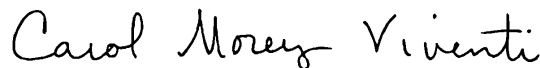
(b) 6.0% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953.

(7) The proceeds of the fees and penalties provided for in this act shall be used for the administration of this act.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.