

**SUBSTITUTE FOR
HOUSE BILL NO. 5632**

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending sections 7 and 12 (MCL 205.427 and 205.432), as
amended by 2002 PA 503.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 7. (1) Beginning May 1, 1994, a tax is levied on the
2 sale 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.
- 9 (d) Beginning August 1, 2002, for cigarettes, in addition to
10 the tax levied in subdivisions (b) and (c), an additional 10

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1 mills per cigarette.

2 (e) Beginning July 1, 2004 [and through June 30, 2007], for
cigarettes, in addition to

3 the tax levied in subdivisions (b), (c), and (d), an additional
4 37.5 mills per cigarette.

5 (f) ~~(e)~~ Beginning August 1, 2002 [],

6 for cigars, noncigarette smoking tobacco, and smokeless tobacco,
7 20% of the wholesale price.

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

1 stamps by denomination at the beginning and end of each calendar
2 month and all stamps acquired during the preceding calendar
3 month. The return shall be signed under penalty of perjury. The
4 return shall be on a form prescribed by the department and shall
5 contain or be accompanied by any further information the
6 department requires.

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

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

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

17 (c) Beginning August 1, 2002, 1.5% of the total amount of the
18 tax due on cigarettes sold.

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

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1 tobacco upon which a tax has been paid pursuant to subsection
 2 (1)(a) shall file a complete inventory of those cigars,
 3 noncigarette smoking tobacco, and smokeless tobacco before
 4 September 1, 2002 and shall pay to the department at the time of
 5 filing this inventory a tax equal to the difference between the
 6 tax imposed in subsection ~~-(1)(e)-~~ (1)(f) and the tax that has
 7 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[, less the number of cigarettes that would
 be sold in a 2-week period calculated by using the average weekly sales
 for the 6-month period immediately preceding July 1, 2004,] before August
 1, 2004 and shall pay
 12 to the department at the time of filing this inventory a tax
 13 equal to the difference between the tax imposed in subsection
 14 (1)(b), (c), (d), and (e) and the tax that has been paid under
 15 subsection (1)(b), (c), and (d). [

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 23] The proceeds
 24 derived under this subsection shall be credited to the [general fund of
 25 this state.

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 27 (6) ~~-(5)-~~ The department may require the payment of the tax

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

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

11 (8) ~~-(7)-~~ A person liable for the tax may reimburse itself by
12 adding to the price of the tobacco products an amount equal to
13 the tax levied under this act.

14 (9) ~~-(8)-~~ A wholesaler, unclassified acquirer, or other
15 person shall not sell or transfer any unaffixed stamps acquired
16 by the wholesaler or unclassified acquirer from the department.
17 A wholesaler or unclassified acquirer who has any unaffixed
18 stamps on hand at the time its license is revoked or expires, or
19 at the time it discontinues the business of selling cigarettes,
20 shall return those stamps to the department. The department
21 shall refund the value of the stamps, less the appropriate
22 discount paid.

23 (10) ~~-(9)-~~ If the wholesaler or unclassified acquirer has
24 unsalable packs returned from a retailer, secondary wholesaler,
25 vending machine operator, wholesaler, or unclassified acquirer
26 with stamps affixed, the department shall refund the amount of
27 the tax less the appropriate discount paid. If the wholesaler or

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

17 (11) ~~-(10)-~~ On or before the twentieth of each month, each
18 manufacturer shall file a report with the department listing all
19 sales of tobacco products to wholesalers and unclassified
20 acquirers during the preceding calendar month and any other
21 information the department finds necessary for the administration
22 of this act. This report shall be in the form and manner
23 specified by the department.

24 (12) ~~-(11)-~~ Each wholesaler or unclassified acquirer shall
25 submit to the department an unstamped cigarette sales report on
26 or before the twentieth day of each month covering the sale,
27 delivery, or distribution of unstamped cigarettes during the

1 preceding calendar month to points outside of Michigan. A
2 separate schedule shall be filed for each state, country, or
3 province into which shipments are made. For purposes of the
4 report described in this subsection, "unstamped cigarettes" means
5 individual packages of cigarettes that do not bear a Michigan
6 stamp. The department may provide the information contained in
7 this report to a proper officer of another state, country, or
8 province reciprocating in this privilege.

9 Sec. 12. (1) The proceeds derived from the payment of
10 taxes, fees, and penalties provided for under this act and the
11 license fees received by the department shall be deposited with
12 the state treasurer and disbursed only as provided in this
13 section **and section 7(5)**.

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

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

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

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

24 (a) Beginning May 1, 1994 **and through June 30, 2004**, 5.3% of
25 the proceeds shall be credited to the health and safety fund
26 created in the health and safety fund act, 1987 PA 264, MCL
27 141.471 to 141.479.

1 **(b) Beginning July 1, 2004, 6.3% of the proceeds shall be**
2 **credited to the health and safety fund created in the health and**
3 **safety fund act, 1987 PA 264, MCL 141.471 to 141.479.**

4 **(c) ~~-(b)-~~ Through June 30, 2004, 25.3% of the proceeds shall**
5 **be credited to the general fund of this state.**

6 **(d) Beginning July 1, 2004, 24.3% of the proceeds shall be**
7 **credited to the general fund of this state.**

8 **(e) ~~-(e)-~~ 63.4% of the proceeds shall be credited to the**
9 **state school aid fund established by section 11 of article IX of**
10 **the state constitution of 1963.**

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

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

16 **(a) Through June 30, 2004, 74.2%, and beginning July 1, 2004,**
17 **5.4%** of the proceeds shall be credited to the general fund of
18 this state. ~~However, beginning October 1, 2004 and through~~
19 ~~September 30, 2007, the proceeds described in this subdivision~~
20 ~~shall be credited to the countercyclical budget and economic~~
21 ~~stabilization fund created under section 351 of the management~~
22 ~~and budget act, 1984 PA 431, MCL 18.1351.~~

23 **(b) Through June 30, 2004, 4.6%, and beginning July 1, 2004,**
24 **44.5%** of the proceeds shall be credited to the state school aid
25 fund established by section 11 of article IX of the state
26 constitution of 1963.

27 (c) 6.0% of the proceeds shall be credited to the healthy

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1 Michigan fund created under section 5953 of the public health
2 code, 1978 PA 368, MCL 333.5953.

3 (d) **Through June 30, 2004, 3.0%, and beginning July 1, 2004,**
4 **3.6%** of the proceeds shall be paid to counties with a 2000
5 population of more than 2,000,000, to be used only for indigent
6 health care.

7 (e) **Through June 30, 2004, 12.2%, and beginning July 1, 2004,**
8 **40.5%** of the proceeds shall be credited to the medicaid benefits
9 trust fund created under section 5 of the Michigan trust fund
10 act, 2000 PA 489, MCL 12.255.

11 (5) Beginning August 1, 2002, the tax imposed under section
12 **[7(1)(e)]** shall be disbursed as follows:

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

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

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

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

27 (a) 94.0% of the proceeds shall be credited to the state

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1 school aid fund established by section 11 of article IX of the
2 state constitution of 1963.

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

6 (7) [After the distribution provided in subsection (9), the
remaining proceeds shall be distributed under this subsection.]
Beginning July 1, 2004, the tax imposed on cigarettes

7 under section 7(1)(e) shall be disbursed as follows:

8 (a) 8.6% of the proceeds shall be credited to the healthy
9 Michigan fund created under section 5953 of the public health
10 code, 1978 PA 368, MCL 333.5953, and is subject to an
11 appropriation.

12 (b) Through September 30, 2004, 91.4% shall be credited to
13 the general fund of this state.

14 (c) Beginning October 1, 2004, 91.4% shall be credited to the
15 medicaid benefits trust fund created under section 5 of the
16 Michigan trust fund act, 2000 PA 489, MCL 12.255. However, each
17 fiscal year subject to an appropriation, the first \$30,000,000.00
18 of the amount described in this subdivision shall be allocated in
19 the following amounts in the following order of priority to the
20 department of community health for the following purposes:

21 (i) An amount sufficient to provide a 4% increase in medicaid
22 payment rates in effect on October 1, 2004 for hospital[, auxiliary
medical, nursing home, pharmacist, ambulance,] and
23 physician services.

24 (ii) The remaining amount to be distributed to unaffiliated
25 hospitals and hospital systems that received less than
26 \$900,000.00 in disproportionate share hospital payments in fiscal
27 year 2002-2003 based on a formula that is weighted proportional

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1 to the product of each eligible unaffiliated hospital's or
2 hospital system's medicaid revenue and medicaid utilization.

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(8) Before distributing any of the proceeds under subsection (7), 1% of the tax imposed on cigarettes under section 7(1)(e) shall be credited to the general fund of this state to be used by the department of treasury solely to fund anti-cigarette smuggling enforcement. The total remaining proceeds from the tax imposed on cigarettes under section 7(1)(e) shall be disbursed as provided in subsection (7).

13 (9)]~~(7)~~ The proceeds of the fees and penalties provided for

14 in this act shall be used for the administration of this act.