

SENATE BILL No. 491

April 29, 2009, Introduced by Senator GILBERT and referred to the Committee on Finance.

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending sections 7 and 12 (MCL 205.427 and 205.432), section 7
as amended by 2008 PA 458 and section 12 as amended by 2004 PA 164.

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.

9 (d) Beginning August 1, 2002, for cigarettes, in addition to

1 the tax levied in subdivisions (b) and (c), an additional 10 mills
2 per cigarette.

3 (e) Beginning July 1, 2004 **AND THROUGH SEPTEMBER 30, 2009**, for
4 cigarettes, in addition to the tax levied in subdivisions (b), (c),
5 and (d), an additional 37.5 mills per cigarette.

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

9 (g) Beginning July 1, 2004, for cigars, noncigarette smoking
10 tobacco, and smokeless tobacco, 32% of the wholesale price.

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

1 affixed and unaffixed stamps by denomination at the beginning and
2 end of each calendar month and all stamps acquired during the
3 preceding calendar month. The return shall be signed under penalty
4 of perjury. The return shall be on a form prescribed by the
5 department and shall contain or be accompanied by any further
6 information the 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 in
10 subsection (1) for tobacco products sold during the calendar month
11 covered by the return, less compensation equal to both of the
12 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 on
20 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 the
24 difference between the tax imposed in subsection (1)(b), (c), and
25 (d) and the tax that has been paid under subsection (1)(b). Every
26 licensee and retailer who, on August 1, 2002, has on hand for sale
27 any cigars, noncigarette smoking tobacco, or smokeless tobacco upon

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

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

25 (6) The department may require the payment of the tax imposed
26 by this act upon the importation or acquisition of a tobacco
27 product. A tobacco product for which the tax under this act has

1 once been imposed and that has not been refunded if paid is not
2 subject upon a subsequent sale to the tax imposed by this act.

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

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

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

18 (10) If the wholesaler or unclassified acquirer has unsalable
19 packs returned from a retailer, secondary wholesaler, vending
20 machine operator, wholesaler, or unclassified acquirer with stamps
21 affixed, the department shall refund the amount of the tax less the
22 appropriate discount paid. If the wholesaler or unclassified
23 acquirer has unaffixed unsalable stamps, the department shall
24 exchange with the wholesaler or unclassified acquirer new stamps in
25 the same quantity as the unaffixed unsalable stamps. An application
26 for refund of the tax shall be filed on a form prescribed by the
27 department for that purpose, within 4 years from the date the

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

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

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

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

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

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

11 (b) 6% of the proceeds shall be credited to the healthy
12 Michigan fund created under section 5953 of the public health code,
13 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described
14 in this subdivision that are used for smoking prevention programs
15 shall be used by the department of community health to expand the
16 free smokers quit kit program to include the nicotine patch or
17 nicotine gum.

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

20 (a) Beginning May 1, 1994 and through June 30, 2004, 5.3% of
21 the proceeds shall be credited to the health and safety fund
22 created in the health and safety fund act, 1987 PA 264, MCL 141.471
23 to 141.479.

24 (b) Beginning July 1, 2004, 6.5% of the proceeds shall be
25 credited to the health and safety fund created in the health and
26 safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

27 (c) Through June 30, 2004, 25.3% of the proceeds shall be

1 credited to the general fund of this state.

2 (d) Beginning July 1, 2004, 24.1% of the proceeds shall be
3 credited to the general fund of this state.

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

7 (f) 6% of the proceeds shall be credited to the healthy
8 Michigan fund created under section 5953 of the public health code,
9 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described
10 in this subdivision that are used for smoking prevention programs
11 shall be used by the department of community health to expand the
12 free smokers quit kit program to include the nicotine patch or
13 nicotine gum.

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 9.0% of the proceeds shall be credited to the general fund of this
18 state.

19 (b) Through June 30, 2004, 4.6%, and beginning July 1, 2004,
20 56.3% of the proceeds shall be credited to the state school aid
21 fund established by section 11 of article IX of the state
22 constitution of 1963.

23 (c) 6.0% of the proceeds shall be credited to the healthy
24 Michigan fund created under section 5953 of the public health code,
25 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described
26 in this subdivision that are used for smoking prevention programs
27 shall be used by the department of community health to expand the

1 free smokers quit kit program to include the nicotine patch or
2 nicotine gum.

3 (d) Through June 30, 2004, 3.0%, and beginning July 1, 2004,
4 3.7% 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 25.0% of the proceeds shall be credited to the medicaid benefits
9 trust fund created under section 5 of the Michigan trust fund act,
10 2000 PA 489, MCL 12.255.

11 (5) Beginning August 1, 2002, the tax imposed under section
12 7(1)(f) 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 code,
18 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described
19 in this subdivision that are used for smoking prevention programs
20 shall be used by the department of community health to expand the
21 free smokers quit kit program to include the nicotine patch or
22 nicotine gum.

23 (c) 18.4% of the proceeds shall be credited to the general
24 fund of this state.

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

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 code,
5 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described
6 in this subdivision that are used for smoking prevention programs
7 shall be used by the department of community health to expand the
8 free smokers quit kit program to include the nicotine patch or
9 nicotine gum.

10 (7) Beginning July 1, 2004 **AND THROUGH SEPTEMBER 30, 2009**, the
11 tax imposed on cigarettes under section 7(1)(e) shall be disbursed
12 as follows:

13 (a) Beginning July 1, 2004 and through September 30, 2005,
14 100% of the proceeds shall be credited to the Michigan medicaid
15 benefits trust fund created under section 5 of the Michigan trust
16 fund act, 2000 PA 489, MCL 12.255.

17 (b) Beginning October 1, 2005, 75.0% of the proceeds shall be
18 credited to the medicaid benefits trust fund created under section
19 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

20 (c) Beginning October 1, 2005, 25.0% of the proceeds shall be
21 credited to the general fund of this state.

22 (8) Beginning July 1, 2004, the tax imposed under section
23 7(1)(g) shall be disbursed as follows:

24 (a) Beginning July 1, 2004 and through September 30, 2005,
25 100% of the proceeds shall be credited to the Michigan medicaid
26 benefits trust fund created under section 5 of the Michigan trust
27 fund act, 2000 PA 489, MCL 12.255.

1 (b) Beginning October 1, 2005, 75.0% of the proceeds shall be
2 credited to the medicaid benefits trust fund created under section
3 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

4 (c) Beginning October 1, 2005, 25.0% of the proceeds shall be
5 credited to the general fund of this state.

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