

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1004

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending sections 7 and 11 (MCL 205.427 and 205.431), section 7
as amended by 2012 PA 188 and section 11 as amended by 2004 PA 474.

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
10 the tax levied in subdivisions (b) and (c), an additional 10 mills

1 per cigarette.

2 (e) Beginning July 1, 2004, for cigarettes, in addition to the
3 tax levied in subdivisions (b), (c), and (d), an additional 37.5
4 mills per cigarette.

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

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

10 **HOWEVER, BEGINNING NOVEMBER 1, 2012 AND THROUGH OCTOBER 31, 2016,**
11 **THE AMOUNT OF TAX LEVIED UNDER THIS SUBDIVISION ON CIGARS SHALL NOT**
12 **EXCEED 50 CENTS PER INDIVIDUAL CIGAR.**

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

1 the end of the preceding calendar month. Wholesalers and
2 unclassified acquirers shall also report accurate inventories of
3 affixed and unaffixed stamps by denomination at the beginning and
4 end of each calendar month and all stamps acquired during the
5 preceding calendar month. The return shall be signed under penalty
6 of perjury. The return shall be on a form prescribed by the
7 department and shall contain or be accompanied by any further
8 information the department requires. The department may also
9 require licensees to report cigarette acquisition, purchase, and
10 sales information in other formats and frequency.

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

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

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

20 (c) Beginning August 1, 2002, 1.5% of the total amount of the
21 tax due on cigarettes sold and, beginning on ~~the effective date of~~
22 ~~the amendatory act that added subdivision (c)~~ **JUNE 20, 2012**, for
23 sales of untaxed cigarettes to Indian tribes in this state, an
24 amount equal to 1.5% of the total amount of the tax due on those
25 cigarettes sold as if those cigarette sales were taxable sales
26 under this act.

27 (d) Beginning on the first calendar month following the

1 implementation of the use of digital stamps as provided in section
2 5a(2), for licensees who are stamping agents, 0.5% of the total
3 amount of the tax due on cigarettes sold and, for sales of untaxed
4 cigarettes to Indian tribes in this state, 0.5% of the total amount
5 of the tax due on those cigarettes sold as if those cigarette sales
6 were taxable sales under this act, until the stamping agent is
7 compensated in an amount equal to the direct cost actually incurred
8 by the stamping agent for upgrades to technology and equipment,
9 excluding the equipment reimbursed under subdivision (e), that are
10 necessary to affix the digital stamp as determined by the
11 department.

12 (e) Beginning in the first calendar month following the
13 implementation of the use of digital stamps as provided in section
14 5a(2) and continuing for the immediately succeeding 17 months, for
15 licensees who are stamping agents, reimbursement of direct costs
16 actually incurred by the stamping agent, as determined by the
17 department, for the initial purchase of eligible equipment in an
18 amount equal to 5.55% of the total net purchase price of the
19 eligible equipment necessary to affix the digital stamp. The
20 reimbursement provided under this subdivision shall exclude
21 reimbursement for any costs for installation or for ongoing
22 maintenance related to eligible equipment. A stamping agent may
23 only receive reimbursement under this subdivision to the extent
24 that the eligible equipment purchased by the stamping agent does
25 not exceed the total number of the stamping agent's existing
26 equipment as certified by the stamping agent on a form prescribed
27 by the department.

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

16 (5) Every licensee and retailer who, on July 1, 2004, has on
17 hand for sale any cigarettes upon which a tax has been paid
18 pursuant to subsection (1)(b), (c), and (d) shall file a complete
19 inventory of those cigarettes before August 1, 2004 and shall pay
20 to the department at the time of filing this inventory a tax equal
21 to the difference between the tax imposed in subsection (1)(b),
22 (c), (d), and (e) and the tax that has been paid under subsection
23 (1)(b), (c), and (d). Every licensee and retailer who, on July 1,
24 2004, has on hand for sale any cigars, noncigarette smoking
25 tobacco, or smokeless tobacco upon which a tax has been paid
26 pursuant to subsection (1)(f) shall file a complete inventory of
27 those cigars, noncigarette smoking tobacco, and smokeless tobacco

1 before August 1, 2004 and shall pay to the department at the time
2 of filing this inventory a tax equal to the difference between the
3 tax imposed in subsection (1)(g) and the tax that has been paid
4 under subsection (1)(f). The proceeds derived under this subsection
5 shall be credited to the **MICHIGAN** medicaid benefits trust fund
6 created under section 5 of the Michigan trust fund act, 2000 PA
7 489, MCL 12.255.

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

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

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

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

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

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

27 (12) Each wholesaler or unclassified acquirer shall submit to

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

11 (13) As used in subsection (3):

12 (a) "Eligible equipment" means a cigarette tax stamping
13 machine that meets all of the following conditions:

14 (i) Was purchased by a stamping agent who was licensed as a
15 stamping agent as of December 31, 2011.

16 (ii) Enables the stamping agent to affix digital stamps to
17 individual packages of cigarettes in accordance with the
18 requirements under section 6a(2).

19 (iii) Was purchased to be used for the primary purpose of
20 permitting the stamping agent to affix digital stamps to individual
21 packages of cigarettes to be sold in this state following the
22 implementation of the use of digital stamps as provided in section
23 5a(2).

24 (b) "Existing equipment" means a cigarette tax stamping
25 machine that meets all of the following conditions:

26 (i) Was owned by a person who was licensed as a stamping agent
27 as of December 31, 2011.

1 (ii) Was a cigarette tax stamping machine used prior to January
2 1, 2012 by the stamping agent to apply stamps using stamp rolls of
3 30,000 stamps.

4 Sec. 11. (1) A person, either as principal or agent, shall not
5 sell or solicit a sale of a tobacco product to be shipped, mailed,
6 or otherwise sent or brought into the state, to a person not a
7 licensed manufacturer, licensed wholesaler, licensed secondary
8 wholesaler, licensed vending machine operator, licensed
9 unclassified acquirer, licensed transporter, or licensed
10 transportation company, unless the tobacco product is to be sold to
11 or through a licensed wholesaler.

12 (2) All sales conducted through the internet, by telephone, or
13 in a mail-order transaction shall not be completed unless, before
14 each delivery of cigarettes is made, whether through the mail,
15 through a transportation company, or through any other delivery
16 system, the seller has obtained from the purchaser an affirmation
17 that includes a copy of a valid government-issued document that
18 confirms the purchaser's name, address, and date of birth showing
19 that the purchaser is at least the legal minimum age to purchase
20 cigarettes; that the cigarettes purchased are not intended for
21 consumption by an individual who is younger than the legal minimum
22 age to purchase cigarettes; and a written statement signed by the
23 purchaser that affirms the purchaser's address and that the
24 purchaser is at least the minimum legal age to purchase cigarettes.
25 The statement shall also confirm that the purchaser understands
26 that signing another person's name to the affirmation is illegal;
27 that the sale of cigarettes to individuals under the legal minimum

1 purchase age is illegal; and that the purchase of cigarettes by
2 individuals under the legal minimum purchase age is illegal under
3 the laws of the state of Michigan. The seller shall verify the
4 information contained in the affirmation provided by the purchaser
5 against a commercially available database of governmental records,
6 or obtain a photocopy, fax copy, or other image of the valid,
7 government-issued identification stating the date of birth or age
8 of the purchaser.

9 (3) All invoices, bills of lading, sales receipts, or other
10 documents related to cigarette sales conducted through the
11 internet, by telephone, or in a mail-order transaction shall
12 contain the current seller's valid Michigan sales tax registration
13 number, business name and address of the seller, and a statement as
14 to whether all sales taxes and taxes levied under this act have
15 been paid. All packages of cigarettes shipped from a cigarette
16 seller to purchasers who reside in Michigan shall clearly print or
17 stamp the package with the word "CIGARETTES" on the outside of all
18 sides of the package so it is clearly visible to the shipper. In
19 addition, the package shall contain an externally visible and
20 clearly legible notice located on the same side of the package as
21 the address to which the package is delivered, as follows:

22 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER
23 LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS
24 REPORTED UNDER FEDERAL LAW THE SALE OF THESE CIGARETTES TO OUR
25 STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU
26 ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON
27 THESE CIGARETTES."

1 If an order is made as a result of advertisement over the
2 internet, the tobacco retailer shall request the electronic mail
3 address of the purchaser and shall receive payment by credit card
4 or check before shipping. This subsection and subsection (2) do not
5 apply to sales by wholesalers and unclassified acquirers.

6 (4) The deliverer of the cigarettes is required to obtain
7 proof from a valid government-issued document that the person
8 signing for the cigarettes is the purchaser.

9 (5) BEGINNING NOVEMBER 1, 2012, A RETAILER THAT IS LICENSED AS
10 AN UNCLASSIFIED ACQUIRER, RETAIL IMPORTER OF TOBACCO PRODUCTS OTHER
11 THAN CIGARETTES, SHALL POST A SIGN, VISIBLE TO THE PUBLIC INSIDE
12 THE RETAIL ESTABLISHMENT THAT INFORMS PURCHASERS OF CIGARS THROUGH
13 CATALOG SALES OR INTERNET SALES OF THEIR RESPONSIBILITY TO PAY ALL
14 APPLICABLE UNPAID STATE TAXES ON THOSE CIGARS.

15 (6) ~~(5)~~—As used in this section:

16 (a) "Computer" means any connected, directly interoperable or
17 interactive device, equipment, or facility that uses a computer
18 program or other instructions to perform specific operations,
19 including logical, arithmetic, or memory functions with or on
20 computer data or a computer program, and that can store, retrieve,
21 alter, or communicate the results of the operations to a person,
22 computer program, computer, computer system, or computer network.

23 (b) "Computer network" means the interconnection of hardwire
24 or wireless communication lines with a computer through remote
25 terminals or a complex consisting of 2 or more interconnected
26 computers.

27 (c) "Computer program" means a series of internal or external

1 instructions communicated in a form acceptable to a computer that
2 directs the functioning of a computer, computer system, or computer
3 network in a manner designed to provide or produce products or
4 results from the computer, computer system, or computer network.

5 (d) "Computer system" means related, connected or unconnected,
6 computer equipment, devices, software, or hardware.

7 (e) "Credit card" means a card or device issued by a person
8 licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the
9 consumer financial services act, 1988 PA 161, MCL 487.2051 to
10 487.2072, or issued by a depository financial institution as
11 defined in section 1a of the mortgage brokers, lenders, and
12 services licensing act, 1987 PA 173, MCL 445.1651a, under a credit
13 card arrangement.

14 (f) "Device" includes, but is not limited to, an electronic,
15 magnetic, electrochemical, biochemical, hydraulic, optical, or
16 organic object that performs input, output, or storage functions by
17 the manipulation of electronic, magnetic, or other impulses.

18 (g) "Internet" means the connection to the world wide web
19 through the use of a computer, a computer network, or a computer
20 system.

21 (h) "Sale conducted through the internet" means a sale of, a
22 solicitation to sell, a purchase of, or an offer to purchase
23 cigarettes conducted all or in part by accessing an internet
24 website.