

SENATE BILL No. 1004

March 6, 2012, Introduced by Senators MEEKHOF, RICHARDVILLE, BRANDENBURG, KOWALL and HANSEN and referred to the Committee on Finance.

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 2008 PA 458 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

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

3 (e) Beginning July 1, 2004, for cigarettes, in addition to the
4 tax levied in subdivisions (b), (c), and (d), an additional 37.5
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 **HOWEVER, BEGINNING OCTOBER 1, 2011, THE AMOUNT OF TAX LEVIED UNDER**
12 **THIS SUBDIVISION ON CIGARS SHALL NOT EXCEED 50 CENTS PER INDIVIDUAL**
13 **CIGAR.**

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

1 accurate inventories of cigarettes, both stamped and unstamped at
2 the end of the preceding calendar month. Wholesalers and
3 unclassified acquirers shall also report accurate inventories of
4 affixed and unaffixed stamps by denomination at the beginning and
5 end of each calendar month and all stamps acquired during the
6 preceding calendar month. The return shall be signed under penalty
7 of perjury. The return shall be on a form prescribed by the
8 department and shall contain or be accompanied by any further
9 information the department requires.

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

22 (4) Every licensee and retailer who, on August 1, 2002, has on
23 hand for sale any cigarettes upon which a tax has been paid
24 pursuant to subsection (1)(b) shall file a complete inventory of
25 those cigarettes before September 1, 2002 and shall pay to the
26 department at the time of filing this inventory a tax equal to the
27 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)(f) and the tax that has been paid under subsection (1)(a).

(5) Every licensee and retailer who, on July 1, 2004, has on hand for sale any cigarettes upon which a tax has been paid pursuant to subsection (1)(b), (c), and (d) shall file a complete inventory of those cigarettes before August 1, 2004 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), (d), and (e) and the tax that has been paid under subsection (1)(b), (c), and (d). Every licensee and retailer who, on July 1, 2004, has on hand for sale any cigars, noncigarette smoking tobacco, or smokeless tobacco upon which a tax has been paid pursuant to subsection (1)(f) shall file a complete inventory of those cigars, noncigarette smoking tobacco, and smokeless tobacco before August 1, 2004 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)(g) and the tax that has been paid under subsection (1)(f). The proceeds derived under this subsection shall be credited to the **MICHIGAN** medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA

1 489, MCL 12.255.

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

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

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

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

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

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

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

21 (12) Each wholesaler or unclassified acquirer shall submit to
22 the department an unstamped cigarette sales report on or before the
23 twentieth day of each month covering the sale, delivery, or
24 distribution of unstamped cigarettes during the preceding calendar
25 month to points outside of Michigan. A separate schedule shall be
26 filed for each state, country, or province into which shipments are
27 made. For purposes of the report described in this subsection,

1 "unstamped cigarettes" means individual packages of cigarettes that
2 do not bear a Michigan stamp. The department may provide the
3 information contained in this report to a proper officer of another
4 state, country, or province reciprocating in this privilege.

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

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

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

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

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

1 THESE CIGARETTES."

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

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

10 (5) BEGINNING OCTOBER 1, 2011, A RETAILER THAT IS LICENSED AS
11 AN UNCLASSIFIED ACQUIRER, RETAIL IMPORTER OF TOBACCO PRODUCTS OTHER
12 THAN CIGARETTES, SHALL POST A SIGN, VISIBLE TO THE PUBLIC INSIDE
13 THE RETAIL ESTABLISHMENT THAT INFORMS PURCHASERS OF CIGARS THROUGH
14 CATALOG SALES OR INTERNET SALES OF THEIR RESPONSIBILITY TO PAY ALL
15 APPLICABLE UNPAID STATE TAXES ON THOSE CIGARS.

16 (6) ~~(5)~~As used in this section:

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

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

1 (c) "Computer program" means a series of internal or external
2 instructions communicated in a form acceptable to a computer that
3 directs the functioning of a computer, computer system, or computer
4 network in a manner designed to provide or produce products or
5 results from the computer, computer system, or computer network.

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

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

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

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

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