

Act No. 325
Public Acts of 2012
Approved by the Governor
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Meekhof, Richardville, Brandenburg, Kowall and Hansen

ENROLLED SENATE BILL No. 1004

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 levy an assessment; to provide for the administration, collection, defense, and disposition of the assessment; 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; to make and supplement appropriations; and to repeal acts and parts of acts," 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:

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 July 1, 2004, for cigarettes, in addition to the tax levied in subdivisions (b), (c), and (d), an additional 37.5 mills per cigarette.
- (f) Beginning August 1, 2002 and through June 30, 2004, for cigars, noncigarette smoking tobacco, and smokeless tobacco, 20% of the wholesale price.

(g) Beginning July 1, 2004, for cigars, noncigarette smoking tobacco, and smokeless tobacco, 32% of the wholesale price. However, beginning November 1, 2012 and through October 31, 2016, the amount of tax levied under this subdivision on cigars shall not exceed 50 cents per individual cigar.

(2) On or before the twentieth day of each calendar month, every licensee under section 3 other than a retailer, 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. The department may also require licensees to report cigarette acquisition, purchase, and sales information in other formats and frequency.

(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 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 and, beginning on June 20, 2012, for sales of untaxed cigarettes to Indian tribes in this state, an amount equal to 1.5% of the total amount of the tax due on those cigarettes sold as if those cigarette sales were taxable sales under this act.

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

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

(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)(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 489, MCL 12.255.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) As used in subsection (3):

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

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

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

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

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

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

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

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

(2) All sales conducted through the internet, by telephone, or in a mail-order transaction shall not be completed unless, before each delivery of cigarettes is made, whether through the mail, through a transportation company, or

through any other delivery system, the seller has obtained from the purchaser an affirmation that includes a copy of a valid government-issued document that confirms the purchaser's name, address, and date of birth showing that the purchaser is at least the legal minimum age to purchase cigarettes; that the cigarettes purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase cigarettes; and a written statement signed by the purchaser that affirms the purchaser's address and that the purchaser is at least the minimum legal age to purchase cigarettes. The statement shall also confirm that the purchaser understands that signing another person's name to the affirmation is illegal; that the sale of cigarettes to individuals under the legal minimum purchase age is illegal; and that the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the state of Michigan. The seller shall verify the information contained in the affirmation provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy, fax copy, or other image of the valid, government-issued identification stating the date of birth or age of the purchaser.

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

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

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

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

(5) Beginning November 1, 2012, a retailer that is licensed as an unclassified acquirer, retail importer of tobacco products other than cigarettes, shall post a sign, visible to the public inside the retail establishment that informs purchasers of cigars through catalog sales or internet sales of their responsibility to pay all applicable unpaid state taxes on those cigars.

(6) As used in this section:

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

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

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

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

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

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

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

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved

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Governor