

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 476

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 2014 PA 298 and section 11 as amended by 2012 PA 325.

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.

1 (d) Beginning August 1, 2002, for cigarettes, in addition to
2 the tax levied in subdivisions (b) and (c), an additional 10 mills
3 per cigarette.

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

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

10 (g) Beginning July 1, 2004, for cigars, noncigarette smoking
11 tobacco, and smokeless tobacco, 32% of the wholesale price.
12 However, beginning November 1, 2012 and through October 31, ~~2016,~~
13 **2021**, the amount of tax levied under this subdivision on cigars
14 shall not exceed 50 cents per individual cigar.

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

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

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

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

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

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

1 (d) Beginning on the first calendar month following the
2 implementation of the use of digital stamps as provided in section
3 5a(2), for licensees who are stamping agents, 0.5% of the total
4 amount of the tax due on cigarettes sold and, for sales of untaxed
5 cigarettes to Indian tribes in this state, 0.5% of the total amount
6 of the tax due on those cigarettes sold as if those cigarette sales
7 were taxable sales under this act, until the stamping agent is
8 compensated in an amount equal to the direct cost actually incurred
9 by the stamping agent for the purchase of upgrades to technology
10 and equipment, excluding the equipment reimbursed under subdivision
11 (e), that are necessary to affix the digital stamp as determined by
12 the department. Compensation under this subdivision may also be
13 claimed by a stamping agent for the direct costs actually incurred
14 by the stamping agent, as determined by the department and
15 reflected in the net purchase price, for the initial and 1-time
16 purchase of case packers or similar machines or conveyors as
17 follows:

18 (i) Case packers or similar machines to be used exclusively to
19 repack cigarette cartons into case boxes after digital stamps have
20 been applied by eligible equipment to the individual packages of
21 cigarettes contained within those cigarette cartons. Compensation
22 under this subparagraph may only be claimed by a stamping agent if
23 the case packers or similar machines are in addition to, and not a
24 replacement for, 1 or more case packers or similar machines used in
25 connection with cigarette stamping machines which do not use the
26 digital stamp authorized under this act.

27 (ii) Conveyors to be used exclusively for that portion of a

1 cigarette stamping line that is necessary for and dedicated to
2 cigarette stamping operations using eligible equipment to affix
3 digital stamps to individual packages of cigarettes to be sold in
4 this state. Compensation under this subparagraph may only be
5 claimed by a stamping agent if the cigarette stamping line served
6 by the conveyors is in addition to 1 or more distinct and existing
7 cigarette stamping lines using stamping machines which do not use
8 the digital stamp authorized under this act and that compensation
9 shall not exceed a total of 50% of the amount reimbursed under
10 subdivision (e) for any particular stamping agent.

11 (iii) Compensation under subparagraphs (i) and (ii) shall also
12 include any applicable sales or use taxes paid, and shipping and
13 crating charges actually incurred, by the stamping agent in
14 connection with the purchase, but shall exclude any other costs
15 incurred by the stamping agent not otherwise expressly provided for
16 in this subdivision, including, but not limited to, charges for
17 installation and ongoing maintenance.

18 (e) Beginning in the first calendar month following the
19 implementation of the use of digital stamps as provided in section
20 5a(2) and continuing for the immediately succeeding 17 months, for
21 licensees who are stamping agents, reimbursement of direct costs
22 actually incurred by the stamping agent, as determined by the
23 department, for the initial purchase of eligible equipment in an
24 amount equal to 5.55% of the total net purchase price of the
25 eligible equipment necessary to affix the digital stamp. The
26 reimbursement provided under this subdivision shall also include
27 reimbursement for any applicable sales or use taxes paid and

1 shipping and crating charges actually incurred by the stamping
2 agent for the initial purchase of eligible equipment, but shall
3 exclude reimbursement for any other costs incurred by the stamping
4 agent not otherwise expressly provided for in this subdivision,
5 including, but not limited to, charges for installation and ongoing
6 maintenance related to eligible equipment. A stamping agent may
7 only receive reimbursement under this subdivision to the extent
8 that the eligible equipment purchased by the stamping agent does
9 not exceed the total number of the stamping agent's existing
10 equipment as certified by the stamping agent on a form prescribed
11 by the department.

12 (f) Beginning in the first calendar month following the
13 implementation of the use of digital stamps as provided in section
14 5a(2), for licensees who are stamping agents, reimbursement of
15 qualified equipment costs actually incurred by the stamping agent,
16 not otherwise compensated or reimbursed under subdivision (d) or
17 (e), as determined by the department. The reimbursement provided
18 under this subdivision shall not exceed \$60,000.00 for all stamping
19 agents combined.

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

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

27 (6) The department may require the payment of the tax imposed

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

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

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

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

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

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

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

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

1 information contained in this report to a proper officer of another
2 state, country, or province reciprocating in this privilege.

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

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

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

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

11 (iii) Was purchased to be used for the primary purpose of
12 permitting the stamping agent to affix digital stamps to individual
13 packages of cigarettes to be sold in this state following the
14 implementation of the use of digital stamps as provided in section
15 5a(2).

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

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

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

23 (c) "Qualified equipment" means equipment that was placed in
24 service by a stamping agent that included conveyors and additional
25 associated electrical line and compressed air line before August
26 15, 2014 in connection with the implementation of a digital
27 stamping line under a pilot program with the department as

1 determined by the department. Qualified equipment does not include
2 the cost of installation of a conveyor.

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

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

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

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

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

27 If an order is made as a result of advertisement over the

1 ~~internet~~, **INTERNET**, the tobacco retailer shall request the
2 electronic mail address of the purchaser and shall receive payment
3 by credit card or check before shipping. This subsection and
4 subsection (2) do not apply to sales by wholesalers and
5 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 **NOT**
10 licensed as an unclassified acquirer, retail importer of tobacco
11 products other than cigarettes, shall post a sign, visible to the
12 public inside the retail establishment that informs purchasers of
13 cigars through catalog sales or ~~internet~~ **INTERNET** sales of their
14 responsibility to pay all applicable unpaid state taxes on those
15 cigars.

16 (6) 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 **WORLD WIDE WEB** through the use of a computer, a computer network,
21 or a computer system.

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