

SENATE BILL No. 476

September 10, 2015, Introduced by Senators SCHMIDT, ANANICH, STAMAS, HANSEN, PROOS, BRANDENBURG, KOWALL, HORN and KNEZEK and referred to the Committee on Commerce.

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.

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

26 (d) Beginning on the first calendar month following the
27 implementation of the use of digital stamps as provided in section

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

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

25 (ii) Conveyors to be used exclusively for that portion of a
26 cigarette stamping line that is necessary for and dedicated to
27 cigarette stamping operations using eligible equipment to affix

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (c) "Qualified equipment" means equipment that was placed in
22 service by a stamping agent that included conveyors and additional
23 associated electrical line and compressed air line before August
24 15, 2014 in connection with the implementation of a digital
25 stamping line under a pilot program with the department as
26 determined by the department. Qualified equipment does not include
27 the cost of installation of a conveyor.

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

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

1 verify the information contained in the affirmation provided by the
2 purchaser against a commercially available database of governmental
3 records, or obtain a photocopy, fax copy, or other image of the
4 valid, government-issued identification stating the date of birth
5 or age of the purchaser.

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

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

25 If an order is made as a result of advertisement over the
26 ~~internet~~, **INTERNET**, the tobacco retailer shall request the
27 electronic mail address of the purchaser and shall receive payment

1 by credit card or check before shipping. This subsection and
2 subsection (2) do not apply to sales by wholesalers and
3 unclassified acquirers.

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

7 (5) Beginning November 1, 2012, a retailer that is **NOT**
8 licensed as an unclassified acquirer, retail importer of tobacco
9 products other than cigarettes, shall post a sign, visible to the
10 public inside the retail establishment that informs purchasers of
11 cigars through catalog sales or ~~internet~~**INTERNET** sales of their
12 responsibility to pay all applicable unpaid state taxes on those
13 cigars.

14 (6) As used in this section:

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

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

26 (c) "Computer program" means a series of internal or external
27 instructions communicated in a form acceptable to a computer that

1 directs the functioning of a computer, computer system, or computer
2 network in a manner designed to provide or produce products or
3 results from the computer, computer system, or computer network.

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

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

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

17 (g) "Internet" means the connection to the ~~world-wide-web~~
18 **WORLD WIDE WEB** through the use of a computer, a computer network,
19 or a computer system.

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