

STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Senator Hune

ENROLLED SENATE BILL No. 304

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 section 7 (MCL 205.427), as amended by 2016 PA 86.

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, 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 the purchase of 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. Compensation under this subdivision may also be claimed by a stamping agent for the direct costs actually incurred by the stamping agent, as determined by the department and reflected in the net purchase price, for the initial and 1-time purchase of case packers or similar machines or conveyors as follows:

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

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

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

(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 also include reimbursement for any applicable sales or use taxes paid and shipping and crating charges actually incurred by the stamping agent for the initial purchase of eligible equipment, but shall exclude reimbursement for any other costs incurred by the stamping agent not otherwise expressly provided for in this subdivision, including, but not limited to, charges for installation and 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.

(f) Beginning in 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, reimbursement of qualified equipment costs actually incurred by the stamping agent, not otherwise compensated or reimbursed under subdivision (d) or (e), as determined by the department. The reimbursement provided under this subdivision shall not exceed \$60,000.00 for all stamping agents combined.

(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 this state. 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.

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

This act is ordered to take immediate effect.

Secretary of the Senate

Clerk of the House of Representatives

Approved

Governor