

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

205.427 Levy of tax on sale of tobacco products and modified risk tobacco products; federal order; notification of rescission, withdrawal, or expiration of federal order; filing return; payment of tax; importation or acquisition of tobacco product; tax abatement or refund; reimbursement by adding to price of tobacco product; sale or transfer of unaffixed stamps by wholesaler or unclassified acquirer; prohibition; exchange of unaffixed stamps; inspection; reports; definitions.

Sec. 7. (1) Subject to subsection (2), a tax is levied on the sale of tobacco products sold in this state or sold for consumption in this state, which consumption is presumed when sold to a retailer or consumer in this state, as follows:

(a) For cigarettes, 100 mills per cigarette.

(b) For cigars, noncigarette smoking tobacco, smokeless tobacco, and any tobacco product other than cigarettes, 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) Notwithstanding any other provision of law and beginning 180 days after the effective date of the amendatory act that added this subsection, if the Secretary of the United States Department of Health and Human Services has issued an order for a product under 21 USC 387k(g) and the manufacturer has notified the department of that order on a form and in a manner prescribed by the department, subject to subsections (3), (4), and (5), the tax imposed on the sale of that product under this section is as follows:

(a) If the order is a modified risk tobacco product order issued under 21 USC 387k(g)(1), reduced by 50% of the otherwise applicable rate under subsection (1).

(b) If the order is issued under 21 USC 387k(g)(2), reduced by 25% of the otherwise applicable rate under subsection (1).

(3) A rate under subsection (2) shall not take effect unless the department has received notice of the modified risk tobacco order by the manufacturer of the tobacco product, in the form and manner prescribed by the department, and the department has published notice of the rate for the tobacco product. The department shall publish notice of the rate not later than 10 days after receipt of the notice from the manufacturer. The effective date of a rate under subsection (2) for a tobacco product shall be the first day of the month following the month in which the department publishes notice of the rate as provided in this subsection.

(4) If a modified risk tobacco product order described in subsection (2) is renewed by the United States Food and Drug Administration, the manufacturer of the tobacco product subject to that order must provide notice of the renewal to the department not later than 10 days after issuance of the order or determination of renewal by the United States Food and Drug Administration, for the rate provided under subsection (2) to remain in effect for that tobacco product. If a modified risk tobacco product order described in subsection (2) is rescinded or withdrawn by the United States Food and Drug Administration or otherwise expires, the manufacturer of the tobacco product subject to that order shall notify the department of the rescission, withdrawal, or expiration of the order not later than 10 days after the issuance of the rescission or withdrawal order or determination by the United States Food and Drug Administration or the date of expiration, as applicable. The department shall publish notice of the rescission, withdrawal, or expiration of the modified risk tobacco product order not later than 10 days after receipt of the notice from the manufacturer or, if the manufacturer fails to provide the notice as required under this subsection, 10 days after the department becomes aware of the rescission, withdrawal, or expiration of the order. Except as otherwise provided in subsection (5), beginning on the first day of the month following the month in which the department publishes a notice of rescission, withdrawal, or expiration of a modified risk tobacco product order for a tobacco product, the rate under subsection (2) shall no longer apply to that tobacco product. Notices required to be made by a manufacturer to the department under this subsection shall be made in the form and manner prescribed by the department.

(5) Except as otherwise provided in this subsection, a tobacco product subject to the rate provided under subsection (2) that was purchased or otherwise acquired before the date a rescission, withdrawal, or expiration of a modified risk tobacco product order for that tobacco product becomes effective remains eligible for the rate provided under subsection (2). The tax rate provided in subsection (2) does not apply, and the otherwise applicable tax rate applies, to any of the following:

(a) A tobacco product purchased or otherwise acquired before the effective date of the rate provided under subsection (2) for that tobacco product.

(b) A tobacco product that is seized and forfeited as contraband as provided under this act.

(c) A person described in section 8(1) for purposes of determining the amount of tax and penalty under section 8(1).

(6) On or before the twentieth day of each calendar month, every licensee under section 3 other than 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 must also include the number and denomination of unaffixed stamps in the possession of the licensee at the end of the preceding calendar month and any other reasonable information the department requires to ensure compliance with this act. 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 must be signed under penalty of perjury. The return must be on a form, and filed in the manner, prescribed by the department and must contain or be accompanied by any further information the department requires. The department may also require licensees to report tobacco product acquisition, purchase, and sales information in other formats and frequency.

(7) 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 this section for tobacco products sold during the calendar month covered by the return, less compensation equal to the following:

(a) 1% of the total amount of the tax due on tobacco products sold other than cigarettes.

(b) 1.5% of the total amount of the tax due on cigarettes sold and, 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.

(c) 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 (d), 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 that 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 that 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 (d) 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.

(d) 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.

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

(8) The department may require the payment of the tax imposed by this act upon the importation or acquisition of a tobacco product in or into this state. 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.

(9) 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.

(10) 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.

(11) 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 when its license is revoked or expires, or when 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.

(12) 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 must be filed on a form and in the manner 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.

(13) 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 must be in the form and manner specified by the department.

(14) 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 must 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.

(15) As used in subsection (7):

(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) and (3).

(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.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Eff. Apr. 15, 1998;—Am. 2002, Act 503, Imd. Eff. July 18, 2002;—Am. 2004, Act 164, Imd. Eff. June 24, 2004;—Am. 2008, Act 458, Imd. Eff. Jan. 9, 2009;—Am. 2012, Act 188, Imd. Eff. June 20, 2012;—Am. 2012, Act 325, Imd. Eff. Oct. 9, 2012;—Am. 2014, Act 298, Imd. Eff. Sept. 30, 2014;—Am. 2016, Act 86, Imd. Eff. Apr. 19, 2016;—Am. 2021, Act 102, Imd. Eff. Nov. 4, 2021;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.