



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB2706

Introduced 02/22/05, by Rep. Gary Hannig

SYNOPSIS AS INTRODUCED:

35 ILCS 130/21	from Ch. 120, par. 453.21
35 ILCS 135/26	from Ch. 120, par. 453.56
35 ILCS 135/27	from Ch. 120, par. 453.57
35 ILCS 143/10-58	

Amends the Cigarette Tax Act, the Cigarette Use Tax Act, and the Tobacco Products Tax Act of 1995. Provides that the Department of Revenue may destroy, maintain and use in an undercover capacity, or sell any forfeited original packages of cigarettes or any forfeited cigarette vending devices (now, the Department must sell the property). Effective immediately.

LRB094 03732 BDD 33741 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Cigarette Tax Act is amended by changing
5 Section 21 as follows:

6 (35 ILCS 130/21) (from Ch. 120, par. 453.21)

7 Sec. 21. (a) When any original packages of cigarettes or
8 any cigarette vending device shall have been declared forfeited
9 to the State by the Department, as provided in Section 18a of
10 this Act, and when all proceedings for the judicial review of
11 the Department's decision have terminated, the Department
12 shall, to the extent that its decision is sustained on review,
13 destroy, maintain and use in an undercover capacity, or sell
14 such property for the best price obtainable and shall forthwith
15 pay over the proceeds of such sale to the State Treasurer. If
16 the value of such property to be sold at any one time is \$500 or
17 more, however, such property shall be sold only to the highest
18 and best bidder on such terms and conditions and on open
19 competitive bidding after public advertisement, in such manner
20 and for such terms as the Department, by rule, may prescribe.

21 (b) If no complaint for review, as provided in Section 8 of
22 this Act, has been filed within the time required by the
23 Administrative Review Law, and if no stay order has been
24 entered thereunder, the Department shall proceed to sell the
25 property for the best price obtainable and shall forthwith pay
26 over the proceeds of such sale to the State Treasurer. If the
27 value of such property to be sold at any one time is \$500 or
28 more, however, such property shall be sold only to the highest
29 and best bidder on such terms and conditions and on open
30 competitive bidding after public advertisement, in such manner
31 and for such terms as the Department, by rule, may prescribe.

32 (c) Upon making a sale of unstamped original packages of

1 cigarettes as provided in this Section, the Department shall
2 affix a distinctive stamp to each of the original packages so
3 sold indicating that the same are sold under this Section.

4 (d) Notwithstanding the foregoing, any cigarettes seized
5 under this Act or under the Cigarette Use Tax Act may, at the
6 discretion of the Director of Revenue, be distributed to any
7 eleemosynary institution within the State of Illinois.

8 (Source: P.A. 82-783.)

9 Section 10. The Cigarette Use Tax Act is amended by
10 changing Sections 26 and 27 as follows:

11 (35 ILCS 135/26) (from Ch. 120, par. 453.56)

12 Sec. 26. Whenever any peace officer of the State or any
13 duly authorized officer or employee of the Department shall
14 have reason to believe that any violation of this Act has
15 occurred and that the person so violating the Act has in his,
16 her or its possession any original package of cigarettes, not
17 tax stamped or tax imprinted underneath the sealed transparent
18 wrapper of such original packages, as required by this Act, or
19 any vending device containing such original packages to which
20 stamps have not been affixed, or on which an authorized
21 substitute for stamps has not been imprinted underneath the
22 sealed transparent wrapper of such original packages, as
23 required by this Act, he may file or cause to be filed his
24 complaint in writing, verified by affidavit, with any circuit
25 court within whose jurisdiction the premises to be searched are
26 situated, stating the facts upon which such belief is founded,
27 the premises to be searched, and the property to be seized, and
28 procure a search warrant and execute the same. Upon the
29 execution of such search warrant, the peace officer, or officer
30 or employee of the Department, executing such search warrant
31 shall make due return thereof to the court issuing the same,
32 together with an inventory of the property taken thereunder.
33 The court shall thereupon issue process against the owner of
34 such property if he is known; otherwise, such process shall be

1 issued against the person in whose possession the property so
2 taken is found, if such person is known. In case of inability
3 to serve such process upon the owner or the person in
4 possession of the property at the time of its seizure, as
5 hereinbefore provided, notice of the proceedings before the
6 court shall be given as required by the statutes of the State
7 governing cases of Attachment. Upon the return of the process
8 duly served or upon the posting or publishing of notice made,
9 as hereinabove provided, the court or jury, if a jury shall be
10 demanded, shall proceed to determine whether or not such
11 property so seized was held or possessed in violation of this
12 Act, or whether, if a vending device has been so seized, it
13 contained at the time of its seizure original packages not tax
14 stamped or tax imprinted underneath the sealed transparent
15 wrapper of such original packages as required by this Act. In
16 case of a finding that the original packages seized were not
17 tax stamped or tax imprinted underneath the sealed transparent
18 wrapper of such original packages in accordance with the
19 provisions of this Act, or that any vending device so seized
20 contained at the time of its seizure original packages not tax
21 stamped or tax imprinted underneath the sealed transparent
22 wrapper of such original packages in accordance with the
23 provisions of this Act, judgment shall be entered confiscating
24 and forfeiting the property to the State and ordering its
25 delivery to the Department, and in addition thereto, the court
26 shall have power to tax and assess the costs of the
27 proceedings.

28 When any original packages or any cigarette vending device
29 shall have been declared forfeited to the State by any court,
30 as hereinbefore provided, and when such confiscated and
31 forfeited property shall have been delivered to the Department,
32 as provided in this Act, the said Department shall destroy,
33 maintain and use in an undercover capacity, or sell such
34 property for the best price obtainable and shall forthwith pay
35 over the proceeds of such sale to the State Treasurer;
36 provided, however, that if the value of such property to be

1 sold at any one time shall be \$500 or more, such property shall
2 be sold only to the highest and best bidder on such terms and
3 conditions and on open competitive bidding after public
4 advertisement, in such manner and for such terms as the
5 Department, by rule, may prescribe.

6 Upon making such a sale of original packages of cigarettes
7 which were not tax stamped or tax imprinted underneath the
8 sealed transparent wrapper of such original packages as
9 required by this Act, the Department shall affix a distinctive
10 stamp to each of the original packages so sold indicating that
11 the same are sold pursuant to the provisions of this Section.

12 (Source: Laws 1965, p. 3710.)

13 (35 ILCS 135/27) (from Ch. 120, par. 453.57)

14 Sec. 27. When any original packages of cigarettes or any
15 cigarette vending device shall have been declared forfeited to
16 the State by the Department, as provided in Section 25 of this
17 Act, and when all proceedings for the judicial review of the
18 Department's decision have terminated, the Department shall,
19 to the extent that its decision is sustained on review,
20 destroy, maintain and use in an undercover capacity, or sell
21 such property for the best price obtainable and shall forthwith
22 pay over the proceeds of such sale to the State Treasurer;
23 provided, however, that if the value of such property to be
24 sold at any one time shall be Five Hundred Dollars (\$500) or
25 more, such property shall be sold only to the highest and best
26 bidder on such terms and conditions and on open competitive
27 bidding after public advertisement, in such manner and for such
28 terms as the Department, by rule, may prescribe.

29 If no complaint for review, as provided in Section 21 of
30 this Act, has been filed within the time required by the
31 "Administrative Review Law," and if no stay order has been
32 entered thereunder, the Department shall proceed to sell said
33 property for the best price obtainable and shall forthwith pay
34 over the proceeds of such sale to the State Treasurer;
35 provided, however, that if the value of such property to be

1 sold at any one time shall be \$500 or more, such property shall
2 be sold only to the highest and best bidder on such terms and
3 conditions and on open competitive bidding after public
4 advertisement, in such manner and for such terms as the
5 Department, by rule, may prescribe.

6 Upon making a sale of unstamped original packages of
7 cigarettes as provided in this Section, the Department shall
8 affix a distinctive stamp to each of the original packages so
9 sold indicating that the same are sold pursuant to the
10 provisions of this Section.

11 (Source: P.A. 83-1539.)

12 Section 15. The Tobacco Products Tax Act of 1995 is amended
13 by changing Section 10-58 as follows:

14 (35 ILCS 143/10-58)

15 Sec. 10-58. Sale of forfeited tobacco products or vending
16 devices.

17 (a) When any tobacco products or any vending devices are
18 declared forfeited to the State by the Department, as provided
19 in Section 10-55, and when all proceedings for the judicial
20 review of the Department's decision have terminated, the
21 Department shall, to the extent that its decision is sustained
22 on review, sell the property for the best price obtainable and
23 shall forthwith pay over the proceeds of the sale to the State
24 Treasurer. If the value of the property to be sold at any one
25 time is \$500 or more, however, the property shall be sold only
26 to the highest and best bidder on terms and conditions, and on
27 open competitive bidding after public advertisement, in a
28 manner and for terms as the Department, by rule, may prescribe.

29 (b) If no complaint for review, as provided in Section 12
30 of the Retailers' Occupation Tax Act, has been filed within the
31 time required by the Administrative Review Law, and if no stay
32 order has been entered under that Law, the Department shall
33 proceed to destroy, maintain and use in an undercover capacity,
34 or sell the property for the best price obtainable and shall

1 forthwith pay over the proceeds of the sale to the State
2 Treasurer. If the value of the property to be sold at any one
3 time is \$500 or more, however, the property shall be sold only
4 to the highest and best bidder on terms and conditions, and on
5 open competitive bidding after public advertisement, in a
6 manner and for terms as the Department, by rule, may prescribe.

7 (c) Upon making a sale of tobacco products as provided in
8 this Section, the Department shall affix a distinctive stamp to
9 each of the tobacco products so sold indicating that they are
10 sold under this Section.

11 (d) Notwithstanding the foregoing, any tobacco products
12 seized under this Act may, at the discretion of the Director of
13 Revenue, be distributed to any eleemosynary institution within
14 the State of Illinois.

15 (Source: P.A. 92-743, eff. 7-25-02.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.