



Rep. Frank J. Mautino

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1 AMENDMENT TO SENATE BILL 109

2 AMENDMENT NO. _____. Amend Senate Bill 109 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Cigarette Tax Act is amended by changing
5 Sections 1, 2, 4d, 7, 8, 9, 10, and 23 and by adding Sections
6 4f, 9f, and 11b as follows:

7 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

8 Sec. 1. For the purposes of this Act:

9 "Brand Style" means a variety of cigarettes distinguished
10 by the tobacco used, tar and nicotine content, flavoring used,
11 size of the cigarette, filtration on the cigarette or
12 packaging.

13 "Cigarette", means any roll for smoking made wholly or in
14 part of tobacco irrespective of size or shape and whether or
15 not such tobacco is flavored, adulterated or mixed with any
16 other ingredient, and the wrapper or cover of which is made of

1 paper or any other substance or material except tobacco.

2 "Contraband cigarettes" means:

3 (a) cigarettes that do not bear a required tax stamp
4 under this Act;

5 (b) cigarettes for which any required federal taxes
6 have not been paid;

7 (c) cigarettes that bear a counterfeit tax stamp;

8 (d) cigarettes that are manufactured, fabricated,
9 assembled, processed, packaged, or labeled by any person
10 other than (i) the owner of the trademark rights in the
11 cigarette brand or (ii) a person that is directly or
12 indirectly authorized by such owner;

13 (e) cigarettes imported into the United States, or
14 otherwise distributed, in violation of the federal
15 Imported Cigarette Compliance Act of 2000 (Title IV of
16 Public Law 106-476);

17 (f) cigarettes that have false manufacturing labels;

18 (g) cigarettes identified in Section 3-10(a)(1) of
19 this Act; or

20 (h) cigarettes that are improperly tax stamped,
21 including cigarettes that bear a tax stamp of another state
22 or taxing jurisdiction.

23 "Person" means any natural individual, firm, partnership,
24 association, joint stock company, joint adventure, public or
25 private corporation, however formed, limited liability
26 company, or a receiver, executor, administrator, trustee,

1 guardian or other representative appointed by order of any
2 court.

3 "Prior Continuous Compliance Taxpayer" means any person
4 who is licensed under this Act and who, having been a licensee
5 for a continuous period of 5 years, is determined by the
6 Department not to have been either delinquent or deficient in
7 the payment of tax liability during that period or otherwise in
8 violation of this Act. Also, any taxpayer who has, as verified
9 by the Department, continuously complied with the condition of
10 his bond or other security under provisions of this Act for a
11 period of 5 consecutive years shall be considered to be a
12 "Prior continuous compliance taxpayer". In calculating the
13 consecutive period of time described herein for qualification
14 as a "prior continuous compliance taxpayer", a consecutive
15 period of time of qualifying compliance immediately prior to
16 the effective date of this amendatory Act of 1987 shall be
17 credited to any licensee who became licensed on or before the
18 effective date of this amendatory Act of 1987.

19 "Department" means the Department of Revenue.

20 "Sale" means any transfer, exchange or barter in any manner
21 or by any means whatsoever for a consideration, and includes
22 and means all sales made by any person.

23 "Original Package" means the individual packet, box or
24 other container whatsoever used to contain and to convey
25 cigarettes to the consumer.

26 "Distributor" means any and each of the following:

1 (1) Any person engaged in the business of selling
2 cigarettes in this State who brings or causes to be brought
3 into this State from without this State any original packages
4 of cigarettes, on which original packages there is no
5 authorized evidence underneath a sealed transparent wrapper
6 showing that the tax liability imposed by this Act has been
7 paid or assumed by the out-of-State seller of such cigarettes,
8 for sale or other disposition in the course of such business.

9 (2) Any person who makes, manufactures or fabricates
10 cigarettes in this State for sale in this State, except a
11 person who makes, manufactures or fabricates cigarettes as a
12 part of a correctional industries program for sale to residents
13 incarcerated in penal institutions or resident patients of a
14 State-operated mental health facility.

15 (3) Any person who makes, manufactures or fabricates
16 cigarettes outside this State, which cigarettes are placed in
17 original packages contained in sealed transparent wrappers,
18 for delivery or shipment into this State, and who elects to
19 qualify and is accepted by the Department as a distributor
20 under Section 4b of this Act.

21 "Place of business" shall mean and include any place where
22 cigarettes are sold or where cigarettes are manufactured,
23 stored or kept for the purpose of sale or consumption,
24 including any vessel, vehicle, airplane, train or vending
25 machine.

26 "Manufacturer representative" means a director, officer,

1 or employee of a manufacturer who has obtained authority from
2 the Department under Section 4f to maintain representatives in
3 Illinois that provide or sell original packages of cigarettes
4 made, manufactured, or fabricated by the manufacturer to
5 retailers in compliance with Section 4f of this Act to promote
6 cigarettes made, manufactured, or fabricated by the
7 manufacturer.

8 "Business" means any trade, occupation, activity or
9 enterprise engaged in for the purpose of selling cigarettes in
10 this State.

11 "Retailer" means any person who engages in the making of
12 transfers of the ownership of, or title to, cigarettes to a
13 purchaser for use or consumption and not for resale in any
14 form, for a valuable consideration. "Retailer" does not include
15 a person:

16 (1) who transfers to residents incarcerated in penal
17 institutions or resident patients of a State-operated
18 mental health facility ownership of cigarettes made,
19 manufactured, or fabricated as part of a correctional
20 industries program; or

21 (2) who transfers cigarettes to a not-for-profit
22 research institution that conducts tests concerning the
23 health effects of tobacco products and who does not offer
24 the cigarettes for resale.

25 "Retailer" shall be construed to include any person who
26 engages in the making of transfers of the ownership of, or

1 title to, cigarettes to a purchaser, for use or consumption by
2 any other person to whom such purchaser may transfer the
3 cigarettes without a valuable consideration, except a person
4 who transfers to residents incarcerated in penal institutions
5 or resident patients of a State-operated mental health facility
6 ownership of cigarettes made, manufactured or fabricated as
7 part of a correctional industries program.

8 "Secondary distributor" means any person engaged in the
9 business of selling cigarettes who purchases stamped original
10 packages of cigarettes from a licensed distributor under this
11 Act or the Cigarette Use Tax Act, sells 75% or more of those
12 cigarettes to retailers for resale, and maintains an
13 established business where a substantial stock of cigarettes is
14 available to retailers for resale.

15 "Stamp" or "stamps" mean the indicia required to be affixed
16 on a pack of cigarettes that evidence payment of the tax on
17 cigarettes under Section 2 of this Act.

18 "Related party" means any person that is associated with
19 any other person because he or she:

20 (a) is an officer or director of a business; or

21 (b) is legally recognized as a partner in business.

22 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;
23 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

24 (35 ILCS 130/2) (from Ch. 120, par. 453.2)

25 Sec. 2. Tax imposed; rate; collection, payment, and

1 distribution; discount.

2 (a) A tax is imposed upon any person engaged in business as
3 a retailer of cigarettes in this State at the rate of 5 1/2
4 mills per cigarette sold, or otherwise disposed of in the
5 course of such business in this State. In addition to any other
6 tax imposed by this Act, a tax is imposed upon any person
7 engaged in business as a retailer of cigarettes in this State
8 at a rate of 1/2 mill per cigarette sold or otherwise disposed
9 of in the course of such business in this State on and after
10 January 1, 1947, and shall be paid into the Metropolitan Fair
11 and Exposition Authority Reconstruction Fund or as otherwise
12 provided in Section 29. On and after December 1, 1985, in
13 addition to any other tax imposed by this Act, a tax is imposed
14 upon any person engaged in business as a retailer of cigarettes
15 in this State at a rate of 4 mills per cigarette sold or
16 otherwise disposed of in the course of such business in this
17 State. Of the additional tax imposed by this amendatory Act of
18 1985, \$9,000,000 of the moneys received by the Department of
19 Revenue pursuant to this Act shall be paid each month into the
20 Common School Fund. On and after the effective date of this
21 amendatory Act of 1989, in addition to any other tax imposed by
22 this Act, a tax is imposed upon any person engaged in business
23 as a retailer of cigarettes at the rate of 5 mills per
24 cigarette sold or otherwise disposed of in the course of such
25 business in this State. On and after the effective date of this
26 amendatory Act of 1993, in addition to any other tax imposed by

1 this Act, a tax is imposed upon any person engaged in business
2 as a retailer of cigarettes at the rate of 7 mills per
3 cigarette sold or otherwise disposed of in the course of such
4 business in this State. On and after December 15, 1997, in
5 addition to any other tax imposed by this Act, a tax is imposed
6 upon any person engaged in business as a retailer of cigarettes
7 at the rate of 7 mills per cigarette sold or otherwise disposed
8 of in the course of such business of this State. All of the
9 moneys received by the Department of Revenue pursuant to this
10 Act and the Cigarette Use Tax Act from the additional taxes
11 imposed by this amendatory Act of 1997, shall be paid each
12 month into the Common School Fund. On and after July 1, 2002,
13 in addition to any other tax imposed by this Act, a tax is
14 imposed upon any person engaged in business as a retailer of
15 cigarettes at the rate of 20.0 mills per cigarette sold or
16 otherwise disposed of in the course of such business in this
17 State. The payment of such taxes shall be evidenced by a stamp
18 affixed to each original package of cigarettes, or an
19 authorized substitute for such stamp imprinted on each original
20 package of such cigarettes underneath the sealed transparent
21 outside wrapper of such original package, as hereinafter
22 provided. However, such taxes are not imposed upon any activity
23 in such business in interstate commerce or otherwise, which
24 activity may not under the Constitution and statutes of the
25 United States be made the subject of taxation by this State.

26 Beginning on the effective date of this amendatory Act of

1 the 92nd General Assembly and through June 30, 2006, all of the
2 moneys received by the Department of Revenue pursuant to this
3 Act and the Cigarette Use Tax Act, other than the moneys that
4 are dedicated to the Common School Fund, shall be distributed
5 each month as follows: first, there shall be paid into the
6 General Revenue Fund an amount which, when added to the amount
7 paid into the Common School Fund for that month, equals
8 \$33,300,000, except that in the month of August of 2004, this
9 amount shall equal \$83,300,000; then, from the moneys
10 remaining, if any amounts required to be paid into the General
11 Revenue Fund in previous months remain unpaid, those amounts
12 shall be paid into the General Revenue Fund; then, beginning on
13 April 1, 2003, from the moneys remaining, \$5,000,000 per month
14 shall be paid into the School Infrastructure Fund; then, if any
15 amounts required to be paid into the School Infrastructure Fund
16 in previous months remain unpaid, those amounts shall be paid
17 into the School Infrastructure Fund; then the moneys remaining,
18 if any, shall be paid into the Long-Term Care Provider Fund. To
19 the extent that more than \$25,000,000 has been paid into the
20 General Revenue Fund and Common School Fund per month for the
21 period of July 1, 1993 through the effective date of this
22 amendatory Act of 1994 from combined receipts of the Cigarette
23 Tax Act and the Cigarette Use Tax Act, notwithstanding the
24 distribution provided in this Section, the Department of
25 Revenue is hereby directed to adjust the distribution provided
26 in this Section to increase the next monthly payments to the

1 Long Term Care Provider Fund by the amount paid to the General
2 Revenue Fund and Common School Fund in excess of \$25,000,000
3 per month and to decrease the next monthly payments to the
4 General Revenue Fund and Common School Fund by that same excess
5 amount.

6 Beginning on July 1, 2006, all of the moneys received by
7 the Department of Revenue pursuant to this Act and the
8 Cigarette Use Tax Act, other than the moneys that are dedicated
9 to the Common School Fund, shall be distributed each month as
10 follows: first, there shall be paid into the General Revenue
11 Fund an amount that, when added to the amount paid into the
12 Common School Fund for that month, equals \$29,200,000; then,
13 from the moneys remaining, if any amounts required to be paid
14 into the General Revenue Fund in previous months remain unpaid,
15 those amounts shall be paid into the General Revenue Fund; then
16 from the moneys remaining, \$5,000,000 per month shall be paid
17 into the School Infrastructure Fund; then, if any amounts
18 required to be paid into the School Infrastructure Fund in
19 previous months remain unpaid, those amounts shall be paid into
20 the School Infrastructure Fund; then the moneys remaining, if
21 any, shall be paid into the Long-Term Care Provider Fund.

22 When any tax imposed herein terminates or has terminated,
23 distributors who have bought stamps while such tax was in
24 effect and who therefore paid such tax, but who can show, to
25 the Department's satisfaction, that they sold the cigarettes to
26 which they affixed such stamps after such tax had terminated

1 and did not recover the tax or its equivalent from purchasers,
2 shall be allowed by the Department to take credit for such
3 absorbed tax against subsequent tax stamp purchases from the
4 Department by such distributor.

5 The impact of the tax levied by this Act is imposed upon
6 the retailer and shall be prepaid or pre-collected by the
7 distributor for the purpose of convenience and facility only,
8 and the amount of the tax shall be added to the price of the
9 cigarettes sold by such distributor. Collection of the tax
10 shall be evidenced by a stamp or stamps affixed to each
11 original package of cigarettes, as hereinafter provided.

12 Each distributor shall collect the tax from the retailer at
13 or before the time of the sale, shall affix the stamps as
14 hereinafter required, and shall remit the tax collected from
15 retailers to the Department, as hereinafter provided. Any
16 distributor who fails to properly collect and pay the tax
17 imposed by this Act shall be liable for the tax. Any
18 distributor having cigarettes to which stamps have been affixed
19 in his possession for sale on the effective date of this
20 amendatory Act of 1989 shall not be required to pay the
21 additional tax imposed by this amendatory Act of 1989 on such
22 stamped cigarettes. Any distributor having cigarettes to which
23 stamps have been affixed in his or her possession for sale at
24 12:01 a.m. on the effective date of this amendatory Act of
25 1993, is required to pay the additional tax imposed by this
26 amendatory Act of 1993 on such stamped cigarettes. This

1 payment, less the discount provided in subsection (b), shall be
2 due when the distributor first makes a purchase of cigarette
3 tax stamps after the effective date of this amendatory Act of
4 1993, or on the first due date of a return under this Act after
5 the effective date of this amendatory Act of 1993, whichever
6 occurs first. Any distributor having cigarettes to which stamps
7 have been affixed in his possession for sale on December 15,
8 1997 shall not be required to pay the additional tax imposed by
9 this amendatory Act of 1997 on such stamped cigarettes.

10 Any distributor having cigarettes to which stamps have been
11 affixed in his or her possession for sale on July 1, 2002 shall
12 not be required to pay the additional tax imposed by this
13 amendatory Act of the 92nd General Assembly on those stamped
14 cigarettes.

15 Distributors making sales of cigarettes to secondary
16 distributors shall add the amount of the tax to the price of
17 the cigarettes sold by the distributors. Secondary
18 distributors making sales of cigarettes to retailers shall
19 include the amount of the tax in the price of the cigarettes
20 sold to retailers. The amount of tax shall not be less than the
21 amount of taxes imposed by the State and all local
22 jurisdictions. The amount of local taxes shall be calculated
23 based on the location of the retailer's place of business shown
24 on the retailer's certificate of registration or
25 sub-registration issued to the retailer pursuant to Section 2a
26 of the Retailers' Occupation Tax Act. The original packages of

1 cigarettes sold to the retailer shall bear all the required
2 stamps, or other indicia, for the taxes included in the price
3 of cigarettes.

4 The amount of the Cigarette Tax imposed by this Act shall
5 be separately stated, apart from the price of the goods, by
6 distributors, manufacturer representatives, secondary
7 distributors, and retailers, in all bills and sales invoices.

8 (b) The distributor shall be required to collect the taxes
9 provided under paragraph (a) hereof, and, to cover the costs of
10 such collection, shall be allowed a discount during any year
11 commencing July 1st and ending the following June 30th in
12 accordance with the schedule set out hereinbelow, which
13 discount shall be allowed at the time of purchase of the stamps
14 when purchase is required by this Act, or at the time when the
15 tax is remitted to the Department without the purchase of
16 stamps from the Department when that method of paying the tax
17 is required or authorized by this Act. Prior to December 1,
18 1985, a discount equal to 1 2/3% of the amount of the tax up to
19 and including the first \$700,000 paid hereunder by such
20 distributor to the Department during any such year; 1 1/3% of
21 the next \$700,000 of tax or any part thereof, paid hereunder by
22 such distributor to the Department during any such year; 1% of
23 the next \$700,000 of tax, or any part thereof, paid hereunder
24 by such distributor to the Department during any such year, and
25 2/3 of 1% of the amount of any additional tax paid hereunder by
26 such distributor to the Department during any such year shall

1 apply. On and after December 1, 1985, a discount equal to 1.75%
2 of the amount of the tax payable under this Act up to and
3 including the first \$3,000,000 paid hereunder by such
4 distributor to the Department during any such year and 1.5% of
5 the amount of any additional tax paid hereunder by such
6 distributor to the Department during any such year shall apply.

7 Two or more distributors that use a common means of
8 affixing revenue tax stamps or that are owned or controlled by
9 the same interests shall be treated as a single distributor for
10 the purpose of computing the discount.

11 (c) The taxes herein imposed are in addition to all other
12 occupation or privilege taxes imposed by the State of Illinois,
13 or by any political subdivision thereof, or by any municipal
14 corporation.

15 (Source: P.A. 96-1027, eff. 7-12-10.)

16 (35 ILCS 130/4d)

17 Sec. 4d. Sales of cigarettes to and by retailers. In-state
18 makers, manufacturers, and fabricators licensed as
19 distributors under Section 4 of this Act and out-of-state
20 makers, manufacturers, and fabricators holding permits under
21 Section 4b of this Act may not sell original packages of
22 cigarettes to retailers. A retailer may sell only original
23 packages of cigarettes obtained from manufacturer
24 representatives, licensed secondary distributors, or licensed
25 distributors other than in-state makers, manufacturers, or

1 fabricators licensed as distributors under Section 4 of this
2 Act and out-of-state makers, manufacturers, or fabricators
3 holding permits under Section 4b of this Act.

4 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10;
5 96-1027, eff. 7-12-10.)

6 (35 ILCS 130/4f new)

7 Sec. 4f. Manufacturer representatives.

8 (a) No manufacturer may market cigarettes produced by the
9 manufacturer directly to retailers in this State without first
10 having obtained authorization from the Department. Application
11 for authority to maintain representatives in this State to
12 market in this State cigarettes produced by the manufacturer
13 shall be made to the Department on a form furnished and
14 prescribed by the Department. Each applicant under this Section
15 shall furnish the following information to the Department on a
16 form signed and verified by the applicant under penalty of
17 perjury:

18 (1) the name and address of the applicant;

19 (2) the address of every location from which the
20 applicant proposes to engage in business in this State;

21 (3) the number of manufacturer representatives the
22 applicant requests to maintain in this State; and

23 (4) any other additional information as the Department
24 may reasonably require.

25 The following manufacturers are ineligible to receive

1 authorization to maintain manufacturer representatives in this
2 State:

3 (1) a manufacturer who owes, at the time of
4 application, any delinquent cigarette taxes that have been
5 determined by law to be due and unpaid, unless the
6 applicant has entered into an agreement approved by the
7 Department to pay the amount due;

8 (2) a manufacturer who has had a license revoked within
9 the past 2 years for misconduct relating to stolen or
10 contraband cigarettes or has been convicted of a state or
11 federal crime, punishable by imprisonment of one year or
12 more, relating to stolen or contraband cigarettes;

13 (3) a manufacturer who has been found, after notice and
14 a hearing, to have imported or caused to be imported into
15 the United States for sale or distribution any cigarette in
16 violation of 19 U.S.C. 1681a;

17 (4) a manufacturer who has been found, after notice and
18 a hearing, to have imported or caused to be imported into
19 the United States for sale or distribution or manufactured
20 for sale or distribution in the United States any cigarette
21 that does not fully comply with the Federal Cigarette
22 Labeling and Advertising Act (15 U.S.C. 1331, et seq.);

23 (5) a manufacturer who has been found, after notice and
24 a hearing, to have made a material false statement in an
25 application or has failed to produce records required to be
26 maintained by this Act;

1 (6) a manufacturer who has been found, after notice and
2 hearing, to have violated any Section of this Act; or

3 (7) a manufacturer licensed as a distributor under
4 Section 4 of this Act or holding a permit under Section 4b
5 of this Act.

6 The Department, upon receipt of an application from a
7 manufacturer who is eligible to maintain manufacturer
8 representatives in this State, shall notify the applicant in
9 writing, not more than 60 days after an application has been
10 received, that the applicant may or may not maintain the
11 requested number of manufacturer representatives in this
12 State. A copy of the notice authorizing a manufacturer to
13 maintain manufacturer representatives in this State shall be
14 available for inspection by the Department at each place of
15 business identified in the application and in the motor vehicle
16 operated by marketing representatives in the course of
17 performing his or her duties in this State on behalf of the
18 manufacturer.

19 A manufacturer representative shall notify the Department
20 of any change in the information contained on the application
21 form and shall do so within 30 days after any such change.

22 (b) Only directors, officers, and employees of the
23 manufacturer may act as manufacturer representatives in this
24 State. The manufacturer shall provide to the Department the
25 names and addresses of the manufacturer representatives
26 operating in this State and the make, model, and license plate

1 number of each motor vehicle operated by a manufacturer
2 representative in the course of performing his or her duties in
3 this State on behalf of the manufacturer. The following
4 individuals may not act as manufacturer representatives:

5 (1) an individual who owes any delinquent cigarette
6 taxes that have been determined by law to be due and
7 unpaid, unless the individual has entered into an agreement
8 approved by the Department to pay the amount due;

9 (2) an individual who has had a license revoked within
10 the past 2 years for misconduct relating to stolen or
11 contraband cigarettes or has been convicted of a state or
12 federal crime, punishable by imprisonment of one year or
13 more, relating to stolen or contraband cigarettes;

14 (3) an individual who has been found, after notice and
15 a hearing, to have made a material false statement in an
16 application or has failed to produce records required to be
17 maintained by this Act; or

18 (4) an individual who has been found, after notice and
19 hearing, to have violated any Section of this Act.

20 (c) Manufacturer representatives may sell to retailers in
21 this State only original packages of cigarettes made,
22 manufactured, or fabricated by the manufacturer and purchased
23 or obtained from a distributor licensed under this Act, or the
24 Cigarette Tax Use Act, and on which tax stamps have been
25 affixed. Manufacturer representatives may sell up to 600
26 stamped original packages of cigarettes in a calendar year, for

1 the purpose of promoting the manufacturer's brands of
2 cigarettes. A manufacturer representative may not possess more
3 than 500 stamped original packages of cigarettes made,
4 manufactured, or fabricated by the manufacturer and purchased
5 or obtained from a distributor licensed under this Act or the
6 Cigarette Use Tax Act. Any original packages of cigarettes in
7 the possession of a manufacturer representative that (i) are
8 not made, manufactured, or fabricated by the manufacturer and
9 purchased or obtained from a distributor licensed under this
10 Act or the Cigarette Use Tax Act, other than cigarettes for
11 personal use and consumption, (ii) exceed the maximum quantity
12 of 500 original packages of cigarettes, excluding packages of
13 cigarettes for personal use and consumption; (iii) violate
14 Section 3-10 of this Act; or (iv) do not have the proper tax
15 stamps affixed, are contraband and subject to seizure and
16 forfeiture.

17 Manufacturer representatives may sell stamped original
18 packages of cigarettes to retailers on behalf of licensed
19 distributors. The manufacturer representative shall provide
20 the distributor with a signed receipt for the cigarettes
21 obtained from the distributor. The distributor shall invoice
22 the retailer, and the retailer shall pay the distributor for
23 all cigarettes provided to retailers by manufacturer
24 representatives on behalf of a distributor.

25 Manufacturer representatives may sell stamped original
26 packages of cigarettes to retailers that are purchased from

1 licensed distributors. Distributors shall provide manufacturer
2 representatives with invoices for stamped original packages of
3 cigarettes sold to manufacturer representatives. Manufacturer
4 representatives shall invoice retailers, and the retailers
5 shall pay the manufacturer representatives for all original
6 packages of cigarettes sold to retailers.

7 (d) Any person aggrieved by any decision of the Department
8 under this Section may, within 20 days after notice of the
9 decision, protest and request a hearing. Upon receiving a
10 request for a hearing, the Department shall give notice to the
11 person requesting the hearing of the time and place fixed for
12 the hearing and shall hold a hearing in conformity with the
13 provisions of this Act and then issue its final administrative
14 decision in the matter to that person. In the absence of a
15 protest and request for a hearing within 20 days, the
16 Department's decision shall become final without any further
17 determination being made or notice given.

18 (35 ILCS 130/7) (from Ch. 120, par. 453.7)

19 Sec. 7. The Department or any officer or employee of the
20 Department designated, in writing, by the Director thereof,
21 shall at its or his or her own instance, or on the written
22 request of any distributor, secondary distributor,
23 manufacturer with authority to maintain manufacturer
24 representatives, or other interested party to the proceeding,
25 issue subpoenas requiring the attendance of and the giving of

1 testimony by witnesses, and subpoenas duces tecum requiring the
2 production of books, papers, records or memoranda. All
3 subpoenas and subpoenas duces tecum issued under the terms of
4 this Act may be served by any person of full age. The fees of
5 witnesses for attendance and travel shall be the same as the
6 fees of witnesses before the circuit court of this State; such
7 fees to be paid when the witness is excused from further
8 attendance. When the witness is subpoenaed at the instance of
9 the Department or any officer or employee thereof, such fees
10 shall be paid in the same manner as other expenses of the
11 Department, and when the witness is subpoenaed at the instance
12 of any other party to any such proceeding, the cost of service
13 of the subpoena or subpoena duces tecum and the fee of the
14 witness shall be borne by the party at whose instance the
15 witness is summoned. In such case the Department, in its
16 discretion, may require a deposit to cover the cost of such
17 service and witness fees. A subpoena or subpoena duces tecum so
18 issued shall be served in the same manner as a subpoena or
19 subpoena duces tecum issued out of a court.

20 Any circuit court of this State, upon the application of
21 the Department or any officer or employee thereof, or upon the
22 application of any other party to the proceeding, may, in its
23 discretion, compel the attendance of witnesses, the production
24 of books, papers, records or memoranda and the giving of
25 testimony before the Department or any officer or employee
26 thereof conducting an investigation or holding a hearing

1 authorized by this Act, by an attachment for contempt, or
2 otherwise, in the same manner as production of evidence may be
3 compelled before the court.

4 The Department or any officer or employee thereof, or any
5 other party in an investigation or hearing before the
6 Department, may cause the depositions of witnesses within the
7 State to be taken in the manner prescribed by law for like
8 depositions, or depositions for discovery in civil actions in
9 courts of this State, and to that end compel the attendance of
10 witnesses and the production of books, papers, records or
11 memoranda, in the same manner hereinbefore provided.

12 (Source: P.A. 96-1027, eff. 7-12-10.)

13 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

14 Sec. 8. The Department may make, promulgate and enforce
15 such reasonable rules and regulations relating to the
16 administration and enforcement of this Act as may be deemed
17 expedient.

18 Whenever notice is required by this Act, such notice may be
19 given by United States certified or registered mail, addressed
20 to the person concerned at his last known address, and proof of
21 such mailing shall be sufficient for the purposes of this Act.
22 Notice of any hearing provided for by this Act shall be so
23 given not less than 7 days prior to the day fixed for the
24 hearing.

25 Hearings provided for in this Act shall be held:

1 (1) In Cook County, if the taxpayer's or licensee's
2 principal place of business is in that county;

3 (2) At the Department's office nearest the taxpayer's
4 or licensee's principal place of business, if the
5 taxpayer's or licensee's principal place of business is in
6 Illinois but outside Cook County;

7 (3) In Sangamon County, if the taxpayer's or licensee's
8 principal place of business is outside Illinois.

9 The Circuit Court of the County wherein the hearing is held
10 has power to review all final administrative decisions of the
11 Department in administering this Act. The provisions of the
12 Administrative Review Law, and all amendments and
13 modifications thereof, and the rules adopted pursuant thereto,
14 shall apply to and govern all proceedings for the judicial
15 review of final administrative decisions of the Department
16 under this Act. The term "administrative decision" is defined
17 as in Section 3-101 of the Code of Civil Procedure.

18 Service upon the Director of Revenue or Assistant Director
19 of Revenue of summons issued in any action to review a final
20 administrative decision shall be service upon the Department.
21 The Department shall certify the record of its proceedings if
22 the distributor, ~~or~~ secondary distributor, or manufacturer
23 with authority to maintain manufacturer representatives pays
24 to it the sum of 75¢ per page of testimony taken before the
25 Department and 25¢ per page of all other matters contained in
26 such record, except that these charges may be waived where the

1 Department is satisfied that the aggrieved party is a poor
2 person who cannot afford to pay such charges. Before the
3 delivery of such record to the person applying for it, payment
4 of these charges must be made, and if the record is not paid
5 for within 30 days after notice that such record is available,
6 the complaint may be dismissed by the court upon motion of the
7 Department.

8 No stay order shall be entered by the Circuit Court unless
9 the distributor, ~~or~~ secondary distributor, or manufacturer
10 with authority to maintain manufacturer representatives files
11 with the court a bond in an amount fixed and approved by the
12 court, to indemnify the State against all loss and injury which
13 may be sustained by it on account of the review proceedings and
14 to secure all costs which may be occasioned by such
15 proceedings.

16 Whenever any proceeding provided by this Act is begun
17 before the Department, either by the Department or by a person
18 subject to this Act, and such person thereafter dies or becomes
19 a person under legal disability before such proceeding is
20 concluded, the legal representative of the deceased person or
21 of the person under legal disability shall notify the
22 Department of such death or legal disability. Such legal
23 representative, as such, shall then be substituted by the
24 Department for such person. If the legal representative fails
25 to notify the Department of his or her appointment as such
26 legal representative, the Department may, upon its own motion,

1 substitute such legal representative in the proceeding pending
2 before the Department for the person who died or became a
3 person under legal disability.

4 (Source: P.A. 96-1027, eff. 7-12-10.)

5 (35 ILCS 130/9) (from Ch. 120, par. 453.9)

6 Sec. 9. Returns; remittance. Every distributor who is
7 required to procure a license under this Act, but who is not a
8 manufacturer of cigarettes in original packages which are
9 contained in a sealed transparent wrapper, shall, on or before
10 the 15th day of each calendar month, file a return with the
11 Department, showing the quantity of cigarettes manufactured
12 during the preceding calendar month, the quantity of cigarettes
13 brought into this State or caused to be brought into this State
14 from outside this State during the preceding calendar month
15 without authorized evidence on the original packages of such
16 cigarettes underneath the sealed transparent wrapper thereof
17 that the tax liability imposed by this Act has been assumed by
18 the out-of-State seller of such cigarettes, the quantity of
19 cigarettes purchased tax-paid during the preceding calendar
20 month either within or outside this State, the quantity of
21 cigarettes sold by manufacturer representatives on behalf of
22 the distributor, the quantity of cigarettes sold to
23 manufacturer representatives, and the quantity of cigarettes
24 sold or otherwise disposed of during the preceding calendar
25 month. Such return shall be filed upon forms furnished and

1 prescribed by the Department and shall contain such other
2 information as the Department may reasonably require. The
3 Department may promulgate rules to require that the
4 distributor's return be accompanied by appropriate
5 computer-generated magnetic media supporting schedule data in
6 the format required by the Department, unless, as provided by
7 rule, the Department grants an exception upon petition of a
8 distributor.

9 Illinois manufacturers of cigarettes in original packages
10 which are contained inside a sealed transparent wrapper shall
11 file a return by the 5th day of each month covering the
12 preceding calendar month. Each such return shall be accompanied
13 by the appropriate remittance for tax as provided in ~~the last~~
14 ~~paragraph of~~ Section 3 of this Act. Each such return shall show
15 the quantity of such cigarettes manufactured during the period
16 covered by the return, the quantity of cigarettes sold or
17 otherwise disposed of during the period covered by the return
18 and such other information as the Department may lawfully
19 require. Such returns shall be filed on forms prescribed and
20 furnished by the Department. Each such return shall be
21 accompanied by a copy of each invoice rendered by such
22 manufacturer to any purchaser to whom such manufacturer
23 delivered cigarettes (or caused cigarettes to be delivered)
24 during the period covered by the return. The Department may
25 promulgate rules to require that the manufacturer's return be
26 accompanied by appropriate computer-generated magnetic media

1 supporting schedule data in the format required by the
2 Department, unless, as provided by rule, the Department grants
3 an exception upon petition of a manufacturer.

4 (Source: P.A. 92-322, eff. 1-1-02.)

5 (35 ILCS 130/9f new)

6 Sec. 9f. Manufacturer representatives; reports. Every
7 manufacturer with authority to maintain manufacturer
8 representatives as defined by Section 4f of this Act shall, on
9 or before the 15th day of each calendar month, file a report
10 with the Department, showing the quantity of cigarettes
11 purchased from licensed distributors during the preceding
12 calendar month, either within or outside this State, and the
13 quantity of cigarettes sold to retailers or otherwise disposed
14 of during the preceding calendar month. Such reports shall be
15 filed in the form prescribed by the Department and shall
16 contain such other information as the Department may reasonably
17 require. The report shall be filed electronically and be
18 accompanied by appropriate computer generated magnetic media
19 supporting schedule data in the format required by the
20 Department, unless, as provided by rule, the Department grants
21 an exception upon petition of a manufacturer with authority to
22 maintain manufacturer representatives in this State.

23 A certification by the Director of the Department that a
24 report has not been filed, or that information has not been
25 supplied pursuant to the provisions of this Act, shall be prima

1 facie evidence thereof.

2 (35 ILCS 130/10) (from Ch. 120, par. 453.10)

3 Sec. 10. The Department, or any officer or employee
4 designated in writing by the Director thereof, for the purpose
5 of administering and enforcing the provisions of this Act, may
6 hold investigations and hearings concerning any matters
7 covered by this Act, and may examine books, papers, records or
8 memoranda bearing upon the sale or other disposition of
9 cigarettes by a distributor, ~~or~~ secondary distributor,
10 manufacturer with authority to maintain manufacturer
11 representatives under Section 4f of this Act, or manufacturer
12 representative, and may issue subpoenas requiring the
13 attendance of a distributor, ~~or~~ secondary distributor,
14 manufacturer with authority to maintain manufacturer
15 representatives under Section 4f of this Act, or manufacturer
16 representative, or any officer or employee of a distributor, ~~or~~
17 secondary distributor, manufacturer with authority to maintain
18 manufacturer representatives under Section 4f of this Act, or
19 any person having knowledge of the facts, and may take
20 testimony and require proof, and may issue subpoenas duces
21 tecum to compel the production of relevant books, papers,
22 records and memoranda, for the information of the Department.

23 In the conduct of any investigation or hearing provided for
24 by this Act, neither the Department, nor any officer or
25 employee thereof, shall be bound by the technical rules of

1 evidence, and no informality in the proceedings nor in the
2 manner of taking testimony shall invalidate any rule, order,
3 decision or regulation made, approved or confirmed by the
4 Department.

5 The Director of Revenue, or any duly authorized officer or
6 employee of the Department, shall have the power to administer
7 oaths to such persons required by this Act to give testimony
8 before the said Department.

9 The books, papers, records and memoranda of the Department,
10 or parts thereof, may be proved in any hearing, investigation
11 or legal proceeding by a reproduced copy thereof under the
12 certificate of the Director of Revenue. Such reproduced copy
13 shall, without further proof, be admitted into evidence before
14 the Department or in any legal proceeding.

15 (Source: P.A. 96-1027, eff. 7-12-10.)

16 (35 ILCS 130/11b new)

17 Sec. 11b. Manufacturer representatives; records. Every
18 manufacturer with authority to maintain manufacturer
19 representatives under Section 4f of this Act shall keep within
20 Illinois, at his business address identified under section 4f
21 of this Act, complete and accurate records of cigarettes
22 purchased, sold, or otherwise disposed of, and shall preserve
23 and keep within Illinois at his business address all invoices,
24 sales records, copies of bills of sale, inventory at the close
25 of each period for which a report is required of all cigarettes

1 on hand, and other pertinent papers and documents relating to
2 the purchase, sale, or disposition of cigarettes. All books and
3 records and other papers and documents that are required by
4 this Act to be kept shall be kept in the English language, and
5 shall, at all times during the usual business hours of the day,
6 be subject to inspection by the Department or its duly
7 authorized agents and employees. The Department may adopt rules
8 that establish requirements, including record forms and
9 formats, for records required to be kept and maintained by
10 manufacturers with authority to maintain manufacturer
11 representatives under Section 4f of this Act and their
12 manufacturer representatives. For purposes of this Section,
13 "records" means all data maintained by the manufacturers with
14 authority to maintain manufacturer representatives under
15 Section 4f of this Act and their manufacturer representatives,
16 including data on paper, microfilm, microfiche or any type of
17 machine sensible data compilation. Those books, records,
18 papers, and documents shall be preserved for a period of at
19 least 3 years after the date of the documents, or the date of
20 the entries appearing in the records, unless the Department, in
21 writing, authorizes their destruction or disposal at an earlier
22 date. At all times during the usual business hours of the day
23 any duly authorized agent or employee of the Department may
24 enter any place of business of the manufacturers with authority
25 to maintain manufacturer representatives under Section 4f of
26 this Act and their manufacturer representatives, or inspect any

1 motor vehicle used by a manufacturer representative in the
2 course of business, without a search warrant and may inspect
3 the premises, motor vehicle, and any packages of cigarettes
4 therein contained to determine whether any of the provisions of
5 this Act are being violated. If such agent or employee is
6 denied free access or is hindered or interfered with in making
7 such examination as herein provided, the ability to maintain
8 marketing representatives in Illinois may be withdrawn by the
9 Department.

10 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

11 Sec. 23. Every distributor, secondary distributor,
12 manufacturer with authority to maintain manufacturer
13 representatives under Section 4f of this Act and their
14 manufacturer representatives, or other person who shall
15 knowingly and wilfully sell or offer for sale any original
16 package, as defined in this Act, having affixed thereto any
17 fraudulent, spurious, imitation or counterfeit stamp, or stamp
18 which has been previously affixed, or affixes a stamp which has
19 previously been affixed to an original package, or who shall
20 knowingly and wilfully sell or offer for sale any original
21 package, as defined in this Act, having imprinted thereon
22 underneath the sealed transparent wrapper thereof any
23 fraudulent, spurious, imitation or counterfeit tax imprint,
24 shall be deemed guilty of a Class 2 felony.

25 (Source: P.A. 96-1027, eff. 7-12-10.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".