



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2900

Introduced 2/1/2012, by Sen. Terry Link

SYNOPSIS AS INTRODUCED:

See Index

Amends the Cigarette Tax Act and the Cigarette Use Tax Act. Requires a person who engages in the business of operating a cigarette machine in the State to obtain a cigarette machine operator's license from the Department. Provides that cigarettes made, manufactured, or fabricated by a cigarette machine may not be sold, distributed to, or possessed by, manufacturers, distributors, secondary distributors, or retailers, other than cigarette machine operators. Sets forth the amount of the license fee. Contains provisions concerning returns and records. Provides that a person who operates a cigarette machine without a license is guilty of a Class 4 felony. Effective immediately.

LRB097 15550 HLH 60687 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

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 Sections 1, 2, 3, 3-10, 4a, 4d, 6, 7, 8, 9, 9a, 9d, 10, 11, 18,
6 18a, 20, 21, 23, and 28a and by adding Sections 4g, 4h, 17, and
7 26.5 as follows:

8 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

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

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

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

19 "Cigarette machine" means any machine, equipment, or
20 device used to make, manufacture, or fabricate cigarettes.

21 "Cigarette machine operator" means any person who is
22 engaged in the business of operating a cigarette machine in
23 this State and is licensed by the Department as a cigarette

1 machine operator under Section 4g of this Act.

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; ~~or~~

23 (i) cigarettes made, manufactured, or fabricated by a
24 person holding a cigarette machine operator's license
25 under Section 4g of this Act that are in the possession of
26 manufacturers, distributors, secondary distributors, or

1 other retailers for the purpose of resale, regardless of
2 whether the tax has been paid on such cigarettes;

3 (j) cigarettes in the possession of a cigarette machine
4 operator that do not meet the requirements of this Act or
5 the Cigarette Fire Safety Standard Act; or

6 (k) cigarettes in the possession of an individual that
7 do not meet the requirements of Section 3-10 of this Act or
8 the Cigarette Fire Safety Standard Act, unless the
9 cigarettes were made, manufactured, or fabricated by an
10 individual for the individual's own use and consumption
11 without the aid or use of a cigarette machine in the
12 possession of a cigarette machine operator holding a
13 license under Section 4g of this Act.

14 "Person" means any natural individual, firm, partnership,
15 association, joint stock company, joint adventure, public or
16 private corporation, however formed, limited liability
17 company, or a receiver, executor, administrator, trustee,
18 guardian or other representative appointed by order of any
19 court.

20 "Prior Continuous Compliance Taxpayer" means any person
21 who is licensed under this Act and who, having been a licensee
22 for a continuous period of 5 years, is determined by the
23 Department not to have been either delinquent or deficient in
24 the payment of tax liability during that period or otherwise in
25 violation of this Act. Also, any taxpayer who has, as verified
26 by the Department, continuously complied with the condition of

1 his bond or other security under provisions of this Act for a
2 period of 5 consecutive years shall be considered to be a
3 "Prior continuous compliance taxpayer". In calculating the
4 consecutive period of time described herein for qualification
5 as a "prior continuous compliance taxpayer", a consecutive
6 period of time of qualifying compliance immediately prior to
7 the effective date of this amendatory Act of 1987 shall be
8 credited to any licensee who became licensed on or before the
9 effective date of this amendatory Act of 1987.

10 "Department" means the Department of Revenue.

11 "Sale" means any transfer, exchange or barter in any manner
12 or by any means whatsoever for a consideration, and includes
13 and means all sales made by any person.

14 "Operate or operating a cigarette machine" means to possess
15 a cigarette machine for the purpose of making the cigarette
16 machine available to individuals who use the cigarette machine
17 to make, manufacture, or fabricate cigarettes for their own use
18 or consumption, and not for resale. For purposes of this Act,
19 the cigarette machine is considered to be operated by the
20 person possessing the cigarette machine. For purposes of this
21 Act, cigarettes made, manufactured, or fabricated by the use of
22 a cigarette machine in the possession of a cigarette machine
23 operator holding a license under Section 4g of this Act are
24 considered to be made, manufactured, and fabricated by the
25 person holding the cigarette machine operator's license and not
26 the individual.

1 "Possess or possessing a cigarette machine" means to own,
2 lease, rent, or have on one's premises a cigarette machine.

3 "Original Package" means the individual packet, box or
4 other container whatsoever used to contain and to convey
5 cigarettes to the consumer.

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

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

16 (2) Any person who makes, manufactures or fabricates
17 cigarettes in this State for sale in this State, except a
18 person who makes, manufactures or fabricates cigarettes as
19 a part of a correctional industries program for sale to
20 residents incarcerated in penal institutions or resident
21 patients of a State-operated mental health facility.

22 (3) Any person who makes, manufactures or fabricates
23 cigarettes outside this State, which cigarettes are placed
24 in original packages contained in sealed transparent
25 wrappers, for delivery or shipment into this State, and who
26 elects to qualify and is accepted by the Department as a

1 distributor under Section 4b of this Act.

2 "Place of business" shall mean and include any place where
3 cigarettes are sold or where cigarettes are manufactured,
4 stored or kept for the purpose of sale or consumption,
5 including any vessel, vehicle, airplane, train or vending
6 machine.

7 "Manufacturer representative" means a director, officer,
8 or employee of a manufacturer who has obtained authority from
9 the Department under Section 4f to maintain representatives in
10 Illinois that provide or sell original packages of cigarettes
11 made, manufactured, or fabricated by the manufacturer to
12 retailers in compliance with Section 4f of this Act to promote
13 cigarettes made, manufactured, or fabricated by the
14 manufacturer.

15 "Business" means any trade, occupation, activity or
16 enterprise engaged in for the purpose of selling cigarettes in
17 this State.

18 "Retailer" means any person who engages in the making of
19 transfers of the ownership of, or title to, cigarettes to a
20 purchaser for use or consumption and not for resale in any
21 form, for a valuable consideration. For purposes of collecting
22 the tax imposed by this Act, "retailer" also includes a person
23 licensed as a cigarette machine operator under Section 4g of
24 this Act. "Retailer" does not include a person:

25 (1) who transfers to residents incarcerated in penal
26 institutions or resident patients of a State-operated

1 mental health facility ownership of cigarettes made,
2 manufactured, or fabricated as part of a correctional
3 industries program; or

4 (2) who transfers cigarettes to a not-for-profit
5 research institution that conducts tests concerning the
6 health effects of tobacco products and who does not offer
7 the cigarettes for resale.

8 "Retailer" shall be construed to include any person who
9 engages in the making of transfers of the ownership of, or
10 title to, cigarettes to a purchaser, for use or consumption by
11 any other person to whom such purchaser may transfer the
12 cigarettes without a valuable consideration, except a person
13 who transfers to residents incarcerated in penal institutions
14 or resident patients of a State-operated mental health facility
15 ownership of cigarettes made, manufactured or fabricated as
16 part of a correctional industries program.

17 "Secondary distributor" means any person engaged in the
18 business of selling cigarettes who purchases stamped original
19 packages of cigarettes from a licensed distributor under this
20 Act or the Cigarette Use Tax Act, sells 75% or more of those
21 cigarettes to retailers for resale, and maintains an
22 established business where a substantial stock of cigarettes is
23 available to retailers for resale.

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

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

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

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

5 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10;
6 97-587, eff. 8-26-11.)

7 (35 ILCS 130/2) (from Ch. 120, par. 453.2)

8 Sec. 2. Tax imposed; rate; collection, payment, and
9 distribution; discount.

10 (a) A tax is imposed upon any person engaged in business as
11 a retailer of cigarettes in this State at the rate of 5 1/2
12 mills per cigarette sold, or otherwise disposed of in the
13 course of such business in this State. In addition to any other
14 tax imposed by this Act, a tax is imposed upon any person
15 engaged in business as a retailer of cigarettes in this State
16 at a rate of 1/2 mill per cigarette sold or otherwise disposed
17 of in the course of such business in this State on and after
18 January 1, 1947, and shall be paid into the Metropolitan Fair
19 and Exposition Authority Reconstruction Fund or as otherwise
20 provided in Section 29. On and after December 1, 1985, in
21 addition to any other tax imposed by this Act, a tax is imposed
22 upon any person engaged in business as a retailer of cigarettes
23 in this State at a rate of 4 mills per cigarette sold or
24 otherwise disposed of in the course of such business in this
25 State. Of the additional tax imposed by this amendatory Act of

1 1985, \$9,000,000 of the moneys received by the Department of
2 Revenue pursuant to this Act shall be paid each month into the
3 Common School Fund. On and after the effective date of this
4 amendatory Act of 1989, in addition to any other tax imposed by
5 this Act, a tax is imposed upon any person engaged in business
6 as a retailer of cigarettes at the rate of 5 mills per
7 cigarette sold or otherwise disposed of in the course of such
8 business in this State. On and after the effective date of this
9 amendatory Act of 1993, in addition to any other tax imposed by
10 this Act, a tax is imposed upon any person engaged in business
11 as a retailer of cigarettes at the rate of 7 mills per
12 cigarette sold or otherwise disposed of in the course of such
13 business in this State. On and after December 15, 1997, in
14 addition to any other tax imposed by this Act, a tax is imposed
15 upon any person engaged in business as a retailer of cigarettes
16 at the rate of 7 mills per cigarette sold or otherwise disposed
17 of in the course of such business of this State. All of the
18 moneys received by the Department of Revenue pursuant to this
19 Act and the Cigarette Use Tax Act from the additional taxes
20 imposed by this amendatory Act of 1997, shall be paid each
21 month into the Common School Fund. On and after July 1, 2002,
22 in addition to any other tax imposed by this Act, a tax is
23 imposed upon any person engaged in business as a retailer of
24 cigarettes at the rate of 20.0 mills per cigarette sold or
25 otherwise disposed of in the course of such business in this
26 State. The payment of such taxes shall be evidenced by a stamp

1 affixed to each original package of cigarettes, or an
2 authorized substitute for such stamp imprinted on each original
3 package of such cigarettes underneath the sealed transparent
4 outside wrapper of such original package, as hereinafter
5 provided. However, such taxes are not imposed upon any activity
6 in such business in interstate commerce or otherwise, which
7 activity may not under the Constitution and statutes of the
8 United States be made the subject of taxation by this State.

9 Beginning on the effective date of this amendatory Act of
10 the 92nd General Assembly and through June 30, 2006, all of the
11 moneys received by the Department of Revenue pursuant to this
12 Act and the Cigarette Use Tax Act, other than the moneys that
13 are dedicated to the Common School Fund, shall be distributed
14 each month as follows: first, there shall be paid into the
15 General Revenue Fund an amount which, when added to the amount
16 paid into the Common School Fund for that month, equals
17 \$33,300,000, except that in the month of August of 2004, this
18 amount shall equal \$83,300,000; then, from the moneys
19 remaining, if any amounts required to be paid into the General
20 Revenue Fund in previous months remain unpaid, those amounts
21 shall be paid into the General Revenue Fund; then, beginning on
22 April 1, 2003, from the moneys remaining, \$5,000,000 per month
23 shall be paid into the School Infrastructure Fund; then, if any
24 amounts required to be paid into the School Infrastructure Fund
25 in previous months remain unpaid, those amounts shall be paid
26 into the School Infrastructure Fund; then the moneys remaining,

1 if any, shall be paid into the Long-Term Care Provider Fund. To
2 the extent that more than \$25,000,000 has been paid into the
3 General Revenue Fund and Common School Fund per month for the
4 period of July 1, 1993 through the effective date of this
5 amendatory Act of 1994 from combined receipts of the Cigarette
6 Tax Act and the Cigarette Use Tax Act, notwithstanding the
7 distribution provided in this Section, the Department of
8 Revenue is hereby directed to adjust the distribution provided
9 in this Section to increase the next monthly payments to the
10 Long Term Care Provider Fund by the amount paid to the General
11 Revenue Fund and Common School Fund in excess of \$25,000,000
12 per month and to decrease the next monthly payments to the
13 General Revenue Fund and Common School Fund by that same excess
14 amount.

15 Beginning on July 1, 2006, all of the moneys received by
16 the Department of Revenue pursuant to this Act and the
17 Cigarette Use Tax Act, other than the moneys that are dedicated
18 to the Common School Fund, shall be distributed each month as
19 follows: first, there shall be paid into the General Revenue
20 Fund an amount that, when added to the amount paid into the
21 Common School Fund for that month, equals \$29,200,000; then,
22 from the moneys remaining, if any amounts required to be paid
23 into the General Revenue Fund in previous months remain unpaid,
24 those amounts shall be paid into the General Revenue Fund; then
25 from the moneys remaining, \$5,000,000 per month shall be paid
26 into the School Infrastructure Fund; then, if any amounts

1 required to be paid into the School Infrastructure Fund in
2 previous months remain unpaid, those amounts shall be paid into
3 the School Infrastructure Fund; then the moneys remaining, if
4 any, shall be paid into the Long-Term Care Provider Fund.

5 When any tax imposed herein terminates or has terminated,
6 distributors and cigarette machine operators who have bought
7 stamps while such tax was in effect and who therefore paid such
8 tax, but who can show, to the Department's satisfaction, that
9 they sold the cigarettes to which they affixed such stamps
10 after such tax had terminated and did not recover the tax or
11 its equivalent from purchasers, shall be allowed by the
12 Department to take credit for such absorbed tax against
13 subsequent tax stamp purchases from the Department by such
14 distributor or cigarette machine operator.

15 The impact of the tax levied by this Act is imposed upon
16 the retailer and shall be prepaid or pre-collected by the
17 distributor or cigarette machine operator for the purpose of
18 convenience and facility only, and the amount of the tax shall
19 be added to the price of the cigarettes sold by such
20 distributor or cigarette machine operator. Collection of the
21 tax shall be evidenced by a stamp or stamps affixed to each
22 original package of cigarettes, as hereinafter provided.

23 Each distributor and each cigarette machine operator shall
24 collect the tax from the retailer at or before the time of the
25 sale, shall affix the stamps as hereinafter required, and shall
26 remit the tax collected from retailers to the Department, as

1 hereinafter provided. Any distributor or cigarette machine
2 operator who fails to properly collect and pay the tax imposed
3 by this Act shall be liable for the tax. Any distributor having
4 cigarettes to which stamps have been affixed in his possession
5 for sale on the effective date of this amendatory Act of 1989
6 shall not be required to pay the additional tax imposed by this
7 amendatory Act of 1989 on such stamped cigarettes. Any
8 distributor having cigarettes to which stamps have been affixed
9 in his or her possession for sale at 12:01 a.m. on the
10 effective date of this amendatory Act of 1993, is required to
11 pay the additional tax imposed by this amendatory Act of 1993
12 on such stamped cigarettes. This payment, less the discount
13 provided in subsection (b), shall be due when the distributor
14 first makes a purchase of cigarette tax stamps after the
15 effective date of this amendatory Act of 1993, or on the first
16 due date of a return under this Act after the effective date of
17 this amendatory Act of 1993, whichever occurs first. Any
18 distributor having cigarettes to which stamps have been affixed
19 in his possession for sale on December 15, 1997 shall not be
20 required to pay the additional tax imposed by this amendatory
21 Act of 1997 on such stamped cigarettes.

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

1 Distributors making sales of cigarettes to secondary
2 distributors shall add the amount of the tax to the price of
3 the cigarettes sold by the distributors. Secondary
4 distributors making sales of cigarettes to retailers shall
5 include the amount of the tax in the price of the cigarettes
6 sold to retailers. The amount of tax shall not be less than the
7 amount of taxes imposed by the State and all local
8 jurisdictions. The amount of local taxes shall be calculated
9 based on the location of the retailer's place of business shown
10 on the retailer's certificate of registration or
11 sub-registration issued to the retailer pursuant to Section 2a
12 of the Retailers' Occupation Tax Act. The original packages of
13 cigarettes sold to the retailer shall bear all the required
14 stamps, or other indicia, for the taxes included in the price
15 of cigarettes.

16 The amount of the Cigarette Tax imposed by this Act shall
17 be separately stated, apart from the price of the goods, by
18 distributors, cigarette machine operators, manufacturer
19 representatives, secondary distributors, and retailers, in all
20 bills and sales invoices.

21 (b) The distributor or cigarette machine operator shall be
22 required to collect the taxes provided under paragraph (a)
23 hereof, and, to cover the costs of such collection, shall be
24 allowed a discount during any year commencing July 1st and
25 ending the following June 30th in accordance with the schedule
26 set out hereinbelow, which discount shall be allowed at the

1 time of purchase of the stamps when purchase is required by
2 this Act, or at the time when the tax is remitted to the
3 Department without the purchase of stamps from the Department
4 when that method of paying the tax is required or authorized by
5 this Act. Prior to December 1, 1985, a discount equal to 1 2/3%
6 of the amount of the tax up to and including the first \$700,000
7 paid hereunder by such distributor to the Department during any
8 such year; 1 1/3% of the next \$700,000 of tax or any part
9 thereof, paid hereunder by such distributor to the Department
10 during any such year; 1% of the next \$700,000 of tax, or any
11 part thereof, paid hereunder by such distributor to the
12 Department during any such year, and 2/3 of 1% of the amount of
13 any additional tax paid hereunder by such distributor to the
14 Department during any such year shall apply. On and after
15 December 1, 1985, a discount equal to 1.75% of the amount of
16 the tax payable under this Act up to and including the first
17 \$3,000,000 paid hereunder by such distributor or cigarette
18 machine operator to the Department during any such year and
19 1.5% of the amount of any additional tax paid hereunder by such
20 distributor or cigarette machine operator to the Department
21 during any such year shall apply.

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

26 (c) The taxes herein imposed are in addition to all other

1 occupation or privilege taxes imposed by the State of Illinois,
2 or by any political subdivision thereof, or by any municipal
3 corporation.

4 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

5 (35 ILCS 130/3) (from Ch. 120, par. 453.3)

6 Sec. 3. Affixing tax stamp; remitting tax to the
7 Department. Payment of the taxes imposed by Section 2 of this
8 Act shall (except as hereinafter provided) be evidenced by
9 revenue tax stamps affixed to each original package of
10 cigarettes. Each distributor of cigarettes and each cigarette
11 machine operator, before delivering or causing to be delivered
12 any original package of cigarettes in this State to a
13 purchaser, shall firmly affix a proper stamp or stamps to each
14 such package, or (in case of manufacturers of cigarettes in
15 original packages which are contained inside a sealed
16 transparent wrapper) shall imprint the required language on the
17 original package of cigarettes beneath such outside wrapper, as
18 hereinafter provided.

19 No stamp or imprint may be affixed to, or made upon, any
20 package of cigarettes unless that package complies with all
21 requirements of the federal Cigarette Labeling and Advertising
22 Act, 15 U.S.C. 1331 and following, for the placement of labels,
23 warnings, or any other information upon a package of cigarettes
24 that is sold within the United States. Under the authority of
25 Section 6, the Department shall revoke the license of any

1 distributor or cigarette machine operator that is determined to
2 have violated this paragraph. A person may not affix a stamp on
3 a package of cigarettes, cigarette papers, wrappers, or tubes
4 if that individual package has been marked for export outside
5 the United States with a label or notice in compliance with
6 Section 290.185 of Title 27 of the Code of Federal Regulations.
7 It is not a defense to a proceeding for violation of this
8 paragraph that the label or notice has been removed, mutilated,
9 obliterated, or altered in any manner.

10 Only distributors licensed under this Act and
11 transporters, as defined in Section 9c of this Act, may possess
12 unstamped original packages of cigarettes. Prior to shipment to
13 a secondary distributor or an Illinois retailer, a stamp shall
14 be applied to each original package of cigarettes sold to the
15 secondary distributor or retailer. Prior to removal from the
16 cigarette machine operator's licensed place of business, a
17 stamp or stamps shall be applied to each original package of
18 cigarettes made, manufactured, or fabricated by the cigarette
19 machine operator. A distributor may apply tax stamps only to
20 original packages of cigarettes purchased or obtained directly
21 from an in-state maker, manufacturer, or fabricator licensed as
22 a distributor under Section 4 of this Act or an out-of-state
23 maker, manufacturer, or fabricator holding a permit under
24 Section 4b of this Act. A cigarette machine operator may apply
25 tax stamps only to original packages of cigarettes made,
26 manufactured, or fabricated by a cigarette machine located at

1 the cigarette machine operator's licensed place of business. A
2 licensed distributor may ship or otherwise cause to be
3 delivered unstamped original packages of cigarettes in, into,
4 or from this State. A licensed distributor may transport
5 unstamped original packages of cigarettes to a facility,
6 wherever located, owned or controlled by such distributor;
7 however, a distributor may not transport unstamped original
8 packages of cigarettes to a facility where retail sales of
9 cigarettes take place or to a facility where a secondary
10 distributor makes sales for resale. Any licensed distributor
11 that ships or otherwise causes to be delivered unstamped
12 original packages of cigarettes into, within, or from this
13 State shall ensure that the invoice or equivalent documentation
14 and the bill of lading or freight bill for the shipment
15 identifies the true name and address of the consignor or
16 seller, the true name and address of the consignee or
17 purchaser, and the quantity by brand style of the cigarettes so
18 transported, provided that this Section shall not be construed
19 as to impose any requirement or liability upon any common or
20 contract carrier. A cigarette machine operator may not ship or
21 otherwise cause to be delivered stamped or unstamped original
22 packages of cigarettes made, manufactured, or fabricated by a
23 cigarette machine located at the cigarette machine operator's
24 licensed place of business into, within, or from this State.

25 The Department, or any person authorized by the Department,
26 shall sell such stamps only to persons holding valid licenses

1 as distributors under this Act or holding valid licenses as
2 cigarette machine operators under this Act. On and after July
3 1, 2003, payment for such stamps must be made by means of
4 electronic funds transfer. The Department may refuse to sell
5 stamps to any person who does not comply with the provisions of
6 this Act. Beginning on the effective date of this amendatory
7 Act of the 92nd General Assembly and through June 30, 2002,
8 persons holding valid licenses as distributors may purchase
9 cigarette tax stamps up to an amount equal to 115% of the
10 distributor's average monthly cigarette tax stamp purchases
11 over the 12 calendar months prior to the effective date of this
12 amendatory Act of the 92nd General Assembly.

13 Prior to December 1, 1985, the Department shall allow a
14 distributor 21 days in which to make final payment of the
15 amount to be paid for such stamps, by allowing the distributor
16 to make payment for the stamps at the time of purchasing them
17 with a draft which shall be in such form as the Department
18 prescribes, and which shall be payable within 21 days
19 thereafter: Provided that such distributor has filed with the
20 Department, and has received the Department's approval of, a
21 bond, which is in addition to the bond required under Section 4
22 of this Act, payable to the Department in an amount equal to
23 80% of such distributor's average monthly tax liability to the
24 Department under this Act during the preceding calendar year or
25 \$500,000, whichever is less. The Bond shall be joint and
26 several and shall be in the form of a surety company bond in

1 such form as the Department prescribes, or it may be in the
2 form of a bank certificate of deposit or bank letter of credit.
3 The bond shall be conditioned upon the distributor's payment of
4 amount of any 21-day draft which the Department accepts from
5 that distributor for the delivery of stamps to that distributor
6 under this Act. The distributor's failure to pay any such
7 draft, when due, shall also make such distributor automatically
8 liable to the Department for a penalty equal to 25% of the
9 amount of such draft.

10 On and after December 1, 1985 and until July 1, 2003, the
11 Department shall allow a distributor 30 days in which to make
12 final payment of the amount to be paid for such stamps, by
13 allowing the distributor to make payment for the stamps at the
14 time of purchasing them with a draft which shall be in such
15 form as the Department prescribes, and which shall be payable
16 within 30 days thereafter, and beginning on January 1, 2003 and
17 thereafter, the draft shall be payable by means of electronic
18 funds transfer: Provided that such distributor has filed with
19 the Department, and has received the Department's approval of,
20 a bond, which is in addition to the bond required under Section
21 4 of this Act, payable to the Department in an amount equal to
22 150% of such distributor's average monthly tax liability to the
23 Department under this Act during the preceding calendar year or
24 \$750,000, whichever is less, except that as to bonds filed on
25 or after January 1, 1987, such additional bond shall be in an
26 amount equal to 100% of such distributor's average monthly tax

1 liability under this Act during the preceding calendar year or
2 \$750,000, whichever is less. The bond shall be joint and
3 several and shall be in the form of a surety company bond in
4 such form as the Department prescribes, or it may be in the
5 form of a bank certificate of deposit or bank letter of credit.
6 The bond shall be conditioned upon the distributor's payment of
7 the amount of any 30-day draft which the Department accepts
8 from that distributor for the delivery of stamps to that
9 distributor under this Act. The distributor's failure to pay
10 any such draft, when due, shall also make such distributor
11 automatically liable to the Department for a penalty equal to
12 25% of the amount of such draft.

13 Every prior continuous compliance taxpayer shall be exempt
14 from all requirements under this Section concerning the
15 furnishing of such bond, as defined in this Section, as a
16 condition precedent to his being authorized to engage in the
17 business licensed under this Act. This exemption shall continue
18 for each such taxpayer until such time as he may be determined
19 by the Department to be delinquent in the filing of any
20 returns, or is determined by the Department (either through the
21 Department's issuance of a final assessment which has become
22 final under the Act, or by the taxpayer's filing of a return
23 which admits tax to be due that is not paid) to be delinquent
24 or deficient in the paying of any tax under this Act, at which
25 time that taxpayer shall become subject to the bond
26 requirements of this Section and, as a condition of being

1 allowed to continue to engage in the business licensed under
2 this Act, shall be required to furnish bond to the Department
3 in such form as provided in this Section. Such taxpayer shall
4 furnish such bond for a period of 2 years, after which, if the
5 taxpayer has not been delinquent in the filing of any returns,
6 or delinquent or deficient in the paying of any tax under this
7 Act, the Department may reinstate such person as a prior
8 continuance compliance taxpayer. Any taxpayer who fails to pay
9 an admitted or established liability under this Act may also be
10 required to post bond or other acceptable security with the
11 Department guaranteeing the payment of such admitted or
12 established liability.

13 Any person aggrieved by any decision of the Department
14 under this Section may, within the time allowed by law, protest
15 and request a hearing, whereupon the Department shall give
16 notice and shall hold a hearing in conformity with the
17 provisions of this Act and then issue its final administrative
18 decision in the matter to such person. In the absence of such a
19 protest filed within the time allowed by law, the Department's
20 decision shall become final without any further determination
21 being made or notice given.

22 The Department shall discharge any surety and shall release
23 and return any bond or security deposited, assigned, pledged,
24 or otherwise provided to it by a taxpayer under this Section
25 within 30 days after:

26 (1) Such taxpayer becomes a prior continuous compliance

1 taxpayer; or

2 (2) Such taxpayer has ceased to collect receipts on which
3 he is required to remit tax to the Department, has filed a
4 final tax return, and has paid to the Department an amount
5 sufficient to discharge his remaining tax liability as
6 determined by the Department under this Act. The Department
7 shall make a final determination of the taxpayer's outstanding
8 tax liability as expeditiously as possible after his final tax
9 return has been filed. If the Department cannot make such final
10 determination within 45 days after receiving the final tax
11 return, within such period it shall so notify the taxpayer,
12 stating its reasons therefor.

13 The Department may authorize distributors to affix revenue
14 tax stamps by imprinting tax meter stamps upon original
15 packages of cigarettes. The Department shall adopt rules and
16 regulations relating to the imprinting of such tax meter stamps
17 as will result in payment of the proper taxes as herein
18 imposed. No distributor may affix revenue tax stamps to
19 original packages of cigarettes by imprinting tax meter stamps
20 thereon unless such distributor has first obtained permission
21 from the Department to employ this method of affixation. The
22 Department shall regulate the use of tax meters and may, to
23 assure the proper collection of the taxes imposed by this Act,
24 revoke or suspend the privilege, theretofore granted by the
25 Department to any distributor, to imprint tax meter stamps upon
26 original packages of cigarettes.

1 Illinois cigarette manufacturers who place their
2 cigarettes in original packages which are contained inside a
3 sealed transparent wrapper, and similar out-of-State cigarette
4 manufacturers who elect to qualify and are accepted by the
5 Department as distributors under Section 4b(a) of this Act,
6 shall pay the taxes imposed by this Act by remitting the amount
7 thereof to the Department by the 5th day of each month covering
8 cigarettes shipped or otherwise delivered in Illinois to
9 purchasers during the preceding calendar month. Such
10 manufacturers of cigarettes in original packages which are
11 contained inside a sealed transparent wrapper, before
12 delivering such cigarettes or causing such cigarettes to be
13 delivered in this State to purchasers, shall evidence their
14 obligation to remit the taxes due with respect to such
15 cigarettes by imprinting language to be prescribed by the
16 Department on each original package of such cigarettes
17 underneath the sealed transparent outside wrapper of such
18 original package, in such place thereon and in such manner as
19 the Department may designate. Such imprinted language shall
20 acknowledge the manufacturer's payment of or liability for the
21 tax imposed by this Act with respect to the distribution of
22 such cigarettes.

23 A distributor shall not affix, or cause to be affixed, any
24 stamp or imprint to a package of cigarettes, as provided for in
25 this Section, if the tobacco product manufacturer, as defined
26 in Section 10 of the Tobacco Product Manufacturers' Escrow Act,

1 that made or sold the cigarettes has failed to become a
2 participating manufacturer, as defined in subdivision (a)(1)
3 of Section 15 of the Tobacco Product Manufacturers' Escrow Act,
4 or has failed to create a qualified escrow fund for any
5 cigarettes manufactured by the tobacco product manufacturer
6 and sold in this State or otherwise failed to bring itself into
7 compliance with subdivision (a)(2) of Section 15 of the Tobacco
8 Product Manufacturers' Escrow Act.

9 A cigarette machine operator shall not affix, or cause to
10 be affixed, any stamp or imprint to an original package of
11 cigarettes, as provided for in this Section, if the cigarette
12 machine operator has failed to become a participating
13 manufacturer, as defined in item (1) of subsection (a) of
14 Section 15 of the Tobacco Product Manufacturers' Escrow Act, or
15 has failed to create a qualified escrow fund for any cigarettes
16 manufactured by the tobacco product manufacturer and sold in
17 this State or otherwise failed to bring itself into compliance
18 with item (2) of subsection (a) of Section 15 of the Tobacco
19 Product Manufacturers' Escrow Act.

20 A cigarette machine operator shall not affix, or cause to
21 be affixed, any stamp or imprint to an original package of
22 cigarettes, as provided for in this Section, unless the
23 cigarette machine operator and the cigarettes contained in such
24 package have complied with the Cigarette Fire Safety Standards
25 Act.

26 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10;

1 96-1027, eff. 7-12-10.)

2 (35 ILCS 130/3-10)

3 Sec. 3-10. Cigarette enforcement.

4 (a) Prohibitions. It is unlawful for any person:

5 (1) to sell or distribute in this State; to acquire,
6 hold, own, possess, or transport, for sale or distribution
7 in this State; or to import, or cause to be imported into
8 this State for sale or distribution in this State:

9 (A) any cigarettes the package of which:

10 (i) bears any statement, label, stamp,
11 sticker, or notice indicating that the
12 manufacturer did not intend the cigarettes to be
13 sold, distributed, or used in the United States,
14 including but not limited to labels stating "For
15 Export Only", "U.S. Tax Exempt", "For Use Outside
16 U.S.", or similar wording; or

17 (ii) does not comply with:

18 (aa) all requirements imposed by or
19 pursuant to federal law regarding warnings and
20 other information on packages of cigarettes
21 manufactured, packaged, or imported for sale,
22 distribution, or use in the United States,
23 including but not limited to the precise
24 warning labels specified in the federal
25 Cigarette Labeling and Advertising Act, 15

1 U.S.C. 1333; and

2 (bb) all federal trademark and copyright
3 laws;

4 (B) any cigarettes imported into the United States
5 in violation of 26 U.S.C. 5754 or any other federal
6 law, or implementing federal regulations;

7 (C) any cigarettes that such person otherwise
8 knows or has reason to know the manufacturer did not
9 intend to be sold, distributed, or used in the United
10 States; or

11 (D) any cigarettes for which there has not been
12 submitted to the Secretary of the U.S. Department of
13 Health and Human Services the list or lists of the
14 ingredients added to tobacco in the manufacture of the
15 cigarettes required by the federal Cigarette Labeling
16 and Advertising Act, 15 U.S.C. 1335a;

17 (2) to alter the package of any cigarettes, prior to
18 sale or distribution to the ultimate consumer, so as to
19 remove, conceal, or obscure:

20 (A) any statement, label, stamp, sticker, or
21 notice described in subdivision (a)(1)(A)(i) of this
22 Section;

23 (B) any health warning that is not specified in, or
24 does not conform with the requirements of, the federal
25 Cigarette Labeling and Advertising Act, 15 U.S.C.
26 1333; or

1 (3) to affix any stamp required pursuant to this Act to
2 the package of any cigarettes described in subdivision
3 (a)(1) of this Section or altered in violation of
4 subdivision (a)(2).

5 (b) Documentation. On the first business day of each month,
6 each person licensed to affix the State tax stamp to cigarettes
7 shall file with the Department, for all cigarettes imported
8 into the United States to which the person has affixed the tax
9 stamp in the preceding month:

10 (1) a copy of:

11 (A) the permit issued pursuant to the Internal
12 Revenue Code, 26 U.S.C. 5713, to the person importing
13 the cigarettes into the United States allowing the
14 person to import the cigarettes; and

15 (B) the customs form containing, with respect to
16 the cigarettes, the internal revenue tax information
17 required by the U.S. Bureau of Alcohol, Tobacco and
18 Firearms;

19 (2) a statement, signed by the person under penalty of
20 perjury, which shall be treated as confidential by the
21 Department and exempt from disclosure under the Freedom of
22 Information Act, identifying the brand and brand styles of
23 all such cigarettes, the quantity of each brand style of
24 such cigarettes, the supplier of such cigarettes, and the
25 person or persons, if any, to whom such cigarettes have
26 been conveyed for resale; and a separate statement, signed

1 by the individual under penalty of perjury, which shall not
2 be treated as confidential or exempt from disclosure,
3 separately identifying the brands and brand styles of such
4 cigarettes; and

5 (3) a statement, signed by an officer of the
6 manufacturer or importer under penalty of perjury,
7 certifying that the manufacturer or importer has complied
8 with:

9 (A) the package health warning and ingredient
10 reporting requirements of the federal Cigarette
11 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a,
12 with respect to such cigarettes; and

13 (B) the provisions of Exhibit T of the Master
14 Settlement Agreement entered in the case of People of
15 the State of Illinois v. Philip Morris, et al. (Circuit
16 Court of Cook County, No. 96-L13146), including a
17 statement indicating whether the manufacturer is, or
18 is not, a participating tobacco manufacturer within
19 the meaning of Exhibit T.

20 (c) Administrative sanctions.

21 (1) Upon finding that a distributor, cigarette machine
22 operator, secondary distributor, or person has committed
23 any of the acts prohibited by subsection (a), knowing or
24 having reason to know that he or she has done so, or upon
25 finding that a distributor or person has failed to comply
26 with any requirement of subsection (b), the Department may

1 revoke or suspend the license or licenses of any
2 distributor, ~~or~~ secondary distributor, or cigarette
3 machine operator pursuant to the procedures set forth in
4 Section 6 and impose, on the distributor, secondary
5 distributor, cigarette machine operator, or person, a
6 civil penalty in an amount not to exceed the greater of
7 500% of the retail value of the cigarettes involved or
8 \$5,000.

9 (2) Cigarettes that are acquired, held, owned,
10 possessed, transported in, imported into, or sold or
11 distributed in this State in violation of this Section
12 shall be deemed contraband under this Act and are subject
13 to seizure and forfeiture as provided in this Act, and all
14 such cigarettes seized and forfeited shall be destroyed or
15 maintained and used in an undercover capacity. Such
16 cigarettes shall be deemed contraband whether the
17 violation of this Section is knowing or otherwise.

18 (d) Unfair trade practices. In addition to any other
19 penalties provided for in this Act, a violation of subsection
20 (a) or subsection (b) of this Section shall constitute an
21 unlawful practice as provided in the Consumer Fraud and
22 Deceptive Business Practices Act.

23 (d-1) Retailers and secondary distributors shall not be
24 liable under subsections (c)(1) and (d) of this Section for
25 unknowingly possessing, selling, or distributing to consumers
26 or users cigarettes identified in subsection (a)(1) of this

1 Section if the cigarettes possessed, sold, or distributed by
2 the retailer or secondary distributor were obtained from a
3 distributor licensed under this Act.

4 (e) Unfair cigarette sales. For purposes of the Trademark
5 Registration and Protection Act and the Counterfeit Trademark
6 Act, cigarettes imported or reimported into the United States
7 for sale or distribution under any trade name, trade dress, or
8 trademark that is the same as, or is confusingly similar to,
9 any trade name, trade dress, or trademark used for cigarettes
10 manufactured in the United States for sale or distribution in
11 the United States shall be presumed to have been purchased
12 outside of the ordinary channels of trade.

13 (f) General provisions.

14 (1) This Section shall be enforced by the Department;
15 provided that, at the request of the Director of Revenue or
16 the Director's duly authorized agent, the State police and
17 all local police authorities shall enforce the provisions
18 of this Section. The Attorney General has concurrent power
19 with the State's Attorney of any county to enforce this
20 Section.

21 (2) For the purpose of enforcing this Section, the
22 Director of Revenue and any agency to which the Director
23 has delegated enforcement responsibility pursuant to
24 subdivision (f)(1) may request information from any State
25 or local agency and may share information with and request
26 information from any federal agency and any agency of any

1 other state or any local agency of any other state.

2 (3) In addition to any other remedy provided by law,
3 including enforcement as provided in subdivision (a)(1),
4 any person may bring an action for appropriate injunctive
5 or other equitable relief for a violation of this Section;
6 actual damages, if any, sustained by reason of the
7 violation; and, as determined by the court, interest on the
8 damages from the date of the complaint, taxable costs, and
9 reasonable attorney's fees. If the trier of fact finds that
10 the violation is flagrant, it may increase recovery to an
11 amount not in excess of 3 times the actual damages
12 sustained by reason of the violation.

13 (g) Definitions. As used in this Section:

14 "Importer" means that term as defined in 26 U.S.C. 5702(1).

15 "Package" means that term as defined in 15 U.S.C. 1332(4).

16 (h) Applicability.

17 (1) This Section does not apply to:

18 (A) cigarettes allowed to be imported or brought
19 into the United States for personal use; and

20 (B) cigarettes sold or intended to be sold as
21 duty-free merchandise by a duty-free sales enterprise
22 in accordance with the provisions of 19 U.S.C. 1555(b)
23 and any implementing regulations; except that this
24 Section shall apply to any such cigarettes that are
25 brought back into the customs territory for resale
26 within the customs territory.

1 (2) The penalties provided in this Section are in
2 addition to any other penalties imposed under other
3 provision of law.

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 130/4a) (from Ch. 120, par. 453.4a)

7 Sec. 4a. If a distributor or cigarette machine operator
8 shall be convicted of the violation of any of the provisions of
9 this Act, or if his or her license shall be revoked and no
10 review is had of the order or revocation, or if on review
11 thereof the decision is adverse to the distributor or cigarette
12 machine operator, or if a distributor or cigarette machine
13 operator fails to pay an assessment as to which no judicial
14 review is sought and which has become final, or pursuant to
15 which, upon review thereof, the circuit court has entered a
16 judgment that is in favor of the Department and that has become
17 final, the bond filed pursuant to this Act shall thereupon be
18 forfeited, and the Department may institute a suit upon such
19 bond in its own name for the entire amount of such bond and
20 costs. Such suit upon the bond shall be in addition to any
21 other remedy provided for herein.

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

23 (35 ILCS 130/4d)

24 Sec. 4d. Sales of cigarettes to and by retailers. In-state

1 makers, manufacturers, and fabricators licensed as
2 distributors under Section 4 of this Act, ~~and~~ out-of-state
3 makers, manufacturers, and fabricators holding permits under
4 Section 4b of this Act, and cigarette machine operators
5 licensed under Section 4g of this Act may not sell original
6 packages of cigarettes to retailers. A retailer may sell only
7 original packages of cigarettes obtained from manufacturer
8 representatives, licensed secondary distributors, or licensed
9 distributors other than in-state makers, manufacturers, or
10 fabricators licensed as distributors under Section 4 of this
11 Act and out-of-state makers, manufacturers, or fabricators
12 holding permits under Section 4b of this Act. A retailer
13 holding a cigarette operator's license under Section 4g is
14 authorized to sell cigarettes made, manufactured, or
15 fabricated from a cigarette machine located on the retailer's
16 premises only to purchasers for use and consumption and not for
17 resale.

18 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10;
19 97-587, eff. 8-26-11.)

20 (35 ILCS 130/4g new)

21 Sec. 4g. Cigarette machine operator license.

22 (a) No person may engage in the business of operating a
23 cigarette machine in this State without first having obtained a
24 license from the Department. Applications for licenses shall be
25 made to the Department on a form furnished and prescribed by

1 the Department. Each applicant for a license under this Section
2 shall furnish the following information to the Department on a
3 form signed and verified by the applicant under penalty of
4 perjury:

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

6 (2) the address of the location at which the applicant
7 proposes to engage in the business of operating a cigarette
8 machine in this State; and

9 (3) any other additional information as the Department
10 may reasonably require.

11 The annual license fee payable to the Department for each
12 cigarette machine operator's license shall be \$250. Each
13 applicant for a license shall pay such fee to the Department at
14 the time of submitting an application for license to the
15 Department.

16 Every applicant who is required to procure a cigarette
17 machine operator's license shall file with his application a
18 joint and several bond. Such bond shall be executed to the
19 Department of Revenue, with good and sufficient surety or
20 sureties residing or licensed to do business within the State
21 of Illinois, in the amount of \$2,500, conditioned upon the true
22 and faithful compliance by the licensee with all of the
23 provisions of this Act. Such bond, or a reissue thereof, or a
24 substitute therefore, shall be kept in effect during the entire
25 period covered by the license. A separate application for a
26 license shall be made, a separate annual license fee paid, and

1 a separate bond filed, for each place of business at which a
2 person who is required to procure a cigarette machine operator
3 license under this Section proposes to engage in business as a
4 distributor in Illinois under this Act.

5 (b) The following are ineligible to receive a cigarette
6 machine operator's license under this Act:

7 (1) a person who is not of good character and
8 reputation in the community in which he resides;

9 (2) a person who has been convicted of a felony under
10 any federal or State law, if the Department, after an
11 investigation and a hearing, if an investigation and
12 hearing are requested by the applicant, determines that the
13 person has not been sufficiently rehabilitated to warrant
14 the public trust;

15 (3) a corporation, if any officer, manager, or director
16 thereof, or any stockholder or stockholders owning in the
17 aggregate more than 5% of the stock of that corporation,
18 would not be eligible to receive a license under this Act
19 for any reason;

20 (4) a person who manufactures cigarettes, whether in
21 this State or out of this State;

22 (5) an entity, or any person who owns more than 15% of
23 the ownership interests in an entity or a related party
24 who:

25 (A) owes, at the time of application, any
26 delinquent cigarette taxes that have been determined

1 by law to be due and unpaid, unless the license
2 applicant has entered into an agreement approved by the
3 Department to pay the amount due;

4 (B) had a license under this Act revoked within the
5 past 2 years by the Department for misconduct relating
6 to stolen or contraband cigarettes or has been
7 convicted of a State or federal crime, punishable by
8 imprisonment of one year or more, relating to stolen or
9 contraband cigarettes;

10 (C) has been found by the Department, after notice
11 and a hearing, to have imported or caused to be
12 imported into the United States for sale or
13 distribution any cigarette in violation of 19 U.S.C.
14 1681a;

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

23 (E) has been found by the Department, after notice
24 and a hearing, to have made a material false statement
25 in the application or has failed to produce records
26 required to be maintained by this Act.

1 (c) The Department, upon receipt of an application, license
2 fee, and bond in proper form, from a person who is eligible to
3 receive a cigarette machine operator license under this Act,
4 shall issue to that applicant a license in a form as prescribed
5 by the Department. That license shall permit the applicant to
6 which it is issued to engage in business as a cigarette machine
7 operator at the place shown in his application. All licenses
8 issued by the Department under this Section shall be valid for
9 a period of time not to exceed one year after issuance unless
10 sooner revoked, canceled, or suspended as provided in this Act.
11 No license issued under this Section is transferable or
12 assignable. Such license shall be conspicuously displayed in
13 the place of business conducted by the licensee in Illinois
14 under the license. No cigarette machine operator acquires any
15 vested interest or compensable property right in a license
16 issued under this Act.

17 (d) A cigarette machine operator shall notify the
18 Department of any change in the information contained on the
19 application form, including any change in ownership, and shall
20 do so within 30 days after any the change.

21 (e) Any person aggrieved by any decision of the Department
22 under this Section may, within 20 days after notice of the
23 decision, protest and request a hearing. Upon receiving a
24 request for a hearing, the Department shall give notice to the
25 person requesting the hearing of the time and place fixed for
26 the hearing and shall hold a hearing in conformity with the

1 provisions of this Act. The Department shall then issue its
2 final administrative decision on the matter to that person. In
3 the absence of a protest and request for a hearing within 20
4 days, the Department's decision shall become final without any
5 further determination being made or notice given.

6 (35 ILCS 130/4h new)

7 Sec. 4h. Cigarette machine operators; sale of cigarettes
8 produced.

9 (a) Any person obtaining a cigarette machine operator's
10 license under Section 4g of this Act shall comply with all laws
11 and regulations relating to the distribution, making,
12 manufacturing, and fabricating of cigarettes. The cigarette
13 machine operator is also responsible for complying with all
14 laws and regulations contained in this Act regarding packaging
15 and labeling of original packages of cigarettes.

16 (b) Immediately after cigarettes are made, manufactured,
17 or fabricated by a cigarette machine operator, they shall be
18 placed in one or more packages, with the correct number of tax
19 stamps permanently affixed to the package or packages and the
20 package or packages sealed with a transparent wrapper or sealed
21 with unique tape approved by the Department. Tax stamps may be
22 permanently affixed to the package or packages after the
23 package or packages are sealed with a transparent wrapper
24 approved by the Department. Cigarettes in the possession of a
25 cigarette machine operator that do not meet the requirements of

1 this subsection (b) are deemed contraband.

2 (c) A person possessing a cigarette machine operator's
3 license may not purchase unstamped cigarettes from an in-State
4 or out-of-State manufacturer or distributor of cigarettes, or
5 import cigarettes from outside of the United States.

6 (d) Cigarettes made, manufactured, or fabricated by a
7 cigarette machine may not be sold or distributed to, or
8 possessed by, manufacturers, distributors, secondary
9 distributors, or retailers other than the cigarette machine
10 operator.

11 (e) A cigarette machine possessed by a person operating a
12 cigarette machine shall have a secure meter that counts the
13 number of cigarettes made, manufactured, or fabricated by the
14 cigarette machine and that cannot be accessed, except for the
15 sole purpose of taking meter readings, altered or reset by the
16 machine operator.

17 (35 ILCS 130/6) (from Ch. 120, par. 453.6)

18 Sec. 6. Revocation, cancellation, or suspension of
19 license. The Department may, after notice and hearing as
20 provided for by this Act, revoke, cancel or suspend the license
21 of any distributor, ~~or~~ secondary distributor, or cigarette
22 machine operator for the violation of any provision of this
23 Act, or for noncompliance with any provision herein contained,
24 or for any noncompliance with any lawful rule or regulation
25 promulgated by the Department under Section 8 of this Act, or

1 because the licensee is determined to be ineligible for a
2 distributor's license for any one or more of the reasons
3 provided for in Section 4 of this Act, or because the licensee
4 is determined to be ineligible for a secondary distributor's
5 license for any one or more of the reasons provided for in
6 Section 4c of this Act, or because the licensee is determined
7 to be ineligible for a cigarette machine operator license for
8 any one or more of the reasons provided for in Section 4g of
9 this Act. However, no such license shall be revoked, cancelled
10 or suspended, except after a hearing by the Department with
11 notice to the distributor, ~~or~~ secondary distributor, or
12 cigarette machine operator, as aforesaid, and affording such
13 distributor, ~~or~~ secondary distributor, or cigarette machine
14 operator a reasonable opportunity to appear and defend, and any
15 distributor, ~~or~~ secondary distributor, or cigarette machine
16 operator aggrieved by any decision of the Department with
17 respect thereto may have the determination of the Department
18 judicially reviewed, as herein provided.

19 The Department may revoke, cancel, or suspend the license
20 of any distributor or cigarette machine operator for a
21 violation of the Tobacco Product Manufacturers' Escrow
22 Enforcement Act as provided in Section 30 of that Act. The
23 Department may revoke, cancel, or suspend the license of any
24 secondary distributor for a violation of subsection (e) of
25 Section 15 of the Tobacco Product Manufacturers' Escrow
26 Enforcement Act.

1 Any distributor, ~~or~~ secondary distributor, or cigarette
2 machine operator aggrieved by any decision of the Department
3 under this Section may, within 20 days after notice of the
4 decision, protest and request a hearing. Upon receiving a
5 request for a hearing, the Department shall give notice in
6 writing to the distributor, ~~or~~ secondary distributor, or
7 cigarette machine operator requesting the hearing that
8 contains a statement of the charges preferred against the
9 distributor, ~~or~~ secondary distributor, or cigarette machine
10 operator and that states the time and place fixed for the
11 hearing. The Department shall hold the hearing in conformity
12 with the provisions of this Act and then issue its final
13 administrative decision in the matter to the distributor, ~~or~~
14 secondary distributor, or cigarette machine operator. In the
15 absence of a protest and request for a hearing within 20 days,
16 the Department's decision shall become final without any
17 further determination being made or notice given.

18 No license so revoked, as aforesaid, shall be reissued to
19 any such distributor, ~~or~~ secondary distributor, or cigarette
20 machine operator within a period of 6 months after the date of
21 the final determination of such revocation. No such license
22 shall be reissued at all so long as the person who would
23 receive the license is ineligible to receive a distributor's
24 license under this Act for any one or more of the reasons
25 provided for in Section 4 of this Act or is ineligible to
26 receive a secondary distributor's license under this Act for

1 any one or more of the reasons provided for in Section 4c of
2 this Act, or because the licensee is determined to be
3 ineligible for a cigarette machine operator license for any one
4 or more of the reasons provided for in Section 4g of this Act.

5 The Department upon complaint filed in the circuit court
6 may by injunction restrain any person who fails, or refuses, to
7 comply with any of the provisions of this Act from acting as a
8 distributor or secondary distributor of cigarettes or a
9 cigarette machine operator in this State.

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

11 (35 ILCS 130/7) (from Ch. 120, par. 453.7)

12 Sec. 7. The Department or any officer or employee of the
13 Department designated, in writing, by the Director thereof,
14 shall at its or his or her own instance, or on the written
15 request of any distributor, secondary distributor, cigarette
16 machine operator, manufacturer with authority to maintain
17 manufacturer representatives, or other interested party to the
18 proceeding, issue subpoenas requiring the attendance of and the
19 giving of testimony by witnesses, and subpoenas duces tecum
20 requiring the production of books, papers, records or
21 memoranda. All subpoenas and subpoenas duces tecum issued under
22 the terms of this Act may be served by any person of full age.
23 The fees of witnesses for attendance and travel shall be the
24 same as the fees of witnesses before the circuit court of this
25 State; such fees to be paid when the witness is excused from

1 further attendance. When the witness is subpoenaed at the
2 instance of the Department or any officer or employee thereof,
3 such fees shall be paid in the same manner as other expenses of
4 the Department, and when the witness is subpoenaed at the
5 instance of any other party to any such proceeding, the cost of
6 service of the subpoena or subpoena duces tecum and the fee of
7 the witness shall be borne by the party at whose instance the
8 witness is summoned. In such case the Department, in its
9 discretion, may require a deposit to cover the cost of such
10 service and witness fees. A subpoena or subpoena duces tecum so
11 issued shall be served in the same manner as a subpoena or
12 subpoena duces tecum issued out of a court.

13 Any circuit court of this State, upon the application of
14 the Department or any officer or employee thereof, or upon the
15 application of any other party to the proceeding, may, in its
16 discretion, compel the attendance of witnesses, the production
17 of books, papers, records or memoranda and the giving of
18 testimony before the Department or any officer or employee
19 thereof conducting an investigation or holding a hearing
20 authorized by this Act, by an attachment for contempt, or
21 otherwise, in the same manner as production of evidence may be
22 compelled before the court.

23 The Department or any officer or employee thereof, or any
24 other party in an investigation or hearing before the
25 Department, may cause the depositions of witnesses within the
26 State to be taken in the manner prescribed by law for like

1 depositions, or depositions for discovery in civil actions in
2 courts of this State, and to that end compel the attendance of
3 witnesses and the production of books, papers, records or
4 memoranda, in the same manner hereinbefore provided.

5 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

6 (35 ILCS 130/8) (from Ch. 120, par. 453.8)

7 Sec. 8. The Department may make, promulgate and enforce
8 such reasonable rules and regulations relating to the
9 administration and enforcement of this Act as may be deemed
10 expedient.

11 Whenever notice is required by this Act, such notice may be
12 given by United States certified or registered mail, addressed
13 to the person concerned at his last known address, and proof of
14 such mailing shall be sufficient for the purposes of this Act.
15 Notice of any hearing provided for by this Act shall be so
16 given not less than 7 days prior to the day fixed for the
17 hearing.

18 Hearings provided for in this Act shall be held:

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

21 (2) At the Department's office nearest the taxpayer's
22 or licensee's principal place of business, if the
23 taxpayer's or licensee's principal place of business is in
24 Illinois but outside Cook County;

25 (3) In Sangamon County, if the taxpayer's or licensee's

1 principal place of business is outside Illinois.

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

11 Service upon the Director of Revenue or Assistant Director
12 of Revenue of summons issued in any action to review a final
13 administrative decision shall be service upon the Department.
14 The Department shall certify the record of its proceedings if
15 the distributor, secondary distributor, cigarette machine
16 operator, or manufacturer with authority to maintain
17 manufacturer representatives pays to it the sum of 75¢ per page
18 of testimony taken before the Department and 25¢ per page of
19 all other matters contained in such record, except that these
20 charges may be waived where the Department is satisfied that
21 the aggrieved party is a poor person who cannot afford to pay
22 such charges. Before the delivery of such record to the person
23 applying for it, payment of these charges must be made, and if
24 the record is not paid for within 30 days after notice that
25 such record is available, the complaint may be dismissed by the
26 court upon motion of the Department.

1 No stay order shall be entered by the Circuit Court unless
2 the distributor, secondary distributor, cigarette machine
3 operator, or manufacturer with authority to maintain
4 manufacturer representatives files with the court a bond in an
5 amount fixed and approved by the court, to indemnify the State
6 against all loss and injury which may be sustained by it on
7 account of the review proceedings and to secure all costs which
8 may be occasioned by such proceedings.

9 Whenever any proceeding provided by this Act is begun
10 before the Department, either by the Department or by a person
11 subject to this Act, and such person thereafter dies or becomes
12 a person under legal disability before such proceeding is
13 concluded, the legal representative of the deceased person or
14 of the person under legal disability shall notify the
15 Department of such death or legal disability. Such legal
16 representative, as such, shall then be substituted by the
17 Department for such person. If the legal representative fails
18 to notify the Department of his or her appointment as such
19 legal representative, the Department may, upon its own motion,
20 substitute such legal representative in the proceeding pending
21 before the Department for the person who died or became a
22 person under legal disability.

23 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

24 (35 ILCS 130/9) (from Ch. 120, par. 453.9)

25 Sec. 9. Returns; remittance. Every distributor who is

1 required to procure a license under this Act, but who is not a
2 manufacturer of cigarettes in original packages which are
3 contained in a sealed transparent wrapper, shall, on or before
4 the 15th day of each calendar month, file a return with the
5 Department, showing the quantity of cigarettes manufactured
6 during the preceding calendar month, the quantity of cigarettes
7 brought into this State or caused to be brought into this State
8 from outside this State during the preceding calendar month
9 without authorized evidence on the original packages of such
10 cigarettes underneath the sealed transparent wrapper thereof
11 that the tax liability imposed by this Act has been assumed by
12 the out-of-State seller of such cigarettes, the quantity of
13 cigarettes purchased tax-paid during the preceding calendar
14 month either within or outside this State, the quantity of
15 cigarettes sold by manufacturer representatives on behalf of
16 the distributor, the quantity of cigarettes sold to
17 manufacturer representatives, and the quantity of cigarettes
18 sold or otherwise disposed of during the preceding calendar
19 month. Such return shall be filed upon forms furnished and
20 prescribed by the Department and shall contain such other
21 information as the Department may reasonably require. The
22 Department may promulgate rules to require that the
23 distributor's return be accompanied by appropriate
24 computer-generated magnetic media supporting schedule data in
25 the format required by the Department, unless, as provided by
26 rule, the Department grants an exception upon petition of a

1 distributor.

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

23 Cigarette machine operators shall file a return by the 15th
24 day of each month covering the preceding calendar month. Each
25 such return shall show: (1) the quantity of cigarettes made,
26 manufactured, or fabricated during the period covered by the

1 return, (2) the beginning and ending meter reading for each
2 cigarette machine for the period covered by the return, (3) the
3 quantity of cigarettes sold or otherwise disposed of during the
4 period covered by the return, (4) the type and quantity of
5 tobacco products used to make, manufacture, or fabricate
6 cigarettes by use of the operator's cigarette machine, (5) the
7 type and quantity of cigarette papers and filters purchased for
8 use in the operator's cigarette machine, and (6) such other
9 information as the Department may lawfully require. These
10 returns shall be filed on forms prescribed and furnished by the
11 Department. The Department may require that each such return
12 shall be accompanied by a copy of each invoice rendered by the
13 cigarette machine operator to any purchaser to whom the
14 cigarette machine operator sold cigarettes during the period
15 covered by the return. The Department may adopt rules in
16 accordance with the provisions of the Illinois Administrative
17 Procedure Act to require that the cigarette machine operator's
18 return be accompanied by appropriate computer generated
19 magnetic media supporting schedule data in the format required
20 by the Department, unless, as provided by rule, the Department
21 grants an exception upon petition of a cigarette machine
22 operator.

23 (Source: P.A. 97-587, eff. 8-26-11.)

24 (35 ILCS 130/9a) (from Ch. 120, par. 453.9a)

25 Sec. 9a. Examination and correction of returns.

1 (1) As soon as practicable after any return is filed, the
2 Department shall examine such return and shall correct such
3 return according to its best judgment and information, which
4 return so corrected by the Department shall be prima facie
5 correct and shall be prima facie evidence of the correctness of
6 the amount of tax due, as shown therein. Instead of requiring
7 the distributor or cigarette machine operator to file an
8 amended return, the Department may simply notify the
9 distributor or cigarette machine operator of the correction or
10 corrections it has made. Proof of such correction by the
11 Department may be made at any hearing before the Department or
12 in any legal proceeding by a reproduced copy of the
13 Department's record relating thereto in the name of the
14 Department under the certificate of the Director of Revenue.
15 Such reproduced copy shall, without further proof, be admitted
16 into evidence before the Department or in any legal proceeding
17 and shall be prima facie proof of the correctness of the amount
18 of tax due, as shown therein. If the Department finds that any
19 amount of tax is due from the distributor or cigarette machine
20 operator, the Department shall issue the distributor a notice
21 of tax liability for the amount of tax claimed by the
22 Department to be due, together with a penalty in an amount
23 determined in accordance with Sections 3-3, 3-5 and 3-6 of the
24 Uniform Penalty and Interest Act. If, in administering the
25 provisions of this Act, comparison of a return or returns of a
26 distributor or cigarette machine operator with the books,

1 records and inventories of such distributor or cigarette
2 machine operator discloses a deficiency which cannot be
3 allocated by the Department to a particular month or months,
4 the Department shall issue the distributor or cigarette machine
5 operator a notice of tax liability for the amount of tax
6 claimed by the Department to be due for a given period, but
7 without any obligation upon the Department to allocate such
8 deficiency to any particular month or months, together with a
9 penalty in an amount determined in accordance with Sections
10 3-3, 3-5 and 3-6 of the Uniform Penalty and Interest Act, under
11 which circumstances the aforesaid notice of tax liability shall
12 be prima facie correct and shall be prima facie evidence of the
13 correctness of the amount of tax due, as shown therein; and
14 proof of such correctness may be made in accordance with, and
15 the admissibility of a reproduced copy of such notice of tax
16 liability shall be governed by, all the provisions of this Act
17 applicable to corrected returns. If any distributor or
18 cigarette machine operator filing any return dies or becomes a
19 person under legal disability at any time before the Department
20 issues its notice of tax liability, such notice shall be issued
21 to the administrator, executor or other legal representative,
22 as such, of such distributor or cigarette machine operator.

23 (2) If, within 60 days after such notice of tax liability,
24 the distributor or cigarette machine operator or his or her
25 legal representative files a protest to such notice of tax
26 liability and requests a hearing thereon, the Department shall

1 give notice to such distributor, or cigarette machine operator,
2 or legal representative of the time and place fixed for such
3 hearing, and shall hold a hearing in conformity with the
4 provisions of this Act, and pursuant thereto shall issue a
5 final assessment to such distributor or cigarette machine
6 operator, or his or her legal representative, for the amount
7 found to be due as a result of such hearing. If a protest to the
8 notice of tax liability and a request for a hearing thereon is
9 not filed within 60 days after such notice of tax liability,
10 such notice of tax liability shall become final without the
11 necessity of a final assessment being issued and shall be
12 deemed to be a final assessment.

13 (3) In case of failure to pay the tax, or any portion
14 thereof, or any penalty provided for in this Act, when due, the
15 Department may bring suit to recover the amount of such tax, or
16 portion thereof, or penalty; or, if the taxpayer dies or
17 becomes incompetent, by filing claim therefor against his
18 estate; provided that no such action with respect to any tax,
19 or portion thereof, or penalty, shall be instituted more than 2
20 years after the cause of action accrues, except with the
21 consent of the person from whom such tax or penalty is due.

22 After the expiration of the period within which the person
23 assessed may file an action for judicial review under the
24 Administrative Review Law without such an action being filed, a
25 certified copy of the final assessment or revised final
26 assessment of the Department may be filed with the Circuit

1 Court of the county in which the taxpayer has his or her
2 principal place of business, or of Sangamon County in those
3 cases in which the taxpayer does not have his principal place
4 of business in this State. The certified copy of the final
5 assessment or revised final assessment shall be accompanied by
6 a certification which recites facts that are sufficient to show
7 that the Department complied with the jurisdictional
8 requirements of the Law in arriving at its final assessment or
9 its revised final assessment and that the taxpayer had his or
10 her opportunity for an administrative hearing and for judicial
11 review, whether he availed himself or herself of either or both
12 of these opportunities or not. If the court is satisfied that
13 the Department complied with the jurisdictional requirements
14 of the Law in arriving at its final assessment or its revised
15 final assessment and that the taxpayer had his or her
16 opportunity for an administrative hearing and for judicial
17 review, whether he or she availed himself or herself of either
18 or both of these opportunities or not, the court shall enter
19 judgment in favor of the Department and against the taxpayer
20 for the amount shown to be due by the final assessment or the
21 revised final assessment, and such judgment shall be filed of
22 record in the court. Such judgment shall bear the rate of
23 interest set in the Uniform Penalty and Interest Act, but
24 otherwise shall have the same effect as other judgments. The
25 judgment may be enforced, and all laws applicable to sales for
26 the enforcement of a judgment shall be applicable to sales made

1 under such judgments. The Department shall file the certified
2 copy of its assessment, as herein provided, with the Circuit
3 Court within 2 years after such assessment becomes final except
4 when the taxpayer consents in writing to an extension of such
5 filing period.

6 If, when the cause of action for a proceeding in court
7 accrues against a person, he or she is out of the State, the
8 action may be commenced within the times herein limited, after
9 his or her coming into or return to the State; and if, after
10 the cause of action accrues, he or she departs from and remains
11 out of the State, the time of his or her absence is no part of
12 the time limited for the commencement of the action; but the
13 foregoing provisions concerning absence from the State shall
14 not apply to any case in which, at the time the cause of action
15 accrues, the party against whom the cause of action accrues is
16 not a resident of this State. The time within which a court
17 action is to be commenced by the Department hereunder shall not
18 run while the taxpayer is a debtor in any proceeding under the
19 Federal Bankruptcy Act nor thereafter until 90 days after the
20 Department is notified by such debtor of being discharged in
21 bankruptcy.

22 No claim shall be filed against the estate of any deceased
23 person or a person under legal disability for any tax or
24 penalty or part of either except in the manner prescribed and
25 within the time limited by the Probate Act of 1975, as amended.

26 The remedies provided for herein shall not be exclusive,

1 but all remedies available to creditors for the collection of
2 debts shall be available for the collection of any tax or
3 penalty due hereunder.

4 The collection of tax or penalty by any means provided for
5 herein shall not be a bar to any prosecution under this Act.

6 The certificate of the Director of the Department to the
7 effect that a tax or amount required to be paid by this Act has
8 not been paid, that a return has not been filed, or that
9 information has not been supplied pursuant to the provisions of
10 this Act, shall be prima facie evidence thereof.

11 All of the provisions of Sections 5a, 5b, 5c, 5d, 5e, 5f,
12 5g, 5i and 5j of the Retailers' Occupation Tax Act, which are
13 not inconsistent with this Act, and Section 3-7 of the Uniform
14 Penalty and Interest Act shall apply, as far as practicable, to
15 the subject matter of this Act to the same extent as if such
16 provisions were included herein. References in such
17 incorporated Sections of the "Retailers' Occupation Tax Act" to
18 retailers, to sellers or to persons engaged in the business of
19 selling tangible personal property shall mean distributors and
20 cigarette machine operators when used in this Act.

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

22 (35 ILCS 130/9d) (from Ch. 120, par. 453.9d)

23 Sec. 9d. If it appears, after claim therefor filed with the
24 Department, that an amount of tax or penalty has been paid
25 which was not due under this Act, whether as the result of a

1 mistake of fact or an error of law, except as hereinafter
2 provided, then the Department shall issue a credit memorandum
3 or refund to the person who made the erroneous payment or, if
4 that person has died or become a person under legal disability,
5 to his or her legal representative, as such.

6 If it is determined that the Department should issue a
7 credit or refund under this Act, the Department may first apply
8 the amount thereof against any amount of tax or penalty due
9 under this Act or under the Cigarette Use Tax Act from the
10 person entitled to such credit or refund. For this purpose, if
11 proceedings are pending to determine whether or not any tax or
12 penalty is due under this Act or under the Cigarette Use Tax
13 Act from such person, the Department may withhold issuance of
14 the credit or refund pending the final disposition of such
15 proceedings and may apply such credit or refund against any
16 amount found to be due to the Department under this Act or
17 under the Cigarette Use Tax Act as a result of such
18 proceedings. The balance, if any, of the credit or refund shall
19 be issued to the person entitled thereto.

20 If no tax or penalty is due and no proceeding is pending to
21 determine whether such taxpayer is indebted to the Department
22 for tax or penalty, the credit memorandum or refund shall be
23 issued to the claimant; or (in the case of a credit memorandum)
24 the credit memorandum may be assigned and set over by the
25 lawful holder thereof, subject to reasonable rules of the
26 Department, to any other person who is subject to this Act or

1 the Cigarette Use Tax Act, and the amount thereof shall be
2 applied by the Department against any tax or penalty due or to
3 become due under this Act or under the Cigarette Use Tax Act
4 from such assignee.

5 As to any claim filed hereunder with the Department on and
6 after each January 1 and July 1, no amount of tax or penalty
7 erroneously paid (either in total or partial liquidation of a
8 tax or penalty under this Act) more than 3 years prior to such
9 January 1 and July 1, respectively, shall be credited or
10 refunded, except that if both the Department and the taxpayer
11 have agreed to an extension of time to issue a notice of tax
12 liability under this Act, the claim may be filed at any time
13 prior to the expiration of the period agreed upon.

14 If the Department approves a claim for stamps affixed to a
15 product returned to a manufacturer or cigarette machine
16 operator or for replacement of stamps, the credit memorandum
17 shall not exceed the face value of stamps originally affixed,
18 and replacement stamps shall be issued only in an amount equal
19 to the value of the stamps previously affixed. Higher
20 denomination stamps shall not be issued as replacements for
21 lower value stamps. Distributors and cigarette machine
22 operators must prove the face value of the stamps which have
23 been destroyed or returned to manufacturers when filing claims.

24 Any credit or refund that is allowed under this Act shall
25 bear interest at the rate and in the manner set forth in the
26 Uniform Penalty and Interest Act.

1 In case the Department determines that the claimant is
2 entitled to a refund, such refund shall be made only from such
3 appropriation as may be available for that purpose. If it
4 appears unlikely that the amount appropriated would permit
5 everyone having a claim allowed during the period covered by
6 such appropriation to elect to receive a cash refund, the
7 Department, by rule or regulation, shall provide for the
8 payment of refunds in hardship cases and shall define what
9 types of cases qualify as hardship cases.

10 If the Department approves a claim for the physical
11 replacement of cigarette tax stamps, the Department (subject to
12 the same limitations as those provided for hereinbefore in this
13 Section) may issue an assignable credit memorandum or refund to
14 the claimant or to the claimant's legal representative.

15 The provisions of Sections 6a, 6b and 6c of the Retailers'
16 Occupation Tax Act which are not inconsistent with this Act,
17 shall apply, as far as practicable, to the subject matter of
18 this Act to the same extent as if such provisions were included
19 herein.

20 (Source: P.A. 90-491, eff. 1-1-98.)

21 (35 ILCS 130/10) (from Ch. 120, par. 453.10)

22 Sec. 10. The Department, or any officer or employee
23 designated in writing by the Director thereof, for the purpose
24 of administering and enforcing the provisions of this Act, may
25 hold investigations and hearings concerning any matters

1 covered by this Act, and may examine books, papers, records or
2 memoranda bearing upon the sale or other disposition of
3 cigarettes by a distributor, secondary distributor, cigarette
4 machine operator, manufacturer with authority to maintain
5 manufacturer representatives under Section 4f of this Act, or
6 manufacturer representative, and may issue subpoenas requiring
7 the attendance of a distributor, secondary distributor,
8 cigarette machine operator, manufacturer with authority to
9 maintain manufacturer representatives under Section 4f of this
10 Act, or manufacturer representative, or any officer or employee
11 of a distributor, secondary distributor, cigarette machine
12 operator, manufacturer with authority to maintain manufacturer
13 representatives under Section 4f of this Act, or any person
14 having knowledge of the facts, and may take testimony and
15 require proof, and may issue subpoenas duces tecum to compel
16 the production of relevant books, papers, records and
17 memoranda, for the information of the Department.

18 In the conduct of any investigation or hearing provided for
19 by this Act, neither the Department, nor any officer or
20 employee thereof, shall be bound by the technical rules of
21 evidence, and no informality in the proceedings nor in the
22 manner of taking testimony shall invalidate any rule, order,
23 decision or regulation made, approved or confirmed by the
24 Department.

25 The Director of Revenue, or any duly authorized officer or
26 employee of the Department, shall have the power to administer

1 oaths to such persons required by this Act to give testimony
2 before the said Department.

3 The books, papers, records and memoranda of the Department,
4 or parts thereof, may be proved in any hearing, investigation
5 or legal proceeding by a reproduced copy thereof under the
6 certificate of the Director of Revenue. Such reproduced copy
7 shall, without further proof, be admitted into evidence before
8 the Department or in any legal proceeding.

9 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

10 (35 ILCS 130/11) (from Ch. 120, par. 453.11)

11 Sec. 11. Every distributor of cigarettes or cigarette
12 machine operator, who is required to procure a license under
13 this Act, shall keep within Illinois, at his licensed address,
14 complete and accurate records of cigarettes held, purchased,
15 manufactured, brought in or caused to be brought in from
16 without the State, and sold, or otherwise disposed of, and
17 shall preserve and keep within Illinois at his licensed address
18 all invoices, bills of lading, sales records, copies of bills
19 of sale, inventory at the close of each period for which a
20 return is required of all cigarettes on hand and of all
21 cigarette revenue stamps, both affixed and unaffixed, and other
22 pertinent papers and documents relating to the making,
23 manufacture, fabrication, purchase, sale or disposition of
24 cigarettes. All books and records and other papers and
25 documents that are required by this Act to be kept shall be

1 kept in the English language, and shall, at all times during
2 the usual business hours of the day, be subject to inspection
3 by the Department or its duly authorized agents and employees.
4 The Department may adopt rules that establish requirements,
5 including record forms and formats, for records required to be
6 kept and maintained by taxpayers. For purposes of this Section,
7 "records" means all data maintained by the taxpayer, including
8 data on paper, microfilm, microfiche or any type of
9 machine-sensible data compilation. Those books, records,
10 papers and documents shall be preserved for a period of at
11 least 3 years after the date of the documents, or the date of
12 the entries appearing in the records, unless the Department, in
13 writing, authorizes their destruction or disposal at an earlier
14 date. At all times during the usual business hours of the day
15 any duly authorized agent or employee of the Department may
16 enter any place of business of the distributor or cigarette
17 machine operator, without a search warrant, and inspect the
18 premises and the stock or packages of cigarettes and the
19 vending devices therein contained, to determine whether any of
20 the provisions of this Act are being violated. If such agent or
21 employee is denied free access or is hindered or interfered
22 with in making such examination as herein provided, the license
23 of the distributor at such premises shall be subject to
24 revocation by the Department.

25 (Source: P.A. 88-480.)

1 (35 ILCS 130/17 new)

2 Sec. 17. Penalties. The number of original packages of
3 cigarettes in a person's possession for the purpose of imposing
4 the civil and criminal penalties contained in this Act shall be
5 determined by dividing the number of cigarettes in the person's
6 possession by 20 and rounding down the quotient to the next
7 lowest whole number.

8 (35 ILCS 130/18) (from Ch. 120, par. 453.18)

9 Sec. 18. Any duly authorized employee of the Department may
10 arrest without warrant any person committing in his presence a
11 violation of any of the provisions of this Act, and may without
12 a search warrant inspect all cigarettes, vending devices, and
13 cigarette machines located in any place of business and seize
14 any original packages of contraband cigarettes, ~~and~~ any vending
15 device in which such packages may be found, and any cigarette
16 machines, and such original packages, ~~or~~ vending devices, or
17 cigarette machines so seized shall be subject to confiscation
18 and forfeiture as hereinafter provided.

19 (Source: P.A. 96-782, eff. 1-1-10.)

20 (35 ILCS 130/18a) (from Ch. 120, par. 453.18a)

21 Sec. 18a. After seizing any original packages of
22 cigarettes, ~~or~~ cigarette vending devices, or cigarette
23 machines, as provided in Section 18 of this Act, the Department
24 shall hold a hearing and shall determine whether such original

1 packages of cigarettes, at the time of their seizure by the
2 Department, were contraband cigarettes, ~~or~~ whether such
3 cigarette vending devices, at the time of their seizure by the
4 Department, contained original packages of contraband
5 cigarettes, or whether the cigarette machines, at the time of
6 their seizure, were operated in violation of this Act. The
7 Department shall give not less than 7 days' notice of the time
8 and place of such hearing to the owner of such property if he
9 is known, and also to the person in whose possession the
10 property so taken was found, if such person is known and if
11 such person in possession is not the owner of said property. In
12 case neither the owner nor the person in possession of such
13 property is known, the Department shall cause publication of
14 the time and place of such hearing to be made at least once in
15 each week for 3 weeks successively in a newspaper of general
16 circulation in the county where such hearing is to be held.

17 If, as the result of such hearing, the Department shall
18 determine that the original packages of cigarettes seized were
19 at the time of seizure contraband cigarettes, ~~or~~ that any
20 cigarette vending device at the time of its seizure contained
21 original packages of contraband cigarettes, or that the
22 cigarette machine, at the time of its seizure, was operated in
23 violation of this Act, the Department shall enter an order
24 declaring such original packages of cigarettes, ~~or~~ such
25 cigarette vending devices, or such cigarette machines
26 confiscated and forfeited to the State, and to be held by the

1 Department for disposal by it as provided in Section 21 of this
2 Act. The Department shall give notice of such order to the
3 owner of such property if he is known, and also to the person
4 in whose possession the property so taken was found, if such
5 person is known and if such person in possession is not the
6 owner of said property. In case neither the owner nor the
7 person in possession of such property is known, the Department
8 shall cause publication of such order to be made at least once
9 in each week for 3 weeks successively in a newspaper of general
10 circulation in the county where such hearing was held.

11 (Source: P.A. 96-782, eff. 1-1-10.)

12 (35 ILCS 130/20) (from Ch. 120, par. 453.20)

13 Sec. 20. Whenever any peace officer of the State or any
14 duly authorized officer or employee of the Department shall
15 have reason to believe that any violation of this Act has
16 occurred and that the person so violating the Act has in his,
17 her or its possession any original package of contraband
18 cigarettes, ~~or~~ any vending device containing such original
19 packages of contraband cigarettes, or any cigarette machine, he
20 may file or cause to be filed his complaint in writing,
21 verified by affidavit, with any court within whose jurisdiction
22 the premises to be searched are situated, stating the facts
23 upon which such belief is founded, the premises to be searched,
24 and the property to be seized, and procure a search warrant and
25 execute the same. Upon the execution of such search warrant,

1 the peace officer, or officer or employee of the Department,
2 executing such search warrant shall make due return thereof to
3 the court issuing the same, together with an inventory of the
4 property taken thereunder. The court shall thereupon issue
5 process against the owner of such property if he is known;
6 otherwise, such process shall be issued against the person in
7 whose possession the property so taken is found, if such person
8 is known. In case of inability to serve such process upon the
9 owner or the person in possession of the property at the time
10 of its seizure, as hereinbefore provided, notice of the
11 proceedings before the court shall be given as required by the
12 statutes of the State governing cases of Attachment. Upon the
13 return of the process duly served or upon the posting or
14 publishing of notice made, as hereinabove provided, the court
15 or jury, if a jury shall be demanded, shall proceed to
16 determine whether or not such property so seized was held or
17 possessed in violation of this Act, ~~or~~ whether, if a vending
18 device has been so seized, it contained at the time of its
19 seizure original packages of contraband cigarettes, or whether
20 the cigarette machine at the time of its seizure was operated
21 in violation of the Act. In case of a finding that the original
22 packages seized were contraband cigarettes, ~~or~~ that any vending
23 device so seized contained at the time of its seizure original
24 packages of contraband cigarettes, or that the cigarette
25 machine at the time of its seizure was operated in violation of
26 the Act, judgment shall be entered confiscating and forfeiting

1 the property to the State and ordering its delivery to the
2 Department, and in addition thereto, the court shall have power
3 to tax and assess the costs of the proceedings.

4 When any original packages, ~~or~~ any cigarette vending
5 device, or cigarette machine shall have been declared forfeited
6 to the State by any court, as hereinbefore provided, and when
7 such confiscated and forfeited property shall have been
8 delivered to the Department, as provided in this Act, the said
9 Department shall destroy or maintain and use such property in
10 an undercover capacity. The Department may, prior to any
11 destruction of cigarettes, permit the true holder of the
12 trademark rights in the cigarette brand to inspect such
13 contraband cigarettes, in order to assist the Department in any
14 investigation regarding such cigarettes.

15 (Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10.)

16 (35 ILCS 130/21) (from Ch. 120, par. 453.21)

17 Sec. 21. Destruction or use of forfeited property.

18 (a) When any original packages of cigarettes, ~~or~~ any
19 cigarette vending device, or any cigarette machine shall have
20 been declared forfeited to the State by the Department, as
21 provided in Section 18a of this Act, and when all proceedings
22 for the judicial review of the Department's decision have
23 terminated, the Department shall, to the extent that its
24 decision is sustained on review, destroy or maintain and use
25 such property in an undercover capacity.

1 (b) The Department may, prior to any destruction of
2 cigarettes, permit the true holder of the trademark rights in
3 the cigarette brand to inspect such contraband cigarettes in
4 order to assist the Department in any investigation regarding
5 such cigarettes.

6 (Source: P.A. 94-776, eff. 5-19-06; 95-1053, eff. 1-1-10.)

7 (35 ILCS 130/23) (from Ch. 120, par. 453.23)

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

22 (Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11.)

23 (35 ILCS 130/26.5 new)

24 Sec. 26.5. Unlawful operation of cigarette machines. A

1 person who operates a cigarette machine in this State without a
2 license is guilty of a Class 4 felony. Notwithstanding the
3 foregoing, an individual may own a cigarette machine for that
4 individual's own use and not for the purpose of resale or
5 distribution of cigarettes.

6 (35 ILCS 130/28a)

7 Sec. 28a. If, at the time of terminating his or her
8 business, any licensed distributor or cigarette machine
9 operator has on hand unused stamps, the distributor or
10 cigarette machine operator or his or her legal representative
11 may, after Department approval, transfer or sell those unused
12 stamps to another distributor licensed under this Act. The
13 transferring distributor or cigarette machine operator, or his
14 or her legal representative, shall report to the Department in
15 writing an intention to so sell or transfer the stamps and the
16 name and address of the distributor to whom the sale or
17 transfer is to be made, together with the total of the face
18 amount of each denomination of stamps to be so sold or
19 transferred. The Department shall approve or disapprove the
20 requested transfer within 48 hours after receiving the report.
21 Approval shall be deemed granted if not received by the
22 distributor or cigarette machine operator within 5 business
23 days after the Department's receipt of the report.

24 (Source: P.A. 96-782, eff. 1-1-10.)

1 Section 10. The Cigarette Use Tax Act is amended by
2 changing Section 1 and by adding Section 25c as follows:

3 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

4 Sec. 1. For the purpose of this Act, unless otherwise
5 required by the context:

6 "Use" means the exercise by any person of any right or
7 power over cigarettes incident to the ownership or possession
8 thereof, other than the making of a sale thereof in the course
9 of engaging in a business of selling cigarettes and shall
10 include the keeping or retention of cigarettes for use, except
11 that "use" does not include the use of cigarettes by a
12 not-for-profit research institution conducting tests
13 concerning the health effects of tobacco products, provided the
14 cigarettes are not offered for resale.

15 "Brand Style" means a variety of cigarettes distinguished
16 by the tobacco used, tar and nicotine content, flavoring used,
17 size of the cigarette, filtration on the cigarette or
18 packaging.

19 "Cigarette" means any roll for smoking made wholly or in
20 part of tobacco irrespective of size or shape and whether or
21 not such tobacco is flavored, adulterated or mixed with any
22 other ingredient, and the wrapper or cover of which is made of
23 paper or any other substance or material except tobacco.

24 "Contraband cigarettes" means:

25 (a) cigarettes that do not bear a required tax stamp

1 under this Act;

2 (b) cigarettes for which any required federal taxes
3 have not been paid;

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

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

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

14 (f) cigarettes that have false manufacturing labels;

15 (g) cigarettes identified in Section 3-10(a)(1) of
16 this Act; ~~or~~

17 (h) cigarettes that are improperly tax stamped,
18 including cigarettes that bear a tax stamp of another state
19 or taxing jurisdiction; ~~or~~

20 (i) cigarettes made, manufactured, or fabricated by a
21 person holding a cigarette machine operator's license
22 under Section 4g of the Cigarette Tax Act in the possession
23 of manufacturers, distributors, secondary distributors, or
24 other retailers for the purpose of resale, regardless of
25 whether the tax has been paid on such cigarettes;

26 (j) cigarettes in the possession of a cigarette machine

1 operator licensed under Section 4g of the Cigarette Tax Act
2 that do not meet the requirements of this Act or the
3 Cigarette Fire Safety Standard Act; or

4 (k) cigarettes in the possession of an individual that
5 do not meet the requirements of Section 3-10 of this Act or
6 the Cigarette Fire Safety Standard Act, unless the
7 cigarettes were made, manufactured, or fabricated by an
8 individual for the individual's own use and consumption,
9 without the aid or use of a cigarette machine in the
10 possession of a cigarette machine operator holding a
11 license under Section 4g of the Cigarette Tax Act.

12 "Person" means any natural individual, firm, partnership,
13 association, joint stock company, joint adventure, public or
14 private corporation, however formed, limited liability
15 company, or a receiver, executor, administrator, trustee,
16 guardian or other representative appointed by order of any
17 court.

18 "Department" means the Department of Revenue.

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

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

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

26 a. Any person engaged in the business of selling

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

8 b. Any person who makes, manufactures or fabricates
9 cigarettes in this State for sale, except a person who
10 makes, manufactures or fabricates cigarettes for sale to
11 residents incarcerated in penal institutions or resident
12 patients or a State-operated mental health facility.

13 c. Any person who makes, manufactures or fabricates
14 cigarettes outside this State, which cigarettes are placed
15 in original packages contained in sealed transparent
16 wrappers, for delivery or shipment into this State, and who
17 elects to qualify and is accepted by the Department as a
18 distributor under Section 7 of this Act.

19 "Distributor" does not include any person who transfers
20 cigarettes to a not-for-profit research institution that
21 conducts tests concerning the health effects of tobacco
22 products and who does not offer the cigarettes for resale.

23 "Distributor maintaining a place of business in this
24 State", or any like term, means any distributor having or
25 maintaining within this State, directly or by a subsidiary, an
26 office, distribution house, sales house, warehouse or other

1 place of business, or any agent operating within this State
2 under the authority of the distributor or its subsidiary,
3 irrespective of whether such place of business or agent is
4 located here permanently or temporarily, or whether such
5 distributor or subsidiary is licensed to transact business
6 within this State.

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

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

26 "Secondary distributor" means any person engaged in the

1 business of selling cigarettes who purchases stamped original
2 packages of cigarettes from a licensed distributor under this
3 Act or the Cigarette Tax Act, sells 75% or more of those
4 cigarettes to retailers for resale, and maintains an
5 established business where a substantial stock of cigarettes is
6 available to retailers for resale.

7 "Secondary distributor maintaining a place of business in
8 this State", or any like term, means any secondary distributor
9 having or maintaining within this State, directly or by a
10 subsidiary, an office, distribution house, sales house,
11 warehouse, or other place of business, or any agent operating
12 within this State under the authority of the secondary
13 distributor or its subsidiary, irrespective of whether such
14 place of business or agent is located here permanently or
15 temporarily, or whether such secondary distributor or
16 subsidiary is licensed to transact business within this State.

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

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

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

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

24 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;
25 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

1 (35 ILCS 135/25c new)

2 Sec. 25c. Penalties. The number of original packages of
3 cigarettes in a person's possession for the purpose of imposing
4 the civil and criminal penalties contained in this Act shall be
5 determined by dividing the number of cigarettes in the person's
6 possession by 20 and rounding down the quotient to the next
7 lowest whole number.

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.

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