

AN ACT concerning revenue.

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

Section 5. The Cigarette Tax Act is amended by changing Sections 1 and 2 as follows:

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

Sec. 1. For the purposes of this Act:

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

Until July 1, 2012, and beginning July 1, 2013, "cigarette", means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Cigarette", beginning on and after July 1, 2012, and through June 30, 2013, means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, and the wrapper or cover of which is made of paper.

"Cigarette", beginning on and after July 1, 2012, and through June 30, 2013, also shall mean: Any roll for smoking made wholly or in part of tobacco labeled as anything other than a cigarette or not bearing a label, if it meets two or more of the following criteria:

- (a) the product is sold in packs similar to cigarettes;
- (b) the product is available for sale in cartons of ten packs;
- (c) the product is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type boxes;
- (d) the product is of a length and diameter similar to commercially manufactured cigarettes;
- (e) the product has a cellulose acetate or other integrated filter;
- (f) the product is marketed or advertised to consumers as a cigarette or cigarette substitute; or
- (g) other evidence that the product fits within the definition of cigarette.

"Contraband cigarettes" means:

- (a) cigarettes that do not bear a required tax stamp under this Act;
- (b) cigarettes for which any required federal taxes have not been paid;
- (c) cigarettes that bear a counterfeit tax stamp;
- (d) cigarettes that are manufactured, fabricated,

assembled, processed, packaged, or labeled by any person other than (i) the owner of the trademark rights in the cigarette brand or (ii) a person that is directly or indirectly authorized by such owner;

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

(f) cigarettes that have false manufacturing labels;

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

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

(i) cigarettes made or fabricated by a person holding a cigarette machine operator license under Section 1-20 of the Cigarette Machine Operators' Occupation Tax Act in the possession of manufacturers, distributors, secondary distributors, manufacturer representatives or other retailers for the purpose of resale, regardless of whether the tax has been paid on such cigarettes.

"Little cigar" has the meaning ascribed to that term in the Tobacco Products Tax Act of 1995.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, however formed, limited liability

company, or a receiver, executor, administrator, trustee, guardian or other representative appointed by order of any court.

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

"Department" means the Department of Revenue.

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

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

"Distributor" means any and each of the following:

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

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

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

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

machine.

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

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

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

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

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

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

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

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

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

- (a) is an officer or director of a business; or
- (b) is legally recognized as a partner in business.

(Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11; 97-688, eff. 6-14-12.)

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

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

(a) A tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at the rate of 5 1/2 mills per cigarette sold, or otherwise disposed of in the course of such business in this State. In addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at a rate of 1/2 mill per cigarette sold or otherwise disposed of in the course of such business in this State on and after January 1, 1947, and shall be paid into the Metropolitan Fair and Exposition Authority Reconstruction Fund or as otherwise provided in Section 29. On and after December 1, 1985, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at a rate of 4 mills per cigarette sold or otherwise disposed of in the course of such business in this State. Of the additional tax imposed by this amendatory Act of 1985, \$9,000,000 of the moneys received by the Department of Revenue pursuant to this Act shall be paid each month into the Common School Fund. On and after the effective date of this amendatory Act of 1989, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 5 mills per cigarette sold or otherwise disposed of in the course of such

business in this State. On and after the effective date of this amendatory Act of 1993, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 7 mills per cigarette sold or otherwise disposed of in the course of such business in this State. On and after December 15, 1997, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 7 mills per cigarette sold or otherwise disposed of in the course of such business of this State. All of the moneys received by the Department of Revenue pursuant to this Act and the Cigarette Use Tax Act from the additional taxes imposed by this amendatory Act of 1997, shall be paid each month into the Common School Fund. On and after July 1, 2002, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 20.0 mills per cigarette sold or otherwise disposed of in the course of such business in this State. Beginning on June 24, 2012, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 50 mills per cigarette sold or otherwise disposed of in the course of such business in this State. All moneys received by the Department of Revenue under this Act and the Cigarette Use Tax Act from the additional taxes imposed by this amendatory Act of the 97th General Assembly shall be paid each month into the

Healthcare Provider Relief Fund. The payment of such taxes shall be evidenced by a stamp affixed to each original package of cigarettes, or an authorized substitute for such stamp imprinted on each original package of such cigarettes underneath the sealed transparent outside wrapper of such original package, as hereinafter provided. However, such taxes are not imposed upon any activity in such business in interstate commerce or otherwise, which activity may not under the Constitution and statutes of the United States be made the subject of taxation by this State.

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

in previous months remain unpaid, those amounts shall be paid into the School Infrastructure Fund; then the moneys remaining, if any, shall be paid into the Long-Term Care Provider Fund. To the extent that more than \$25,000,000 has been paid into the General Revenue Fund and Common School Fund per month for the period of July 1, 1993 through the effective date of this amendatory Act of 1994 from combined receipts of the Cigarette Tax Act and the Cigarette Use Tax Act, notwithstanding the distribution provided in this Section, the Department of Revenue is hereby directed to adjust the distribution provided in this Section to increase the next monthly payments to the Long Term Care Provider Fund by the amount paid to the General Revenue Fund and Common School Fund in excess of \$25,000,000 per month and to decrease the next monthly payments to the General Revenue Fund and Common School Fund by that same excess amount.

Beginning on July 1, 2006, all of the moneys received by the Department of Revenue pursuant to this Act and the Cigarette Use Tax Act, other than the moneys that are dedicated to the Common School Fund and, beginning on the effective date of this amendatory Act of the 97th General Assembly, other than the moneys from the additional taxes imposed by this amendatory Act of the 97th General Assembly that must be paid each month into the Healthcare Provider Relief Fund, shall be distributed each month as follows: first, there shall be paid into the General Revenue Fund an amount that, when added to the amount

paid into the Common School Fund for that month, equals \$29,200,000; then, from the moneys remaining, if any amounts required to be paid into the General Revenue Fund in previous months remain unpaid, those amounts shall be paid into the General Revenue Fund; then from the moneys remaining, \$5,000,000 per month shall be paid into the School Infrastructure Fund; then, if any amounts required to be paid into the School Infrastructure Fund in previous months remain unpaid, those amounts shall be paid into the School Infrastructure Fund; then the moneys remaining, if any, shall be paid into the Long-Term Care Provider Fund.

Moneys collected from the tax imposed on little cigars under Section 10-10 of the Tobacco Products Tax Act of 1995 shall be included with the moneys collected under the Cigarette Tax Act and the Cigarette Use Tax Act when making distributions to the Common School Fund, the Healthcare Provider Relief Fund, the General Revenue Fund, the School Infrastructure Fund, and the Long-Term Care Provider Fund under this Section.

When any tax imposed herein terminates or has terminated, distributors who have bought stamps while such tax was in effect and who therefore paid such tax, but who can show, to the Department's satisfaction, that they sold the cigarettes to which they affixed such stamps after such tax had terminated and did not recover the tax or its equivalent from purchasers, shall be allowed by the Department to take credit for such absorbed tax against subsequent tax stamp purchases from the

Department by such distributor.

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

Each distributor shall collect the tax from the retailer at or before the time of the sale, shall affix the stamps as hereinafter required, and shall remit the tax collected from retailers to the Department, as hereinafter provided. Any distributor who fails to properly collect and pay the tax imposed by this Act shall be liable for the tax. Any distributor having cigarettes to which stamps have been affixed in his possession for sale on the effective date of this amendatory Act of 1989 shall not be required to pay the additional tax imposed by this amendatory Act of 1989 on such stamped cigarettes. Any distributor having cigarettes to which stamps have been affixed in his or her possession for sale at 12:01 a.m. on the effective date of this amendatory Act of 1993, is required to pay the additional tax imposed by this amendatory Act of 1993 on such stamped cigarettes. This payment, less the discount provided in subsection (b), shall be due when the distributor first makes a purchase of cigarette tax stamps after the effective date of this amendatory Act of

1993, or on the first due date of a return under this Act after the effective date of this amendatory Act of 1993, whichever occurs first. Any distributor having cigarettes to which stamps have been affixed in his possession for sale on December 15, 1997 shall not be required to pay the additional tax imposed by this amendatory Act of 1997 on such stamped cigarettes.

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

Any retailer having cigarettes in his or her possession on June 24, 2012 to which tax stamps have been affixed is not required to pay the additional tax that begins on June 24, 2012 imposed by this amendatory Act of the 97th General Assembly on those stamped cigarettes. Any distributor having cigarettes in his or her possession on June 24, 2012 to which tax stamps have been affixed, and any distributor having stamps in his or her possession on June 24, 2012 that have not been affixed to packages of cigarettes before June 24, 2012, is required to pay the additional tax that begins on June 24, 2012 imposed by this amendatory Act of the 97th General Assembly to the extent the calendar year 2012 average monthly volume of cigarette stamps in the distributor's possession exceeds the average monthly volume of cigarette stamps purchased by the distributor in calendar year 2011. This payment, less the discount provided in

subsection (b), is due when the distributor first makes a purchase of cigarette stamps on or after June 24, 2012 or on the first due date of a return under this Act occurring on or after June 24, 2012, whichever occurs first. Those distributors may elect to pay the additional tax on packages of cigarettes to which stamps have been affixed and on any stamps in the distributor's possession that have not been affixed to packages of cigarettes over a period not to exceed 12 months from the due date of the additional tax by notifying the Department in writing. The first payment for distributors making such election is due when the distributor first makes a purchase of cigarette tax stamps on or after June 24, 2012 or on the first due date of a return under this Act occurring on or after June 24, 2012, whichever occurs first. Distributors making such an election are not entitled to take the discount provided in subsection (b) on such payments.

Distributors making sales of cigarettes to secondary distributors shall add the amount of the tax to the price of the cigarettes sold by the distributors. Secondary distributors making sales of cigarettes to retailers shall include the amount of the tax in the price of the cigarettes sold to retailers. The amount of tax shall not be less than the amount of taxes imposed by the State and all local jurisdictions. The amount of local taxes shall be calculated based on the location of the retailer's place of business shown on the retailer's certificate of registration or

sub-registration issued to the retailer pursuant to Section 2a of the Retailers' Occupation Tax Act. The original packages of cigarettes sold to the retailer shall bear all the required stamps, or other indicia, for the taxes included in the price of cigarettes.

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

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

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

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

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

(Source: P.A. 96-1027, eff. 7-12-10; 97-587, eff. 8-26-11; 97-688, eff. 6-14-12.)

Section 10. The Cigarette Use Tax Act is amended by changing Section 1 as follows:

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

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

"Use" means the exercise by any person of any right or

power over cigarettes incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes and shall include the keeping or retention of cigarettes for use, except that "use" does not include the use of cigarettes by a not-for-profit research institution conducting tests concerning the health effects of tobacco products, provided the cigarettes are not offered for resale.

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

Until July 1, 2012, and beginning July 1, 2013, "cigarette" means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Cigarette", beginning on and after July 1, 2012, and through June 30, 2013, means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, and the wrapper or cover of which is made of paper.

"Cigarette", beginning on and after July 1, 2012, and through June 30, 2013, also shall mean: Any roll for smoking

made wholly or in part of tobacco labeled as anything other than a cigarette or not bearing a label, if it meets two or more of the following criteria:

- (a) the product is sold in packs similar to cigarettes;
- (b) the product is available for sale in cartons of ten packs;
- (c) the product is sold in soft packs, hard packs, flip-top boxes, clam shells, or other cigarette-type boxes;
- (d) the product is of a length and diameter similar to commercially manufactured cigarettes;
- (e) the product has a cellulose acetate or other integrated filter;
- (f) the product is marketed or advertised to consumers as a cigarette or cigarette substitute; or
- (g) other evidence that the product fits within the definition of cigarette.

"Contraband cigarettes" means:

- (a) cigarettes that do not bear a required tax stamp under this Act;
- (b) cigarettes for which any required federal taxes have not been paid;
- (c) cigarettes that bear a counterfeit tax stamp;
- (d) cigarettes that are manufactured, fabricated, assembled, processed, packaged, or labeled by any person other than (i) the owner of the trademark rights in the

cigarette brand or (ii) a person that is directly or indirectly authorized by such owner;

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

(f) cigarettes that have false manufacturing labels;

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

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

(i) cigarettes made or fabricated by a person holding a cigarette machine operator license under Section 1-20 of the Cigarette Machine Operators' Occupation Tax Act in the possession of manufacturers, distributors, secondary distributors, manufacturer representatives or other retailers for the purpose of resale, regardless of whether the tax has been paid on such cigarettes.

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

"Department" means the Department of Revenue.

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

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

"Distributor" means any and each of the following:

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

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

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

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

"Distributor maintaining a place of business in this State", or any like term, means any distributor having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this State under the authority of the distributor or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such distributor or subsidiary is licensed to transact business within this State.

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

"Prior Continuous Compliance Taxpayer" means any person who is licensed under this Act and who, having been a licensee for a continuous period of 5 years, is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period or otherwise in violation of this Act. Also, any taxpayer who has, as verified by the Department, continuously complied with the condition of his bond or other security under provisions of this Act of a period of 5 consecutive years shall be considered to be a

"prior continuous compliance taxpayer". In calculating the consecutive period of time described herein for qualification as a "prior continuous compliance taxpayer", a consecutive period of time of qualifying compliance immediately prior to the effective date of this amendatory Act of 1987 shall be credited to any licensee who became licensed on or before the effective date of this amendatory Act of 1987.

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

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

"Stamp" or "stamps" mean the indicia required to be affixed on a pack of cigarettes that evidence payment of the tax on

cigarettes under Section 2 of this Act.

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

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

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

(Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10; 97-688, eff. 6-14-12.)

Section 15. The Tobacco Products Tax Act of 1995 is amended by changing Sections 10-5, 10-10, 10-15, 10-30, and 10-45 and by adding Sections 10-26, 10-27, 10-28, 10-29, and 10-36 as follows:

(35 ILCS 143/10-5)

Sec. 10-5. Definitions. For purposes of this Act:

"Business" means any trade, occupation, activity, or enterprise engaged in, at any location whatsoever, for the purpose of selling tobacco products.

"Cigarette" has the meaning ascribed to the term in Section 1 of the Cigarette Tax Act.

"Contraband little cigar" means:

(1) packages of little cigars containing 20 or 25 little cigars that do not bear a required tax stamp under this Act;

(2) packages of little cigars containing 20 or 25 little cigars that bear a fraudulent, imitation, or

counterfeit tax stamp;

(3) packages of little cigars containing 20 or 25 little cigars that are improperly tax stamped, including packages of little cigars that bear only a tax stamp of another state or taxing jurisdiction; or

(4) packages of little cigars containing other than 20 or 25 little cigars in the possession of a distributor, retailer or wholesaler, unless the distributor, retailer, or wholesaler possesses, or produces within the time frame provided in Section 10-27 or 10-28 of this Act, an invoice from a stamping distributor, distributor, or wholesaler showing that the tax on the packages has been or will be paid.

"Correctional Industries program" means a program run by a State penal institution in which residents of the penal institution produce tobacco products for sale to persons incarcerated in penal institutions or resident patients of a State operated mental health facility.

"Department" means the Illinois Department of Revenue.

"Distributor" means any of the following:

(1) Any manufacturer or wholesaler in this State engaged in the business of selling tobacco products who sells, exchanges, or distributes tobacco products to retailers or consumers in this State.

(2) Any manufacturer or wholesaler engaged in the business of selling tobacco products from without this

State who sells, exchanges, distributes, ships, or transports tobacco products to retailers or consumers located in this State, so long as that manufacturer or wholesaler has or maintains within this State, directly or by subsidiary, an office, sales house, or other place of business, or any agent or other representative operating within this State under the authority of the person or subsidiary, irrespective of whether the place of business or agent or other representative is located here permanently or temporarily.

(3) Any retailer who receives tobacco products on which the tax has not been or will not be paid by another distributor.

"Distributor" does not include any person, wherever resident or located, who makes, manufactures, or fabricates tobacco products as part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility.

"Little cigar" means and includes any roll, made wholly or in part of tobacco, where such roll has an integrated cellulose acetate filter and weighs less than 4 pounds per thousand and the wrapper or cover of which is made in whole or in part of tobacco.

"Manufacturer" means any person, wherever resident or located, who manufactures and sells tobacco products, except a person who makes, manufactures, or fabricates tobacco products

as a part of a Correctional Industries program for sale to persons incarcerated in penal institutions or resident patients of a State operated mental health facility.

Beginning on January 1, 2013, "moist snuff" means any finely cut, ground, or powdered tobacco that is not intended to be smoked, but shall not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint venture, limited liability company, or public or private corporation, however formed, or a receiver, executor, administrator, trustee, conservator, or other representative appointed by order of any court.

"Place of business" means and includes any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

"Retailer" means any person in this State engaged in the business of selling tobacco products to consumers in this State, regardless of quantity or number of sales.

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

"Stamp" or "stamps" mean the indicia required to be affixed

on a package of little cigars that evidence payment of the tax on packages of little cigars containing 20 or 25 little cigars under Section 10-10 of this Act. These stamps shall be the same stamps used for cigarettes under the Cigarette Tax Act.

"Stamping distributor" means a distributor licensed under this Act and also licensed as a distributor under the Cigarette Tax Act or Cigarette Use Tax Act.

"Tobacco products" means any cigars, including little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff (including moist snuff) or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweeping of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include cigarettes or tobacco purchased for the manufacture of cigarettes by cigarette distributors and manufacturers defined in the Cigarette Tax Act and persons who make, manufacture, or fabricate cigarettes as a part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility.

"Wholesale price" means the established list price for which a manufacturer sells tobacco products to a distributor, before the allowance of any discount, trade allowance, rebate,

or other reduction. In the absence of such an established list price, the manufacturer's invoice price at which the manufacturer sells the tobacco product to unaffiliated distributors, before any discounts, trade allowances, rebates, or other reductions, shall be presumed to be the wholesale price.

"Wholesaler" means any person, wherever resident or located, engaged in the business of selling tobacco products to others for the purpose of resale. "Wholesaler", when used in this Act, does not include a person licensed as a distributor under Section 10-20 of this Act unless expressly stated in this Act.

(Source: P.A. 97-688, eff. 6-14-12.)

(35 ILCS 143/10-10)

Sec. 10-10. Tax imposed.

(a) Except as otherwise provided in this Section with respect to little cigars, on ~~On~~ the first day of the third month after the month in which this Act becomes law, a tax is imposed on any person engaged in business as a distributor of tobacco products, as defined in Section 10-5, at the rate of (i) 18% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State prior to July 1, 2012 and (ii) 36% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State beginning on July 1, 2012;

except that, beginning on January 1, 2013, the tax on moist snuff shall be imposed at a rate of \$0.30 per ounce, and a proportionate tax at the like rate on all fractional parts of an ounce, sold or otherwise disposed of to retailers or consumers located in this State. The tax is in addition to all other occupation or privilege taxes imposed by the State of Illinois, by any political subdivision thereof, or by any municipal corporation. However, the tax is not imposed upon any activity in that business in interstate commerce or otherwise, to the extent to which that activity may not, under the Constitution and Statutes of the United States, be made the subject of taxation by this State, and except that, beginning July 1, 2013, the tax on little cigars shall be imposed at the same rate, and the proceeds shall be distributed in the same manner, as the tax imposed on cigarettes under the Cigarette Tax Act. The tax is also not imposed on sales made to the United States or any entity thereof.

(b) Notwithstanding subsection (a) of this Section, stamping distributors of packages of little cigars containing 20 or 25 little cigars sold or otherwise disposed of in this State shall remit the tax by purchasing tax stamps from the Department and affixing them to packages of little cigars in the same manner as stamps are purchased and affixed to cigarettes under the Cigarette Tax Act, unless the stamping distributor sells or otherwise disposes of those packages of little cigars to another stamping distributor. Only persons

meeting the definition of "stamping distributor" contained in Section 10-5 of this Act may affix stamps to packages of little cigars containing 20 or 25 little cigars. Stamping distributors may not sell or dispose of little cigars at retail to consumers or users at locations where stamping distributors affix stamps to packages of little cigars containing 20 or 25 little cigars.

(c) The impact of the tax levied by this Act is imposed upon distributors engaged in the business of selling tobacco products to retailers or consumers in this State. Whenever a stamping distributor brings or causes to be brought into this State from without this State, or purchases from without or within this State, any packages of little cigars containing 20 or 25 little cigars upon which there are no tax stamps affixed as required by this Act, for purposes of resale or disposal in this State to a person not a stamping distributor, then such stamping distributor shall pay the tax to the Department and add the amount of the tax to the price of such packages sold by such stamping distributor. Payment of the tax shall be evidenced by a stamp or stamps affixed to each package of little cigars containing 20 or 25 little cigars.

Stamping distributors paying the tax to the Department on packages of little cigars containing 20 or 25 little cigars sold to other distributors, wholesalers or retailers shall add the amount of the tax to the price of the packages of little cigars containing 20 or 25 little cigars sold by such stamping distributors.

(d) Beginning on January 1, 2013, the tax rate imposed per ounce of moist snuff may not exceed 15% of the tax imposed upon a package of 20 cigarettes pursuant to the Cigarette Tax Act.

(e) All moneys received by the Department under this Act from sales occurring prior to July 1, 2012 shall be paid into the Long-Term Care Provider Fund of the State Treasury. Of the moneys received by the Department from sales occurring on or after July 1, 2012, except for moneys received from the tax imposed on the sale of little cigars, 50% shall be paid into the Long-Term Care Provider Fund and 50% shall be paid into the Healthcare Provider Relief Fund. Beginning July 1, 2013, all moneys received by the Department under this Act from the tax imposed on little cigars shall be distributed as provided in subsection (a) of Section 2 of the Cigarette Tax Act.

(Source: P.A. 97-688, eff. 6-14-12.)

(35 ILCS 143/10-15)

Sec. 10-15. Exempt sales. Purchases of tobacco products other than little cigars by wholesalers who will not sell the product at retail are exempt from the tax imposed by this Act. Purchases of tobacco products other than little cigars by wholesalers and retailers for delivery of the product outside Illinois are exempt from the tax imposed by this Act. The wholesaler or retailer making the exempt sale of tobacco products other than little cigars shall document this exemption by obtaining a certification from the purchaser containing the

seller's name and address, the purchaser's name and address, the date of purchase, the purchaser's signature, the purchaser's tobacco products tax license number, if applicable, and a statement that the purchaser is purchasing for resale other than for sale to consumers or is purchasing for delivery outside of Illinois.

(Source: P.A. 89-21, eff. 6-6-95.)

(35 ILCS 143/10-26 new)

Sec. 10-26. Manufacturers; sale of little cigars.
Manufacturers that are not stamping distributors may not sell little cigars to consumers in this State or to distributors, wholesalers or retailers, unless the distributors, wholesalers or retailers are stamping distributors. Manufacturers that are not stamping distributors may sell little cigars only to stamping distributors. Manufacturers that are not stamping distributors are prohibited from delivering little cigars to locations where sales of little cigars to consumers or users take place.

(35 ILCS 143/10-27 new)

Sec. 10-27. Retailers; purchase and possession of little cigars.

(a) Retailers are prohibited from possessing unstamped packages of little cigars containing 20 or 25 little cigars at locations where retailers make sales of little cigars to

consumers or users. Retailers that are also stamping distributors are prohibited from possessing unstamped little cigars at locations where those retailers make sales of packages of little cigars containing 20 or 25 little cigars to consumers or users. Retailers that are not stamping distributors shall purchase stamped packages of little cigars containing 20 or 25 little cigars for resale only from stamping distributors, distributors, or wholesalers. Retailers who are not stamping distributors may not purchase or possess unstamped packages of little cigars containing 20 or 25 little cigars. A retailer must be a stamping distributor to make tax exempt sales of packages of little cigars containing 20 or 25 little cigars for use outside of this State. A retailer who is a stamping distributor making sales of stamped packages of little cigars for use outside of this State may file a claim for credit for such sales with the Department on forms and in the manner provided by the Department.

(b) For purchases of packages of little cigars containing other than 20 or 25 little cigars, retailers who are not stamping distributors may not purchase or possess such packages of little cigars, unless the retailer receives an invoice from a stamping distributor, distributor, or wholesaler stating the tax on the packages has been or will be paid. Retailers shall retain such invoices for inspection by the Department. If a retailer maintaining multiple retail locations notifies the Department in writing that it maintains its invoices at a

centralized business location, the Department shall have the authority to inspect invoices at the centralized business location at all times during the usual business hours of the day and the Department may grant the retailer 3 business days to produce the invoices at the retail location at which the request was made. A retailer must be a stamping distributor to make tax exempt sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State. A retailer who is a stamping distributor making sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State on which the tax has been or will be paid by another stamping distributor or was paid by the retailer may file a claim for credit for such sales with the Department on forms and in the manner provided by the Department.

(c) Notwithstanding anything to the contrary in this Act, a retailer unknowingly possessing contraband little cigars obtained from a stamping distributor, distributor, or wholesaler or other person engaged in the business of selling tobacco products or knowingly possessing contraband little cigars obtained from a stamping distributor is not subject to penalties for such purchase or possession if the retailer, within 48 hours after discovering that the little cigars are contraband little cigars, excluding Saturdays, Sundays, and holidays: (i) notifies the Department and the person from whom the little cigars were obtained, orally and in writing, that he

or she possesses contraband little cigars; (ii) places the contraband little cigars in one or more containers and seals those containers; and (iii) places on the containers the following or similar language: "Contraband Little Cigars. Not For Sale." All contraband little cigars in the possession of a retailer remain subject to forfeiture under the provisions of this Act.

(35 ILCS 143/10-28 new)

Sec. 10-28. Wholesalers.

(a) Wholesalers are prohibited from possessing unstamped packages of little cigars containing 20 or 25 little cigars unless the wholesalers are stamping distributors. A wholesaler must be a stamping distributor to make tax exempt sales of packages of little cigars containing 20 or 25 little cigars for use outside of this State. A wholesaler who is a stamping distributor making sales of stamped packages of little cigars for use outside of this State may file a claim for credit for such sales with the Department on forms and in the manner provided by the Department.

(b) For purchases of packages of little cigars containing other than 20 or 25 little cigars, wholesalers who are not stamping distributors may not purchase or possess such packages of little cigars, unless the wholesalers receive an invoice from a stamping distributor, distributor, or wholesaler stating the tax on the packages has been or will be paid.

Wholesalers shall retain such invoices for inspection by the Department. Every sales invoice for packages of little cigars containing other than 20 or 25 little cigars issued by a wholesaler to a person who is not a stamping distributor shall state that the tax imposed by the Act has been or will be paid. If a wholesaler maintaining multiple wholesale locations notifies the Department in writing that it maintains its invoices at a centralized business location, the Department shall have the authority to inspect invoices at the centralized business location at all times during the usual business hours of the day and the Department may grant the wholesaler 3 business days to produce the invoices at the wholesale location at which the request was made. A wholesaler must be a stamping distributor to make tax exempt sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State. A wholesaler who is a stamping distributor making sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State on which the tax has been or will be paid by another stamping distributor or was paid by the wholesaler may file a claim for credit for such sales with the Department on forms and in the manner provided by the Department.

(35 ILCS 143/10-29 new)

Sec. 10-29. Invoices; packages of little cigars.

(a) Every sales invoice for packages of little cigars

containing other than 20 or 25 little cigars issued by a stamping distributor to a person who is not a stamping distributor shall contain both the stamping distributor's Tobacco Products License number and Cigarette Tax Distributor's License number or Cigarette Use Tax Distributor's License number and state that the tax imposed by the Act has been or will be paid or that the sale is exempt in whole or in part and the exemption which is claimed.

(b) Any stamping distributor, distributor or wholesaler who knowingly falsely states on the invoice that the tax imposed by this Act has been or will be paid, or any officer or employee of a corporation, member or employee of a partnership, or manager, member or employee of a limited liability company that is a stamping distributor, distributor, or wholesaler, who, as such officer, employee, manager, or member, knowingly causes to be issued an invoice on behalf of such entity, that such person knows falsely states that the tax imposed by the Act has been or will be paid, is guilty of a Class 4 felony.

(c) Whenever any sales invoice issued by a stamping distributor, distributor or wholesaler for the sale of packages of little cigars containing other than 20 or 25 little cigars does not comply with subsection (b) of Section 10-28 or subsection (a) of this Section by indicating that the tax has been or will be paid or that the sale is exempt in whole or in part, a prima facie presumption shall arise that the tax imposed by Section 10-10 of this Act has not been paid on the

little cigars listed on the sales invoice. A person who is not a stamping distributor and is unable to rebut this presumption is in violation of this Act and is subject to the penalties provided in this Act.

(35 ILCS 143/10-30)

Sec. 10-30. Returns.

(a) Every distributor shall, on or before the 15th day of each month, file a return with the Department covering the preceding calendar month. The return shall disclose the wholesale price for all tobacco products other than moist snuff and the quantity in ounces of moist snuff sold or otherwise disposed of and other information that the Department may reasonably require. The return shall be filed upon a form prescribed and furnished by the Department.

(b) In addition to the information required under subsection (a), on or before the 15th day of each month, covering the preceding calendar month, each stamping distributor shall, on forms prescribed and furnished by the Department, report the quantity of little cigars sold or otherwise disposed of, including the number of packages of little cigars sold or disposed of during the month containing 20 or 25 little cigars.

(c) At the time when any return of any distributor is due to be filed with the Department, the distributor shall also remit to the Department the tax liability that the distributor

has incurred for transactions occurring in the preceding calendar month.

(d) The Department may adopt rules to require the electronic filing of any return or document required to be filed under this Act. Those rules may provide for exceptions from the filing requirement set forth in this paragraph for persons who demonstrate that they do not have access to the Internet and petition the Department to waive the electronic filing requirement.

(Source: P.A. 97-688, eff. 6-14-12.)

(35 ILCS 143/10-36 new)

Sec. 10-36. Recordkeeping by retailers. Every retailer shall keep complete and accurate records of tobacco products held and purchased, and tobacco products sold or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale. Books, records, papers, and documents that are required by this Act to be kept shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The books, records, papers, and documents for any period with respect to which the Department is authorized to issue a notice of tax liability shall be preserved until the expiration of that period.

(35 ILCS 143/10-45)

Sec. 10-45. Incorporation by reference. All of the provisions of Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, 5i, 5j, 6, 6a, 6b, 6c, 8, 9, 10, 11, 11a, and 12 of the Retailers' Occupation Tax Act, and all applicable provisions of the Uniform Penalty and Interest Act that are not inconsistent with this Act, apply to distributors of tobacco products to the same extent as if those provisions were included in this Act. References in the incorporated Sections of the Retailers' Occupation Tax Act to retailers, to sellers, or to persons engaged in the business of selling tangible personal property mean distributors when used in this Act. References in the incorporated Sections to sales of tangible personal property mean sales of tobacco products when used in this Act.

All of the provisions of Sections 7, 8, 8a, 16, 18a, 18b, 18c, 22, 23, 24, 26, 27, and 28a of the Cigarette Tax Act which are not inconsistent with this Act shall apply, as far as practicable, to the subject matter of this Act to the same extent as if those provisions were included in this Act. References in the incorporated Sections to sales of cigarettes mean sales of little cigars in packages of 20 or 25 little cigars.

(Source: P.A. 89-21, eff. 6-6-95.)

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