

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 440
CIGARETTE TAX ACT

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45
46 AUTHORITY: Implementing and authorized by the Cigarette Tax Act [35 ILCS 130].

47
48 SOURCE: Filed and effective June 17, 1958; amended at 6 Ill. Reg. 2831 and 2834, effective
49 March 3, 1982; codified at 8 Ill. Reg. 17912; amended at 13 Ill. Reg. 10678, effective June 16,
50 1989; amended at 14 Ill. Reg. 6794, effective April 19, 1990; amended at 15 Ill. Reg. 117,
51 effective December 24, 1990; emergency amendment at 23 Ill. Reg. 9541, effective July 29,
52 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 14748, effective December 8, 1999;
53 amended at 24 Ill. Reg. 9903, effective June 23, 2000; emergency amendment at 24 Ill. Reg.
54 10752, effective July 6, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 17793,
55 effective November 28, 2000; amended at 25 Ill. Reg. 933, effective January 8, 2001; emergency
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61 effective October 22, 2015; amended at 42 Ill. Reg. 23174, effective November 29, 2018;
62 amended at 43 Ill. Reg. 8898, effective July 30, 2019; amended at 44 Ill. Reg. 6061, effective
63 April 3, 2020; amended at 46 Ill. Reg. 6763, effective April 12, 2022; amended at 47 Ill. Reg.
64 5800, effective April 4, 2023; amended at 50 Ill. Reg. _____, effective _____.

65
66 **Section 440.100 Returns and Reports Required: When Filed**

67
68 a) Filing by Non-manufacturers

69
70 1) Every distributor who is required to procure a license under the Act, but
71 who is not a manufacturer of cigarettes in original packages which are
72 contained in a sealed transparent wrapper, shall, on or before the 15th day
73 of each calendar month, file a return with the Department, showing:

74
75 A) the quantity of cigarettes manufactured during the preceding
76 calendar month;

77
78 B) the quantity of cigarettes brought into this State or caused to be
79 brought into this State from outside this State during the preceding
80 calendar month without authorized evidence on the original
81 packages of cigarettes underneath the sealed transparent wrapper
82 that the tax liability imposed by the Act has been assumed by the
83 out-of-State seller of such cigarettes;

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85 C) the quantity of cigarettes purchased tax-paid during the preceding
86 calendar month either within or outside this State;

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- D) the quantity of cigarettes sold by manufacturer representatives on behalf of the distributor;
- E) the quantity of cigarettes sold to manufacturer representatives; and
- F) the quantity of cigarettes sold or otherwise disposed of during the preceding calendar month.

2) The return shall be filed on forms furnished and prescribed by the Department and shall contain such other information the Department may reasonably require. Information that the Department may reasonably require includes information related to the uniform regulation and taxation of cigarettes. All returns and supporting schedules required to be filed and all payments required to be made under Section 9 of the Act shall be by electronic means in the form prescribed by the Department. [35 ILCS 130/9]

3) Every secondary distributor who is required to procure a license under the Act shall, on or before the 15th day of each calendar month, file a report with the Department, showing the quantity of cigarettes purchased during the preceding calendar month either within or outside this State, and the quantity of cigarettes sold to retailers or otherwise disposed of during the preceding calendar month. Such reports shall be filed electronically in such form prescribed by the Department and shall contain such other information as the Department may reasonably require. Information that the Department may reasonably require includes information related to the uniform regulation and taxation of cigarettes. [35 ILCS 130/9e]

4) Computer generated returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered unprocessable and may subject the filer to penalties and interest for failure to file a proper return.

b) Filing by Manufacturers

1) Illinois manufacturers of cigarettes in original packages which are contained inside a sealed transparent wrapper shall file a return by the 5th day of each month covering the preceding calendar month. Each return shall show:

- 130 A) the quantity of cigarettes manufactured during the period covered
131 by the return;
132
- 133 B) the quantity of cigarettes sold or otherwise disposed of during the
134 period covered by the return; and
135
- 136 C) such other information the Department may lawfully require.
137 Information that the Department may lawfully require includes
138 information related to the uniform regulation and taxation of
139 cigarettes. All returns and supporting schedules required to be
140 filed and all payments required to be made under Section 9 of the
141 Act shall be by electronic means in the form prescribed by the
142 Department. [35 ILCS 130/9]
143
- 144 2) Each out-of-State manufacturer, who is granted a permit by the
145 Department under Section 4b(a) of the Act, shall file a return and shall
146 disclose such information as the Department may lawfully require.
147 Information the Department may lawfully require includes information
148 related to the uniform regulation and taxation of cigarettes. All returns
149 and supporting schedules required to be filed and all payments required to
150 be made under Section 4b(a) of the Act shall be by electronic means in the
151 form prescribed by the Department. [35 ILCS 130/4b(a)] The return shall
152 be filed by the 5th day of the month and shall cover the preceding calendar
153 month.
154
- 155 3) Each out-of-State manufacturer, who is granted a permit by the
156 Department under Section 4b(b) of the Act, shall file a report covering
157 cigarettes shipped or otherwise delivered in Illinois to licensed distributors
158 or distributed to the public for promotional purposes on a form to be
159 prescribed and furnished by the Department and shall disclose such other
160 information as the Department may lawfully require. Information the
161 Department may lawfully require includes information related to the
162 uniform regulation and taxation of cigarettes. All reports and supporting
163 schedules required to be filed under Section 4b(b) of the Act shall be filed
164 electronically in the form prescribed by the Department. [35 ILCS
165 130/4b(b)] The return shall be filed by the 5th day of the month and shall
166 cover the preceding calendar month.
167
- 168 4) Every manufacturer with authority to maintain manufacturer
169 representatives as defined by Section 4f of the Act shall, on or before the
170 15th day of each calendar month, file a report with the Department,
171 showing the quantity of cigarettes purchased from licensed distributors
172 during the preceding calendar month, either within or outside this State,

173 *and the quantity of cigarettes sold to retailers or otherwise disposed of*
174 *during the preceding calendar month. Such reports shall be filed in the*
175 *form prescribed by the Department and shall contain such other*
176 *information as the Department may reasonably require. Information that*
177 *the Department may reasonably require includes information related to*
178 *the uniform regulation and taxation of cigarettes. The report and*
179 *supporting schedules shall be filed electronically in the form prescribed by*
180 *the Department. [35 ILCS 130/9f]*

- 181
182 5) Computer generated returns and schedules or returns and schedules filed
183 on forms that have not been approved by the Department are considered
184 unprocessable and may subject the filer to penalties and interest for failure
185 to file a proper return.

186
187 ~~Every distributor who is required to procure a license under the Act, but~~
188 ~~who is not a manufacturer of cigarettes in original packages that are~~
189 ~~contained in a sealed transparent wrapper, shall, on or before the 15th day~~
190 ~~of each calendar month, file a return with the Department, showing:~~

- 191
192 A) ~~the quantity of cigarettes manufactured during the preceding~~
193 ~~calendar month;~~
194
195 B) ~~the quantity of cigarettes brought into this State or caused to be~~
196 ~~brought into this State from outside this State during the preceding~~
197 ~~calendar month without authorized evidence on the original~~
198 ~~packages of cigarettes underneath the sealed transparent wrapper~~
199 ~~that the tax liability imposed by the Act has been assumed by the~~
200 ~~out of state seller of cigarettes;~~
201
202 C) ~~the quantity of cigarettes purchased tax paid during the preceding~~
203 ~~calendar month either within or outside this State; and~~
204
205 D) ~~the quantity of cigarettes sold or otherwise disposed of during the~~
206 ~~preceding calendar month.~~

207
208 2) ~~The return shall be filed on forms furnished and prescribed~~
209 ~~by the Department and shall contain other information the~~
210 ~~Department may reasonably require.~~

211
212 3) ~~Computer generated returns and schedules or returns and~~
213 ~~schedules filed on forms that have not been approved by~~
214 ~~the Department are considered non-processable and may~~
215 ~~subject the filer to penalties and interest for failure to file a~~

216 proper return.

217
218 b) ~~Illinois manufacturers of cigarettes in original packages that are contained~~
219 ~~inside a sealed transparent wrapper shall file a return by the 5th day of each~~
220 ~~month covering the preceding calendar month. Each return shall show the~~
221 ~~quantity of cigarettes manufactured during the period covered by the~~
222 ~~return, the quantity of cigarettes sold or otherwise disposed of during the~~
223 ~~period covered by the return, and other information the Department may~~
224 ~~lawfully require. Returns shall be filed on forms prescribed and furnished~~
225 ~~by the Department. Computer generated returns and schedules or returns~~
226 ~~and schedules filed on forms that have not been approved by the~~
227 ~~Department are considered non processable and may subject the filer to~~
228 ~~penalties and interest for failure to file a proper return.~~

229
230 e) ~~Each out of state manufacturer, who is granted a permit by the~~
231 ~~Department under Section 4b of the Act, shall file a return with the~~
232 ~~Department on a form to be prescribed and furnished by the Department~~
233 ~~and shall disclose the information as the Department may lawfully require.~~
234 ~~The return shall be filed by the 5th day of the month and shall cover the~~
235 ~~preceding calendar month. Computer generated returns and schedules or~~
236 ~~returns and schedules filed on forms that have not been approved by the~~
237 ~~Department are considered non processable and may subject the filer to~~
238 ~~penalties and interest for failure to file a proper form.~~

239
240 d) ~~The returns filed by both distributors required to procure a license under~~
241 ~~the Act who have 30 or more transactions per month, and by Illinois~~
242 ~~manufacturers having 30 or more transactions per month, must be~~
243 ~~accompanied by appropriate computer generated magnetic media~~
244 ~~supporting schedule data in the format required by the Department~~
245 ~~(Section 9 of the Act). Distributors and manufacturers who voluntarily~~
246 ~~file returns and schedules electronically are not subject to this~~
247 ~~requirement.~~

248
249 (Source: Amended at 50 Ill. Reg. _____, effective _____)

250
251 **Section 440.110 Books and Records; Invoices; Penalties**

252
253 a) Distributors. Every distributor of cigarettes, who is required to procure a license
254 under the Act, shall keep within Illinois, at its licensed address, complete and
255 accurate records of cigarettes held, purchased, manufactured, brought in or
256 caused to be brought in from without the State, and sold or otherwise disposed of,
257 and shall preserve and keep within Illinois at its licensed address all invoices,
258 bills of lading, sales records, copies of bills of sale, inventory at the close of each

259 period for which a return is required of all cigarettes on hand and of all cigarette
260 revenue stamps, both affixed and unaffixed, and other pertinent papers and
261 documents relating to the manufacture, purchase, sale or disposition of
262 cigarettes. [35 ILCS 130/11]
263

264 **Books and Records**

265
266 1) ~~Distributors. Every distributor of cigarettes, who is required to procure a~~
267 ~~license under the Act, shall keep within Illinois, at his or her licensed~~
268 ~~address, complete and accurate records of cigarettes held, purchased,~~
269 ~~manufactured, brought in or caused to be brought in from without the~~
270 ~~State, and sold or otherwise disposed of, and shall preserve and keep~~
271 ~~within Illinois at his licensed address all invoices, bills of lading, sales~~
272 ~~records, copies of bills of sale, inventory at the close of each period for~~
273 ~~which a return is required of all cigarettes on hand and of all cigarette~~
274 ~~revenue stamps, both affixed and unaffixed, and other pertinent papers and~~
275 ~~documents relating to the manufacture, purchase, sale or disposition of~~
276 ~~cigarettes.~~ A distributor's records of a particular purchase from a
277 manufacturer or distributor shall include:

- 278
279 A) ~~a~~A copy of the distributor's purchase order, (if any,) to the
280 manufacturer or distributor;
281
282 B) the manufacturer's or distributor's invoice to the distributor in
283 duplicate (see subsection (b)(~~2~~+));
284
285 C) a bill of lading or waybill pertaining to the shipment covered by
286 the invoice;
287
288 D) the receiving record showing the date when the cigarettes were
289 received by the distributor; and
290
291 E) evidence of payment by the distributor to the manufacturer or
292 distributor.

293
294 2) Every distributor who is required to procure a license under the Act and
295 who purchases cigarettes for shipment into Illinois from a point outside
296 this State shall procure invoices in duplicate covering each shipment,
297 shall make the invoices available for inspection upon demand by a duly
298 authorized agent or employee of the Department, and shall, if the
299 Department so requires, furnish one copy of each invoice to the
300 Department upon request. [35 ILCS 130/12]
301

- 302 3) Every sales invoice issued by a licensed distributor to a retailer in this
303 State shall contain the distributor's cigarette distributor license number
304 unless the distributor has been granted a waiver by the Department. The
305 distributor shall file a written request with the Department, and, if the
306 Department determines that the distributor meets the conditions for a
307 waiver, the Department shall grant the waiver. The Department shall
308 grant a waiver in response to a written request when:
309
310 A) the distributor sells cigarettes only to licensed retailers that are
311 wholly-owned by the distributor or owned by a wholly-owned
312 subsidiary of the distributor;
313
314 B) the licensed retailer obtains cigarettes only from the distributor
315 requesting the waiver; and
316
317 C) the distributor affixes the tax stamps to the original packages of
318 cigarettes sold to the licensed retailer. [35 ILCS 130/11]
319
320 4) Any licensed distributor that ships or otherwise causes to be delivered
321 unstamped original packages of cigarettes into, within, or from this State
322 shall ensure that the invoice or equivalent documentation and the bill of
323 lading or freight bill for the shipment identifies the true name and address
324 of the consignor or seller, the true name and address of the consignee or
325 purchaser, and the quantity by brand style of the cigarettes so transported,
326 provided that this subsection (a)(4) shall not be construed as to impose
327 any requirement or liability upon any common or contract carrier. [35
328 ILCS 130/3]
329
330 5) When a distributor who is licensed or has a permit under the Cigarette Tax
331 Act sells cigarettes to a federal or foreign government agency or
332 instrumentality, the distributor shall print, stamp or otherwise write
333 substantially the following legend on the original and all copies of the
334 invoice covering the cigarettes: "Illinois cigarette tax paid".
335
336 6) When a distributor who is licensed or has a permit under the Cigarette Tax
337 Act sells Illinois tax-stamped or tax-imprinted original packages of
338 cigarettes to any purchaser other than a federal or foreign government
339 agency or instrumentality, the distributor's invoice not only shall state that
340 the cigarette tax has been paid by the distributor, but also shall state the
341 amount of the tax to the purchaser as a separate item from the selling price
342 of the cigarettes.
343

344 7) When a permit holder or licensee under the Cigarette Use Tax Act, as
345 distinguished from a licensee or permit holder under the Cigarette Tax
346 Act, sells Illinois tax-stamped or tax-imprinted cigarettes to anyone other
347 than a federal or foreign government agency or instrumentality, the
348 distributor's invoice shall state the amount of the Cigarette Use Tax to the
349 purchaser as a separate item from the selling price of the cigarettes.
350 However, when a person sells cigarettes to a federal or foreign
351 government agency or instrumentality, the invoice should omit any
352 reference to the Cigarette Use Tax.

354 8) Each Illinois manufacturer of cigarettes in original packages that are
355 contained inside a sealed transparent wrapper shall keep a copy of each
356 invoice rendered by the manufacturer to any purchaser to whom the
357 manufacturer delivered cigarettes or caused cigarettes to be delivered
358 during the period covered by the manufacturer's return. Copies of
359 invoices must be furnished to the Department upon request.

361 9) Each manufacturer who holds a permit under Section 4b of the Act shall
362 keep a copy of each invoice rendered by the permittee to any purchaser to
363 whom the permittee delivered cigarettes of the type covered by the permit
364 or caused cigarettes of the type covered by the permit to be delivered in
365 Illinois during the period covered by the return. Copies of invoices must
366 be furnished to the Department upon request.

368 b) Secondary Distributors.

369
370 1) Every secondary distributor of cigarettes, who is required to procure a
371 license under the Act shall keep within Illinois, at its licensed address,
372 complete and accurate records of cigarettes held, purchased, brought in
373 from without the State, and sold, or otherwise disposed of, and shall
374 preserve and keep within Illinois at its licensed address all invoices, bills
375 of lading, sales records, copies of bills of sale, inventory at the close of
376 each period for which a report is required of all cigarettes on hand, and
377 other pertinent papers and documents relating to the purchase, sale, or
378 disposition of cigarettes. [35 ILCS 130/11a]

379
380 2) Every secondary distributor of cigarettes, who is required to procure a
381 license under the Act and who purchases cigarettes for shipment into
382 Illinois from a point outside this State shall procure invoices in duplicate
383 covering each shipment, shall make the invoices available for inspection
384 upon demand by a duly authorized agent or employee of the Department,
385 and shall, if the Department so requires, furnish one copy of each invoice
386 to the Department upon request. [35 ILCS 130/12]

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c) Manufacturers with Manufacturer Representatives. Every manufacturer with authority to maintain manufacturer representatives under Section 4f of the Act shall keep within Illinois, at its business address identified under Section 4f of the Act, complete and accurate records of cigarettes purchased, sold, or otherwise disposed of, and shall preserve and keep within Illinois at its business address all invoices, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the manufacturers with authority to maintain manufacturer representatives under Section 4f of the Act and their manufacturer representatives, or inspect any motor vehicle used by a manufacturer representative in the course of business, without a search warrant and may inspect the premises, motor vehicle, and any packages of cigarettes therein contained to determine whether any of the provisions of the Act are being violated. [35 ILCS 130/11b]

d) Retailers. Every retailer who is required to procure a license under the Act shall keep within Illinois complete and accurate records of cigarettes purchased, sold, or otherwise disposed of. It shall be the duty of every retail licensee to make sales records, copies of bills of sale, and inventory at the close of each period for which a report is required of all cigarettes on hand available upon reasonable notice for the purpose of investigation and control by the Department.

1) The books and records need not be maintained on the licensed premises, but must be maintained in the State of Illinois. However, all original invoices or copies thereof covering purchases of cigarettes must be retained on the licensed premises for a period of 90 days after purchase, unless the Department has granted a waiver in response to a written request in cases in which records are kept at a central business location within the State of Illinois. [35 ILCS 130/11c] Prior to removing the books and records from the licensed premises, the retailer must notify the Department that the books and records will be kept at another location in Illinois and identify the location. Under these circumstances, books and records may be kept at that location in Illinois, but the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers, and documents available within 30 days at the licensed premises or an agreed upon location by the Department for the purpose of inspection and audit as the Department may deem necessary.

429 2) Books and records may be maintained out of State if access is available
430 electronically. However, all original invoices or copies thereof covering
431 purchases of cigarettes must be retained on the licensed premises for a
432 period of 90 days after purchase, unless the Department has granted a
433 waiver in response to a written request in cases in which records that are
434 available electronically are maintained out of State. [35 ILCS 130/11c]
435

436 3) The Department will grant a written waiver under subsections (d)(1) and
437 (2) when the following requirements are met by the retailer:
438

439 A) The retailer submits a letter to the Department containing:
440

- 441 i) the retailer's license number and FEIN;
- 442
- 443 ii) the address or addresses of the licensed premises where
444 records are currently maintained;
- 445
- 446 iii) the address of the central location or out-of-State location
447 where the retailer intends to maintain the records;
- 448
- 449 iv) if the records are maintained out-of-State, an explanation of
450 the process and system that will enable the Department or
451 its duly authorized agents or employees to electronically
452 access the records from the licensed premises on demand;
453 and
- 454
- 455 v) an acknowledgement by the retailer that the Department,
456 upon 30 days written notice, may revoke the waiver of the
457 retailer for one or more licensed premises if the retailer
458 fails to provide electronic access in accordance with the
459 requirements of the written waiver; transfers or sells the
460 licensed premises to another person; or changes the process
461 or system for providing access to the records electronically.

462

463 B) For books and records maintained out of State, the Department is
464 given access electronically to accurate records of cigarettes held,
465 purchased, sold, or otherwise disposed of; invoices; bills of lading;
466 sales records; copies of bills of sale, returns, and other pertinent
467 papers; and documents relating to the purchase, sale, or disposition
468 of cigarettes kept at the licensed premises in the normal course of
469 business at the time of the request; and
470

471 C) For books and records maintained out of State, the Department has
472 tested the process and system from the licensed premises and
473 verified that the Department and its duly authorized agents and
474 employees have access electronically to the required records from
475 the licensed premises on demand.

476
477 e) General.

- 478
479 1) For purposes of this Section, "records" means all data maintained by
480 distributors, secondary distributors, manufacturers with the authority to
481 maintain manufacturer representatives and their manufacturer
482 representatives, and retailers, including data on paper, microfilm,
483 microfiche, or any type of machine sensible data compilation. [35 ILCS
484 130/11, 11a, 11b and 11c]
- 485
486 2) All books and records and other papers and documents that are required
487 by the Act to be kept shall be kept in the English language, and shall, at all
488 times during the usual business hours of the day, be subject to inspection
489 by the Department or its duly authorized agents and employees. [35 ILCS
490 130/11, 11a, and 11b]
- 491
492 3) At all times during the usual business hours of the day, any duly
493 authorized agent or employee of the Department may enter any place of
494 business of the distributor, secondary distributor, manufacturer with
495 authority to maintain a manufacturer representative, manufacturer
496 representative's vehicle, or retailer without a search warrant and inspect
497 the premises and the stock or packages of cigarettes and any vending
498 devices in the premises or motor vehicle to determine whether any of the
499 provisions of the Act are being violated. If the agent or employee is
500 denied free access or is hindered or interfered with in making the
501 examination, the license of the distributor, secondary distributor,
502 manufacturer representative, or retailer shall be subject to revocation by
503 the Department. [35 ILCS 130/11, 11a, 11b, and 11c]
- 504
505 4) The books, records, papers and documents shall be preserved for a period
506 of at least 3 years after the date of the documents, or the date of the
507 entries appearing in the records, whichever is later, unless the
508 Department, in writing, authorizes their destruction or disposal at an
509 earlier date. [35 ILCS 130/11, 11a, 11b, and 11c]

510
511 ~~Secondary Distributors. Every secondary distributor of cigarettes who is~~
512 ~~required to procure a license under the Act shall keep within Illinois, at~~
513 ~~his or her licensed address, complete and accurate records of cigarettes~~

514 ~~held, purchased, brought in from without the State, and sold, or otherwise~~
515 ~~disposed of, and shall preserve and keep within Illinois at his or her~~
516 ~~licensed address all invoices, bills of lading, sales records, copies of bills~~
517 ~~of sale, inventory at the close of each period for which a report is required~~
518 ~~of all cigarettes on hand, and other pertinent papers and documents~~
519 ~~relating to the purchase, sale, or disposition of cigarettes. [35 ILCS~~
520 ~~130/11a]~~

521
522 3) ~~Manufacturers with Manufacturer Representatives. Every manufacturer~~
523 ~~with authority to maintain manufacturer representatives under Section 4f~~
524 ~~of the Act shall keep within Illinois, at his or her business address~~
525 ~~identified under Section 4f of the Act, complete and accurate records of~~
526 ~~cigarettes purchased, sold, or otherwise disposed of, and shall preserve~~
527 ~~and keep within Illinois at his or her business address all invoices, sales~~
528 ~~records, copies of bills of sale, inventory at the close of each period for~~
529 ~~which a report is required of all cigarettes on hand, and other pertinent~~
530 ~~papers and documents relating to the purchase, sale, or disposition of~~
531 ~~cigarettes. At all times during the usual business hours of the day, any~~
532 ~~duly authorized agent or employee of the Department may enter any place~~
533 ~~of business of the manufacturers with authority to maintain manufacturer~~
534 ~~representatives under Section 4f of the Act and their manufacturer~~
535 ~~representatives, or inspect any motor vehicle used by a manufacturer~~
536 ~~representative in the course of business, without a search warrant and~~
537 ~~may inspect the premises, motor vehicle, and any packages of cigarettes~~
538 ~~therein contained to determine whether any of the provisions of the Act~~
539 ~~are being violated. [35 ILCS 130/11b]~~

540
541 4) ~~Retailers. Every retailer who is required to procure a license under the~~
542 ~~Act shall keep within Illinois complete and accurate records of cigarettes~~
543 ~~purchased, sold, or otherwise disposed of. It shall be the duty of every~~
544 ~~retail licensee to make sales records, copies of bills of sale, and inventory~~
545 ~~at the close of each period for which a report is required of all cigarettes~~
546 ~~on hand available upon reasonable notice for the purpose of investigation~~
547 ~~and control by the Department.~~

548
549 A) ~~The books and records need not be maintained on the licensed~~
550 ~~premises, but must be maintained in the State of Illinois. However,~~
551 ~~all original invoices or copies thereof covering purchases of~~
552 ~~cigarettes must be retained on the licensed premises for a period of~~
553 ~~90 days after purchase, unless the Department has granted a~~
554 ~~waiver in response to a written request in cases in which records~~
555 ~~are kept at a central business location within the State of Illinois.~~
556 ~~Prior to removing the books and records from the licensed~~

557 ~~premises, the retailer must notify the Department that the books~~
558 ~~and records will be kept at another location in Illinois and identify~~
559 ~~the location. Under these circumstances, books and records may~~
560 ~~be kept at that location in Illinois, but the taxpayer must, within a~~
561 ~~reasonable time after notification by the Department, make all~~
562 ~~pertinent books, records, papers and documents available at some~~
563 ~~point within Illinois for the purpose of inspection and audit as the~~
564 ~~Department may deem necessary.~~

566 ~~B) *Books and records may be maintained out of state if access is*~~
567 ~~*available electronically. However, all original invoices or copies*~~
568 ~~*thereof covering purchases of cigarettes must be retained on the*~~
569 ~~*licensed premises for a period of 90 days after purchase, unless the*~~
570 ~~*Department has granted a waiver in response to a written request*~~
571 ~~*when records that are available electronically are maintained out*~~
572 ~~*of state. [35 ILCS 130/11e]*~~

574 ~~C) The Department will grant a written waiver under subsections~~
575 ~~(a)(4)(A) and (B) when the retailer submits a letter to the~~
576 ~~Department containing:~~

- 577
- 578 ~~1) the retailer's license number and FEIN;~~
 - 579
 - 580 ~~2) the address or addresses of the licensed premises where records are~~
581 ~~currently maintained;~~
 - 582
 - 583 ~~3) the address of the central location or out-of-state location where the~~
584 ~~retailer intends to maintain the records;~~
 - 585
 - 586 ~~4) if the records are maintained out of state, an explanation of the process~~
587 ~~and system that will enable the Department or its duly authorized agents or~~
588 ~~employees to electronically access the records from the licensed premises~~
589 ~~on demand; and~~

590

- 591 ~~5) an acknowledgement by the retailer that the Department, upon 30 days~~
592 ~~written notice, may revoke the waiver of the retailer for one or more~~
593 ~~licensed premises if the retailer:~~

594

- 595 ~~A) fails to provide access in accordance with the requirements of the~~
596 ~~written waiver;~~

597

- 598 ~~B) transfers or sells the licensed premises to another person; or~~

599

- 600 ~~C) changes the process or system for providing access to the records~~
601 ~~electronically.~~
- 602
- 603 ~~5) For purposes of this Section, "records" means all data maintained by~~
604 ~~distributors, secondary distributors, manufacturers with manufacturer~~
605 ~~representatives, and retailers, including data on paper, microfilm,~~
606 ~~microfiche or any type of machine sensible data compilation. [35 ILCS~~
607 ~~130/11, 11a, 11b and 11c]~~
- 608
- 609 ~~6) All books and records and other papers and documents which are required~~
610 ~~by the Act to be kept shall be kept in the English language, and shall, at all~~
611 ~~times during the usual business hours of the day, be subject to inspection~~
612 ~~by the Department or its duly authorized agents and employees. At all~~
613 ~~times during the usual business hours of the day, any duly authorized~~
614 ~~agent or employee of the Department may enter any place of business of~~
615 ~~the distributor, secondary distributor, manufacturer with authority to~~
616 ~~maintain a manufacturer representative, manufacturer representative's~~
617 ~~vehicle, or retailer without a search warrant and inspect the premises and~~
618 ~~the stock or packages of cigarettes and any vending devices in the~~
619 ~~premises to determine whether any of the provisions of the Act are being~~
620 ~~violated. If the agent or employee is denied free access or is hindered or~~
621 ~~interfered with in making the examination, the license of the distributor,~~
622 ~~secondary distributor, manufacturer representative or retailer shall be~~
623 ~~subject to revocation by the Department. [35 ILCS 130/11, 11a, 11b and~~
624 ~~11c]~~
- 625
- 626 ~~7) The books, records, papers and documents shall be preserved for a period~~
627 ~~of at least 3 years after the date of the documents, or the date of the~~
628 ~~entries appearing in the records, whichever is later, unless the~~
629 ~~Department, in writing, authorizes their destruction or disposal at an~~
630 ~~earlier date. [35 ILCS 130/11, 11a, 11b and 11c]~~
- 631
- 632 ~~b) Invoices~~
- 633
- 634 ~~1) Every distributor who is required to procure a license under the Act and~~
635 ~~who purchases cigarettes for shipment into Illinois from a point outside~~
636 ~~this State shall procure invoices in duplicate covering each shipment, shall~~
637 ~~make the invoices available for inspection upon demand by a duly~~
638 ~~authorized agent or employee of the Department, and shall, if the~~
639 ~~Department so requires, furnish one copy of each invoice to the~~
640 ~~Department upon request.~~
- 641

- 642 2) ~~Every sales invoice issued by a licensed distributor to a retailer in this~~
643 ~~State shall contain the distributor's cigarette distributor license number~~
644 ~~unless the distributor has been granted a waiver by the Department. The~~
645 ~~distributor shall file a written request with the Department, and, if the~~
646 ~~Department determines that the distributor meets the conditions for a~~
647 ~~waiver, the Department will grant the waiver. The Department will grant~~
648 ~~a waiver in response to a written request when:~~
649
650 A) ~~the distributor sells cigarettes only to licensed retailers that are~~
651 ~~wholly owned by the distributor or owned by a wholly owned~~
652 ~~subsidiary of the distributor;~~
653
654 B) ~~the licensed retailer obtains cigarettes only from the distributor~~
655 ~~requesting the waiver; and~~
656
657 C) ~~the distributor affixes the tax stamps to the original packages of~~
658 ~~cigarettes sold to the licensed retailer. [35 ILCS 130/11]~~
659
660 3) ~~Any licensed distributor that ships or otherwise causes to be delivered~~
661 ~~unstamped original packages of cigarettes into, within, or from this State~~
662 ~~shall ensure that the invoice or equivalent documentation and the bill of~~
663 ~~lading or freight bill for the shipment identifies the true name and address~~
664 ~~of the consignor or seller, the true name and address of the consignee or~~
665 ~~purchaser, and the quantity by brand style of the cigarettes so transported,~~
666 ~~provided that this subsection (b)(3) shall not be construed as to impose~~
667 ~~any requirement or liability upon any common or contract carrier. [35~~
668 ~~ILCS 130/3]~~
669
670 4) ~~Each Illinois manufacturer of cigarettes in original packages that are~~
671 ~~contained inside a sealed transparent wrapper shall keep a copy of each~~
672 ~~invoice rendered by the manufacturer to any purchaser to whom the~~
673 ~~manufacturer delivered cigarettes (or caused cigarettes to be delivered)~~
674 ~~during the period covered by the manufacturer's return. Copies of~~
675 ~~invoices must be furnished to the Department upon request.~~
676
677 5) ~~Each manufacturer who holds a permit under Section 4b of the Act shall~~
678 ~~keep a copy of each invoice rendered by the permittee to any purchaser to~~
679 ~~whom the permittee delivered cigarettes of the type covered by the permit~~
680 ~~(or caused cigarettes of the type covered by the permit to be delivered) in~~
681 ~~Illinois during the period covered by the return. Copies of invoices must~~
682 ~~be furnished to the Department upon request.~~
683

684 6) ~~When a distributor who is licensed or has a permit under the Cigarette Tax~~
685 ~~Act sells cigarettes to a federal or foreign government agency or~~
686 ~~instrumentality under circumstances causing Illinois cigarette tax liability~~
687 ~~to be incurred (see Section 440.180), the distributor shall print, stamp or~~
688 ~~otherwise write substantially the following legend on the original and all~~
689 ~~copies of the invoice covering the cigarettes: "Illinois cigarette tax paid".~~

691 7) ~~When a distributor who is licensed or has a permit under the Cigarette Tax~~
692 ~~Act sells Illinois tax stamped or tax imprinted original packages of~~
693 ~~cigarettes to any purchaser other than a federal or foreign government~~
694 ~~agency or instrumentality, the distributor's invoice not only shall state that~~
695 ~~the cigarette tax has been paid by the distributor, but also shall state the~~
696 ~~amount of the tax to the purchaser as a separate item from the selling price~~
697 ~~of the cigarettes.~~

699 8) ~~When a permit holder or licensee under the Cigarette Use Tax Act (as~~
700 ~~distinguished from a licensee or permit holder under the Cigarette Tax~~
701 ~~Act) sells Illinois tax stamped or tax imprinted cigarettes to anyone other~~
702 ~~than a federal or foreign government agency or instrumentality, the~~
703 ~~distributor's invoice shall state the amount of the cigarette use tax to the~~
704 ~~purchaser as a separate item from the selling price of the cigarettes. (See~~
705 ~~Section 440.50.) However, when a person sells cigarettes to a federal or~~
706 ~~foreign government agency or instrumentality, the invoice should omit any~~
707 ~~reference to the cigarette use tax.~~

708
709 e) Penalties

711 1) ~~Any person required by the Act to keep records of any kind whatsoever,~~
712 ~~who shall fail to keep the records so required or who shall falsify those~~
713 ~~records, shall be guilty of a Class 4 felony. If a person fails to produce the~~
714 ~~records for inspection by the Department upon request, a prima facie~~
715 ~~presumption shall arise that the person has failed to keep the records so~~
716 ~~required. A person who is unable to rebut this presumption is in violation~~
717 ~~of the Act and is subject to the penalties provided in this subsection (c).~~
718 ~~[35 ILCS 130/14].~~

720 2) ~~Any person who shall fail to safely maintain and preserve the records~~
721 ~~required by Sections 11, 11a, 11b, and 11c of the Act for a period of 3~~
722 ~~years, as required in the Act, in such manner as to insure permanency and~~
723 ~~accessibility for inspection by the Department, shall be guilty of a business~~
724 ~~offense and may be fined up to \$5,000. [35 ILCS 130/15] (See subsection~~
725 ~~(a) for the requirements to maintain books and records.)~~

726

- 727 3) ~~The Department may, after notice and hearing as provided for by the Act,~~
728 ~~revoke, cancel or suspend the license of any distributor, secondary~~
729 ~~distributor, or retailer for any noncompliance with this subsection (c). No~~
730 ~~license so revoked shall be reissued to any such distributor, secondary~~
731 ~~distributor, or retailer within a period of 6 months after the date of the~~
732 ~~final determination of the revocation. Any distributor, secondary~~
733 ~~distributor, or retailer aggrieved by any decision of the Department under~~
734 ~~this Section may, within 20 days after notice of the decision, protest and~~
735 ~~request a hearing. Upon receiving a request for a hearing, the~~
736 ~~Department shall give notice in writing to the distributor, secondary~~
737 ~~distributor, or retailer requesting the hearing of the time and place fixed~~
738 ~~for the hearing. If a distributor, secondary distributor, or retailer protests~~
739 ~~the revocation, cancellation or suspension of a license and requests a~~
740 ~~hearing, the notice also shall contain a statement of the charges preferred~~
741 ~~against the distributor, secondary distributor or retailer. The Department~~
742 ~~shall hold the hearing in conformity with the provisions of the Act and~~
743 ~~then issue its final administrative decision in the matter to the distributor,~~
744 ~~secondary distributor, or retailer. In the absence of a protest and request~~
745 ~~for a hearing within 20 days, the Department's decision shall become final~~
746 ~~without any further determination being made or notice given. [35 ILCS~~
747 ~~130/6]~~
748
749 4) ~~Any person who fails to keep books and records or fails to produce books~~
750 ~~and records for inspection, as required by Sections 11, 11a, 11b, and 11c~~
751 ~~of the Act, is liable to pay to the Department, for deposit in the Tax~~
752 ~~Compliance and Administration Fund, a penalty of \$1,000 for the first~~
753 ~~failure to keep books and records or failure to produce books and records~~
754 ~~for inspection, as required by Sections 11, 11a, 11b, and 11c, and \$3,000~~
755 ~~for each subsequent failure to keep books and records or failure to~~
756 ~~produce books and records for inspection, as required by Sections 11,~~
757 ~~11a, 11b, and 11c. [35 ILCS 130/15a] (See subsections (a) and (b) for the~~
758 ~~requirements to maintain books and records.)~~
759
760 A) ~~All books and records and other papers and documents that are~~
761 ~~required to be kept by the Act shall, at all times during the usual~~
762 ~~business hours of the day, be subject to inspection by the~~
763 ~~Department or its duly authorized agents and employees. (See~~
764 ~~subsection (a)(6).) A person that prohibits a duly authorized agent~~
765 ~~of the Department from inspecting books and records during usual~~
766 ~~business hours of the day has failed to produce books and records~~
767 ~~to the Department for inspection as required by this Section. The~~
768 ~~Department may issue a notice of penalty to that person pursuant~~
769 ~~to this subsection (c)(4). The Department is not required to~~

770 provide the retailer with a written document request pursuant to
771 this subsection (c)(4)(A) or provide additional time for the retailer
772 to allow the inspection of the premises and the books and records
773 at the location.

774
775 B) ~~Except for retailers that are permitted to maintain books and~~
776 ~~records at another location pursuant to subsection (a)(4),~~
777 ~~distributors, secondary distributors, manufacturers with~~
778 ~~manufacturer representatives, and retailers must have a person at~~
779 ~~their place of business at all times during the usual business hours~~
780 ~~of the day who is authorized to produce books and records for~~
781 ~~inspection by the Department. It is presumed that a person~~
782 ~~working at a place of business has authority to permit the~~
783 ~~Department to inspect the books and records at the business~~
784 ~~location. If a retail establishment has only one employee working~~
785 ~~at the time of the request for the books and records who has no~~
786 ~~ownership interest in the establishment and is not authorized to~~
787 ~~produce books and records, the employee is required to advise the~~
788 ~~Department he or she does not have authority to provide books and~~
789 ~~records for inspection. The Department will not issue a notice of~~
790 ~~penalty to a retailer for failure to produce books and records if a~~
791 ~~person who is authorized to produce the books and records can be~~
792 ~~contacted by the employee and arrives at the place of business~~
793 ~~within 2 hours and produces the books and records. The~~
794 ~~Department may extend the period either on verbal or written~~
795 ~~request for good cause shown or on its own motion.~~

796
797 ~~EXAMPLE 1: An authorized agent of the Department attempts to~~
798 ~~inspect the books and records of a cigarette retailer. The person at~~
799 ~~the store states the books and records are at the store but refuses to~~
800 ~~provide access to the books and records because the owner of the~~
801 ~~store told him not to let anyone have access to the records. The~~
802 ~~person states the owner is unavailable and cannot be contacted.~~
803 ~~The Department issues a notice of penalty.~~

804
805 ~~EXAMPLE 2: An authorized agent of the Department attempts to~~
806 ~~inspect the books and records of a cigarette retailer. The person at~~
807 ~~the store states the books and records are at the store but refuses to~~
808 ~~provide access to the books and records because the owner of the~~
809 ~~store told him not to let anyone have access to the records. The~~
810 ~~person states he can call a person responsible for making the~~
811 ~~records available to the agent. The employee calls the person and~~
812 ~~the person arrives at the store in less than 2 hours and makes the~~

813 ~~books and records available to the agent. The Department will not~~
814 ~~issue a notice of penalty.~~

815
816 ~~EXAMPLE 3: An authorized agent of the Department enters a~~
817 ~~retailer's place of business and requests to see the books and~~
818 ~~records. The person at the store states the books and records are~~
819 ~~maintained at another business location in Illinois. The agent~~
820 ~~cannot issue a notice of penalty unless the retailer failed to notify~~
821 ~~the Department that the books and records are located at another~~
822 ~~location pursuant to subsection (a)(4). However, the authorized~~
823 ~~agent of the Department does have authority to inspect the~~
824 ~~premises pursuant to subsection (a)(6).~~

825
826 C) ~~If a person fails to produce books and records for inspection by the~~
827 ~~Department upon request, a prima facie presumption shall arise~~
828 ~~that the person has failed to keep the books and records so~~
829 ~~required. A person who is unable to rebut this presumption is~~
830 ~~subject to the penalty provided in this subsection (c)(4). Except as~~
831 ~~otherwise provided by subsection (c)(4)(A), if a request for the~~
832 ~~production of books and records has been made and not honored,~~
833 ~~prior to issuing a notice of penalty for a failure to maintain books~~
834 ~~and records or a failure to produce books and records, the~~
835 ~~Department must provide the taxpayer with a document request in~~
836 ~~writing. The written document request shall contain:~~

- 837
838 i) ~~the name of the person receiving the request;~~
839
840 ii) ~~the name of the business;~~
841
842 iii) ~~the date of the original request or requests;~~
843
844 iv) ~~the books and records requested;~~
845
846 v) ~~the books and records that the person failed to produce;~~
847
848 vi) ~~the number of days the person has to produce the books and~~
849 ~~records; and~~
850
851 vii) ~~the name of the Department agent or employee and his or~~
852 ~~her contact information.~~

853
854 D) ~~The Department agent or employee shall sign and date the written~~
855 ~~document request and personally provide or mail a copy of the written~~

856 document request to the business at its last known address. The person
857 shall have 30 days from the date of the written document request to
858 produce the books and records the person has failed to produce. The
859 Department may extend the period either on written request for good
860 cause shown or on its own motion. If the person fails to produce the
861 books and records within the time allotted, the Department may issue a
862 notice of penalty pursuant to this subsection (c)(4) to the business at its
863 last known address.

864
865 ~~EXAMPLE: An authorized agent of the Department enters a convenience~~
866 ~~store and requests to see all the invoices for cigarettes purchased by the~~
867 ~~store in the last 60 days and all cash register receipts for sales made in the~~
868 ~~last 60 days. The person at the store produces the cash register receipts~~
869 ~~but states that they have no invoices for cigarettes purchased in the last 60~~
870 ~~days. The agent completes a written document request, provides a copy to~~
871 ~~the person, and provides the person 30 days to produce the invoices. The~~
872 ~~agent returns 30 days later and requests the invoices. The person at the~~
873 ~~store cannot produce the invoices. The Department will issue a notice of~~
874 ~~penalty to the business at its last known address.~~

875
876 E) ~~Any person receiving a notice of penalty may, within 20 days after the~~
877 ~~date on the notice, protest and request a hearing. Upon receiving a request~~
878 ~~for a hearing, the Department shall give notice to the person requesting the~~
879 ~~hearing of the time and place fixed for the hearing and shall hold a hearing~~
880 ~~in conformity with the provisions of the Act and then issue its final~~
881 ~~administrative decision in the matter to that person. If the request is made~~
882 ~~during an audit, the Department shall postpone the hearing until~~
883 ~~completion of the audit or inspection. In the absence of a protest and~~
884 ~~request for a hearing within 20 days, the Department's decision shall~~
885 ~~become final without any further determination being made or notice~~
886 ~~given.~~

887
888 F) ~~The Department cannot impose more than one penalty for failure to~~
889 ~~produce books and records for a calendar month.~~

890
891 ~~EXAMPLE 1: An authorized agent of the Department inspects a cigarette~~
892 ~~retailer and requests the records for the first week in April. The retailer~~
893 ~~does not produce the records. The agent subsequently requests the records~~
894 ~~for the remaining 3 weeks in April. The retailer does not produce the~~
895 ~~records. The agent can assess only one penalty for the month of April.~~

896
897 ~~EXAMPLE 2: An authorized agent of the Department inspects a cigarette~~
898 ~~retailer and requests all purchase invoices for cigarettes for March. The~~

899 ~~invoices are not provided by the retailer and the Department issues a~~
900 ~~notice of penalty. The agent returns in May and ask to see all the cigarette~~
901 ~~sales receipts for March. The retailer fails to produce the sales receipts for~~
902 ~~March. The Department cannot issue a penalty for failure of the retailer to~~
903 ~~provide sales receipts for March because the agent has previously issued a~~
904 ~~notice of penalty for failure to produce the invoices for March.~~

905
906 G) ~~A records request can cover multiple periods. The Department is~~
907 ~~authorized to issue a separate penalty for each period; e.g., for a taxpayer~~
908 ~~that files returns monthly, the period is one month.~~

909
910 ~~EXAMPLE: An authorized agent of the Department inspects a cigarette~~
911 ~~retailer and requests the books and records for the months of January~~
912 ~~through July. The retailer cannot produce the books and records for any of~~
913 ~~the months. The agent fills out a written document request, provides a~~
914 ~~copy of the document request to the person, and provides the person 30~~
915 ~~business days to produce the invoices. The agent returns 30 business days~~
916 ~~later and requests the invoices. The person at the store cannot produce the~~
917 ~~invoices. The Department will issue a notice of penalty in the amount of~~
918 ~~\$1,000 for the month of January and \$3,000 for each of the months~~
919 ~~February through July, for a total penalty of \$19,000.~~

920
921 (Source: Amended at 50 Ill. Reg. _____, effective _____)

922
923 **Section 440.115 Books and Records Penalties**

924
925 a) Any person required by the Act to keep records of any kind whatsoever, who shall
926 fail to keep the records so required or who shall falsify such records, shall be
927 guilty of a Class 4 felony. If a person fails to produce the records for inspection
928 by the Department upon request, a prima facie presumption shall arise that the
929 person has failed to keep the records so required. A person who is unable to
930 rebut this presumption is in violation of the Act and is subject to the penalties
931 provided in this subsection (a). [35 ILCS 130/14]

932
933 b) Any person who shall fail to safely maintain and preserve the records required by
934 Sections 11, 11a, 11b, and 11c of the Act for a period of 3 years, as required in
935 the Act, in such manner as to ensure permanency and accessibility for inspection
936 by the Department, shall be guilty of a business offense and may be fined up to
937 \$5,000. [35 ILCS 130/15] See Section 440.110.

938
939 c) Any person who fails to keep books and records or fails to produce books and
940 records for inspection, as required by Sections 11, 11a, 11b, and 11c of the Act, is
941 liable to pay to the Department, for deposit in the Tax Compliance and

942 Administration Fund, a penalty of \$1,000 for the first failure to keep books and
943 records or failure to produce books and records for inspection, as required by
944 Sections 11, 11a, 11b, and 11c, and \$3,000 for each subsequent failure to keep
945 books and records or failure to produce books and records for inspection, as
946 required by Sections 11, 11a, 11b, and 11c. [35 ILCS 130/15a] See Section
947 440.110.

948
949 1) All books and records and other papers and documents that are required to
950 be kept by the Act shall, at all times during the usual business hours of the
951 day, be subject to inspection by the Department or its duly authorized
952 agents and employees. A person that prohibits a duly authorized agent of
953 the Department from inspecting books and records during usual business
954 hours of the day has failed to produce books and records to the
955 Department for inspection as required by this Section. The Department
956 may issue a notice of penalty to that person pursuant to this subsection (c).
957 The Department is not required to provide the retailer with a written
958 document request pursuant to this subsection (c)(1) or provide additional
959 time for the retailer to allow the inspection of the premises and the books
960 and records at the location.

961
962 2) Except for retailers that are permitted to maintain books and records at
963 another location pursuant to Section 440.110(d), distributors, secondary
964 distributors, manufacturers with manufacturer representatives, and
965 retailers must have a person at their place of business at all times during
966 the usual business hours of the day who is authorized to produce books
967 and records for inspection by the Department. It is presumed that a person
968 working at a place of business has authority to permit the Department to
969 inspect the books and records at the business location. If a retail
970 establishment has only one employee working at the time of the request
971 for the books and records who has no ownership interest in the
972 establishment and is not authorized to produce books and records, the
973 employee is required to advise the Department they do not have authority
974 to provide books and records for inspection. The Department will not
975 issue a notice of penalty to a retailer for failure to produce books and
976 records if a person who is authorized to produce the books and records can
977 be contacted by the employee and arrives at the place of business within 2
978 hours and produces the books and records. The Department may extend
979 the period either on verbal or written request for good cause shown.

980
981 EXAMPLE 1: An authorized agent of the Department attempts to inspect
982 the books and records of a cigarette retailer. The person at the store states
983 the books and records are at the store but refuses to provide access to the
984 books and records because the owner of the store told the employee not to

985 let anyone have access to the records. The person states the owner is
986 unavailable and cannot be contacted. The Department will issue a notice
987 of penalty.

988
989 EXAMPLE 2: An authorized agent of the Department attempts to inspect
990 the books and records of a cigarette retailer. The person at the store states
991 the books and records are at the store but refuses to provide access to the
992 books and records because the owner of the store told the employee not to
993 let anyone have access to the records. The person offers to call a person
994 responsible for making the records available to the agent. The employee
995 calls the person, and the person arrives at the store in less than 2 hours and
996 makes the books and records available to the agent. The Department will
997 not issue a notice of penalty.

998
999 EXAMPLE 3: An authorized agent of the Department enters a retailer's
1000 place of business and requests to see the books and records. The person at
1001 the store states the books and records are maintained at another business
1002 location in Illinois. The agent cannot issue a notice of penalty unless the
1003 retailer failed to notify the Department that the books and records are
1004 located at another location pursuant to Section 440.110(d). However, the
1005 authorized agent of the Department does have authority to inspect the
1006 premises pursuant to subsection Section 440.110(e)(2) and (3).

1007 3) If a person fails to produce books and records for inspection by the
1008 Department upon request, a prima facie presumption shall arise that the
1009 person has failed to keep the books and records so required. A person
1010 who is unable to rebut this presumption is subject to the penalty provided
1011 in this subsection (c). Except as otherwise provided by subsection (c)(1),
1012 if a request for the production of books and records has been made and not
1013 honored, prior to issuing a notice of penalty for a failure to maintain books
1014 and records or a failure to produce books and records, the Department
1015 must provide the taxpayer with a document request in writing. The
1016 written document request shall contain:

1017
1018 A) the name of the person receiving the request;

1019
1020 B) the name of the business;

1021
1022 C) the date of the original request or requests;

1023
1024 D) the books and records requested;

1025
1026 E) the books and records that the person failed to produce;

1027

- 1028 F) the number of days the person has to produce the books and
- 1029 records; and
- 1030
- 1031 G) the name of the Department agent or employee and their contact
- 1032 information.
- 1033

1034 4) The Department agent or employee shall sign and date the written

1035 document request and personally provide or mail a copy of the written

1036 document request to the business at its last known address. The person

1037 shall have 30 days from the date of the written document request to

1038 produce the books and records the person has failed to produce. The

1039 Department may extend the period either on written request for good

1040 cause shown or on its own motion. If the person fails to produce the

1041 books and records within the time allotted, the Department may issue a

1042 notice of penalty pursuant to this subsection (c) to the business at its last

1043 known address.

1044

1045 EXAMPLE: An authorized agent of the Department enters a convenience

1046 store and requests to see all the invoices for cigarettes purchased by the

1047 store in the last 60 days and all cash register receipts for sales made in the

1048 last 60 days. The person at the store produces the cash register receipts

1049 but states that they have no invoices for cigarettes purchased in the last 60

1050 days. The agent completes a written document request, provides a copy to

1051 the person, and provides the person 30 days to produce the invoices. The

1052 agent returns 30 days later and requests the invoices. The person at the

1053 store cannot produce the invoices. The Department will issue a notice of

1054 penalty to the business at its last known address.

1055

1056 5) Any person receiving a notice of penalty may, within 20 days after the

1057 date on the notice, protest and request a hearing. Upon receiving a request

1058 for a hearing, the Department shall give notice to the person requesting the

1059 hearing of the time and place fixed for the hearing and shall hold a hearing

1060 in conformity with the provisions of the Act and then issue its final

1061 administrative decision in the matter to that person. If the request is made

1062 during an audit, the Department shall postpone the hearing until

1063 completion of the audit or inspection. In the absence of a protest and

1064 request for a hearing within 20 days, the Department's decision shall

1065 become final without any further determination being made or notice

1066 given.

1067

1068 6) The Department cannot impose more than one penalty for failure to

1069 produce books and records for a calendar month.

1070

1071 EXAMPLE 1: An authorized agent of the Department inspects a cigarette
1072 retailer and requests the records for the first week in April. The retailer
1073 does not produce the records. The agent subsequently requests the records
1074 for the remaining 3 weeks in April. The retailer does not produce the
1075 records. The agent can assess only one penalty for the month of April.

1076
1077 EXAMPLE 2: An authorized agent of the Department inspects a cigarette
1078 retailer and requests all purchase invoices for cigarettes for March. The
1079 invoices are not provided by the retailer and the Department issues a
1080 notice of penalty. The agent returns in May and asks to see all the
1081 cigarette sales receipts for March. The retailer fails to produce the sales
1082 receipts for March. The Department cannot issue a penalty for failure of
1083 the retailer to provide sales receipts for March because the agent has
1084 previously issued a notice of penalty for failure to produce the invoices for
1085 March.

1086
1087 7) A records request can cover multiple periods. The Department is
1088 authorized to issue a separate penalty for each period. For example, for a
1089 taxpayer that files a return monthly, the period is one month.

1090
1091 EXAMPLE: An authorized agent of the Department inspects a cigarette
1092 retailer and requests the books and records for the months of January
1093 through July. The retailer cannot produce the books and records for any of
1094 the months. The agent fills out a written document request, provides a
1095 copy of the document request to the person, and provides the person 30
1096 business days to produce the invoices. The agent returns 30 business days
1097 later and requests the invoices. The person at the store cannot produce the
1098 invoices. The Department will issue a notice of penalty in the amount of
1099 \$1,000 for the month of January and \$3,000 for each of the months
1100 February through July, for a total penalty of \$19,000.

1101
1102 d) The Department may, after notice and hearing as provided for by the Act, revoke,
1103 cancel or suspend the license of any distributor, secondary distributor, or retailer
1104 for any noncompliance with this Section.

1105
1106 e) Any distributor, secondary distributor, or retailer aggrieved by any decision of
1107 the Department under this Section may, within 20 days after notice of the
1108 decision, protest and request a hearing. Upon receiving a request for a hearing,
1109 the Department shall give notice in writing to the distributor, secondary
1110 distributor, or retailer requesting the hearing stating the time and place fixed for
1111 the hearing and containing a statement of the charges preferred against the
1112 distributor, secondary distributor, or retailer. The Department shall hold the
1113 hearing in conformity with the provisions of the Act and then issue its final

1114 administrative decision in the matter to the distributor, secondary distributor, or
1115 retailer.

1116
1117 f) In the absence of a protest and request for a hearing within 20 days, the
1118 Department's decision shall become final without any further determination being
1119 made or notice given.

1120
1121 g) No license so revoked shall be reissued to any such distributor, secondary
1122 distributor, or retailer within a period of 6 months after the date of the final
1123 determination of the revocation. [35 ILCS 130/6]

1124
1125 (Source: Added at 50 Ill. Reg. _____, effective _____)

1126
1127 **Section 440.205 Arrest; Search and Seizure Without a Warrant**

1128
1129 a) Any duly authorized employee of the Department may:

1130
1131 1) arrest without warrant any person committing in the presence of the
1132 employee a violation of any of the provisions of the Act, and

1133
1134 2) without a search warrant inspect all cigarettes located in any place of
1135 business and seize any original packages of contraband cigarettes and any
1136 vending device in which such packages may be found.

1137
1138 b) Any contraband cigarettes or vending devices so seized shall be subject to
1139 confiscation and forfeiture as provided in Sections 440.206 and 440.210. [35
1140 ILCS 130/18]

1141
1142 (Source: Added at 50 Ill. Reg. _____, effective _____)

1143
1144 **Section 440.206 Seizure and Forfeiture**

1145
1146 a) After seizing any original packages of cigarettes or cigarette vending devices, as
1147 provided in Section 440.205, the Department shall hold a hearing and shall
1148 determine whether the seized original packages of cigarettes, at the time of their
1149 seizure, were contraband cigarettes, or whether the seized cigarette vending
1150 devices, at the time of their seizure, contained original packages of contraband
1151 cigarettes. The Department shall give not less than 7 days' notice of the time and
1152 place of such hearing to the owner of such property if the owner is known, and
1153 also to the person in whose possession the property so taken was found, if such
1154 person is known and if such person in possession is not the owner of said
1155 property. If neither the owner nor the person in possession of such property is
1156 known, the Department shall cause publication of the time and place of such

1157 hearing to be made at least once in each week for 3 weeks successively in a
1158 newspaper of general circulation in the county where such hearing is to be held.
1159

1160 b) If, as a result of a hearing, the Department shall determine that the original
1161 packages of cigarettes seized were at the time of seizure contraband cigarettes, or
1162 that any cigarette vending device at the time of its seizure contained original
1163 packages of contraband cigarettes, the Department shall enter an order declaring
1164 such original packages of cigarettes or such cigarette vending devices confiscated
1165 and forfeited to the State, and to be held by the Department for disposal by it as
1166 provided in Section 21 of the Act.
1167

1168 c) The Department is not required to hold a hearing if a waiver and consent to
1169 forfeiture has been executed by the owner of the property, if the owner is known,
1170 and by the person in whose possession the property so taken was found, if that
1171 person is known and if that person is not the owner of the property. Upon receipt
1172 of a properly executed waiver and consent to forfeiture as provided in this
1173 subsection (c), the Department shall enter an order declaring such original
1174 packages of cigarettes or such cigarette vending devices confiscated and forfeited
1175 to the State, and to be held by the Department for disposal by it as provided in
1176 Section 21 of the Act. [35 ILCS 130/18a]
1177

1178 1) The waiver and consent to forfeiture is limited to declaring the contraband
1179 items, such as cigarettes or little cigars, confiscated and forfeited to the
1180 State of Illinois for disposal as provided by Section 21 of the Act.
1181

1182 2) The waiver and consent to forfeiture does not preclude the taxpayer from
1183 requesting a hearing on the tax, penalties, and interest imposed by the
1184 Department.
1185

1186 3) The waiver and consent to forfeiture may not be introduced by the
1187 Department as evidence in any proceeding relating to the contraband items
1188 found in possession of the taxpayer.
1189

1190 d) The Department shall give notice of such order to the owner of such property if
1191 the owner is known, and also to the person in whose possession the property so
1192 taken was found, if such person is known and if the person in possession is not the
1193 owner of said property. If neither the owner nor the person in possession of such
1194 property is known, the Department shall cause publication of the time and place
1195 of such hearing to be made at least once in each week for 3 weeks successively in
1196 a newspaper of general circulation in the county where such hearing was held.
1197 [35 ILCS 130/18a]
1198

1199 (Source: Added at 50 Ill. Reg. _____, effective _____)

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Section 440.215 License Actions: Revocations, Cancellations, and Suspensions

- a) The Department may, after notice and hearing as provided for by the Act revoke, cancel or suspend the license of any distributor, secondary distributor, or retailer for the violation of any provision of the Act; for noncompliance with this Section; for noncompliance with any Section of this Part 440; or because the licensee is determined to be ineligible for a distributor's license, secondary distributor's license, or retailer's license for any one or more of the reasons provided for in Sections 4, 4c, or 4g of the Act.

- b) No such license shall be revoked, cancelled, or suspended, except after a hearing by the Department with notice to the distributor, secondary distributor, or retailer, providing a reasonable opportunity to appear and defend.

- c) Distributors.
 - 1) The Department may revoke, cancel or suspend the license of any distributor for a violation of Section 30 of the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167/30]. [35 ILCS 130/6]

 - 2) Upon notification by the Attorney General, the Department may revoke a distributor's license for failure to submit information as required by Section 25(a) or (d) of the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003. [30 ILCS 167/30(c-5)]

- d) Secondary Distributors. The Department may revoke, cancel, or suspend, the license of any secondary distributor for a violation of Section 15(e) of the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167/15(e)]. [35 ILCS 130/6]

- e) Retailers. Violations of Minimum-Age Tobacco Laws
 - 1) If the retailer has a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 3 days the license of that retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act, as provided in Section 2(a) of that Act [720 ILCS 675]. For the purposes of this Section, any violation of Section 2(a) of the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act

- 1242 occurring at the retailer's licensed location, during a 24-month period,
1243 shall be counted as a violation against the retailer.
1244
1245 2) If the retailer does not have a training program that facilitates compliance
1246 with minimum-age tobacco laws, the Department shall suspend the license
1247 of that retailer for violations of the Prevention of Tobacco Use by Persons
1248 under 21 Years of Age and Sale and Distribution of Tobacco Products Act,
1249 as provided in Section 2(a-5), as follows:
1250
1251 A) 3 days for a second violation;
1252
1253 B) 7 days for a third violation; and
1254
1255 C) 30 days for a fourth or subsequent violation.
1256
1257 3) A training program that facilitates compliance with minimum-age tobacco
1258 laws must include at least the following elements:
1259
1260 A) it must explain that only individuals displaying valid identification
1261 demonstrating that they are 21 years of age or older shall be
1262 eligible to purchase cigarettes or tobacco products; and
1263
1264 B) it must explain where in the establishment, at the time of purchase,
1265 a clerk can check identification for a date of birth.
1266
1267 4) The training may be conducted electronically. Each retailer that has a
1268 training program shall require each employee who completes the training
1269 program to sign a form attesting that the employee has received and
1270 completed tobacco training. The form shall be kept in the employee's file
1271 and may be used to provide proof of training. [35 ILCS 130/6]
1272
1273 f) Any distributor, secondary distributor, or retailer aggrieved by any decision of
1274 the Department under this Section may, within 20 days after notice of the
1275 decision, protest and request a hearing. Upon receiving a request for a hearing,
1276 the Department shall give notice in writing to the distributor, secondary
1277 distributor, or retailer requesting the hearing stating the time and place fixed for
1278 the hearing and containing a statement of the charges preferred against the
1279 distributor, secondary distributor, or retailer. The Department shall hold the
1280 hearing in conformity with the provisions of the Act and then issue its final
1281 administrative decision in the matter to the distributor, secondary distributor, or
1282 retailer.
1283

1284 g) In the absence of a protest and request for a hearing within 20 days, the
1285 Department's decision shall become final without any further determination being
1286 made or notice given.

1287
1288 h) No license so revoked shall be reissued to any such distributor, secondary
1289 distributor, or retailer within a period of 6 months after the date of the final
1290 determination of the revocation. [35 ILCS 130/6]

1291
1292 (Source: Added at 50 Ill. Reg. _____, effective _____)

1293
1294 **Section 440.216 Violations and Penalties**

1295
1296 a) With the exception of licensed distributors and transporters, anyone possessing or
1297 having possessed 10 to 100 packages of contraband cigarettes contained in
1298 original packages is liable to pay to the Department, for a deposit into the Tax
1299 Compliance and Administration Fund, a penalty of \$15 for each package of
1300 contraband cigarettes, unless reasonable cause can be established by the person
1301 upon whom the penalty is to be imposed. The provisions of the Uniform Penalty
1302 and Interest Act do not apply to this subsection (a). [35 ILCS 130/18c] For
1303 purposes of this Section, "contraband cigarettes" means unstamped original
1304 packages of cigarettes or original packages of cigarettes that bear a tax stamp of
1305 another state or taxing jurisdiction.

1306
1307 b) With the exception of licensed distributors and transporters, any person
1308 possessing or having possessed more than 100 packages of contraband cigarettes
1309 contained in original packages is liable to pay, to the Department, for deposit in
1310 the Tax Compliance and Administration Fund, a penalty of \$25 for each package
1311 of contraband cigarettes in excess of 100 packages, unless reasonable cause can
1312 be established by the person upon whom the penalty is to be imposed. This
1313 penalty is in addition to the taxes imposed by the Act. The provisions of the
1314 Uniform Penalty and Interest Act do not apply to this subsection (b). [35 ILCS
1315 130/18b]

1316
1317 c) The sale of individual or loose cigarettes is prohibited. Any person who violates
1318 this subsection (c) is liable to pay to the Department for deposit in the Tax
1319 Compliance and Administration Fund, a penalty of \$1,000 for the first violation
1320 and \$3,000 for any subsequent violation. Any person who violates this subsection
1321 (c) shall be guilty of a Class 4 felony. [35 ILCS 130/18d]

1322
1323 d) Any person shall be guilty of a Class 2 felony who for the purpose of evading the
1324 tax imposed by the Act:

1325
1326 1) falsely or fraudulently makes, forges, alters, or counterfeits any stamp;

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- 2) causes or procures to be falsely or fraudulently made, forged, altered, or counterfeited any such stamp;
- 3) knowingly and wilfully utters, publishes, passes, or tenders as genuine any such false, altered, forged, or counterfeit stamp;
- 4) falsely or fraudulently makes, forges, alters, or counterfeits any tax imprint on an original package of cigarettes inside a sealed transparent wrapper;
- 5) causes or procures falsely or fraudulently to be made, forged, altered, or counterfeited any such tax imprint; or
- 6) knowingly and wilfully utters, publishes, passes, or tenders as genuine any false, altered, forged, or counterfeited tax imprint. [35 ILCS 130/22]

e) Any person including every distributor, secondary distributor, retailer, manufacturer with authority to maintain manufacturer representatives, and their manufacturer representatives shall be deemed guilty of a Class 2 felony who shall:

- 1) knowingly and wilfully sell or offer for sale any original package having affixed to such original package any fraudulent, spurious, imitation, or counterfeit stamp, or stamp which has been previously affixed, or affixes a stamp which has previously been affixed to an original package; or
- 2) knowingly and wilfully sell or offer for sale any original package having imprinted on such original package underneath the sealed transparent wrapper any fraudulent, spurious, imitation, or counterfeit tax imprint. [35 ILCS 130/23]

f) Sale or Possession of Packages of Contraband Cigarettes.

- 1) With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, any person who has in their possession or sells:

A) 100 or less original packages of contraband cigarettes is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense occurring within 12 months of a prior offense;

- 1370 B) 101 to 250 original packages of contraband cigarettes is guilty of
1371 Class A misdemeanor for a first offense and a Class 4 felony for
1372 each subsequent offense;
1373
- 1374 C) 251 to 1000 original packages of contraband cigarettes is guilty of
1375 a Class 4 felony; or
1376
- 1377 D) 1001 or more original packages of contraband cigarettes is guilty
1378 of a Class 3 felony. [35 ILCS 130/24(a)-(d)]
1379
- 1380 2) Any licensed distributor, licensed secondary distributor, or licensed
1381 transporter who has in their possession or sells:
1382
- 1383 A) 100 or less original packages of contraband cigarettes is guilty of
1384 a Class A misdemeanor for a first offense and a Class 4 felony for
1385 each subsequent offense occurring within 12 months of a prior
1386 offense; or
1387
- 1388 B) 101 or more original packages of contraband cigarettes is guilty of
1389 a Class 4 felony. [35 ILCS 130/24(e) and (f)]
1390
- 1391 3) Notwithstanding subsections (f)(2)(A) and (B),
1392
- 1393 A) licensed distributors and transporters may possess unstamped
1394 packages of cigarettes;
1395
- 1396 B) licensed distributors may possess cigarettes that bear a tax stamp
1397 of another state or taxing jurisdiction;
1398
- 1399 C) a licensed distributor or licensed secondary distributor may
1400 possess contraband cigarettes returned to the distributor or
1401 secondary distributor by a retailer if:
1402
- 1403 i) the distributor or licensed secondary distributor
1404 immediately conducts an inventory of the cigarettes being
1405 returned;
1406
- 1407 ii) the distributor or licensed distributor and the retailer
1408 returning the contraband cigarettes sign the inventory;
1409
- 1410 iii) the distributor or licensed secondary distributor provides a
1411 copy of the signed inventory to the retailer; and
1412

1413 iv) the distributor or licensed secondary distributor retains the
1414 inventory in its books and records and promptly notifies the
1415 Department. [35 ILCS 130/24(g)]
1416

1417 4) Retailers.
1418

1419 A) Any retailer who knowingly possesses packages of cigarettes with
1420 a counterfeit stamp with intent to sell is guilty of a Class 2 felony.
1421

1422 B) Any retailer who knowingly possesses unstamped packages of
1423 cigarettes with intent to sell is guilty of a Class 4 felony.
1424

1425 C) Notwithstanding subsections (f)(1)(A)-(D), a retailer unknowingly
1426 possessing contraband cigarettes obtained from a licensed
1427 distributor or licensed secondary distributor or knowingly
1428 possessing contraband cigarettes obtained from a licensed
1429 distributor or secondary distributor is not subject to penalties
1430 under this Section if the retailer, within 48 hours after discovering
1431 that the cigarette are contraband cigarettes, excluding Saturdays,
1432 Sundays, and holidays:
1433

1434 i) notifies the Department and the licensed distributor or
1435 licensed secondary distributor from whom the cigarettes
1436 were obtained, orally and in writing, that the retailer
1437 possesses contraband cigarettes obtained from a licensed
1438 distributor or licensed secondary distributor;
1439

1440 ii) places the contraband cigarettes in one or more containers
1441 and seals those containers; and
1442

1443 iii) places on the containers the following or similar language:
1444 "Contraband Cigarettes. Not For Sale."
1445

1446 D) All contraband cigarettes in the possession of a retailer remain
1447 subject to forfeiture under the provisions of the Act. [35 ILCS
1448 130/24(h)]
1449

1450 g) Any person, or any officer, agent or employee of a person, required by the Act to
1451 make, file, render, sign or verify any report or return, who makes any false or
1452 fraudulent report or return or files any false or fraudulent report or return, or
1453 who shall fail to make such report or return or files such report or return when
1454 due, shall be guilty of a Class 4 felony. [35 ILCS 130/25]
1455

1456 h) Any person who acts as a distributor, secondary distributor, retailer, or
1457 manufacturer representative without having a license, as required by the Act,
1458 shall be guilty of a Class 4 felony. [35 ILCS 130/26]
1459

1460 (Source: Added at 50 Ill. Reg. _____, effective _____)
1461

1462 **Section 440.217 Protest Procedures for Certain Penalties**
1463

1464 Except as otherwise provided in this Part, any person aggrieved by any decision of the
1465 Department under this Part may, within 60 days after notice of the decision, protest in writing
1466 and request a hearing. Upon receiving a timely, written request for a hearing, the Department
1467 shall provide written notice of the date, time, and place of the hearing to the person requesting
1468 the hearing at least 20 days prior to the hearing date, shall hold a hearing in conformity with the
1469 provisions of this Part, and then issue its final administrative decision in the matter to that
1470 person. In the absence of a protest and request for a hearing within 60 days, the Department's
1471 decision shall become final without any further determination being made or notice given.
1472

1473 (Source: Added at 50 Ill. Reg. _____, effective _____)
1474

1475 **Section 440.218 Reasonable Cause**
1476

1477 a) The penalties imposed under the Sections 18b and 18c of the Act shall not apply
1478 if the person shows that the possession of unstamped original packages of
1479 cigarettes or original packages of cigarettes that bear a tax stamp of another state
1480 or taxing jurisdiction at the time of inspection or seizure was due to reasonable
1481 cause. Reasonable cause is determined in each situation in accordance with this
1482 Section.
1483

1484 b) The determination of whether a person acted with reasonable cause shall be made
1485 on a case-by-case basis considering all pertinent facts and circumstances. The
1486 most important factor to be considered in determining to abate a penalty will be
1487 the extent to which the person made a good faith effort to determine the existence
1488 of any contraband cigarettes in its possession and to timely report such contraband
1489 cigarettes to the Department.
1490

1491 c) A person will be considered to have made a good faith effort to determine the
1492 existence of any contraband cigarettes if the person exercised ordinary business
1493 care and prudence in so doing. A determination of whether a person exercised
1494 ordinary business care and prudence is dependent upon the clarity of the law or its
1495 interpretation and the person's experience, knowledge, and education.
1496 Accordingly, reliance on the advice of a professional does not necessarily
1497 establish that a person exercised ordinary business care and prudence, nor does
1498 reliance on incorrect facts.

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- d) A person's history of compliance is also a factor to be considered in determining whether the taxpayer acted in good faith. An isolated incident of contraband cigarettes being found in a person's inventory generally will not indicate a lack of good faith.

- e) Examples of Reasonable Cause. The following is a non-exclusive list of situations in which reasonable cause may exist for purposes of the abatement of penalties:
 - 1) Reasonable cause for abatement of penalty will exist if a liability results from amendments made by the Department to regulations or formal administrative policies or positions after the discovery and seizure of contraband cigarettes.

 - 2) Reasonable cause for abatement may also be based on the death, incapacity or serious illness of the person or a death or serious illness in the person's immediate family that causes them to be away from the premises for an extended period of time. In the case of a corporation, estate, trust, etc., the death, incapacity, or serious illness of an individual having sole authority to inspect inventory or a member of that individual's immediate family, may be reasonable cause for abatement.

 - 3) An unavoidable absence of a person due to circumstances unforeseeable by a reasonable person may also constitute reasonable cause for purposes of abatement of the penalty. An unavoidable absence does not include a planned absence such as a vacation. In the case of a corporation, estate, trust, etc., the absence of an individual having sole authority to inspect and approve inventory may be reasonable cause for purposes of abatement.

 - 4) An Illinois appellate court decision, a U.S. appellate court decision, or an appellate court decision from another state (provided that the appellate court case in the other state is based upon substantially similar statutory or regulatory law) that supports the person's position will ordinarily provide a basis for a reasonable cause determination.

 - 5) The Department gave erroneous information or delayed a process under its control. In making the determination of whether the taxpayer had reasonable cause for purposes of abatement, the following factors are relevant:
 - A) Did the taxpayer timely inspect the incoming inventory of cigarettes?

- 1542
1543 B) Was the information requested by the taxpayer easily available in
1544 instructions or bulletins?
1545
1546 C) Did the taxpayer rely on the advice of the Department?
1547
1548 D) Did a Department employee who was acting in an official capacity
1549 and was authorized to provide assistance provide the advice?
1550
1551 E) Was the taxpayer's reliance upon the advice reasonable?
1552
1553 6) Employee fraud not reasonably within the knowledge of the taxpayer.
1554
1555 f) Relevant Factors Used by the Department in Determining the Existence of
1556 Reasonable Cause.
1557
1558 1) Did the taxpayer have sufficient procedures to review inventory and to
1559 timely report any contraband cigarettes?
1560
1561 2) Does the taxpayer's reason address the penalty assessed?
1562
1563 3) Does the length of time between the reason cited and the actual violation
1564 support abatement? If the taxpayer cites a specific event or set of events
1565 (e.g., illness, unexpected absence, or natural disaster) or set of events that
1566 led to the imposition of the penalty, are those events directly related to the
1567 incident under review?
1568
1569 4) Could the event cited have been reasonably anticipated? Was the event
1570 one that should have been anticipated (e.g., a vacation or scheduled
1571 absence) or was it unexpected, unavoidable, or otherwise unplanned (e.g.,
1572 an emergency or disaster)?
1573
1574 5) Were ordinary business care and prudence exercised? In the absence of
1575 new or unusual circumstances, possession penalties for contraband
1576 cigarettes are common knowledge or are readily available to most
1577 taxpayers. If the taxpayer did all that could be reasonably expected of
1578 them and still possessed contraband cigarettes, reasonable cause may be
1579 present.

1580
1581 (Source: Added at 50 Ill. Reg. _____, effective _____)