

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 450
CIGARETTE USE TAX ACT

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30
31 AUTHORITY: Implementing and authorized by the Cigarette Use Tax Act [35 ILCS 135].
32

33 SOURCE: Filed and effective June 17, 1958; codified at 8 Ill. Reg. 13838; amended at 13 Ill.
34 Reg. 10687, effective June 16, 1989; amended at 14 Ill. Reg. 6804, effective April 19, 1990;
35 amended at 15 Ill. Reg. 122, effective December 24, 1990; amended by emergency rulemaking at
36 23 Ill. Reg. 9546, effective July 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg.
37 14753, effective December 8, 1999; amended at 24 Ill. Reg. 9909, effective June 23, 2000;
38 emergency amendment at 24 Ill. Reg. 10759, effective July 6, 2000, for a maximum of 150 days;
39 amended at 24 Ill. Reg. 17800, effective November 28, 2000; amended at 25 Ill. Reg. 937,
40 effective January 8, 2001; emergency amendment at 26 Ill. Reg. 9027, effective June 10, 2002,
41 for a maximum of 150 days; emergency expired November 5, 2002; amended at 27 Ill. Reg.
42 1647, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 10529, effective July 1,
43 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill.

44 Reg. 3911, effective February 13, 2004; amended at 32 Ill. Reg. 17580, effective October 27,
45 2008; amended at 42 Ill. Reg. 23186, effective November 29, 2018; amended at 43 Ill. Reg.
46 8915, effective July 30, 2019; amended at 44 Ill. Reg. 6069, effective April 3, 2020; amended at
47 46 Ill. Reg. 6768, effective April 12, 2022; amended at 47 Ill. Reg. 5806, effective April 4, 2023;
48 amended at 50 Ill. Reg. _____, effective _____.

49

50 **Section 450.40 Reports and Returns**

51

52 a) When cigarettes are acquired for use in this State by a person (including a
53 distributor), who did not pay the cigarette use tax to a distributor, the person,
54 within 30 days after acquiring the cigarettes, shall file with the Department a
55 return declaring the possession of the cigarettes and shall transmit with the return
56 to the Department the tax imposed by the Act. All returns and supporting
57 schedules required to be filed and all payments required to be made under
58 Section 12 of the Act shall be by electronic means in the form prescribed by the
59 Department. [35 ILCS 135/12]~~When cigarettes are acquired for use in this State~~
60 ~~by a person (including a distributor as well as any other person), who did not pay~~
61 ~~the cigarette use tax to a distributor, the person, within 30 days after acquiring the~~
62 ~~cigarettes, shall file a return with the Department and shall transmit with the~~
63 ~~return to the Department the tax imposed by the Act. Computer generated returns~~
64 ~~or returns filed on forms that have not been approved by the Department are~~
65 ~~considered non-processable and may subject the filer to penalties and interest for~~
66 ~~failure to file a proper return.~~

67

68 b) Every distributor, who is required or authorized to collect the tax under the Act,
69 but who is not a manufacturer of cigarettes in original packages which are
70 contained in a sealed transparent wrapper, shall, on or before the 15th day of
71 each calendar month, file a return with the Department showing such information
72 as the Department may reasonably require. Information that the Department may
73 reasonably require includes information related to the uniform regulation and
74 taxation of cigarettes. All returns and supporting schedules required to be filed
75 under Section 11 of the Act shall be filed electronically in the form prescribed by
76 the Department. [35 ILCS 135/11]~~Every distributor, who is required or~~
77 ~~authorized to collect tax under the Act, but who is not a manufacturer of cigarettes~~
78 ~~in original packages that are contained in a sealed transparent wrapper, shall, on~~
79 ~~or before the 15th day of each calendar month, file a return with the Department~~
80 ~~showing the information the Department may reasonably require. Computer~~
81 ~~generated returns and schedules or returns and schedules that have not been~~
82 ~~approved by the Department are considered non-processable and may subject the~~
83 ~~filer to penalties and interest for failure to file a proper return.~~

84

85 c) Every distributor who is a manufacturer of cigarettes in original packages which
86 are contained inside a sealed transparent wrapper, and who is required or

87 authorized to collect tax under the Act, shall file a return by the 5th day of each
 88 month covering the preceding calendar month. Each return shall be
 89 accompanied by the appropriate remittance for tax as provided in Section 3 and
 90 Section 7 of the Act. Each return shall disclose such information as the
 91 Department may lawfully require. Information that the Department may lawfully
 92 require includes information related to the uniform regulation and taxation of
 93 cigarettes. All returns and supporting schedules required to be filed and all
 94 payments required to be made under Section 11 of the Act shall be by electronic
 95 means in the form prescribed by the Department. [35 ILCS 135/11]~~Every~~
 96 ~~distributor who is a manufacturer of cigarettes in original packages contained~~
 97 ~~inside a sealed transparent wrapper, and who is required or authorized to collect~~
 98 ~~tax under the Act, shall file a return by the 5th day of each month covering the~~
 99 ~~preceding calendar month. Each return shall be accompanied by the appropriate~~
 100 ~~remittance for tax as provided in Sections 3 and 7 of the Act. Each return shall~~
 101 ~~disclose the information the Department may lawfully require. Computer~~
 102 ~~generated returns and schedules or returns and schedules filed on forms that have~~
 103 ~~not been approved by the Department are considered to be non-processable and~~
 104 ~~may subject the filer to penalties and interest for failure to file a proper return.~~

105
 106 d) No distributor shall be required to return information to the extent to which the
 107 reporting of such information would be a duplication of the distributor's reporting
 108 of information in any return the distributor is required to file with the Department
 109 under the Cigarette Tax Act. [35 ILCS 135/11]~~No distributor shall be required to~~
 110 ~~return information to the extent to which the reporting of that information would~~
 111 ~~be a duplication of the distributor's reporting of information in any return he or~~
 112 ~~she is required to file with the Department under the Cigarette Tax Act. Returns~~
 113 ~~shall be filed on forms prescribed by the Department. Computer generated~~
 114 ~~returns and schedules or returns and schedules filed on forms that have not been~~
 115 ~~approved by the Department are considered non-processable and may subject the~~
 116 ~~filer to penalties and interest for failure to file a proper return.~~

117
 118 e) Every secondary distributor who is required or authorized to procure a license
 119 under the Act, shall on or before the 15th day of each calendar month, file a report
 120 with the Department, showing the quantity of cigarettes purchased during the
 121 preceding calendar month, either within and outside this State, and the quantity of
 122 cigarettes sold to Illinois retailers or otherwise disposed of during the preceding
 123 calendar month. Such reports shall be filed electronically in such form
 124 prescribed by the Department and shall contain such information as the
 125 Department may reasonably require. Information that the Department may
 126 reasonably require includes information related to the uniform regulation and
 127 taxation of cigarettes. [35 ILCS 135/11a]~~The returns filed by both distributors~~
 128 ~~required or authorized to collect tax under the Act who have 30 or more~~
 129 ~~transactions per month, and by Illinois manufacturers having 30 or more~~

130 ~~transactions per month, must be accompanied by appropriate computer generated~~
131 ~~magnetic media supporting schedule data in the format required by the~~
132 ~~Department. (Section 11 of the Act) Distributors and manufacturers who~~
133 ~~voluntarily file returns and schedules electronically are not subject to this~~
134 ~~requirement.~~

135
136 f) Computer generated returns and schedules or returns and schedules filed on forms
137 that have not been approved by the Department are considered unprocessable and
138 may subject the filer to penalties and interest for failure to file a proper return.

139
140 g) *A taxpayer who has an annual tax liability of \$20,000 or more shall make all*
141 *payments of that tax to the Department by electronic funds transfer. Before*
142 *August 1 of each year, the Department shall notify all taxpayers required to make*
143 *payments by electronic funds transfer. [20 ILCS ~~2505/2505-210~~2502/2505-200].-*

144
145 (Source: Amended at 50 Ill. Reg. _____, effective _____)

146
147 **Section 450.50 Books and Records; Invoices; Penalties**

148
149 a) Books and Records

150
151 1) ~~Distributors and Persons that Have Not Paid the Tax Due Under the Act.~~
152 Every distributor required or authorized to collect taxes imposed by the
153 Act and every person using, in this State, cigarettes purchased on or after
154 the effective date of the Act without cigarette tax stamps affixed to the
155 original packages and without authorized tax imprints placed underneath
156 the sealed transparent wrapper of the original packages, shall keep the
157 records, receipts, invoices, and other pertinent books, documents,
158 memoranda and papers as the Department shall require, in a form as the
159 Department shall require. The books, records, papers, memoranda, and
160 documents of a distributor pertaining to business done by the distributor at
161 or from a licensed place of business, or at or from a place of business for
162 which the distributor holds a permit issued by the Department under
163 Section 7 of the Act, shall be kept by the distributor at the place of
164 business. [35 ILCS 135/15]~~Every distributor required or authorized to~~
165 ~~collect taxes imposed by the Cigarette Use Tax Act and every person~~
166 ~~using, in this State, cigarettes purchased on or after the effective date of~~
167 ~~this Act without Illinois cigarette tax stamps affixed to the original~~
168 ~~packages and without authorized tax imprints placed underneath the sealed~~
169 ~~transparent wrapper of the original packages, shall keep the records,~~
170 ~~receipts, invoices and other pertinent books, documents, memoranda and~~
171 ~~papers as the Department shall require, in a form as the Department shall~~
172 ~~require. The books, records, papers, memoranda and documents of a~~

173 ~~distributor pertaining to business done by him or her at or from a licensed~~
174 ~~place of business, or at or from a place of business for which he or she~~
175 ~~holds a permit issued by the Department, shall be kept by the distributor at~~
176 ~~the place of business.~~ A distributor's records of a particular purchase from
177 a manufacturer or other distributor shall, at a minimum, include:

- 178
- 179 A) a copy of the distributor's purchase order, ~~(if any,)~~ to the
180 manufacturer or other distributor;
- 181
- 182 B) the manufacturer's or other distributor's invoice to the distributor in
183 duplicate (see subsection (b));
- 184
- 185 C) bill of lading or waybill pertaining to the shipment covered by the
186 invoice;
- 187
- 188 D) receiving record showing ~~(the receiving record should show~~ the
189 date when the cigarettes were received by the distributor);
- 190
- 191 E) evidence of payment by the other distributor to the manufacturer;
192 and
- 193
- 194 F) other records as the Department may reasonably require.

195

196 2) *Secondary Distributors. Every secondary distributor of cigarettes who is*
197 *required to procure, or is allowed to procure, a license under ~~the~~ the Act*
198 *shall keep, at ~~its~~ ~~his or her~~ licensed address, complete and accurate*
199 *records of cigarettes held, purchased, brought in from without the State,*
200 *and sold, or otherwise disposed of, and shall preserve and keep within*
201 *Illinois at ~~its~~ ~~his or her~~ licensed address all invoices, bills of lading, sales*
202 *records, copies of bills of sale, inventory at the close of each period for*
203 *which a report is required of all cigarettes on hand, and other pertinent*
204 *papers and documents relating to the purchase, sale or disposition of*
205 *cigarettes. [35 ILCS 135/15a]*

206

207 3) *For purposes of ~~this Section~~ this Section, "records" means all data*
208 *maintained by the secondary distributors, including data on paper,*
209 *microfilm, microfiche or any type of machine sensible data compilation.*
210 *~~[(See 35 ILCS 135/15 and 15a).]~~*

211

212 4) *All books, records, papers, memoranda, and documents that are required*
213 *to be kept by the Act, shall be kept in the English language and shall, at all*
214 *times during business hours of the day, be subject to inspection by the*
215 *Department or its duly authorized agents and employees.* ~~All books,~~

216 ~~records, papers, memoranda and documents that are required to be kept~~
217 ~~under the Act shall be kept in the English language and shall, at all times~~
218 ~~during business hours of the day, be subject to inspection by the~~
219 ~~Department or its duly authorized agents and employees. At all times~~
220 ~~during the usual business hours of the day, any duly authorized agent or~~
221 ~~employee of the Department may enter any place of business of the~~
222 ~~distributor or the secondary distributor, without a search warrant, and~~
223 ~~may inspect the premises and the stock or packages of cigarettes in those~~
224 ~~premises ~~in those premises~~ to determine whether any of the provisions of~~
225 ~~the ~~the~~ Act are being violated. If the agent or employee is denied free~~
226 ~~access or is hindered or interfered with in making the examination, the~~
227 ~~license of the secondary distributor at the premises shall be subject to~~
228 ~~revocation by the Department. [35 ILCS 135/15 and 15a]~~
229

230 5) The books, records, papers, memoranda and documents that are required
231 to be kept shall be preserved for a period of at least 3 years after the date
232 of the documents or the date of the entries appearing in the records,
233 whichever is later, unless the Department, in writing, authorizes their
234 destruction or disposal at an earlier date. [35 ILCS 135/15 and 15a]~~The~~
235 ~~books, records, papers, memoranda and documents that are required to be~~
236 ~~kept shall be preserved for a period of at least 3 years after the date of the~~
237 ~~documents or the date of the entries appearing in the records, unless the~~
238 ~~Department, in writing, authorizes their destruction or disposal at an~~
239 ~~earlier date. (See 35 ILCS 135/15 and 15a.)~~
240

241 6) It is not the purpose of this subsection (a) to require distributors and
242 secondary distributors to keep duplicate sets of books and records.
243 Consequently, to the extent to which a distributor is required by the
244 Cigarette Tax Act and by the Cigarette Use Tax Act to keep the same
245 books and records, the distributor's compliance with the requirement under
246 the Cigarette Tax Act shall be deemed to be a compliance with the same
247 requirement under the Cigarette Use Tax Act.
248

249 b) Invoices

250
251 1) Every person who purchases cigarettes for shipment into Illinois from a
252 point outside this State, and who is required to file a return or report with
253 the Department with respect to cigarettes, shall procure invoices covering
254 each shipment and shall furnish one copy of each invoice to the
255 Department upon request. [35 ILCS 135/17]~~Every person who purchases~~
256 ~~cigarettes for shipment into Illinois from a point outside this State, and~~
257 ~~who is required to file a return with the Department with respect to the~~
258 ~~cigarettes, shall procure invoices covering each shipment and shall furnish~~

- 259 ~~one copy of each invoice to the Department upon request.~~
260
261 2) Each Illinois manufacturer of cigarettes in original packages that are
262 contained inside a sealed transparent wrapper shall keep a copy of each
263 invoice rendered by the manufacturer to any purchaser to whom the
264 manufacturer delivered cigarettes (or caused cigarettes to be delivered)
265 during the period covered by the manufacturer's return. Copies must be
266 furnished to the Department upon request.
267
268 3) Each manufacturer who holds a permit under Section 7 of the Cigarette
269 Use Tax Act shall keep a copy of each invoice rendered by the permittee
270 to any purchaser to whom the permittee delivered cigarettes of the type
271 covered by the permit (or caused cigarettes of the type covered by the
272 permit to be delivered) in Illinois during the period covered by the return.
273 Copies must be furnished to the Department upon request. Subsections
274 (a)(1) through (a)(3) shall not apply to a transaction in which the same
275 requirement applies by virtue of the provisions of 86 Ill. Adm. Code
276 440.110 (Cigarette Tax Act rules).
277
278 4) *Any licensed distributor that ships or otherwise causes to be delivered*
279 *unstamped original packages of cigarettes into, within, or from this State*
280 *shall ensure that the invoice or equivalent documentation and the bill of*
281 *lading or freight bill for the shipment identifies the true name and address*
282 *of the consignor or seller, the true name and address of the consignee or*
283 *purchaser, and the quantity by brand style of the cigarettes so transported,*
284 *provided that ~~this Section~~ ~~this Section~~ shall not be construed as to impose*
285 *any requirement or liability upon any common or contract carrier. [35*
286 *ILCS 135/3]*
287
288 5) When a permit holder or licensee under the Cigarette Use Tax Act (as
289 distinguished from a licensee or permit holder under the Cigarette Tax
290 Act) sells Illinois tax-stamped or tax-imprinted cigarettes to anyone other
291 than a federal or foreign government agency or instrumentality,
292 distributor's invoice shall state the amount of the cigarette use tax to the
293 purchaser as a separate item from the selling price of the cigarettes.
294 However, when a person sells cigarettes to a federal or foreign
295 government agency or instrumentality, the invoice should omit any
296 reference to the cigarette use tax.
297
298 c) Penalties
299
300 1) *Any person required by ~~the~~ ~~the~~ Act to maintain or keep records of any kind*
301 *whatsoever, who shall fail to keep the records so required, or who shall*

302 falsify those records, shall be guilty of a Class 4 felony. If a person fails
303 to produce the records for inspection by the Department upon request, a
304 prima facie presumption shall arise that the person has failed to keep the
305 records so required. A person who is unable to rebut this presumption is
306 in violation of ~~the~~ the Act and is subject to the penalties provided in this
307 ~~Section~~this Section. This subsection (c)(1)~~This subsection (c)(1)~~ shall not
308 apply if the violation in a particular case also constitutes a criminal
309 violation of the Cigarette Tax Act. [35 ILCS 135/22]

310
311 2) Any person who shall fail to safely preserve the records required by
312 Sections 15 and 15a of ~~the~~ the Act for the period of 3 years, as required in
313 those Sections, in such manner as to insure permanency and accessibility
314 for inspection by the Department shall be guilty of a business offense and
315 may be fined up to \$5,000. This subsection (c)(2)~~This subsection (c)(2)~~
316 shall not apply if the violation in a particular case also constitutes a
317 criminal violation of the Cigarette Tax Act. [35 ILCS 135/23]

318
319 3) The Department may, after notice and hearing as provided for by the Act,
320 revoke, cancel or suspend the license of any distributor or secondary
321 distributor for any noncompliance with this Section. Any distributor or
322 secondary distributor aggrieved by any decision of the Department under
323 this Section may, within 20 days after notice of the decision, protest and
324 request a hearing. Upon receiving a request for a hearing, the
325 Department shall give notice in writing to the distributor or secondary
326 distributor requesting the hearing stating the time and place fixed for the
327 hearing and containing a statement of the charges preferred against the
328 distributor, secondary distributor, or retailer. The Department shall hold
329 the hearing in conformity with the provisions of the Act and then issue its
330 final administrative decision in the matter to the distributor or secondary
331 distributor. In the absence of a protest and request for a hearing within
332 20 days, the Department's decision shall become final without any further
333 determination being made or notice given. No license so revoked shall be
334 reissued to any such distributor, secondary distributor, or retailer within a
335 period of 6 months after the date of the final determination of the
336 revocation. [35 ILCS 135/6]~~The Department may, after notice and~~
337 ~~hearing as provided for by the Act, revoke, cancel or suspend the license~~
338 ~~of any distributor or secondary distributor for any noncompliance with this~~
339 ~~Section. No license so revoked shall be reissued to any such distributor or~~
340 ~~secondary distributor within a period of 6 months after the date of the final~~
341 ~~determination of the revocation. (See 35 ILCS 135/6.) Any distributor or~~
342 ~~secondary distributor aggrieved by any decision of the Department under~~
343 ~~this Section may, within 20 days after notice of the decision, protest and~~
344 ~~request a hearing. Upon receiving a request for a hearing, the Department~~

~~shall give notice in writing to the distributor or secondary distributor requesting the hearing of the time and place fixed for the hearing. If a distributor or secondary distributor protests the revocation, cancellation or suspension of a license and requests a hearing, the notice also shall contain a statement of the charges preferred against the distributor or secondary distributor. The Department shall hold the hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to the distributor or secondary distributor. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.~~

- 4) *Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Sections 15 and 15a of the Act, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or failure to produce books and records for inspection, as required by Sections 15 and 15a, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Sections 15 and 15a. [35 ILCS 135/23a] The provisions of [the Cigarette Tax Act Regulations](#), 86 Ill. Adm. Code 440.115-110(c) (~~Cigarette Tax Act Regulations~~) that are not inconsistent with the Cigarette Use Tax Act shall apply, as far as practicable, to the subject matter of this Part to the same extent as if those provisions were included in this Part.*

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

Section 450.105 Arrest; Search and Seizure Without a Warrant

- a) *Any duly authorized employee of the Department may*
 - 1) *arrest without warrant any person committing in his presence a violation of any of the provisions of the Act, and*
 - 2) *without a search warrant seize any original packages of contraband cigarettes and any vending device in which such packages may be found.*
- b) *Any contraband cigarettes or vending devices so seized shall be subject to confiscation and forfeiture as provided in Section 450.106. [35 ILCS 135/24]*

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

Section 450.106 Seizure and Forfeiture

- 388
389
390 a) After seizing any original packages of cigarettes, or cigarette vending devices, as
391 provided in Section 450.105, the Department shall hold a hearing and shall
392 determine whether such original packages of cigarettes, at the time of their
393 seizure by the Department, were contraband cigarettes or whether such cigarette
394 vending devices, at the time of their seizure, contained original packages of
395 contraband cigarettes. The Department shall give not less than 7 days' notice of
396 the time and place of such hearing to the owner of such property if the owner is
397 known, and also to the person in whose possession the property so taken was
398 found, if such person is known and if such person in possession is not the owner
399 of said property. If neither the owner nor the person in possession of such
400 property is known, the Department shall cause publication of the time and place
401 of such hearing to be made at least once in each week for 3 weeks successively in
402 a newspaper of general circulation in the county where such hearing is to be held.
403
- 404 b) If, as a result of a hearing, the Department shall determine that the original
405 packages of cigarettes seized were at the time of seizure contraband cigarettes, or
406 that any cigarette vending device at the time of its seizure contained original
407 packages of contraband cigarettes, the Department shall enter an order declaring
408 such original packages of cigarettes or such cigarette vending devices confiscated
409 and forfeited to the State, and to be held by the Department for disposal by it as
410 provided in Section 27 of the Act.
411
- 412 c) The Department is not required to hold such a hearing if a waiver and consent to
413 forfeiture has been executed by the owner of the property, if the owner is known,
414 and by the person in whose possession the property so taken was found, if that
415 person is known and if that person is not the owner of the property. Upon receipt
416 of a properly executed waiver and consent to forfeiture as provided in subsection
417 (c), the Department shall enter an order declaring such original packages of
418 cigarettes or such cigarette vending devices confiscated and forfeited to the State,
419 and to be held by the Department for disposal by it as provided in Section 27 of
420 the Act. [35 ILCS 135/25]
421
- 422 1) The waiver and consent to forfeiture is limited to declaring the contraband
423 items, such as cigarettes or little cigars, confiscated and forfeited to the
424 State of Illinois for disposal as provided by Section 27 of the Act.
425
- 426 2) The waiver and consent to forfeiture does not preclude the taxpayer from
427 requesting a hearing on the tax, penalties, and interest imposed by the
428 Department.
429

430 3) The waiver and consent to forfeiture may not be introduced by the
431 Department as evidence in any proceeding relating to the contraband items
432 found in possession of the taxpayer.
433

434 d) The Department shall give notice of such order to the owner of such property if
435 the owner is known, and also to the person in whose possession the property so
436 taken was found, if such person is known and if the person in possession is not the
437 owner of said property. If neither the owner nor the person in possession of such
438 property is known, the Department shall cause publication of the time and place
439 of such hearing to be made at least once in each week for 3 weeks successively in
440 a newspaper of general circulation in the county where such hearing was held.
441 [35 ILCS 135/25]
442

443 (Source: Added at 50 Ill. Reg. _____, effective _____)
444

445 **Section 450.115 License Actions: Revocations, Cancellations, and Suspensions**
446

447 a) The Department may, after notice and hearing as provided for by the Act revoke,
448 cancel or suspend the license of any distributor or secondary distributor: for the
449 violation of any provision of the Act; for noncompliance with this Section; for
450 noncompliance with any Section of this Part 450; or because the licensee is
451 determined to be ineligible for a distributor's license or secondary distributor's
452 license for any one or more of the reasons provided for in Sections 4, 4b, or 7a of
453 the Act. [35 ILCS 135/6]
454

455 b) No such license shall be revoked, cancelled, or suspended, except after a hearing
456 by the Department with notice to the distributor or secondary distributor
457 providing a reasonable opportunity to appear and defend.
458

459 c) Distributors.
460

461 1) The Department may revoke, cancel or suspend the license of any
462 distributor for a violation of Section 30 of the Tobacco Products
463 Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167/30].
464

465 2) Upon notification by the Attorney General, the Department may revoke a
466 distributor's license for failure to submit information as required by
467 Section 25(a) or (d) of the Tobacco Products Manufacturers' Escrow
468 Enforcement Act of 2003. [30 ILCS 167/30(c-5)]
469

470 d) Secondary Distributors. The Department may revoke, cancel, or suspend, the
471 license of any secondary distributor for a violation of Section 15(e) of the

472 Tobacco Products Manufacturers' Escrow Enforcement Act of 2003. [30 ILCS
473 167/15(e)]

- 474
- 475 e) Any distributor or secondary distributor aggrieved by any decision of the
476 Department under this Section may, within 20 days after notice of the decision,
477 protest and request a hearing. Upon receiving a request for a hearing, the
478 Department shall give notice in writing to the distributor or secondary distributor
479 requesting the hearing stating the time and place fixed for the hearing and
480 containing a statement of the charges preferred against the distributor or
481 secondary distributor. The Department shall hold the hearing in conformity with
482 the provisions of the Act and then issue its final administrative decision in the
483 matter to the distributor or secondary distributor.
- 484
- 485 f) In the absence of a protest and request for a hearing within 20 days, the
486 Department's decision shall become final without any further determination being
487 made or notice given.
- 488
- 489 g) No license so revoked shall be reissued to any such distributor or secondary
490 distributor within a period of 6 months after the date of the final determination of
491 the revocation. [35 ILCS 135/6]

492

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

494

495 **Section 450.116 Violations and Penalties**

496

- 497 a) With the exception of licensed distributors and transporters, anyone possessing or
498 having possessed not less than 10 and not more than 100 packages of contraband
499 cigarettes contained in original packages is liable to pay to the Department, for a
500 deposit into the Tax Compliance and Administration Fund, a penalty of \$20 for
501 each package of contraband cigarettes, unless reasonable cause can be
502 established by the person upon whom the penalty is to be imposed. Any person
503 who purchases and possesses a total of 9 or fewer original packages of
504 unstamped cigarettes per month is exempt from the penalties of this Section. The
505 provisions of the Uniform Penalty and Interest Act do not apply to this subsection
506 (a). [35 ILCS 135/25b] For purposes of this Section, "contraband cigarettes"
507 means unstamped original packages of cigarettes or original packages of
508 cigarettes that bear a tax stamp of another state or taxing jurisdiction.
- 509 b) With the exception of licensed distributors and transporters, any person
510 possessing or having possessed more than 100 packages of contraband cigarettes
511 contained in original packages is liable to pay, to the Department, for deposit in
512 the Tax Compliance and Administration Fund, a penalty of \$25 for each package
513 of contraband cigarettes in excess of 100 packages, unless reasonable cause can
514 be established by the person upon whom the penalty is to be imposed. The

515 provisions of the Uniform Penalty and Interest Act do not apply to this subsection
516 (b). [35 ILCS 135/25a]

517
518 c) The sale of individual or loose cigarettes is prohibited. Any person who violates
519 this subsection (c) is liable to pay to the Department for deposit in the Tax
520 Compliance and Administration Fund, a penalty of \$1,000 for the first violation
521 and \$3,000 for any subsequent violation. Any person who violates this subsection
522 (c) shall be guilty of a Class 4 felony. This subsection shall not apply if the
523 violation in a particular case also constitutes a violation of the Cigarette Tax Act.
524 [35 ILCS 135/25c]

525
526 d) Any person shall be guilty of a Class 2 felony who for the purpose of evading the
527 tax imposed by the Act:

- 528
529 1) falsely or fraudulently makes, forges, alters, or counterfeits any stamp;
530
531 2) causes or procures to be falsely or fraudulently made, forged, altered, or
532 counterfeited any such stamp;
533
534 3) knowingly and wilfully utters, publishes, passes, or tenders as genuine any
535 such false, altered, forged, or counterfeit stamp;
536
537 4) falsely or fraudulently makes, forges, alters, or counterfeits any tax
538 imprint on an original package of cigarettes inside a sealed transparent
539 wrapper;
540
541 5) causes or procures falsely or fraudulently to be made, forged, altered, or
542 counterfeited any such tax imprint; or
543
544 6) knowingly and wilfully utters, publishes, passes, or tenders as genuine any
545 false, altered, forged, or counterfeited tax imprint. [35 ILCS 135/28]

546
547 e) Any person including every distributor or secondary distributor shall be deemed
548 guilty of a Class 2 felony who shall:

- 549
550 1) knowingly and wilfully sell or offer for sale any original package having
551 affixed to such original package any fraudulent, spurious, imitation, or
552 counterfeit stamp, or stamp which has been previously affixed, or affixes a
553 stamp which has previously been affixed to an original package; or
554
555 2) knowingly and wilfully sell or offer for sale any original package having
556 imprinted on such original package underneath the sealed transparent
557 wrapper any fraudulent, spurious, imitation, or counterfeit tax imprint.

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3) This subsection (e) shall not apply if the violation in a particular case also constitutes a criminal violation of the Cigarette Tax Act. [35 ILCS 135/29]

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

B) 101 to 250 original packages of contraband cigarettes is guilty of Class A misdemeanor for the first offense and a Class 4 felony for each subsequent offense;

C) 251 to 1000 original packages of contraband cigarettes is guilty of a Class 4 felony; or

D) 1001 or more original packages of contraband cigarettes is guilty of a Class 3 felony. [35 ILCS 135/30(a)-(d)]

2) Any licensed distributor, licensed secondary distributor, or licensed transporter who has in their possession or sells:

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

B) 101 or more original packages of contraband cigarettes is guilty of a Class 4 felony. [35 ILCS 130/24]

3) Notwithstanding subsections (f)(2)(A) and (B),

A) licensed distributors and transporters may possess unstamped packages of cigarettes;

- 600 B) *licensed distributors may possess cigarettes that bear a tax stamp*
601 *of another state or taxing jurisdiction;*
602
603 C) *a licensed distributor or licensed secondary distributor may*
604 *possess contraband cigarettes returned to the distributor or*
605 *secondary distributor by a retailer if:*
606
607 i) *the distributor or licensed secondary distributor*
608 *immediately conducts an inventory of the cigarettes being*
609 *returned;*
610
611 ii) *the distributor or licensed distributor and the retailer*
612 *returning the contraband cigarettes sign the inventory;*
613
614 iii) *the distributor or licensed secondary distributor provides a*
615 *copy of the signed inventory to the retailer; and*
616
617 iv) *the distributor or licensed secondary distributor retains the*
618 *inventory in its books and records and promptly notifies the*
619 *Department. [35 ILCS 135/30(g)]*
620
621 4) *Retailers.*
622
623 A) *Any retailer who knowingly possesses packages of cigarettes with*
624 *a counterfeit stamp with intent to sell is guilty of a Class 2 felony.*
625
626 B) *Any retailer who knowingly possesses unstamped packages of*
627 *cigarettes with intent to sell is guilty of a Class 4 felony. [35 ILCS*
628 *135/30(h)]*
629
630 C) *Notwithstanding subsections (f)(1)(A)-(D), a retailer unknowingly*
631 *possessing contraband cigarettes obtained from a licensed*
632 *distributor or licensed secondary distributor or knowingly*
633 *possessing contraband cigarettes obtained from a licensed*
634 *distributor or licensed secondary distributor is not subject to*
635 *penalties under this Section if the retailer, within 48 hours after*
636 *discovering that the cigarette are contraband cigarettes, excluding*
637 *Saturdays, Sundays, and holidays:*
638
639 i) *notifies the Department and the licensed distributor or*
640 *licensed secondary distributor from whom the cigarettes*
641 *were obtained, orally and in writing, that the retailer*

- 642 possesses contraband cigarettes obtained from a licensed
643 distributor or licensed secondary distributor;
644
645 ii) places the contraband cigarettes in one or more containers
646 and seals those containers; and
647
648 iii) places on the containers the following or similar language:
649 "Contraband Cigarettes. Not For Sale."
650
651 D) All contraband cigarettes in the possession of a retailer remain
652 subject to forfeiture under the provisions of the Act. [35 ILCS
653 135/30(h)]
654
655 g) Any person, or any officer, agent or employee of a person, required by the Act to
656 make, file, render, sign or verify any report or return, who makes any false or
657 fraudulent report or return or files any false or fraudulent report or return, or
658 who shall fail to make such report or return or file such report or return when
659 due, shall be guilty of a Class 4 felony. [35 ILCS 135/31]
660

661 (Source: Added at 50 Ill. Reg. _____, effective _____)
662

663 **Section 450.117 Protest Procedures for Certain Penalties**

664
665 Except as otherwise provided in this Part, any person aggrieved by any decision of the
666 Department under this Part may, within 60 days after notice of the decision, protest in writing
667 and request a hearing. Upon receiving a timely, written request for a hearing, the Department
668 shall provide written notice of the date, time, and place of the hearing to the person requesting
669 the hearing at least 20 days prior to the hearing date, shall hold a hearing in conformity with the
670 provisions of this Part, and then issue its final administrative decision in the matter to that
671 person. In the absence of a protest and request for a hearing within 60 days, the Department's
672 decision shall become final without any further determination being made or notice given.
673

674 (Source: Added at 50 Ill. Reg. _____, effective _____)
675

676 **Section 450.118 Reasonable Cause**

- 677
678 a) The penalties imposed under the Sections 25a and 25b of the Act shall not apply
679 if the person shows that the possession of unstamped original packages of
680 cigarettes or original packages of cigarettes that bear a tax stamp of another state
681 or taxing jurisdiction at the time of inspection or seizure was due to reasonable
682 cause. Reasonable cause is determined in each situation in accordance with this
683 Section.
684

- 685 **b)** The determination of whether a person acted with reasonable cause shall be made
686 on a case-by-case basis considering all pertinent facts and circumstances. The
687 most important factor to be considered in determining to abate a penalty will be
688 the extent to which the person made a good faith effort to determine the existence
689 of any contraband cigarettes in its possession and to timely report such contraband
690 cigarettes to the Department.
- 691
- 692 **c)** A person will be considered to have made a good faith effort to determine the
693 existence of any contraband cigarettes if the person exercised ordinary business
694 care and prudence in so doing. A determination of whether a person exercised
695 ordinary business care and prudence is dependent upon the clarity of the law or its
696 interpretation and the person's experience, knowledge, and education.
697 Accordingly, reliance on the advice of a professional does not necessarily
698 establish that a person exercised ordinary business care and prudence, nor does
699 reliance on incorrect facts.
- 700
- 701 **d)** A person's history of compliance is also a factor to be considered in determining
702 whether the taxpayer acted in good faith. An isolated incident of contraband
703 cigarettes being found in a person's inventory generally will not indicate a lack of
704 good faith.
- 705
- 706 **e)** Examples of Reasonable Cause. The following is a non-exclusive list of
707 situations in which reasonable cause may exist for purposes of the abatement of
708 penalties:
- 709
- 710 1) Reasonable cause for abatement of penalty will exist if a liability results
711 from amendments made by the Department to regulations or formal
712 administrative policies or positions after the discovery and seizure of
713 contraband cigarettes.
- 714
- 715 2) Reasonable cause for abatement may also be based on the death,
716 incapacity or serious illness of the person or a death or serious illness in
717 the person's immediate family that causes them to be away from the
718 premises for an extended period of time. In the case of a corporation,
719 estate, trust, etc., the death, incapacity, or serious illness of an individual
720 having sole authority to inspect inventory or a member of that individual's
721 immediate family, may be reasonable cause for abatement.
- 722
- 723 3) An unavoidable absence of a person due to circumstances unforeseeable
724 by a reasonable person may also constitute reasonable cause for purposes
725 of abatement of the penalty. An unavoidable absence does not include a
726 planned absence such as a vacation. In the case of a corporation, estate,

727 trust, etc., the absence of an individual having sole authority to inspect and
728 approve inventory may be reasonable cause for purposes of abatement.

729
730 4) An Illinois appellate court decision, a U.S. appellate court decision, or an
731 appellate court decision from another state (provided that the appellate
732 court case in the other state is based upon substantially similar statutory or
733 regulatory law) that supports the person's position will ordinarily provide a
734 basis for a reasonable cause determination.

735
736 5) The Department gave erroneous information or delayed a process under its
737 control. In making the determination of whether the taxpayer had
738 reasonable cause for purposes of abatement, the following factors are
739 relevant:

740
741 A) Did the taxpayer timely inspect the incoming inventory of
742 cigarettes?

743
744 B) Was the information requested by the taxpayer easily available in
745 instructions or bulletins?

746
747 C) Did the taxpayer rely on the advice of the Department?

748
749 D) Did a Department employee who was acting in an official capacity
750 and was authorized to provide assistance provide the advice?

751
752 E) Was the taxpayer's reliance upon the advice reasonable?

753
754 6) Employee fraud not reasonably within the knowledge of the taxpayer.

755
756 f) Relevant Factors Used by the Department in Determining the Existence of
757 Reasonable Cause.

758
759 1) Did the taxpayer have sufficient procedures to review inventory and to
760 timely report any contraband cigarettes?

761
762 2) Does the taxpayer's reason address the penalty assessed?

763
764 3) Does the length of time between the reason cited and the actual violation
765 support abatement? If the taxpayer cites a specific event or set of events
766 (e.g., illness, unexpected absence, or natural disaster) or set of events that
767 led to the imposition of the penalty, are those events directly related to the
768 incident under review?

769

- 770 4) Could the event cited have been reasonably anticipated? Was the event
771 one that should have been anticipated (e.g., a vacation or scheduled
772 absence) or was it unexpected, unavoidable, or otherwise unplanned (e.g.,
773 an emergency or disaster)?
774
775 5) Were ordinary business care and prudence exercised? In the absence of
776 new or unusual circumstances, possession penalties for contraband
777 cigarettes are common knowledge or are readily available to most
778 taxpayers. If the taxpayer did all that could be reasonably expected of
779 them and still possessed contraband cigarettes, reasonable cause may be
780 present.
781

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