

# SB1362



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

SB1362

Introduced 2/13/2019, by Sen. Thomas Cullerton

#### SYNOPSIS AS INTRODUCED:

35 ILCS 143/10-5  
35 ILCS 143/10-10

Amends the Tobacco Products Tax Act of 1995. Provides that a retailer who is considered a "retailer maintaining a place of business in this State" under the Use Tax Act is considered a distributor under the Tobacco Products Tax Act of 1995. Provides that, beginning January 1, 2020, the tax per cigar or other rolled tobacco product sold or otherwise disposed of shall not exceed \$0.50 per cigar or roll. Effective January 1, 2020.

LRB101 07531 HLH 52576 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Tobacco Products Tax Act of 1995 is amended  
5 by changing Sections 10-5 and 10-10 as follows:

6 (35 ILCS 143/10-5)

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

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

11 "Cigarette" has the meaning ascribed to the term in Section  
12 1 of the Cigarette Tax Act.

13 "Contraband little cigar" means:

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

17 (2) packages of little cigars containing 20 or 25  
18 little cigars that bear a fraudulent, imitation, or  
19 counterfeit tax stamp;

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

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

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

14 "Department" means the Illinois Department of Revenue.

15 "Distributor" means any of the following:

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

20 (2) Any manufacturer or wholesaler engaged in the  
21 business of selling tobacco products from without this  
22 State who sells, exchanges, distributes, ships, or  
23 transports tobacco products to retailers or consumers  
24 located in this State, so long as that manufacturer, ~~or~~  
25 wholesaler, or retailer (i) has or maintains within this  
26 State, directly or by subsidiary, an office, sales house,

1 or other place of business, or any agent or other  
2 representative operating within this State under the  
3 authority of the person or subsidiary, irrespective of  
4 whether the place of business or agent or other  
5 representative is located here permanently or temporarily  
6 or (ii) is considered a "retailer maintaining a place of  
7 business in this State" under Section 2 of the Use Tax Act.

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

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

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

21 "Manufacturer" means any person, wherever resident or  
22 located, who manufactures and sells tobacco products, except a  
23 person who makes, manufactures, or fabricates tobacco products  
24 as a part of a Correctional Industries program for sale to  
25 persons incarcerated in penal institutions or resident  
26 patients of a State operated mental health facility.

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

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

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

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

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

23           "Stamp" or "stamps" mean the indicia required to be affixed  
24 on a package of little cigars that evidence payment of the tax  
25 on packages of little cigars containing 20 or 25 little cigars  
26 under Section 10-10 of this Act. These stamps shall be the same

1 stamps used for cigarettes under the Cigarette Tax Act.

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

5 "Tobacco products" means any cigars, including little  
6 cigars; cheroots; stogies; periques; granulated, plug cut,  
7 crimp cut, ready rubbed, and other smoking tobacco; snuff  
8 (including moist snuff) or snuff flour; cavendish; plug and  
9 twist tobacco; fine-cut and other chewing tobaccos; shorts;  
10 refuse scraps, clippings, cuttings, and sweeping of tobacco;  
11 and other kinds and forms of tobacco, prepared in such manner  
12 as to be suitable for chewing or smoking in a pipe or  
13 otherwise, or both for chewing and smoking; but does not  
14 include cigarettes as defined in Section 1 of the Cigarette Tax  
15 Act or tobacco purchased for the manufacture of cigarettes by  
16 cigarette distributors and manufacturers defined in the  
17 Cigarette Tax Act and persons who make, manufacture, or  
18 fabricate cigarettes as a part of a Correctional Industries  
19 program for sale to residents incarcerated in penal  
20 institutions or resident patients of a State operated mental  
21 health facility.

22 "Wholesale price" means the established list price for  
23 which a manufacturer sells tobacco products to a distributor,  
24 before the allowance of any discount, trade allowance, rebate,  
25 or other reduction. In the absence of such an established list  
26 price, the manufacturer's invoice price at which the

1 manufacturer sells the tobacco product to unaffiliated  
2 distributors, before any discounts, trade allowances, rebates,  
3 or other reductions, shall be presumed to be the wholesale  
4 price.

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

11 (Source: P.A. 97-688, eff. 6-14-12; 98-273, eff. 8-9-13;  
12 98-1055, eff. 1-1-16.)

13 (35 ILCS 143/10-10)

14 Sec. 10-10. Tax imposed.

15 (a) Except as otherwise provided in this Section with  
16 respect to little cigars, on the first day of the third month  
17 after the month in which this Act becomes law, a tax is imposed  
18 on any person engaged in business as a distributor of tobacco  
19 products, as defined in Section 10-5, at the rate of (i) 18% of  
20 the wholesale price of tobacco products sold or otherwise  
21 disposed of to retailers or consumers located in this State  
22 prior to July 1, 2012 and (ii) 36% of the wholesale price of  
23 tobacco products sold or otherwise disposed of to retailers or  
24 consumers located in this State beginning on July 1, 2012;  
25 except that, beginning on January 1, 2013, the tax on moist

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

17 (b) Notwithstanding subsection (a) of this Section,  
18 stamping distributors of packages of little cigars containing  
19 20 or 25 little cigars sold or otherwise disposed of in this  
20 State shall remit the tax by purchasing tax stamps from the  
21 Department and affixing them to packages of little cigars in  
22 the same manner as stamps are purchased and affixed to  
23 cigarettes under the Cigarette Tax Act, unless the stamping  
24 distributor sells or otherwise disposes of those packages of  
25 little cigars to another stamping distributor. Only persons  
26 meeting the definition of "stamping distributor" contained in



1 Section 10-5 of this Act may affix stamps to packages of little  
2 cigars containing 20 or 25 little cigars. Stamping distributors  
3 may not sell or dispose of little cigars at retail to consumers  
4 or users at locations where stamping distributors affix stamps  
5 to packages of little cigars containing 20 or 25 little cigars.

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

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

26 (d) Beginning on January 1, 2013, the tax rate imposed per

1 ounce of moist snuff may not exceed 15% of the tax imposed upon  
2 a package of 20 cigarettes pursuant to the Cigarette Tax Act.

3 (d-5) Notwithstanding the provisions of this Section,  
4 beginning January 1, 2020, the tax per cigar or other rolled  
5 tobacco product sold or otherwise disposed of shall not exceed  
6 \$0.50 per cigar or roll. This surtax shall be collected,  
7 administered, and enforced by the Department in the same manner  
8 as the tax imposed by this Section.

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

20 (Source: P.A. 97-688, eff. 6-14-12; 98-273, eff. 8-9-13.)

21 Section 99. Effective date. This Act takes effect January  
22 1, 2020.