



## 102ND GENERAL ASSEMBLY

### State of Illinois

### 2021 and 2022

### SB3619

Introduced 1/19/2022, by Sen. Donald P. DeWitte

#### SYNOPSIS AS INTRODUCED:

35 ILCS 143/10-5  
35 ILCS 143/10-20

Amends the Tobacco Products Tax Act of 1995. Provides that the Department of Revenue shall discharge any surety and shall release and return any bond provided to it by a taxpayer in connection with a distributor's license 90 days after: (1) that taxpayer becomes a prior continuous compliance taxpayer; or (2) that taxpayer has ceased to collect receipts on which he is required to remit tax to the Department, has filed a final tax return, and has paid to the Department an amount sufficient to discharge his remaining tax liability as determined by the Department. Defines "prior continuous compliance taxpayer". Effective January 1, 2023.

LRB102 23408 HLH 32577 b

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 10-20 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  
12 Section 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 in this State  
17                 engaged in the business of selling tobacco products who  
18                 sells, exchanges, or distributes tobacco products to  
19                 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 has or maintains within this State, directly or  
26                 by subsidiary, an office, sales house, or other place of

1 business, or any agent or other representative operating  
2 within this State under the authority of the person or  
3 subsidiary, irrespective of whether the place of business  
4 or agent or other representative is located here  
5 permanently or temporarily.

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

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

14 "Electronic cigarette" means:

15 (1) any device that employs a battery or other  
16 mechanism to heat a solution or substance to produce a  
17 vapor or aerosol intended for inhalation, except for (A)  
18 any device designed solely for use with cannabis that  
19 contains a statement on the retail packaging that the  
20 device is designed solely for use with cannabis and not  
21 for use with tobacco or (B) any device that contains a  
22 solution or substance that contains cannabis subject to  
23 tax under the Compassionate Use of Medical Cannabis  
24 Program Act or the Cannabis Regulation and Tax Act;

25 (2) any cartridge or container of a solution or  
26 substance intended to be used with or in the device or to

1 refill the device, except for any cartridge or container  
2 of a solution or substance that contains cannabis subject  
3 to tax under the Compassionate Use of Medical Cannabis  
4 Program Act or the Cannabis Regulation and Tax Act; or

5 (3) any solution or substance, whether or not it  
6 contains nicotine, intended for use in the device, except  
7 for any solution or substance that contains cannabis  
8 subject to tax under the Compassionate Use of Medical  
9 Cannabis Program Act or the Cannabis Regulation and Tax  
10 Act.

11 The changes made to the definition of "electronic  
12 cigarette" by this amendatory Act of the 102nd General  
13 Assembly apply on and after June 28, 2019, but no claim for  
14 credit or refund is allowed on or after the effective date of  
15 this amendatory Act of the 102nd General Assembly for such  
16 taxes paid during the period beginning June 28, 2019 and the  
17 effective date of this amendatory Act of the 102nd General  
18 Assembly.

19 "Electronic cigarette" includes, but is not limited to,  
20 any electronic nicotine delivery system, electronic cigar,  
21 electronic cigarillo, electronic pipe, electronic hookah, vape  
22 pen, or similar product or device, and any component or part  
23 that can be used to build the product or device. "Electronic  
24 cigarette" does not include: cigarettes, as defined in Section  
25 1 of the Cigarette Tax Act; any product approved by the United  
26 States Food and Drug Administration for sale as a tobacco

1 cessation product, a tobacco dependence product, or for other  
2 medical purposes that is marketed and sold solely for that  
3 approved purpose; any asthma inhaler prescribed by a physician  
4 for that condition that is marketed and sold solely for that  
5 approved purpose; or any therapeutic product approved for use  
6 under the Compassionate Use of Medical Cannabis Program Act.

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

12 "Manufacturer" means any person, wherever resident or  
13 located, who manufactures and sells tobacco products, except a  
14 person who makes, manufactures, or fabricates tobacco products  
15 as a part of a Correctional Industries program for sale to  
16 persons incarcerated in penal institutions or resident  
17 patients of a State operated mental health facility.

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

23 "Person" means any natural individual, firm, partnership,  
24 association, joint stock company, joint venture, limited  
25 liability company, or public or private corporation, however  
26 formed, or a receiver, executor, administrator, trustee,

1 conservator, or other representative appointed by order of any  
2 court.

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

8 "Prior continuous compliance taxpayer" means any person  
9 who is licensed under this Act and who, having been a licensee  
10 for a continuous period of 2 years, is determined by the  
11 Department not to have been either delinquent or deficient in  
12 the payment of tax liability during that period or otherwise  
13 in violation of this Act. Also, any taxpayer who has, as  
14 verified by the Department, continuously complied with the  
15 condition of his bond or other security under provisions of  
16 this Act for a period of 2 consecutive years shall be  
17 considered to be a "prior continuous compliance taxpayer". In  
18 calculating the consecutive period of time described in this  
19 definition for qualification as a "prior continuous compliance  
20 taxpayer", a consecutive period of time of qualifying  
21 compliance immediately prior to the effective date of this  
22 amendatory Act of the 102nd General Assembly shall be credited  
23 to any licensee who became licensed on or before the effective  
24 date of this amendatory Act of the 102nd General Assembly. A  
25 distributor that is a prior continuous compliance taxpayer and  
26 becomes a successor as the result of an acquisition, merger,

1 or consolidation of a distributor shall be deemed to be a prior  
2 continuous compliance taxpayer with respect to the acquired,  
3 merged, or consolidated entity.

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

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

10 "Stamp" or "stamps" mean the indicia required to be  
11 affixed on a package of little cigars that evidence payment of  
12 the tax on packages of little cigars containing 20 or 25 little  
13 cigars under Section 10-10 of this Act. These stamps shall be  
14 the same stamps used for cigarettes under the Cigarette Tax  
15 Act.

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

19 "Tobacco products" means any cigars, including little  
20 cigars; cheroots; stogies; periques; granulated, plug cut,  
21 crimp cut, ready rubbed, and other smoking tobacco; snuff  
22 (including moist snuff) or snuff flour; cavendish; plug and  
23 twist tobacco; fine-cut and other chewing tobaccos; shorts;  
24 refuse scraps, clippings, cuttings, and sweeping of tobacco;  
25 and other kinds and forms of tobacco, prepared in such manner  
26 as to be suitable for chewing or smoking in a pipe or



1 otherwise, or both for chewing and smoking; but does not  
2 include cigarettes as defined in Section 1 of the Cigarette  
3 Tax Act or tobacco purchased for the manufacture of cigarettes  
4 by cigarette distributors and manufacturers defined in the  
5 Cigarette Tax Act and persons who make, manufacture, or  
6 fabricate cigarettes as a part of a Correctional Industries  
7 program for sale to residents incarcerated in penal  
8 institutions or resident patients of a State operated mental  
9 health facility.

10 Beginning on July 1, 2019, "tobacco products" also  
11 includes electronic cigarettes.

12 "Wholesale price" means the established list price for  
13 which a manufacturer sells tobacco products to a distributor,  
14 before the allowance of any discount, trade allowance, rebate,  
15 or other reduction. In the absence of such an established list  
16 price, the manufacturer's invoice price at which the  
17 manufacturer sells the tobacco product to unaffiliated  
18 distributors, before any discounts, trade allowances, rebates,  
19 or other reductions, shall be presumed to be the wholesale  
20 price.

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

1 (Source: P.A. 101-31, eff. 6-28-19; 101-593, eff. 12-4-19;  
2 102-40, eff. 6-25-21.)

3 (35 ILCS 143/10-20)

4 Sec. 10-20. Distributor's licenses. It shall be unlawful  
5 for any person to engage in business as a distributor of  
6 tobacco products within the meaning of this Act without first  
7 having obtained a license to do so from the Department.  
8 Application for that license shall be made to the Department  
9 in a form prescribed and furnished by the Department. Each  
10 applicant for a license shall furnish to the Department on a  
11 form, signed and verified by the applicant, the following  
12 information:

13 (1) The name of the applicant.

14 (2) The address of the location at which the applicant  
15 proposes to engage in business as a distributor of tobacco  
16 products.

17 (3) Other information the Department may reasonably  
18 require.

19 Except as otherwise provided in this Section, every  
20 applicant who is required to procure a distributor's license  
21 shall file with his or her application a joint and several  
22 bond. The bond shall be executed to the Department of Revenue,  
23 with good and sufficient surety or sureties residing or  
24 licensed to do business within the State of Illinois,  
25 conditioned upon the true and faithful compliance by the

1 licensee with all of the provisions of this Act. The  
2 Department shall fix the amount of the bond for each  
3 applicant, taking into consideration the amount of money  
4 expected to become due from the applicant under this Act. The  
5 amount of bond required by the Department shall be an amount  
6 that, in its opinion, will protect the State of Illinois  
7 against failure to pay the amount that may become due from the  
8 applicant under this Act, but the amount of the security  
9 required by the Department shall not exceed 3 times the amount  
10 of the applicant's average monthly tax liability, or \$50,000,  
11 whichever amount is lower. Except as otherwise provided in  
12 this Section, the ~~The~~ bond, a reissue, or a substitute shall be  
13 kept in full force and effect during the entire period covered  
14 by the license. A separate application for license shall be  
15 made, and bond filed, for each place of business at which a  
16 person who is required to procure a distributor's license  
17 proposes to engage in business as a distributor under this  
18 Act.

19 The Department, upon receipt of an application and bond in  
20 proper form, shall issue to the applicant a license, in a form  
21 prescribed by the Department, which shall permit the applicant  
22 to whom it is issued to engage in business as a distributor at  
23 the place shown on his or her application. The license shall be  
24 issued by the Department without charge or cost to the  
25 applicant. No license issued under this Act is transferable or  
26 assignable. The license shall be conspicuously displayed in

1 the place of business conducted by the licensee under the  
2 license.

3 The bonding requirement in this Section does not apply to  
4 an applicant for a distributor's license who is already bonded  
5 under the Cigarette Tax Act or the Cigarette Use Tax Act.  
6 Licenses issued by the Department under this Act shall be  
7 valid for a period not to exceed one year after issuance unless  
8 sooner revoked, canceled, or suspended as provided in this  
9 Act.

10 No license shall be issued to any person who is in default  
11 to the State of Illinois for moneys due under this Act or any  
12 other tax Act administered by the Department.

13 The Department shall discharge any surety and shall  
14 release and return any bond provided to it by a taxpayer under  
15 this Section within 90 days after:

16 (1) that taxpayer becomes a prior continuous  
17 compliance taxpayer; or

18 (2) that taxpayer has ceased to collect receipts on  
19 which he is required to remit tax to the Department, has  
20 filed a final tax return, and has paid to the Department an  
21 amount sufficient to discharge his remaining tax liability  
22 as determined by the Department under this Act.

23 The Department shall make a final determination of the  
24 taxpayer's outstanding tax liability as expeditiously as  
25 possible after his final tax return has been filed. If the  
26 Department cannot make that final determination within 45 days

1 after receiving the final tax return, within such period it  
2 shall so notify the taxpayer, stating its reasons therefor.

3 The Department may, in its discretion, upon application,  
4 authorize the payment of the tax imposed under Section 10-10  
5 by any distributor or manufacturer not otherwise subject to  
6 the tax imposed under this Act who, to the satisfaction of the  
7 Department, furnishes adequate security to ensure payment of  
8 the tax. The distributor or manufacturer shall be issued,  
9 without charge, a license to remit the tax. When so  
10 authorized, it shall be the duty of the distributor or  
11 manufacturer to remit the tax imposed upon the wholesale price  
12 of tobacco products sold or otherwise disposed of to retailers  
13 or consumers located in this State, in the same manner and  
14 subject to the same requirements as any other distributor or  
15 manufacturer licensed under this Act.

16 The Department may revoke, suspend, or cancel the license  
17 of a distributor of roll-your-own tobacco (as that term is  
18 used in Section 10 of the Tobacco Product Manufacturers'  
19 Escrow Act) under this Act if the tobacco product  
20 manufacturer, as defined in Section 10 of the Tobacco Product  
21 Manufacturers' Escrow Act, that made or sold the roll-your-own  
22 tobacco has failed to become a participating manufacturer, as  
23 defined in subdivision (a)(1) of Section 15 of the Tobacco  
24 Product Manufacturers' Escrow Act, or has failed to create a  
25 qualified escrow fund for any roll-your-own tobacco  
26 manufactured by the tobacco product manufacturer and sold in

1 this State or otherwise failed to bring itself into compliance  
2 with subdivision (a)(2) of Section 15 of the Tobacco Product  
3 Manufacturers' Escrow Act.

4 Any person aggrieved by any decision of the Department  
5 under this Section may, within 20 days after notice of that  
6 decision, protest and request a hearing, whereupon the  
7 Department must give notice to that person of the time and  
8 place fixed for the hearing and must hold a hearing in  
9 conformity with the provisions of this Act and then issue its  
10 final administrative decision in the matter to that person. In  
11 the absence of such a protest within 20 days, the Department's  
12 decision becomes final without any further determination being  
13 made or notice given.

14 (Source: P.A. 98-1055, eff. 1-1-16.)

15 Section 99. Effective date. This Act takes effect January  
16 1, 2023.