

SB3924



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB3924

Introduced 5/31/2012, by Sen. William R. Haine

SYNOPSIS AS INTRODUCED:

35 ILCS 130/1	from Ch. 120, par. 453.1
35 ILCS 135/1	from Ch. 120, par. 453.31
425 ILCS 8/65 rep.	

Repeals the Cigarette Machine Operators' Occupation Tax Act and makes related changes to other Acts if and only if House Bill 2194 of the 97th General Assembly becomes law. Effective immediately.

LRB097 21827 PJG 70475 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. If and only if House Bill 2194 of the 97th
5 General Assembly becomes law, the Cigarette Machine Operators'
6 Occupation Tax Act is repealed.

7 Section 10. If and only if House Bill 2194 of the 97th
8 General Assembly becomes law, the Cigarette Tax Act is amended
9 by changing Section 1 as follows:

10 (35 ILCS 130/1) (from Ch. 120, par. 453.1)

11 Sec. 1. For the purposes of this Act:

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

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

22 "Cigarette", beginning on and after July 1, 2012, means any

1 roll for smoking made wholly or in part of tobacco irrespective
2 of size or shape and whether or not such tobacco is flavored,
3 adulterated, or mixed with any other ingredient, and the
4 wrapper or cover of which is made of paper.

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

10 (a) the product is sold in packs similar to cigarettes;

11 (b) the product is available for sale in cartons of ten
12 packs;

13 (c) the product is sold in soft packs, hard packs,
14 flip-top boxes, clam shells, or other cigarette-type
15 boxes;

16 (d) the product is of a length and diameter similar to
17 commercially manufactured cigarettes;

18 (e) the product has a cellulose acetate or other
19 integrated filter;

20 (f) the product is marketed or advertised to consumers
21 as a cigarette or cigarette substitute; or

22 (g) other evidence that the product fits within the
23 definition of cigarette.

24 "Contraband cigarettes" means:

25 (a) cigarettes that do not bear a required tax stamp
26 under this Act;

1 (b) cigarettes for which any required federal taxes
2 have not been paid;

3 (c) cigarettes that bear a counterfeit tax stamp;

4 (d) cigarettes that are manufactured, fabricated,
5 assembled, processed, packaged, or labeled by any person
6 other than (i) the owner of the trademark rights in the
7 cigarette brand or (ii) a person that is directly or
8 indirectly authorized by such owner;

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

13 (f) cigarettes that have false manufacturing labels;

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

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

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

26 "Person" means any natural individual, firm, partnership,

1 association, joint stock company, joint adventure, public or
2 private corporation, however formed, limited liability
3 company, or a receiver, executor, administrator, trustee,
4 guardian or other representative appointed by order of any
5 court.

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

22 "Department" means the Department of Revenue.

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

26 "Original Package" means the individual packet, box or

1 other container whatsoever used to contain and to convey
2 cigarettes to the consumer.

3 "Distributor" means any and each of the following:

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

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

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

25 "Place of business" shall mean and include any place where
26 cigarettes are sold or where cigarettes are manufactured,

1 stored or kept for the purpose of sale or consumption,
2 including any vessel, vehicle, airplane, train or vending
3 machine.

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

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

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

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

25 (2) who transfers cigarettes to a not-for-profit
26 research institution that conducts tests concerning the

1 health effects of tobacco products and who does not offer
2 the cigarettes for resale.

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

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

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

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

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

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

26 (Source: P.A. 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10;

1 97-587, eff. 8-26-11; 09700SB2194enr.)

2 Section 15. If and only if House Bill 2194 of the 97th
3 General Assembly becomes law, the Cigarette Use Tax Act is
4 amended by changing Section 1 as follows:

5 (35 ILCS 135/1) (from Ch. 120, par. 453.31)

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

8 "Use" means the exercise by any person of any right or
9 power over cigarettes incident to the ownership or possession
10 thereof, other than the making of a sale thereof in the course
11 of engaging in a business of selling cigarettes and shall
12 include the keeping or retention of cigarettes for use, except
13 that "use" does not include the use of cigarettes by a
14 not-for-profit research institution conducting tests
15 concerning the health effects of tobacco products, provided the
16 cigarettes are not offered for resale.

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

21 Until July 1, 2012, "cigarette" means any roll for smoking
22 made wholly or in part of tobacco irrespective of size or shape
23 and whether or not such tobacco is flavored, adulterated or
24 mixed with any other ingredient, and the wrapper or cover of

1 which is made of paper or any other substance or material
2 except tobacco.

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

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

13 (a) the product is sold in packs similar to cigarettes;

14 (b) the product is available for sale in cartons of ten
15 packs;

16 (c) the product is sold in soft packs, hard packs,
17 flip-top boxes, clam shells, or other cigarette-type
18 boxes;

19 (d) the product is of a length and diameter similar to
20 commercially manufactured cigarettes;

21 (e) the product has a cellulose acetate or other
22 integrated filter;

23 (f) the product is marketed or advertised to consumers
24 as a cigarette or cigarette substitute; or

25 (g) other evidence that the product fits within the
26 definition of cigarette.

1 "Contraband cigarettes" means:

2 (a) cigarettes that do not bear a required tax stamp
3 under this Act;

4 (b) cigarettes for which any required federal taxes
5 have not been paid;

6 (c) cigarettes that bear a counterfeit tax stamp;

7 (d) cigarettes that are manufactured, fabricated,
8 assembled, processed, packaged, or labeled by any person
9 other than (i) the owner of the trademark rights in the
10 cigarette brand or (ii) a person that is directly or
11 indirectly authorized by such owner;

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

16 (f) cigarettes that have false manufacturing labels;

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

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

22 ~~(i) cigarettes made or fabricated by a person holding a~~
23 ~~cigarette machine operator license under Section 1-20 of~~
24 ~~the Cigarette Machine Operators' Occupation Tax Act in the~~
25 ~~possession of manufacturers, distributors, secondary~~
26 ~~distributors, manufacturer representatives or other~~

1 ~~retailers for the purpose of resale, regardless of whether~~
2 ~~the tax has been paid on such cigarettes.~~

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

9 "Department" means the Department of Revenue.

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

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

16 "Distributor" means any and each of the following:

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

25 b. Any person who makes, manufactures or fabricates
26 cigarettes in this State for sale, except a person who

1 makes, manufactures or fabricates cigarettes for sale to
2 residents incarcerated in penal institutions or resident
3 patients or a State-operated mental health facility.

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

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

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

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

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

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

24 "Secondary distributor maintaining a place of business in
25 this State", or any like term, means any secondary distributor
26 having or maintaining within this State, directly or by a

1 subsidiary, an office, distribution house, sales house,
2 warehouse, or other place of business, or any agent operating
3 within this State under the authority of the secondary
4 distributor or its subsidiary, irrespective of whether such
5 place of business or agent is located here permanently or
6 temporarily, or whether such secondary distributor or
7 subsidiary is licensed to transact business within this State.

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

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

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

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

15 (Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10;
16 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10; 09700SB2194enr.)

17 (425 ILCS 8/65 rep.)

18 Section 20. The Cigarette Fire Safety Standard Act is
19 amended by repealing Section 65.

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