

AN ACT concerning revenue.

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

Section 5. The Cigarette Tax Act is amended by changing Section 18a as follows:

(35 ILCS 130/18a) (from Ch. 120, par. 453.18a)

Sec. 18a. After seizing any original packages of cigarettes, or cigarette vending devices, as provided in Section 18 of this Act, the Department shall hold a hearing and shall determine whether such original packages of cigarettes, at the time of their seizure by the Department, were contraband cigarettes, or whether such cigarette vending devices, at the time of their seizure by the Department, contained original packages of contraband cigarettes. The Department is not required to hold such a hearing if a waiver and consent to forfeiture has been executed by the owner of the property, if the owner is known, and by the person in whose possession the property so taken was found, if that person is known and if that person is not the owner of the property. The Department shall give not less than 7 days' notice of the time and place of such hearing to the owner of such property if the owner ~~he~~ is known, and also to the person in whose possession the property so taken was found, if such person is known and if

such person in possession is not the owner of said property. In case neither the owner nor the person in possession of such property is known, the Department shall cause publication of the time and place of such hearing to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where such hearing is to be held.

If, as the result of such hearing, the Department shall determine that the original packages of cigarettes seized were at the time of seizure contraband cigarettes, or that any cigarette vending device at the time of its seizure contained original packages of contraband cigarettes, or upon receipt of a properly executed waiver and consent to forfeiture as provided in this Section, the Department shall enter an order declaring such original packages of cigarettes or such cigarette vending devices confiscated and forfeited to the State, and to be held by the Department for disposal by it as provided in Section 21 of this Act. The Department shall give notice of such order to the owner of such property if the owner ~~he~~ is known, and also to the person in whose possession the property so taken was found, if such person is known and if such person in possession is not the owner of said property. In case neither the owner nor the person in possession of such property is known, the Department shall cause publication of such order to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where such hearing was held.

(Source: P.A. 96-782, eff. 1-1-10.)

Section 10. The Cigarette Use Tax Act is amended by changing Section 25 as follows:

(35 ILCS 135/25) (from Ch. 120, par. 453.55)

Sec. 25. After seizing any original packages of cigarettes, or cigarette vending devices, as provided in Section 24 of this Act, the Department shall hold a hearing and shall determine whether such original packages of cigarettes, at the time of their seizure by the Department, were contraband cigarettes or whether such cigarette vending devices, at the time of their seizure by the Department, contained original packages of contraband cigarettes. The Department is not required to hold such a hearing if a waiver and consent to forfeiture has been executed by the owner of the property, if the owner is known, and by the person in whose possession the property so taken was found, if that person is known and if that person is not the owner of the property. The Department shall give not less than 7 days' notice of the time and place of such hearing to the owner of such property if the owner ~~he~~ is known, and also to the person in whose possession the property so taken was found, if such person is known and if such person in possession is not the owner of said property. In case neither the owner nor the person in possession of such property is known, the Department shall cause publication of

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

If, as the result of such hearing, the Department shall determine that the original packages of cigarettes seized were at the time of seizure contraband cigarettes, or that any cigarette vending device at the time of its seizure contained original packages of contraband cigarettes, or upon receipt of a properly executed waiver and consent to forfeiture as provided in this Section, the Department shall enter an order declaring such original packages of cigarettes or such cigarette vending devices confiscated and forfeited to the State, and to be held by the Department for disposal by it as provided in Section 27 of this Act. The Department shall give notice of such order to the owner of such property if the owner ~~he~~ is known, and also to the person in whose possession the property so taken was found, if such person is known and if such person in possession is not the owner of said property. In case neither the owner nor the person in possession of such property is known, the Department shall cause publication of such order to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where such hearing was held.

(Source: P.A. 96-782, eff. 1-1-10.)

Section 15. The Tobacco Products Tax Act of 1995 is

amended by changing Section 10-5, 10-20, and 10-56 as follows:

(35 ILCS 143/10-5)

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

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

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

"Contraband little cigar" means:

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

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

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

(4) packages of little cigars containing other than 20 or 25 little cigars in the possession of a distributor, retailer or wholesaler, unless the distributor, retailer, or wholesaler possesses, or produces within the time frame provided in Section 10-27 or 10-28 of this Act, an invoice from a stamping distributor, distributor, or wholesaler

showing that the tax on the packages has been or will be paid.

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

"Department" means the Illinois Department of Revenue.

"Distributor" means any of the following:

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

(2) Any manufacturer or wholesaler engaged in the business of selling tobacco products from without this State who sells, exchanges, distributes, ships, or transports tobacco products to retailers or consumers located in this State, so long as that manufacturer or wholesaler has or maintains within this State, directly or by subsidiary, an office, sales house, or other place of business, or any agent or other representative operating within this State under the authority of the person or subsidiary, irrespective of whether the place of business or agent or other representative is located here permanently or temporarily.

(3) Any retailer who receives tobacco products on

which the tax has not been or will not be paid by another distributor.

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

"Electronic cigarette" means:

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

(2) any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device, except for any cartridge or container of a solution or substance that contains cannabis subject to tax under the Compassionate Use of Medical Cannabis Program Act or the Cannabis Regulation and Tax Act; or

(3) any solution or substance, whether or not it contains nicotine, intended for use in the device, except

for any solution or substance that contains cannabis subject to tax under the Compassionate Use of Medical Cannabis Program Act or the Cannabis Regulation and Tax Act.

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

"Electronic cigarette" includes, but is not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any component or part that can be used to build the product or device. "Electronic cigarette" does not include: cigarettes, as defined in Section 1 of the Cigarette Tax Act; any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, a tobacco dependence product, or for other medical purposes that is marketed and sold solely for that approved purpose; any asthma inhaler prescribed by a physician for that condition that is marketed and sold solely for that approved purpose; or any therapeutic product approved for use under the Compassionate Use of Medical Cannabis Program Act.

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

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

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

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

"Place of business" means and includes any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train,

or vending machine.

"Prior continuous compliance taxpayer" means any person who is licensed under this Act and who, having been a licensee for a continuous period of 2 years, is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period or otherwise in violation of this Act. "Prior continuous compliance taxpayer" also means any taxpayer who has, as verified by the Department, continuously complied with the condition of his bond or other security under provisions of this Act for a period of 2 consecutive years. In calculating the consecutive period of time described in this definition for qualification as a prior continuous compliance taxpayer, a consecutive period of time of qualifying compliance immediately prior to the effective date of this amendatory Act of the 103rd General Assembly shall be credited to any licensee who became licensed on or before the effective date of this amendatory Act of the 103rd General Assembly. A distributor that is a prior continuous compliance taxpayer and becomes a successor to a distributor as the result of an acquisition, merger, or consolidation of that distributor shall be deemed to be a prior continuous compliance taxpayer with respect to the acquired, merged, or consolidated entity.

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

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

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

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

"Tobacco products" means any cigars, including little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff (including moist snuff) or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweeping of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include cigarettes as defined in Section 1 of the Cigarette Tax Act or tobacco purchased for the manufacture of cigarettes by cigarette distributors and manufacturers defined in the Cigarette Tax Act and persons who make, manufacture, or fabricate cigarettes as a part of a Correctional Industries

program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility.

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

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

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

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

(35 ILCS 143/10-20)

Sec. 10-20. Distributor's licenses. It shall be unlawful for any person to engage in business as a distributor of

tobacco products within the meaning of this Act without first having obtained a license to do so from the Department. Application for that license shall be made to the Department in a form prescribed and furnished by the Department. Each applicant for a license shall furnish to the Department on a form, signed and verified by the applicant, the following information:

(1) The name of the applicant.

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

(3) Other information the Department may reasonably require.

Each distributor, except for a distributor who is applying for a distributor's license under this Act for the first time or a distributor who, in the preceding year, had less than \$50,000 of tax liability, shall also file with the Department a bond in an amount not to exceed (i) 3 times the amount of the distributor's average monthly tax liability or (ii) \$50,000, whichever amount is lower, on a form to be approved by the Department.~~Except as otherwise provided in this Section, every applicant who is required to procure a distributor's license shall file with his or her application a joint and several bond. The bond shall be executed to the Department of Revenue, with good and sufficient surety or sureties residing or licensed to do business within the State of Illinois,~~

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

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

assignable. The license shall be conspicuously displayed in the place of business conducted by the licensee under the license.

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

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

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

(1) the taxpayer becomes a prior continuous compliance taxpayer; or

(2) the taxpayer has ceased to collect receipts on which the taxpayer is required to remit the tax under this Act 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 under this Act.

For the purposes of item (2), the Department shall make a final determination of the taxpayer's outstanding tax

liability as expeditiously as possible after the taxpayer's final tax return under this Act has been filed. If the Department will be unable to make such a final determination within 45 days after receiving the taxpayer's final tax return, then the Department shall notify the taxpayer within that 45-day period stating the reasons why it is unable to make the final determination within that 45-day period.

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

The Department may revoke, suspend, or cancel the license of a distributor of roll-your-own tobacco (as that term is used in Section 10 of the Tobacco Product Manufacturers' Escrow Act) under this Act if the tobacco product manufacturer, as defined in Section 10 of the Tobacco Product Manufacturers' Escrow Act, that made or sold the roll-your-own

tobacco has failed to become a participating manufacturer, as defined in subdivision (a)(1) of Section 15 of the Tobacco Product Manufacturers' Escrow Act, or has failed to create a qualified escrow fund for any roll-your-own tobacco manufactured by the tobacco product manufacturer and sold in this State or otherwise failed to bring itself into compliance with subdivision (a)(2) of Section 15 of the Tobacco Product Manufacturers' Escrow Act.

Any applicant applying for a distributor's license after the applicant's distributor's license has been revoked by the Department shall also file a bond with the Department in an amount equal to 3 times the amount of the applicant's average monthly tax liability under this Act, as that average monthly tax liability was calculated immediately prior to the revocation of the applicant's distributor's license.

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

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

(35 ILCS 143/10-56)

Sec. 10-56. Seizure and forfeiture. After seizing any tobacco products or vending devices, as provided in Section 10-55, the Department must hold a hearing and determine whether the distributor or retailer was properly licensed to sell the tobacco products at the time of their seizure by the Department. The Department is not required to hold such a hearing if a waiver and consent to forfeiture has been executed by the owner of the property, if the owner is known, and by the person in whose possession the property so taken was found, if that person is known and if that person is not the owner of the property. The Department shall give not less than 20 days' notice of the time and place of the hearing to the owner of the property, if the owner is known, and also to the person in whose possession the property was found, if that person is known and if the person in possession is not the owner of the property. If neither the owner nor the person in possession of the property is known, the Department must cause publication of the time and place of the hearing to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing is to be held.

If, as the result of the hearing, the Department determines that the distributor or retailer was not properly licensed at the time the tobacco products were seized, or upon

receipt of a properly executed waiver and consent to forfeiture as provided in this Section, the Department must enter an order declaring the tobacco products or vending devices confiscated and forfeited to the State, to be held by the Department for disposal by it as provided in Section 10-58. The Department must give notice of the order to the owner of the property, if the owner is known, and also to the person in whose possession the property was found, if that person is known and if the person in possession is not the owner of the property. If neither the owner nor the person in possession of the property is known, the Department must cause publication of the order to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing was held.

(Source: P.A. 92-743, eff. 7-25-02.)

Section 20. The Cannabis Regulation and Tax Act is amended by changing Section 65-42 as follows:

(410 ILCS 705/65-42)

Sec. 65-42. Seizure and forfeiture. After seizing any cannabis as provided in Section 65-41, the Department must hold a hearing and determine whether the retailer was properly registered to sell the cannabis at the time of its seizure by the Department. The Department is not required to hold such a hearing if a waiver and consent to forfeiture has been

executed by the owner of the cannabis, if the owner is known, and by the person in whose possession the cannabis so taken was found, if that person is known and if that person is not the owner of said cannabis. The Department shall give not less than 20 days' notice of the time and place of the hearing to the owner of the cannabis, if the owner is known, and also to the person in whose possession the cannabis was found, if that person is known and if the person in possession is not the owner of the cannabis. If neither the owner nor the person in possession of the cannabis is known, the Department must cause publication of the time and place of the hearing to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing is to be held.

If, as the result of the hearing, the Department determines that the retailer was not properly registered at the time the cannabis was seized, or upon receipt of a properly executed waiver and consent to forfeiture as provided in this Section, the Department must enter an order declaring the cannabis confiscated and forfeited to the State, to be held by the Department for disposal by it as provided in Section 65-43. The Department must give notice of the order to the owner of the cannabis, if the owner is known, and also to the person in whose possession the cannabis was found, if that person is known and if the person in possession is not the owner of the cannabis. If neither the owner nor the person in

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possession of the cannabis is known, the Department must cause publication of the order to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing was held.

(Source: P.A. 101-27, eff. 6-25-19.)

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