**Section 440.110 Books and Records; Invoices; Penalties**

a) Books and Records

1) Distributors. Every distributor of cigarettes, who is required to procure a license under the Act, shall keep within Illinois, at his or her licensed address, complete and accurate records of cigarettes held, purchased, manufactured, brought in or caused to be brought in from without the State, and sold or otherwise disposed of, and shall preserve and keep within Illinois at his licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a return is required of all cigarettes on hand and of all cigarette revenue stamps, both affixed and unaffixed, and other pertinent papers and documents relating to the manufacture, purchase, sale or disposition of cigarettes. A distributor's records of a particular purchase from a manufacturer or distributor shall include:

A) A copy of the distributor's purchase order (if any) to the manufacturer or distributor;

B) the manufacturer's or distributor's invoice to the distributor in duplicate (see subsection (b)(1));

C) a bill of lading or waybill pertaining to the shipment covered by the invoice;

D) the receiving record showing the date when the cigarettes were received by the distributor; and

E) evidence of payment by the distributor to the manufacturer or distributor.

2) Secondary Distributors. *Every secondary distributor of cigarettes who is required to procure a license under the Act shall keep within Illinois, at his or her licensed address, complete and accurate records of cigarettes held, purchased, brought in from without the State, and sold, or otherwise disposed of, and shall preserve and keep within Illinois at his or her licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes.* [35 ILCS 130/11a]

3) Manufacturers with Manufacturer Representatives. *Every manufacturer with authority to maintain manufacturer representatives under Section 4f of the Act shall keep within Illinois, at his or her business address identified under Section 4f of the Act, complete and accurate records of cigarettes purchased, sold, or otherwise disposed of, and shall preserve and keep within Illinois at his or her business address all invoices, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the manufacturers with authority to maintain manufacturer representatives under Section 4f of the Act and their manufacturer representatives, or inspect any motor vehicle used by a manufacturer representative in the course of business, without a search warrant and may inspect the premises, motor vehicle, and any packages of cigarettes therein contained to determine whether any of the provisions of the Act are being violated.* [35 ILCS 130/11b]

4)Retailers. *Every retailer who is required to procure a license under the Act shall keep within Illinois complete and accurate records of cigarettes purchased, sold, or otherwise disposed of. It shall be the duty of every retail licensee to make sales records, copies of bills of sale, and inventory at the close of each period for which a report is required of all cigarettes on hand available upon reasonable notice for the purpose of investigation and control by the Department.*

A) *The books and records need not be maintained on the licensed premises, but must be maintained in the State of Illinois. However, all original invoices or copies thereof covering purchases of cigarettes must be retained on the licensed premises for a period of 90 days after purchase, unless the Department has granted a waiver in response to a written request in cases in which records are kept at a central business location within the State of Illinois.* Prior to removing the books and records from the licensed premises, the retailer must notify the Department that the books and records will be kept at another location in Illinois and identify the location. Under these circumstances, books and records may be kept at that location in Illinois, but the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers and documents available at some point within Illinois for the purpose of inspection and audit as the Department may deem necessary.

B) *Books and records may be maintained out of state if access is available electronically. However, all original invoices or copies thereof covering purchases of cigarettes must be retained on the licensed premises for a period of 90 days after purchase, unless the Department has granted a waiver in response to a written request when records that are available electronically are maintained out of state.* [35 ILCS 130/11c]

C) The Department will grant a written waiver under subsections (a)(4)(A) and (B) when the retailer submits a letter to the Department containing:

1) the retailer's license number and FEIN;

2) the address or addresses of the licensed premises where records are currently maintained;

3) the address of the central location or out-of-state location where the retailer intends to maintain the records;

4) if the records are maintained out-of-state, an explanation of the process and system that will enable the Department or its duly authorized agents or employees to electronically access the records from the licensed premises on demand; and

5) an acknowledgement by the retailer that the Department, upon 30 days written notice, may revoke the waiver of the retailer for one or more licensed premises if the retailer:

A) fails to provide access in accordance with the requirements of the written waiver;

B) transfers or sells the licensed premises to another person; or

C) changes the process or system for providing access to the records electronically.

5) *For purposes of this Section, "records" means all data maintained by distributors, secondary distributors, manufacturers with manufacturer representatives, and retailers, including data on paper, microfilm, microfiche or any type of machine sensible data compilation.* [35 ILCS 130/11, 11a, 11b and 11c]

6) All books and records and other papers and documents which are required by the Act to be kept shall be kept in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees*. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the distributor, secondary distributor, manufacturer with authority to maintain a manufacturer representative, manufacturer representative's vehicle, or retailer without a search warrant and inspect the premises and the stock or packages of cigarettes and any vending devices in the premises to determine whether any of the provisions of the Act are being violated. If the agent or employee is denied free access or is hindered or interfered with in making the examination, the license of the distributor, secondary distributor, manufacturer representative or retailer shall be subject to revocation by the Department.* [35 ILCS 130/11, 11a, 11b and 11c]

7) *The books, records, papers and documents shall be preserved for a period of at least 3 years after the date of the documents, or the date of the entries appearing in the records, whichever is later, unless the Department, in writing, authorizes their destruction or disposal at an earlier date.* [35 ILCS 130/11, 11a, 11b and 11c]

b) Invoices

1) Every distributor who is required to procure a license under the Act and who purchases cigarettes for shipment into Illinois from a point outside this State shall procure invoices in duplicate covering each shipment, shall make the invoices available for inspection upon demand by a duly authorized agent or employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to the Department upon request.

2) *Every sales invoice issued by a licensed distributor to a retailer in this State shall contain the distributor's cigarette distributor license number unless the distributor has been granted a waiver by the Department. The distributor shall file a written request with the Department, and, if the Department determines that the distributor meets the conditions for a waiver, the Department will grant the waiver. The Department will grant a waiver in response to a written request when:*

A) *the distributor sells cigarettes only to licensed retailers that are wholly-owned by the distributor or owned by a wholly-owned subsidiary of the distributor;*

B) *the licensed retailer obtains cigarettes only from the distributor requesting the waiver; and*

C) *the distributor affixes the tax stamps to the original packages of cigarettes sold to the licensed retailer.* [35 ILCS 130/11]

3) *Any licensed distributor that ships or otherwise causes to be delivered unstamped original packages of cigarettes into, within, or from this State shall ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand style of the cigarettes so transported, provided that this* subsection (b)(3) *shall not be construed as to impose any requirement or liability upon any common or contract carrier.* [35 ILCS 130/3]

4) Each Illinois manufacturer of cigarettes in original packages that are contained inside a sealed transparent wrapper shall keep a copy of each invoice rendered by the manufacturer to any purchaser to whom the manufacturer delivered cigarettes (or caused cigarettes to be delivered) during the period covered by the manufacturer's return. Copies of invoices must be furnished to the Department upon request.

5) Each manufacturer who holds a permit under Section 4b of the Act shall keep a copy of each invoice rendered by the permittee to any purchaser to whom the permittee delivered cigarettes of the type covered by the permit (or caused cigarettes of the type covered by the permit to be delivered) in Illinois during the period covered by the return. Copies of invoices must be furnished to the Department upon request.

6) When a distributor who is licensed or has a permit under the Cigarette Tax Act sells cigarettes to a federal or foreign government agency or instrumentality under circumstances causing Illinois cigarette tax liability to be incurred (see Section 440.180), the distributor shall print, stamp or otherwise write substantially the following legend on the original and all copies of the invoice covering the cigarettes: "Illinois cigarette tax paid".

7) When a distributor who is licensed or has a permit under the Cigarette Tax Act sells Illinois tax-stamped or tax-imprinted original packages of cigarettes to any purchaser other than a federal or foreign government agency or instrumentality, the distributor's invoice not only shall state that the cigarette tax has been paid by the distributor, but also shall state the amount of the tax to the purchaser as a separate item from the selling price of the cigarettes.

8) When a permit holder or licensee under the Cigarette Use Tax Act (as distinguished from a licensee or permit holder under the Cigarette Tax Act) sells Illinois tax-stamped or tax-imprinted cigarettes to anyone other than a federal or foreign government agency or instrumentality, the distributor's invoice shall state the amount of the cigarette use tax to the purchaser as a separate item from the selling price of the cigarettes. (See Section 440.50.) However, when a person sells cigarettes to a federal or foreign government agency or instrumentality, the invoice should omit any reference to the cigarette use tax.

c) Penalties

1) *Any person required by the Act to keep records of any kind whatsoever, who shall fail to keep the records so required or who shall falsify those records, shall be guilty of a Class 4 felony. If a person fails to produce the records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the records so required. A person who is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in this subsection (c).* [35 ILCS 130/14].

2) *Any person who shall fail to safely maintain and preserve the records required by Sections 11, 11a, 11b, and 11c of the Act for a period of 3 years, as required in the Act, in such manner as to insure permanency and accessibility for inspection by the Department, shall be guilty of a business offense and may be fined up to $5,000.* [35 ILCS 130/15] (See subsection (a) for the requirements to maintain books and records.)

3) *The Department may, after notice and hearing as provided for by the Act, revoke, cancel or suspend the license of any distributor, secondary distributor, or retailer for any noncompliance with this subsection (c). No license so revoked shall be reissued to any such distributor, secondary distributor, or retailer within a period of 6 months after the date of the final determination of the revocation. Any distributor, secondary distributor, or retailer aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice in writing to the distributor, secondary distributor, or retailer requesting the hearing of the time and place fixed for the hearing. If a distributor, secondary distributor, or retailer 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, secondary distributor or retailer. 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, secondary distributor, or retailer. 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.* [35 ILCS 130/6]

4) *Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c 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 11, 11a, 11b, and 11c, 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 11, 11a, 11b, and 11c.* [35 ILCS 130/15a] (See subsections (a) and (b) for the requirements to maintain books and records.)

A) All books and records and other papers and documents that are required to be kept by the Act shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. (See subsection (a)(6).) A person that prohibits a duly authorized agent of the Department from inspecting books and records during usual business hours of the day has failed to produce books and records to the Department for inspection as required by this Section. The Department may issue a notice of penalty to that person pursuant to this subsection (c)(4). The Department is not required to provide the retailer with a written document request pursuant to this subsection (c)(4)(A) or provide additional time for the retailer to allow the inspection of the premises and the books and records at the location.

B) Except for retailers that are permitted to maintain books and records at another location pursuant to subsection (a)(4), distributors, secondary distributors, manufacturers with manufacturer representatives, and retailers must have a person at their place of business at all times during the usual business hours of the day who is authorized to produce books and records for inspection by the Department. It is presumed that a person working at a place of business has authority to permit the Department to inspect the books and records at the business location. If a retail establishment has only one employee working at the time of the request for the books and records who has no ownership interest in the establishment and is not authorized to produce books and records, the employee is required to advise the Department he or she does not have authority to provide books and records for inspection. The Department will not issue a notice of penalty to a retailer for failure to produce books and records if a person who is authorized to produce the books and records can be contacted by the employee and arrives at the place of business within 2 hours and produces the books and records. The Department may extend the period either on verbal or written request for good cause shown or on its own motion.

EXAMPLE 1: An authorized agent of the Department attempts to inspect the books and records of a cigarette retailer. The person at the store states the books and records are at the store but refuses to provide access to the books and records because the owner of the store told him not to let anyone have access to the records. The person states the owner is unavailable and cannot be contacted. The Department issues a notice of penalty.

EXAMPLE 2: An authorized agent of the Department attempts to inspect the books and records of a cigarette retailer. The person at the store states the books and records are at the store but refuses to provide access to the books and records because the owner of the store told him not to let anyone have access to the records. The person states he can call a person responsible for making the records available to the agent. The employee calls the person and the person arrives at the store in less than 2 hours and makes the books and records available to the agent. The Department will not issue a notice of penalty.

EXAMPLE 3: An authorized agent of the Department enters a retailer's place of business and requests to see the books and records. The person at the store states the books and records are maintained at another business location in Illinois. The agent cannot issue a notice of penalty unless the retailer failed to notify the Department that the books and records are located at another location pursuant to subsection (a)(4). However, the authorized agent of the Department does have authority to inspect the premises pursuant to subsection (a)(6).

C) If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the books and records so required. A person who is unable to rebut this presumption is subject to the penalty provided in this subsection (c)(4). Except as otherwise provided by subsection (c)(4)(A), if a request for the production of books and records has been made and not honored, prior to issuing a notice of penalty for a failure to maintain books and records or a failure to produce books and records, the Department must provide the taxpayer with a document request in writing. The written document request shall contain:

i) the name of the person receiving the request;

ii) the name of the business;

iii) the date of the original request or requests;

iv) the books and records requested;

v) the books and records that the person failed to produce;

vi) the number of days the person has to produce the books and records; and

vii) the name of the Department agent or employee and his or her contact information.

D) The Department agent or employee shall sign and date the written document request and personally provide or mail a copy of the written document request to the business at its last known address. The person shall have 30 days from the date of the written document request to produce the books and records the person has failed to produce. The Department may extend the period either on written request for good cause shown or on its own motion. If the person fails to produce the books and records within the time allotted, the Department may issue a notice of penalty pursuant to this subsection (c)(4) to the business at its last known address.

EXAMPLE: An authorized agent of the Department enters a convenience store and requests to see all the invoices for cigarettes purchased by the store in the last 60 days and all cash register receipts for sales made in the last 60 days. The person at the store produces the cash register receipts but states that they have no invoices for cigarettes purchased in the last 60 days. The agent completes a written document request, provides a copy to the person, and provides the person 30 days to produce the invoices. The agent returns 30 days later and requests the invoices. The person at the store cannot produce the invoices. The Department will issue a notice of penalty to the business at its last known address.

E) Any person receiving a notice of penalty may, within 20 days after the date on the notice, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to that person. If the request is made during an audit, the Department shall postpone the hearing until completion of the audit or inspection. 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.

F) The Department cannot impose more than one penalty for failure to produce books and records for a calendar month.

EXAMPLE 1: An authorized agent of the Department inspects a cigarette retailer and requests the records for the first week in April. The retailer does not produce the records. The agent subsequently requests the records for the remaining 3 weeks in April. The retailer does not produce the records. The agent can assess only one penalty for the month of April.

EXAMPLE 2: An authorized agent of the Department inspects a cigarette retailer and requests all purchase invoices for cigarettes for March. The invoices are not provided by the retailer and the Department issues a notice of penalty. The agent returns in May and ask to see all the cigarette sales receipts for March. The retailer fails to produce the sales receipts for March. The Department cannot issue a penalty for failure of the retailer to provide sales receipts for March because the agent has previously issued a notice of penalty for failure to produce the invoices for March.

G) A records request can cover multiple periods. The Department is authorized to issue a separate penalty for each period; e.g.*,* for a taxpayer that files returns monthly, the period is one month.

EXAMPLE: An authorized agent of the Department inspects a cigarette retailer and requests the books and records for the months of January through July. The retailer cannot produce the books and records for any of the months. The agent fills out a written document request, provides a copy of the document request to the person, and provides the person 30 business days to produce the invoices. The agent returns 30 business days later and requests the invoices. The person at the store cannot produce the invoices. The Department will issue a notice of penalty in the amount of $1,000 for the month of January and $3,000 for each of the months February through July, for a total penalty of $19,000.

(Source: Amended at 43 Ill. Reg. 8898, effective July 30, 2019)