

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 882

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending sections 7 and 8 (MCL 205.427 and 205.428), section 7
as amended by 2004 PA 164 and section 8 as amended by 2005 PA 238.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) Beginning May 1, 1994, a tax is levied on the sale
2 of tobacco products sold in this state as follows:

3 (a) Through July 31, 2002, for cigars, noncigarette smoking
4 tobacco, and smokeless tobacco, 16% of the wholesale price.

5 (b) For cigarettes, 37.5 mills per cigarette.

6 (c) Beginning August 1, 2002, for cigarettes, in addition to
7 the tax levied in subdivision (b), an additional 15 mills per
8 cigarette.

9 (d) Beginning August 1, 2002, for cigarettes, in addition to

1 the tax levied in subdivisions (b) and (c), an additional 10 mills
2 per cigarette.

3 (e) Beginning July 1, 2004, for cigarettes, in addition to the
4 tax levied in subdivisions (b), (c), and (d), an additional 37.5
5 mills per cigarette.

6 (f) Beginning August 1, 2002 and through June 30, 2004, for
7 cigars, noncigarette smoking tobacco, and smokeless tobacco, 20% of
8 the wholesale price.

9 (g) Beginning July 1, 2004, for cigars, noncigarette smoking
10 tobacco, and smokeless tobacco, 32% of the wholesale price.

11 (2) On or before the twentieth day of each calendar month,
12 every licensee under section 3 other than a retailer, ~~secondary~~
13 ~~wholesaler~~, unclassified acquirer licensed as a manufacturer, or
14 vending machine operator shall file a return with the department
15 stating the wholesale price of each tobacco product other than
16 cigarettes purchased, the quantity of cigarettes purchased, the
17 wholesale price charged for all tobacco products other than
18 cigarettes sold, the number of individual packages of cigarettes
19 and the number of cigarettes in those individual packages, and the
20 number and denominations of stamps affixed to individual packages
21 of cigarettes sold by the licensee for each place of business in
22 the preceding calendar month. The return shall also include the
23 number and denomination of unaffixed stamps in the possession of
24 the licensee at the end of the preceding calendar month.

25 Wholesalers shall also report accurate inventories of cigarettes,
26 both stamped and unstamped at the end of the preceding calendar
27 month. Wholesalers and unclassified acquirers shall also report

1 accurate inventories of affixed and unaffixed stamps by
2 denomination at the beginning and end of each calendar month and
3 all stamps acquired during the preceding calendar month. The return
4 shall be signed under penalty of perjury. The return shall be on a
5 form prescribed by the department and shall contain or be
6 accompanied by any further information the department requires.

7 (3) To cover the cost of expenses incurred in the
8 administration of this act, at the time of the filing of the
9 return, the licensee shall pay to the department the tax levied in
10 subsection (1) for tobacco products sold during the calendar month
11 covered by the return, less compensation equal to both of the
12 following:

13 (a) One percent of the total amount of the tax due on tobacco
14 products sold other than cigarettes.

15 (b) Through July 31, 2002, 1.25% of the total amount of the
16 tax due on cigarettes sold.

17 (c) Beginning August 1, 2002, 1.5% of the total amount of the
18 tax due on cigarettes sold.

19 (4) Every licensee and retailer who, on August 1, 2002, has on
20 hand for sale any cigarettes upon which a tax has been paid
21 pursuant to subsection (1)(b) shall file a complete inventory of
22 those cigarettes before September 1, 2002 and shall pay to the
23 department at the time of filing this inventory a tax equal to the
24 difference between the tax imposed in subsection (1)(b), (c), and
25 (d) and the tax that has been paid under subsection (1)(b). Every
26 licensee and retailer who, on August 1, 2002, has on hand for sale
27 any cigars, noncigarette smoking tobacco, or smokeless tobacco upon

1 which a tax has been paid pursuant to subsection (1)(a) shall file
2 a complete inventory of those cigars, noncigarette smoking tobacco,
3 and smokeless tobacco before September 1, 2002 and shall pay to the
4 department at the time of filing this inventory a tax equal to the
5 difference between the tax imposed in subsection (1)(f) and the tax
6 that has been paid under subsection (1)(a).

7 (5) Every licensee and retailer who, on July 1, 2004, has on
8 hand for sale any cigarettes upon which a tax has been paid
9 pursuant to subsection (1)(b), (c), and (d) shall file a complete
10 inventory of those cigarettes before August 1, 2004 and shall pay
11 to the department at the time of filing this inventory a tax equal
12 to the difference between the tax imposed in subsection (1)(b),
13 (c), (d), and (e) and the tax that has been paid under subsection
14 (1)(b), (c), and (d). Every licensee and retailer who, on July 1,
15 2004, has on hand for sale any cigars, noncigarette smoking
16 tobacco, or smokeless tobacco upon which a tax has been paid
17 pursuant to subsection (1)(f) shall file a complete inventory of
18 those cigars, noncigarette smoking tobacco, and smokeless tobacco
19 before August 1, 2004 and shall pay to the department at the time
20 of filing this inventory a tax equal to the difference between the
21 tax imposed in subsection (1)(g) and the tax that has been paid
22 under subsection (1)(f). The proceeds derived under this subsection
23 shall be credited to the medicaid benefits trust fund created under
24 section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

25 (6) The department may require the payment of the tax imposed
26 by this act upon the importation or acquisition of a tobacco
27 product. A tobacco product for which the tax under this act has

1 once been imposed and that has not been refunded if paid is not
2 subject upon a subsequent sale to the tax imposed by this act.

3 (7) An abatement or refund of the tax provided by this act may
4 be made by the department for causes the department considers
5 expedient. The department shall certify the amount and the state
6 treasurer shall pay that amount out of the proceeds of the tax.

7 (8) A person liable for the tax may reimburse itself by adding
8 to the price of the tobacco products an amount equal to the tax
9 levied under this act.

10 (9) A wholesaler, unclassified acquirer, or other person shall
11 not sell or transfer any unaffixed stamps acquired by the
12 wholesaler or unclassified acquirer from the department. A
13 wholesaler or unclassified acquirer who has any unaffixed stamps on
14 hand at the time its license is revoked or expires, or at the time
15 it discontinues the business of selling cigarettes, shall return
16 those stamps to the department. The department shall refund the
17 value of the stamps, less the appropriate discount paid.

18 (10) If the wholesaler or unclassified acquirer has unsalable
19 packs returned from a retailer, secondary wholesaler, vending
20 machine operator, wholesaler, or unclassified acquirer with stamps
21 affixed, the department shall refund the amount of the tax less the
22 appropriate discount paid. If the wholesaler or unclassified
23 acquirer has unaffixed unsalable stamps, the department shall
24 exchange with the wholesaler or unclassified acquirer new stamps in
25 the same quantity as the unaffixed unsalable stamps. An application
26 for refund of the tax shall be filed on a form prescribed by the
27 department for that purpose, within 4 years from the date the

1 stamps were originally acquired from the department. A wholesaler
2 or unclassified acquirer shall make available for inspection by the
3 department the unused or spoiled stamps and the stamps affixed to
4 unsalable individual packages of cigarettes. The department may, at
5 its own discretion, witness and certify the destruction of the
6 unused or spoiled stamps and unsalable individual packages of
7 cigarettes that are not returnable to the manufacturer. The
8 wholesaler or unclassified acquirer shall provide certification
9 from the manufacturer for any unsalable individual packages of
10 cigarettes that are returned to the manufacturer.

11 (11) On or before the twentieth of each month, each
12 manufacturer shall file a report with the department listing all
13 sales of tobacco products to wholesalers and unclassified acquirers
14 during the preceding calendar month and any other information the
15 department finds necessary for the administration of this act. This
16 report shall be in the form and manner specified by the department.

17 (12) Each wholesaler or unclassified acquirer shall submit to
18 the department an unstamped cigarette sales report on or before the
19 twentieth day of each month covering the sale, delivery, or
20 distribution of unstamped cigarettes during the preceding calendar
21 month to points outside of Michigan. A separate schedule shall be
22 filed for each state, country, or province into which shipments are
23 made. For purposes of the report described in this subsection,
24 "unstamped cigarettes" means individual packages of cigarettes that
25 do not bear a Michigan stamp. The department may provide the
26 information contained in this report to a proper officer of another
27 state, country, or province reciprocating in this privilege.

1 Sec. 8. (1) A person, other than a licensee, who is in control
2 or in possession of a tobacco product contrary to this act, who
3 after August 31, 1998 is in control or in possession of an
4 individual package of cigarettes without a stamp in violation of
5 this act, or who offers to sell or does sell a tobacco product to
6 another for purposes of resale without being licensed to do so
7 under this act, shall be personally liable for the tax imposed by
8 this act, plus a penalty of 500% of the amount of tax due under
9 this act.

10 (2) The department may permit a representative of a licensed
11 manufacturer of tobacco products whose duties require travel in
12 this state to transport up to 138,000 cigarettes, of which not more
13 than 36,000 cigarettes may bear no tax indicia or the tax indicia
14 of another state. All 138,000 cigarettes must bear the stamp
15 approved by the department or the tax indicia of another state, if
16 any. The total value of tobacco products, excluding cigarettes,
17 carried by a representative shall not exceed a wholesale value of
18 \$5,000.00. A manufacturer shall notify the department of the
19 manufacturer's representatives that it currently employs who carry
20 cigarettes or tobacco products other than cigarettes in performing
21 work duties in this state. The manufacturer shall maintain a record
22 of each transaction by the manufacturer's representative for a
23 period of 4 years immediately following the transaction and shall
24 produce the records upon request of the state treasurer or the
25 state treasurer's authorized agent. Each record shall identify the
26 quantity and identity of the tobacco products, detail whether
27 exchanged, received, removed, or otherwise disposed of and the

1 identity of the retailer, wholesaler, secondary wholesaler, vending
2 machine operator, or unclassified acquirer involved. The
3 representative of the manufacturer shall provide a copy of the
4 record to the retailer, wholesaler, secondary wholesaler, vending
5 machine operator, or unclassified acquirer at the time of the
6 exchange or disposal. The retailer, wholesaler, secondary
7 wholesaler, vending machine operator, or unclassified acquirer
8 shall retain the copy of the record in the same place and for the
9 same time period as other records required by this section. A
10 representative shall not exchange, or otherwise dispose of, within
11 this state tobacco products bearing the tax indicia of another
12 state or receive tobacco products bearing the tax indicia of
13 another state from retailers located within this state. A
14 representative who sells, exchanges, or otherwise disposes of
15 cigarettes or tobacco products other than cigarettes that do not
16 bear the stamp or other marking required by the department or
17 sells, exchanges, or otherwise disposes of cigarettes or tobacco
18 products other than cigarettes bearing the tax indicia of another
19 state is guilty of a felony, punishable by a fine of not more than
20 \$5,000.00 or imprisonment for not more than 5 years, or both.

21 (3) A person who possesses, acquires, transports, or offers
22 for sale contrary to this act 3,000 or more cigarettes, tobacco
23 products other than cigarettes with an aggregate wholesale price of
24 \$250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or
25 more counterfeit cigarette papers, 3,000 or more gray market
26 cigarettes, or 3,000 or more gray market cigarette papers is guilty
27 of a felony, punishable by a fine of not more than \$50,000.00 or

1 imprisonment for not more than 5 years, or both.

2 (4) A person who possesses, acquires, transports, or offers
3 for sale contrary to this act 1,200 or more, but not more than
4 2,999, cigarettes, tobacco products other than cigarettes with an
5 aggregate wholesale value of \$100.00 or more but less than \$250.00,
6 or 1,200 or more, but not more than 2,999, counterfeit cigarettes,
7 counterfeit cigarette papers, gray market cigarettes, or gray
8 market cigarette papers is guilty of a misdemeanor punishable by a
9 fine of not more than \$5,000.00 or imprisonment of not more than 1
10 year, or both.

11 (5) A person who violates a provision of this act for which a
12 criminal punishment is not otherwise provided is guilty of a
13 misdemeanor, punishable by a fine of not more than \$1,000.00 or 5
14 times the retail value of the tobacco products involved, whichever
15 is greater, or imprisonment for not more than 1 year, or both. **THIS**
16 **SUBSECTION DOES NOT APPLY TO CONDUCT DESCRIBED IN SUBSECTION (12).**

17 (6) A person who manufactures, possesses, or uses a stamp or
18 manufactures, possesses, or uses a counterfeit stamp or writing or
19 device intended to replicate a stamp without authorization of the
20 department, a licensee who purchases or obtains a stamp from any
21 person other than the department, or who falsifies a manufacturer's
22 label on cigarettes, counterfeit cigarettes, gray market cigarette
23 papers, or counterfeit cigarette papers is guilty of a felony and
24 shall be punished by imprisonment for not less than 1 year or more
25 than 10 years and may be punished by a fine of not more than
26 \$50,000.00.

27 (7) A person who falsely makes, counterfeits, or alters a

1 license, vending machine disc, or marker, or who purchases or
2 receives a false or altered license, vending machine disc, or
3 marker, or who assists in or causes to be made a false or altered
4 license, vending machine disc, or marker, or who possesses a device
5 used to forge, alter, or counterfeit a license, vending machine
6 disc, or marker is guilty of a felony punishable by a fine of not
7 more than \$5,000.00 or imprisonment for not more than 5 years, or
8 both. A person who alters or falsifies records or markings required
9 under this act is guilty of a felony punishable by a fine of not
10 more than \$5,000.00 or imprisonment for not more than 5 years, or
11 both.

12 (8) The attorney general has concurrent power with the
13 prosecuting attorneys of the state to enforce this act.

14 (9) At the request of the department or its duly authorized
15 agent, the state police and all local police authorities shall
16 enforce the provisions of this act.

17 (10) The department does not have the authority to enforce the
18 provisions of this section regarding gray market cigarette papers
19 or counterfeit cigarette papers.

20 (11) A PERSON WHO KNOWINGLY POSSESSES, ACQUIRES, TRANSPORTS,
21 OR OFFERS FOR SALE CONTRARY TO THIS ACT 600 OR MORE, BUT NOT MORE
22 THAN 1,199, CIGARETTES, TOBACCO PRODUCTS OTHER THAN CIGARETTES WITH
23 AN AGGREGATE WHOLESALE VALUE OF \$50.00 OR MORE BUT LESS THAN
24 \$100.00, OR 600 OR MORE, BUT NOT MORE THAN 1,199, COUNTERFEIT
25 CIGARETTES, COUNTERFEIT CIGARETTE PAPERS, GRAY MARKET CIGARETTES,
26 OR GRAY MARKET CIGARETTE PAPERS IS GUILTY OF A MISDEMEANOR
27 PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000.00 OR IMPRISONMENT OF

1 NOT MORE THAN 90 DAYS, OR BOTH.

2 (12) A PERSON SHALL NOT POSSESS, ACQUIRE, TRANSPORT, OR OFFER
3 FOR SALE CONTRARY TO THIS ACT LESS THAN 600 CIGARETTES, TOBACCO
4 PRODUCTS OTHER THAN CIGARETTES WITH AN AGGREGATE WHOLESALE VALUE OF
5 LESS THAN \$50.00, OR LESS THAN 600 COUNTERFEIT CIGARETTES,
6 COUNTERFEIT CIGARETTE PAPERS, GRAY MARKET CIGARETTES, OR GRAY
7 MARKET CIGARETTE PAPERS. A PERSON WHO POSSESSES, ACQUIRES,
8 TRANSPORTS, OR OFFERS FOR SALE CONTRARY TO THIS ACT 180 OR MORE,
9 BUT NOT MORE THAN 599, CIGARETTES, TOBACCO PRODUCTS OTHER THAN
10 CIGARETTES WITH AN AGGREGATE WHOLESALE VALUE OF \$25.00 OR MORE BUT
11 LESS THAN \$50.00, OR 180 OR MORE, BUT NOT MORE THAN 599,
12 COUNTERFEIT CIGARETTES, COUNTERFEIT CIGARETTE PAPERS, GRAY MARKET
13 CIGARETTES, OR GRAY MARKET CIGARETTE PAPERS IS RESPONSIBLE FOR A
14 STATE CIVIL INFRACTION AND MAY BE ORDERED TO PAY A CIVIL FINE OF
15 NOT MORE THAN \$100.00.