

HOUSE BILL No. 5355

September 10, 2009, Introduced by Rep. Cushingberry and referred to the Committee on Tax Policy.

A bill to amend 1993 PA 327, entitled "Tobacco products tax act," by amending sections 2 and 7 (MCL 205.422 and 205.427), section 2 as amended by 2005 PA 238 and section 7 as amended by 2008 PA 458.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Cigarette" means a roll for smoking made wholly or in
3 part of tobacco, irrespective of size or shape and irrespective of
4 the tobacco being flavored, adulterated, or mixed with any other
5 ingredient, which roll has a wrapper or cover made of paper or any
6 other material. Cigarette does not include cigars **AND LITTLE**
7 **CIGARS.**

8 (b) "Commissioner" means the state treasurer.

9 (c) "Counterfeit cigarette" means a cigarette in an individual
10 package of cigarettes or other container with a false manufacturing

1 label or a cigarette in an individual package of cigarettes or
2 other container with a counterfeit stamp.

3 (d) "Counterfeit cigarette paper" means a cigarette paper with
4 a false manufacturing label or that has not been printed,
5 manufactured, or made by authority of the trademark owner.

6 (e) "Counterfeit stamp" means any stamp, label, or print,
7 indicium, or character, that evidences, or purports to evidence,
8 the payment of any tax levied under this act and that has not been
9 printed, manufactured, or made by authority of the department as
10 provided in this act and has not been issued, sold, or circulated
11 by the department.

12 (f) "Department" means the department of treasury.

13 (g) "Financially sound" means a determination by the
14 department that the wholesaler or unclassified acquirer is able to
15 pay for its stamps in the ordinary course of business based on
16 criteria including, but not limited to, all of the following:

17 (i) Past filing and payment history with the department.

18 (ii) Outstanding liabilities.

19 (iii) Review of current financial statements including, but not
20 limited to, balance sheets and income statements.

21 (iv) Duration that the wholesaler or unclassified acquirer has
22 been licensed under this act.

23 (h) "Gray market cigarette" means any cigarette the package of
24 which bears any statement, label, stamp, sticker, or notice
25 indicating that the manufacturer did not intend the cigarettes to
26 be sold, distributed, or used in the United States, including, but
27 not limited to, a label stating "For Export Only", "U.S. Tax

1 Exempt", "For Use Outside U.S.", or similar wording.

2 (i) "Gray market cigarette paper" means any cigarette paper
3 the package of which bears any statement, label, stamp, sticker, or
4 notice indicating that the manufacturer did not intend the
5 cigarette papers to be sold, distributed, or used in the United
6 States, including, but not limited to, a label stating "For Export
7 Only", "U.S. Tax Exempt", "For Use Outside U.S.", "For Use in
8 _____ (another country) Only", or similar wording.

9 (j) "Individual package" means an individual packet or pack
10 used to contain or to convey cigarettes to the consumer. Individual
11 package does not include cartons, cases, or shipping or storage
12 containers that contain smaller packaging units of cigarettes.

13 (k) "Licensee" means a person licensed under this act.

14 (l) **"LITTLE CIGAR" MEANS ANY ROLL FOR SMOKING MADE WHOLLY OR IN**
15 **PART OF TOBACCO THAT IS NOT A CIGARETTE, THAT IS WRAPPED IN ANY**
16 **SUBSTANCE CONTAINING TOBACCO, OTHER THAN NATURAL LEAF TOBACCO**
17 **WRAPPER, AND THAT WEIGHS 4-1/2 POUNDS OR LESS PER 1,000.**

18 (M) ~~(l)~~ "Manufacturer" means a person who manufactures or
19 produces a tobacco product.

20 (N) **"MOIST SNUFF" MEANS ANY FINELY CUT, GROUND, OR POWDERED**
21 **TOBACCO THAT IS INTENDED TO BE SMOKED BUT SHALL NOT INCLUDE ANY**
22 **FINELY CUT, GROUND, OR POWDERED TOBACCO THAT IS INTENDED TO BE**
23 **PLACED IN THE NASAL CAVITY.**

24 (O) ~~(m)~~ "Noncigarette smoking tobacco" means tobacco sold in
25 loose or bulk form that is intended for consumption by smoking and
26 includes roll-your-own cigarette tobacco **AND MOIST SNUFF.**

27 (P) ~~(n)~~ "Person" means an individual, partnership, fiduciary,

1 association, limited liability company, corporation, or other legal
2 entity.

3 (Q) ~~(e)~~—"Place of business" means a place where a tobacco
4 product is sold or where a tobacco product is brought or kept for
5 the purpose of sale or consumption, including a vessel, airplane,
6 train, or vending machine.

7 (R) ~~(p)~~—"Retailer" means a person other than a transportation
8 company who operates a place of business for the purpose of making
9 sales of a tobacco product at retail.

10 (S) ~~(q)~~—"Sale" means a transaction by which the ownership of
11 tangible personal property is transferred for consideration and
12 applies also to use, gifts, exchanges, barter, and theft.

13 (T) ~~(r)~~—"Secondary wholesaler" means a person who sells a
14 tobacco product for resale, who purchases a tobacco product from a
15 wholesaler or unclassified acquirer licensed under this act, and
16 who maintains an established place of business in this state where
17 a substantial portion of the business is the sale of tobacco
18 products and related merchandise at wholesale, and where at all
19 times a substantial stock of tobacco products and related
20 merchandise is available to retailers for resale.

21 (U) ~~(s)~~—"Smokeless tobacco" means snuff, chewing tobacco, and
22 any other tobacco that is intended to be consumed by means other
23 than smoking.

24 (V) ~~(t)~~—"Stamp" means a distinctive character, indication, or
25 mark, as determined by the department, attached or affixed to an
26 individual package of cigarettes by mechanical device or other
27 means authorized by the department to indicate that the tax imposed

1 under this act has been paid.

2 (W) ~~(u)~~—"Stamping agent" means a wholesaler or unclassified
3 acquirer other than a manufacturer who is licensed and authorized
4 by the department to affix stamps to individual packages of
5 cigarettes on behalf of themselves and other wholesalers or
6 unclassified acquirers other than manufacturers.

7 (X) ~~(v)~~—"Tobacco product" means cigarettes, cigars, **LITTLE**
8 **CIGARS**, noncigarette smoking tobacco, or smokeless tobacco.

9 (Y) ~~(w)~~—"Transportation company" means a person operating, or
10 supplying to common carriers, cars, boats, or other vehicles for
11 the transportation or accommodation of passengers and engaged in
12 the sale of a tobacco product at retail.

13 (Z) ~~(x)~~—"Transporter" means a person importing or transporting
14 into this state, or transporting in this state, a tobacco product
15 obtained from a source located outside this state, or from any
16 person not duly licensed under this act. Transporter does not
17 include an interstate commerce carrier licensed by the interstate
18 commerce commission to carry commodities in interstate commerce, or
19 a licensee maintaining a warehouse or place of business outside of
20 this state if the warehouse or place of business is licensed under
21 this act.

22 (AA) ~~(y)~~—"Unclassified acquirer" means a person, except a
23 transportation company or a purchaser at retail from a retailer
24 licensed under the general sales tax act, 1933 PA 167, MCL 205.51
25 to 205.78, who imports or acquires a tobacco product from a source
26 other than a wholesaler or secondary wholesaler licensed under this
27 act for use, sale, or distribution. Unclassified acquirer also

1 means a person who receives cigars, **LITTLE CIGARS**, noncigarette
2 smoking tobacco, or smokeless tobacco directly from a manufacturer
3 licensed under this act or from another source outside this state,
4 which source is not licensed under this act. An unclassified
5 acquirer does not include a wholesaler.

6 (BB) ~~(z)~~—"Vending machine operator" means a person who
7 operates 1 or more vending machines for the sale of a tobacco
8 product and who purchases a tobacco product from a manufacturer,
9 licensed wholesaler, or secondary wholesaler.

10 (CC) ~~(aa)~~—"Wholesale price" means the actual price paid for a
11 tobacco product, including any tax, by a wholesaler or unclassified
12 acquirer to a manufacturer, excluding any discounts or reductions.

13 (DD) ~~(bb)~~—"Wholesaler" means a person who purchases all or
14 part of his or her tobacco products from a manufacturer, who sells
15 75% or more of those tobacco products to others for resale, and who
16 maintains an established business where substantially all of the
17 business is the sale of tobacco products or cigarettes and related
18 merchandise at wholesale and where at all times a substantial stock
19 of tobacco products and related merchandise is available to
20 retailers for resale. Wholesaler includes a chain of stores
21 retailing a tobacco product to the consumer if 75% of its stock of
22 tobacco products is purchased directly from the manufacturer.

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

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

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

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

4 (d) Beginning August 1, 2002, for cigarettes, in addition to
5 the tax levied in subdivisions (b) and (c), an additional 10 mills
6 per cigarette.

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

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

13 (g) Beginning July 1, 2004, for cigars, **LITTLE CIGARS**,
14 noncigarette smoking tobacco, and smokeless tobacco, 32% of the
15 wholesale price.

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

1 unaffixed stamps in the possession of the licensee at the end of
2 the preceding calendar month. Wholesalers shall also report
3 accurate inventories of cigarettes, both stamped and unstamped at
4 the end of the preceding calendar month. Wholesalers and
5 unclassified acquirers shall also report accurate inventories of
6 affixed and unaffixed stamps by denomination at the beginning and
7 end of each calendar month and all stamps acquired during the
8 preceding calendar month. The return shall be signed under penalty
9 of perjury. The return shall be on a form prescribed by the
10 department and shall contain or be accompanied by any further
11 information the department requires.

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

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

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

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

24 (4) Every licensee and retailer who, on August 1, 2002, has on
25 hand for sale any cigarettes upon which a tax has been paid
26 pursuant to subsection (1)(b) shall file a complete inventory of
27 those cigarettes before September 1, 2002 and shall pay to the

1 department at the time of filing this inventory a tax equal to the
2 difference between the tax imposed in subsection (1)(b), (c), and
3 (d) and the tax that has been paid under subsection (1)(b). Every
4 licensee and retailer who, on August 1, 2002, has on hand for sale
5 any cigars, noncigarette smoking tobacco, or smokeless tobacco upon
6 which a tax has been paid pursuant to subsection (1)(a) shall file
7 a complete inventory of those cigars, noncigarette smoking tobacco,
8 and smokeless tobacco before September 1, 2002 and shall pay to the
9 department at the time of filing this inventory a tax equal to the
10 difference between the tax imposed in subsection (1)(f) and the tax
11 that has been paid under subsection (1)(a).

12 (5) Every licensee and retailer who, on July 1, 2004, has on
13 hand for sale any cigarettes upon which a tax has been paid
14 pursuant to subsection (1)(b), (c), and (d) shall file a complete
15 inventory of those cigarettes before August 1, 2004 and shall pay
16 to the department at the time of filing this inventory a tax equal
17 to the difference between the tax imposed in subsection (1)(b),
18 (c), (d), and (e) and the tax that has been paid under subsection
19 (1)(b), (c), and (d). Every licensee and retailer who, on July 1,
20 2004, has on hand for sale any cigars, noncigarette smoking
21 tobacco, or smokeless tobacco upon which a tax has been paid
22 pursuant to subsection (1)(f) shall file a complete inventory of
23 those cigars, noncigarette smoking tobacco, and smokeless tobacco
24 before August 1, 2004 and shall pay to the department at the time
25 of filing this inventory a tax equal to the difference between the
26 tax imposed in subsection (1)(g) and the tax that has been paid
27 under subsection (1)(f). The proceeds derived under this subsection

1 shall be credited to the medicaid benefits trust fund created under
2 section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

3 (6) The department may require the payment of the tax imposed
4 by this act upon the importation or acquisition of a tobacco
5 product. A tobacco product for which the tax under this act has
6 once been imposed and that has not been refunded if paid is not
7 subject upon a subsequent sale to the tax imposed by this act.

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

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

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

23 (10) If the wholesaler or unclassified acquirer has unsalable
24 packs returned from a retailer, secondary wholesaler, vending
25 machine operator, wholesaler, or unclassified acquirer with stamps
26 affixed, the department shall refund the amount of the tax less the
27 appropriate discount paid. If the wholesaler or unclassified

1 acquirer has unaffixed unsalable stamps, the department shall
2 exchange with the wholesaler or unclassified acquirer new stamps in
3 the same quantity as the unaffixed unsalable stamps. An application
4 for refund of the tax shall be filed on a form prescribed by the
5 department for that purpose, within 4 years from the date the
6 stamps were originally acquired from the department. A wholesaler
7 or unclassified acquirer shall make available for inspection by the
8 department the unused or spoiled stamps and the stamps affixed to
9 unsalable individual packages of cigarettes. The department may, at
10 its own discretion, witness and certify the destruction of the
11 unused or spoiled stamps and unsalable individual packages of
12 cigarettes that are not returnable to the manufacturer. The
13 wholesaler or unclassified acquirer shall provide certification
14 from the manufacturer for any unsalable individual packages of
15 cigarettes that are returned to the manufacturer.

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

22 (12) Each wholesaler or unclassified acquirer shall submit to
23 the department an unstamped cigarette sales report on or before the
24 twentieth day of each month covering the sale, delivery, or
25 distribution of unstamped cigarettes during the preceding calendar
26 month to points outside of Michigan. A separate schedule shall be
27 filed for each state, country, or province into which shipments are

1 made. For purposes of the report described in this subsection,
2 "unstamped cigarettes" means individual packages of cigarettes that
3 do not bear a Michigan stamp. The department may provide the
4 information contained in this report to a proper officer of another
5 state, country, or province reciprocating in this privilege.