

# SENATE BILL No. 476

September 10, 2015, Introduced by Senators SCHMIDT, ANANICH, STAMAS, HANSEN, PROOS, BRANDENBURG, KOWALL, HORN and KNEZEK and referred to the Committee on Commerce.

A bill to amend 1993 PA 327, entitled "Tobacco products tax act," by amending sections 7 and 11 (MCL 205.427 and 205.431), section 7 as amended by 2014 PA 298 and section 11 as amended by 2012 PA 325.

**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  
10 the tax levied in subdivisions (b) and (c), an additional 10 mills

1 per cigarette.

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

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

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

10 However, beginning November 1, 2012, ~~and through October 31, 2016,~~  
11 the amount of tax levied under this subdivision on cigars shall not  
12 exceed 50 cents per individual cigar.

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

1 the end of the preceding calendar month. Wholesalers and  
2 unclassified acquirers shall also report accurate inventories of  
3 affixed and unaffixed stamps by denomination at the beginning and  
4 end of each calendar month and all stamps acquired during the  
5 preceding calendar month. The return shall be signed under penalty  
6 of perjury. The return shall be on a form prescribed by the  
7 department and shall contain or be accompanied by any further  
8 information the department requires. The department may also  
9 require licensees to report cigarette acquisition, purchase, and  
10 sales information in other formats and frequency.

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

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

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

20 (c) Beginning August 1, 2002, 1.5% of the total amount of the  
21 tax due on cigarettes sold and, beginning on June 20, 2012, for  
22 sales of untaxed cigarettes to Indian tribes in this state, an  
23 amount equal to 1.5% of the total amount of the tax due on those  
24 cigarettes sold as if those cigarette sales were taxable sales  
25 under this act.

26 (d) Beginning on the first calendar month following the  
27 implementation of the use of digital stamps as provided in section

1 5a(2), for licensees who are stamping agents, 0.5% of the total  
2 amount of the tax due on cigarettes sold and, for sales of untaxed  
3 cigarettes to Indian tribes in this state, 0.5% of the total amount  
4 of the tax due on those cigarettes sold as if those cigarette sales  
5 were taxable sales under this act, until the stamping agent is  
6 compensated in an amount equal to the direct cost actually incurred  
7 by the stamping agent for the purchase of upgrades to technology  
8 and equipment, excluding the equipment reimbursed under subdivision  
9 (e), that are necessary to affix the digital stamp as determined by  
10 the department. Compensation under this subdivision may also be  
11 claimed by a stamping agent for the direct costs actually incurred  
12 by the stamping agent, as determined by the department and  
13 reflected in the net purchase price, for the initial and 1-time  
14 purchase of case packers or similar machines or conveyors as  
15 follows:

16 (i) Case packers or similar machines to be used exclusively to  
17 repack cigarette cartons into case boxes after digital stamps have  
18 been applied by eligible equipment to the individual packages of  
19 cigarettes contained within those cigarette cartons. Compensation  
20 under this subparagraph may only be claimed by a stamping agent if  
21 the case packers or similar machines are in addition to, and not a  
22 replacement for, 1 or more case packers or similar machines used in  
23 connection with cigarette stamping machines which do not use the  
24 digital stamp authorized under this act.

25 (ii) Conveyors to be used exclusively for that portion of a  
26 cigarette stamping line that is necessary for and dedicated to  
27 cigarette stamping operations using eligible equipment to affix

1 digital stamps to individual packages of cigarettes to be sold in  
2 this state. Compensation under this subparagraph may only be  
3 claimed by a stamping agent if the cigarette stamping line served  
4 by the conveyors is in addition to 1 or more distinct and existing  
5 cigarette stamping lines using stamping machines which do not use  
6 the digital stamp authorized under this act and that compensation  
7 shall not exceed a total of 50% of the amount reimbursed under  
8 subdivision (e) for any particular stamping agent.

9 (iii) Compensation under subparagraphs (i) and (ii) shall also  
10 include any applicable sales or use taxes paid, and shipping and  
11 crating charges actually incurred, by the stamping agent in  
12 connection with the purchase, but shall exclude any other costs  
13 incurred by the stamping agent not otherwise expressly provided for  
14 in this subdivision, including, but not limited to, charges for  
15 installation and ongoing maintenance.

16 (e) Beginning in the first calendar month following the  
17 implementation of the use of digital stamps as provided in section  
18 5a(2) and continuing for the immediately succeeding 17 months, for  
19 licensees who are stamping agents, reimbursement of direct costs  
20 actually incurred by the stamping agent, as determined by the  
21 department, for the initial purchase of eligible equipment in an  
22 amount equal to 5.55% of the total net purchase price of the  
23 eligible equipment necessary to affix the digital stamp. The  
24 reimbursement provided under this subdivision shall also include  
25 reimbursement for any applicable sales or use taxes paid and  
26 shipping and crating charges actually incurred by the stamping  
27 agent for the initial purchase of eligible equipment, but shall

1 exclude reimbursement for any other costs incurred by the stamping  
2 agent not otherwise expressly provided for in this subdivision,  
3 including, but not limited to, charges for installation and ongoing  
4 maintenance related to eligible equipment. A stamping agent may  
5 only receive reimbursement under this subdivision to the extent  
6 that the eligible equipment purchased by the stamping agent does  
7 not exceed the total number of the stamping agent's existing  
8 equipment as certified by the stamping agent on a form prescribed  
9 by the department.

10 (f) Beginning in the first calendar month following the  
11 implementation of the use of digital stamps as provided in section  
12 5a(2), for licensees who are stamping agents, reimbursement of  
13 qualified equipment costs actually incurred by the stamping agent,  
14 not otherwise compensated or reimbursed under subdivision (d) or  
15 (e), as determined by the department. The reimbursement provided  
16 under this subdivision shall not exceed \$60,000.00 for all stamping  
17 agents combined.

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

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

6 (5) Every licensee and retailer who, on July 1, 2004, has on  
7 hand for sale any cigarettes upon which a tax has been paid  
8 pursuant to subsection (1)(b), (c), and (d) shall file a complete  
9 inventory of those cigarettes before August 1, 2004 and shall pay  
10 to the department at the time of filing this inventory a tax equal  
11 to the difference between the tax imposed in subsection (1)(b),  
12 (c), (d), and (e) and the tax that has been paid under subsection  
13 (1)(b), (c), and (d). Every licensee and retailer who, on July 1,  
14 2004, has on hand for sale any cigars, noncigarette smoking  
15 tobacco, or smokeless tobacco upon which a tax has been paid  
16 pursuant to subsection (1)(f) shall file a complete inventory of  
17 those cigars, noncigarette smoking tobacco, and smokeless tobacco  
18 before August 1, 2004 and shall pay to the department at the time  
19 of filing this inventory a tax equal to the difference between the  
20 tax imposed in subsection (1)(g) and the tax that has been paid  
21 under subsection (1)(f). The proceeds derived under this subsection  
22 shall be credited to the Michigan ~~medicaid~~ **MEDICAID** benefits trust  
23 fund created under section 5 of the Michigan trust fund act, 2000  
24 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 this state. 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 (13) As used in subsection (3):

2 (a) "Eligible equipment" means a cigarette tax stamping  
3 machine that meets all of the following conditions:

4 (i) Was purchased by a stamping agent who was licensed as a  
5 stamping agent as of December 31, 2011.

6 (ii) Enables the stamping agent to affix digital stamps to  
7 individual packages of cigarettes in accordance with the  
8 requirements under section 6a(2).

9 (iii) Was purchased to be used for the primary purpose of  
10 permitting the stamping agent to affix digital stamps to individual  
11 packages of cigarettes to be sold in this state following the  
12 implementation of the use of digital stamps as provided in section  
13 5a(2).

14 (b) "Existing equipment" means a cigarette tax stamping  
15 machine that meets all of the following conditions:

16 (i) Was owned by a person who was licensed as a stamping agent  
17 as of December 31, 2011.

18 (ii) Was a cigarette tax stamping machine used prior to  
19 January 1, 2012 by the stamping agent to apply stamps using stamp  
20 rolls of 30,000 stamps.

21 (c) "Qualified equipment" means equipment that was placed in  
22 service by a stamping agent that included conveyors and additional  
23 associated electrical line and compressed air line before August  
24 15, 2014 in connection with the implementation of a digital  
25 stamping line under a pilot program with the department as  
26 determined by the department. Qualified equipment does not include  
27 the cost of installation of a conveyor.

1           Sec. 11. (1) A person, either as principal or agent, shall not  
2 sell or solicit a sale of a tobacco product to be shipped, mailed,  
3 or otherwise sent or brought into the state, to a person not a  
4 licensed manufacturer, licensed wholesaler, licensed secondary  
5 wholesaler, licensed vending machine operator, licensed  
6 unclassified acquirer, licensed transporter, or licensed  
7 transportation company, unless the tobacco product is to be sold to  
8 or through a licensed wholesaler.

9           (2) All sales conducted through the ~~internet~~, **INTERNET**, by  
10 telephone, or in a mail-order transaction shall not be completed  
11 unless, before each delivery of cigarettes is made, whether through  
12 the mail, through a transportation company, or through any other  
13 delivery system, the seller has obtained from the purchaser an  
14 affirmation that includes a copy of a valid government-issued  
15 document that confirms the purchaser's name, address, and date of  
16 birth showing that the purchaser is at least the legal minimum age  
17 to purchase cigarettes; that the cigarettes purchased are not  
18 intended for consumption by an individual who is younger than the  
19 legal minimum age to purchase cigarettes; and a written statement  
20 signed by the purchaser that affirms the purchaser's address and  
21 that the purchaser is at least the minimum legal age to purchase  
22 cigarettes. The statement shall also confirm that the purchaser  
23 understands that signing another person's name to the affirmation  
24 is illegal; that the sale of cigarettes to individuals under the  
25 legal minimum purchase age is illegal; and that the purchase of  
26 cigarettes by individuals under the legal minimum purchase age is  
27 illegal under the laws of the state of Michigan. The seller shall

1 verify the information contained in the affirmation provided by the  
2 purchaser against a commercially available database of governmental  
3 records, or obtain a photocopy, fax copy, or other image of the  
4 valid, government-issued identification stating the date of birth  
5 or age of the purchaser.

6 (3) All invoices, bills of lading, sales receipts, or other  
7 documents related to cigarette sales conducted through the  
8 internet, by telephone, or in a mail-order transaction shall  
9 contain the current seller's valid Michigan sales tax registration  
10 number, business name and address of the seller, and a statement as  
11 to whether all sales taxes and taxes levied under this act have  
12 been paid. All packages of cigarettes shipped from a cigarette  
13 seller to purchasers who reside in Michigan shall clearly print or  
14 stamp the package with the word "CIGARETTES" on the outside of all  
15 sides of the package so it is clearly visible to the shipper. In  
16 addition, the package shall contain an externally visible and  
17 clearly legible notice located on the same side of the package as  
18 the address to which the package is delivered, as follows:

19 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER  
20 LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS  
21 REPORTED UNDER FEDERAL LAW THE SALE OF THESE CIGARETTES TO OUR  
22 STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU  
23 ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON  
24 THESE CIGARETTES."

25 If an order is made as a result of advertisement over the  
26 ~~internet~~, **INTERNET**, the tobacco retailer shall request the  
27 electronic mail address of the purchaser and shall receive payment

1 by credit card or check before shipping. This subsection and  
2 subsection (2) do not apply to sales by wholesalers and  
3 unclassified acquirers.

4 (4) The deliverer of the cigarettes is required to obtain  
5 proof from a valid government-issued document that the person  
6 signing for the cigarettes is the purchaser.

7 (5) Beginning November 1, 2012, a retailer that is **NOT**  
8 licensed as an unclassified acquirer, retail importer of tobacco  
9 products other than cigarettes, shall post a sign, visible to the  
10 public inside the retail establishment that informs purchasers of  
11 cigars through catalog sales or ~~internet~~**INTERNET** sales of their  
12 responsibility to pay all applicable unpaid state taxes on those  
13 cigars.

14 (6) As used in this section:

15 (a) "Computer" means any connected, directly interoperable or  
16 interactive device, equipment, or facility that uses a computer  
17 program or other instructions to perform specific operations,  
18 including logical, arithmetic, or memory functions with or on  
19 computer data or a computer program, and that can store, retrieve,  
20 alter, or communicate the results of the operations to a person,  
21 computer program, computer, computer system, or computer network.

22 (b) "Computer network" means the interconnection of hardwire  
23 or wireless communication lines with a computer through remote  
24 terminals or a complex consisting of 2 or more interconnected  
25 computers.

26 (c) "Computer program" means a series of internal or external  
27 instructions communicated in a form acceptable to a computer that

1 directs the functioning of a computer, computer system, or computer  
2 network in a manner designed to provide or produce products or  
3 results from the computer, computer system, or computer network.

4 (d) "Computer system" means related, connected or unconnected,  
5 computer equipment, devices, software, or hardware.

6 (e) "Credit card" means a card or device issued by a person  
7 licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the  
8 consumer financial services act, 1988 PA 161, MCL 487.2051 to  
9 487.2072, or issued by a depository financial institution as  
10 defined in section 1a of the mortgage brokers, lenders, and  
11 services licensing act, 1987 PA 173, MCL 445.1651a, under a credit  
12 card arrangement.

13 (f) "Device" includes, but is not limited to, an electronic,  
14 magnetic, electrochemical, biochemical, hydraulic, optical, or  
15 organic object that performs input, output, or storage functions by  
16 the manipulation of electronic, magnetic, or other impulses.

17 (g) "Internet" means the connection to the ~~world wide web~~  
18 **WORLD WIDE WEB** through the use of a computer, a computer network,  
19 or a computer system.

20 (h) "Sale conducted through the ~~internet~~" **INTERNET** means a  
21 sale of, a solicitation to sell, a purchase of, or an offer to  
22 purchase cigarettes conducted all or in part by accessing an  
23 ~~internet~~ **INTERNET** website.