

SB3836



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3836

Introduced 2/14/2020, by Sen. Cristina Castro

SYNOPSIS AS INTRODUCED:

35 ILCS 143/10-5

Amends the Tobacco Products Tax Act of 1995. Provides that the term "electronic cigarette" does not include 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 Cultivation Privilege Tax Law. Effective immediately.

LRB101 20760 HLH 70448 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

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

4 Section 5. The Tobacco Products Tax Act of 1995 is amended
5 by changing Section 10-5 as follows:

6 (35 ILCS 143/10-5)

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

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

11 "Cigarette" has the meaning ascribed to the term in Section
12 1 of the Cigarette Tax Act.

13 "Contraband little cigar" means:

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

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

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

1 (4) packages of little cigars containing other than 20
2 or 25 little cigars in the possession of a distributor,
3 retailer or wholesaler, unless the distributor, retailer,
4 or wholesaler possesses, or produces within the time frame
5 provided in Section 10-27 or 10-28 of this Act, an invoice
6 from a stamping distributor, distributor, or wholesaler
7 showing that the tax on the packages has been or will be
8 paid.

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

14 "Department" means the Illinois Department of Revenue.

15 "Distributor" means any of the following:

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

20 (2) Any manufacturer or wholesaler engaged in the
21 business of selling tobacco products from without this
22 State who sells, exchanges, distributes, ships, or
23 transports tobacco products to retailers or consumers
24 located in this State, so long as that manufacturer or
25 wholesaler has or maintains within this State, directly or
26 by subsidiary, an office, sales house, or other place of

1 business, or any agent or other representative operating
2 within this State under the authority of the person or
3 subsidiary, irrespective of whether the place of business
4 or agent or other representative is located here
5 permanently or temporarily.

6 (3) Any retailer who receives tobacco products on which
7 the tax has not been or will not be paid by another
8 distributor.

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

14 "Electronic cigarette" means:

15 (1) any device that employs a battery or other
16 mechanism to heat a solution or substance to produce a
17 vapor or aerosol intended for inhalation;

18 (2) any cartridge or container of a solution or
19 substance intended to be used with or in the device or to
20 refill the device, except any cartridge or container of a
21 solution or substance that contains cannabis subject to tax
22 under the Compassionate Use of Medical Cannabis Program Act
23 or the Cannabis Cultivation Privilege Tax Law; or

24 (3) any solution or substance, whether or not it
25 contains nicotine, intended for use in the device, except
26 any solution or substance that contains cannabis subject to

1 tax under the Compassionate Use of Medical Cannabis Program
2 Act or the Cannabis Cultivation Privilege Tax Law. The
3 changes made to the definition of "electronic cigarette" by
4 this amendatory Act of the 101st General Assembly apply on
5 and after June 28, 2019, but no claim for credit or refund
6 is allowed on or after the effective date of this
7 amendatory Act of the 101st General Assembly for such taxes
8 paid during the period beginning June 28, 2019 and the
9 effective date of this amendatory Act of the 101st General
10 Assembly.

11 "Electronic cigarette" includes, but is not limited to, any
12 electronic nicotine delivery system, electronic cigar,
13 electronic cigarillo, electronic pipe, electronic hookah, vape
14 pen, or similar product or device, and any component or part
15 that can be used to build the product or device. "Electronic
16 cigarette" does not include: cigarettes, as defined in Section
17 1 of the Cigarette Tax Act; any product approved by the United
18 States Food and Drug Administration for sale as a tobacco
19 cessation product, a tobacco dependence product, or for other
20 medical purposes that is marketed and sold solely for that
21 approved purpose; any asthma inhaler prescribed by a physician
22 for that condition that is marketed and sold solely for that
23 approved purpose; or any therapeutic product approved for use
24 under the Compassionate Use of Medical Cannabis Program Act.

25 "Little cigar" means and includes any roll, made wholly or
26 in part of tobacco, where such roll has an integrated cellulose

1 acetate filter and weighs less than 4 pounds per thousand and
2 the wrapper or cover of which is made in whole or in part of
3 tobacco.

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

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

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

21 "Place of business" means and includes any place where
22 tobacco products are sold or where tobacco products are
23 manufactured, stored, or kept for the purpose of sale or
24 consumption, including any vessel, vehicle, airplane, train,
25 or vending machine.

26 "Retailer" means any person in this State engaged in the

1 business of selling tobacco products to consumers in this
2 State, regardless of quantity or number of sales.

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

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

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

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

1 fabricate cigarettes as a part of a Correctional Industries
2 program for sale to residents incarcerated in penal
3 institutions or resident patients of a State operated mental
4 health facility.

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

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

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

22 (Source: P.A. 101-31, eff. 6-28-19; 101-593, eff. 12-4-19.)

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