

AN ACT concerning revenue.

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

Section 5. The Cigarette Tax Act is amended by changing Sections 1, 2, 4d, 7, 8, 9, 10, and 23 and by adding Sections 4f, 9f, and 11b as follows:

(35 ILCS 130/1) (from Ch. 120, par. 453.1)

Sec. 1. For the purposes of this Act:

"Brand Style" means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette or packaging.

"Cigarette", means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, and the wrapper or cover of which is made of paper or any other substance or material except tobacco.

"Contraband cigarettes" means:

(a) cigarettes that do not bear a required tax stamp under this Act;

(b) cigarettes for which any required federal taxes have not been paid;

(c) cigarettes that bear a counterfeit tax stamp;

(d) cigarettes that are manufactured, fabricated, assembled, processed, packaged, or labeled by any person other than (i) the owner of the trademark rights in the cigarette brand or (ii) a person that is directly or indirectly authorized by such owner;

(e) cigarettes imported into the United States, or otherwise distributed, in violation of the federal Imported Cigarette Compliance Act of 2000 (Title IV of Public Law 106-476);

(f) cigarettes that have false manufacturing labels;

(g) cigarettes identified in Section 3-10(a)(1) of this Act; or

(h) cigarettes that are improperly tax stamped, including cigarettes that bear a tax stamp of another state or taxing jurisdiction.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, however formed, limited liability company, or a receiver, executor, administrator, trustee, guardian or other representative appointed by order of any court.

"Prior Continuous Compliance Taxpayer" means any person who is licensed under this Act and who, having been a licensee for a continuous period of 5 years, is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period or otherwise in

violation of this Act. Also, any taxpayer who has, as verified by the Department, continuously complied with the condition of his bond or other security under provisions of this Act for a period of 5 consecutive years shall be considered to be a "Prior continuous compliance taxpayer". In calculating the consecutive period of time described herein for qualification as a "prior continuous compliance taxpayer", a consecutive period of time of qualifying compliance immediately prior to the effective date of this amendatory Act of 1987 shall be credited to any licensee who became licensed on or before the effective date of this amendatory Act of 1987.

"Department" means the Department of Revenue.

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

"Original Package" means the individual packet, box or other container whatsoever used to contain and to convey cigarettes to the consumer.

"Distributor" means any and each of the following:

(1) Any person engaged in the business of selling cigarettes in this State who brings or causes to be brought into this State from without this State any original packages of cigarettes, on which original packages there is no authorized evidence underneath a sealed transparent wrapper showing that the tax liability imposed by this Act has been paid or assumed by the out-of-State seller of such cigarettes,

for sale or other disposition in the course of such business.

(2) Any person who makes, manufactures or fabricates cigarettes in this State for sale in this State, except a person who makes, manufactures or fabricates cigarettes as a part of a correctional industries program for sale to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility.

(3) Any person who makes, manufactures or fabricates cigarettes outside this State, which cigarettes are placed in original packages contained in sealed transparent wrappers, for delivery or shipment into this State, and who elects to qualify and is accepted by the Department as a distributor under Section 4b of this Act.

"Place of business" shall mean and include any place where cigarettes are sold or where cigarettes are manufactured, stored or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machine.

"Manufacturer representative" means a director, officer, or employee of a manufacturer who has obtained authority from the Department under Section 4f to maintain representatives in Illinois that provide or sell original packages of cigarettes made, manufactured, or fabricated by the manufacturer to retailers in compliance with Section 4f of this Act to promote cigarettes made, manufactured, or fabricated by the manufacturer.

"Business" means any trade, occupation, activity or enterprise engaged in for the purpose of selling cigarettes in this State.

"Retailer" means any person who engages in the making of transfers of the ownership of, or title to, cigarettes to a purchaser for use or consumption and not for resale in any form, for a valuable consideration. "Retailer" does not include a person:

(1) who transfers to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility ownership of cigarettes made, manufactured, or fabricated as part of a correctional industries program; or

(2) who transfers cigarettes to a not-for-profit research institution that conducts tests concerning the health effects of tobacco products and who does not offer the cigarettes for resale.

"Retailer" shall be construed to include any person who engages in the making of transfers of the ownership of, or title to, cigarettes to a purchaser, for use or consumption by any other person to whom such purchaser may transfer the cigarettes without a valuable consideration, except a person who transfers to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility ownership of cigarettes made, manufactured or fabricated as part of a correctional industries program.

"Secondary distributor" means any person engaged in the business of selling cigarettes who purchases stamped original packages of cigarettes from a licensed distributor under this Act or the Cigarette Use Tax Act, sells 75% or more of those cigarettes to retailers for resale, and maintains an established business where a substantial stock of cigarettes is available to retailers for resale.

"Stamp" or "stamps" mean the indicia required to be affixed on a pack of cigarettes that evidence payment of the tax on cigarettes under Section 2 of this Act.

"Related party" means any person that is associated with any other person because he or she:

- (a) is an officer or director of a business; or
- (b) is legally recognized as a partner in business.

(Source: P.A. 95-462, eff. 8-27-07; 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

(35 ILCS 130/2) (from Ch. 120, par. 453.2)

Sec. 2. Tax imposed; rate; collection, payment, and distribution; discount.

(a) A tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at the rate of 5 1/2 mills per cigarette sold, or otherwise disposed of in the course of such business in this State. In addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes in this State

at a rate of 1/2 mill per cigarette sold or otherwise disposed of in the course of such business in this State on and after January 1, 1947, and shall be paid into the Metropolitan Fair and Exposition Authority Reconstruction Fund or as otherwise provided in Section 29. On and after December 1, 1985, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes in this State at a rate of 4 mills per cigarette sold or otherwise disposed of in the course of such business in this State. Of the additional tax imposed by this amendatory Act of 1985, \$9,000,000 of the moneys received by the Department of Revenue pursuant to this Act shall be paid each month into the Common School Fund. On and after the effective date of this amendatory Act of 1989, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 5 mills per cigarette sold or otherwise disposed of in the course of such business in this State. On and after the effective date of this amendatory Act of 1993, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 7 mills per cigarette sold or otherwise disposed of in the course of such business in this State. On and after December 15, 1997, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 7 mills per cigarette sold or otherwise disposed

of in the course of such business of this State. All of the moneys received by the Department of Revenue pursuant to this Act and the Cigarette Use Tax Act from the additional taxes imposed by this amendatory Act of 1997, shall be paid each month into the Common School Fund. On and after July 1, 2002, in addition to any other tax imposed by this Act, a tax is imposed upon any person engaged in business as a retailer of cigarettes at the rate of 20.0 mills per cigarette sold or otherwise disposed of in the course of such business in this State. The payment of such taxes shall be evidenced by a stamp affixed to each original package of cigarettes, or an authorized substitute for such stamp imprinted on each original package of such cigarettes underneath the sealed transparent outside wrapper of such original package, as hereinafter provided. However, such taxes are not imposed upon any activity in such business in interstate commerce or otherwise, which activity may not under the Constitution and statutes of the United States be made the subject of taxation by this State.

Beginning on the effective date of this amendatory Act of the 92nd General Assembly and through June 30, 2006, all of the moneys received by the Department of Revenue pursuant to this Act and the Cigarette Use Tax Act, other than the moneys that are dedicated to the Common School Fund, shall be distributed each month as follows: first, there shall be paid into the General Revenue Fund an amount which, when added to the amount paid into the Common School Fund for that month, equals

\$33,300,000, except that in the month of August of 2004, this amount shall equal \$83,300,000; then, from the moneys remaining, if any amounts required to be paid into the General Revenue Fund in previous months remain unpaid, those amounts shall be paid into the General Revenue Fund; then, beginning on April 1, 2003, from the moneys remaining, \$5,000,000 per month shall be paid into the School Infrastructure Fund; then, if any amounts required to be paid into the School Infrastructure Fund in previous months remain unpaid, those amounts shall be paid into the School Infrastructure Fund; then the moneys remaining, if any, shall be paid into the Long-Term Care Provider Fund. To the extent that more than \$25,000,000 has been paid into the General Revenue Fund and Common School Fund per month for the period of July 1, 1993 through the effective date of this amendatory Act of 1994 from combined receipts of the Cigarette Tax Act and the Cigarette Use Tax Act, notwithstanding the distribution provided in this Section, the Department of Revenue is hereby directed to adjust the distribution provided in this Section to increase the next monthly payments to the Long Term Care Provider Fund by the amount paid to the General Revenue Fund and Common School Fund in excess of \$25,000,000 per month and to decrease the next monthly payments to the General Revenue Fund and Common School Fund by that same excess amount.

Beginning on July 1, 2006, all of the moneys received by the Department of Revenue pursuant to this Act and the

Cigarette Use Tax Act, other than the moneys that are dedicated to the Common School Fund, shall be distributed each month as follows: first, there shall be paid into the General Revenue Fund an amount that, when added to the amount paid into the Common School Fund for that month, equals \$29,200,000; then, from the moneys remaining, if any amounts required to be paid into the General Revenue Fund in previous months remain unpaid, those amounts shall be paid into the General Revenue Fund; then from the moneys remaining, \$5,000,000 per month shall be paid into the School Infrastructure Fund; then, if any amounts required to be paid into the School Infrastructure Fund in previous months remain unpaid, those amounts shall be paid into the School Infrastructure Fund; then the moneys remaining, if any, shall be paid into the Long-Term Care Provider Fund.

When any tax imposed herein terminates or has terminated, distributors who have bought stamps while such tax was in effect and who therefore paid such tax, but who can show, to the Department's satisfaction, that they sold the cigarettes to which they affixed such stamps after such tax had terminated and did not recover the tax or its equivalent from purchasers, shall be allowed by the Department to take credit for such absorbed tax against subsequent tax stamp purchases from the Department by such distributor.

The impact of the tax levied by this Act is imposed upon the retailer and shall be prepaid or pre-collected by the distributor for the purpose of convenience and facility only,

and the amount of the tax shall be added to the price of the cigarettes sold by such distributor. Collection of the tax shall be evidenced by a stamp or stamps affixed to each original package of cigarettes, as hereinafter provided.

Each distributor shall collect the tax from the retailer at or before the time of the sale, shall affix the stamps as hereinafter required, and shall remit the tax collected from retailers to the Department, as hereinafter provided. Any distributor who fails to properly collect and pay the tax imposed by this Act shall be liable for the tax. Any distributor having cigarettes to which stamps have been affixed in his possession for sale on the effective date of this amendatory Act of 1989 shall not be required to pay the additional tax imposed by this amendatory Act of 1989 on such stamped cigarettes. Any distributor having cigarettes to which stamps have been affixed in his or her possession for sale at 12:01 a.m. on the effective date of this amendatory Act of 1993, is required to pay the additional tax imposed by this amendatory Act of 1993 on such stamped cigarettes. This payment, less the discount provided in subsection (b), shall be due when the distributor first makes a purchase of cigarette tax stamps after the effective date of this amendatory Act of 1993, or on the first due date of a return under this Act after the effective date of this amendatory Act of 1993, whichever occurs first. Any distributor having cigarettes to which stamps have been affixed in his possession for sale on December 15,

1997 shall not be required to pay the additional tax imposed by this amendatory Act of 1997 on such stamped cigarettes.

Any distributor having cigarettes to which stamps have been affixed in his or her possession for sale on July 1, 2002 shall not be required to pay the additional tax imposed by this amendatory Act of the 92nd General Assembly on those stamped cigarettes.

Distributors making sales of cigarettes to secondary distributors shall add the amount of the tax to the price of the cigarettes sold by the distributors. Secondary distributors making sales of cigarettes to retailers shall include the amount of the tax in the price of the cigarettes sold to retailers. The amount of tax shall not be less than the amount of taxes imposed by the State and all local jurisdictions. The amount of local taxes shall be calculated based on the location of the retailer's place of business shown on the retailer's certificate of registration or sub-registration issued to the retailer pursuant to Section 2a of the Retailers' Occupation Tax Act. The original packages of cigarettes sold to the retailer shall bear all the required stamps, or other indicia, for the taxes included in the price of cigarettes.

The amount of the Cigarette Tax imposed by this Act shall be separately stated, apart from the price of the goods, by distributors, manufacturer representatives, secondary distributors, and retailers, in all bills and sales invoices.

(b) The distributor shall be required to collect the taxes provided under paragraph (a) hereof, and, to cover the costs of such collection, shall be allowed a discount during any year commencing July 1st and ending the following June 30th in accordance with the schedule set out hereinbelow, which discount shall be allowed at the time of purchase of the stamps when purchase is required by this Act, or at the time when the tax is remitted to the Department without the purchase of stamps from the Department when that method of paying the tax is required or authorized by this Act. Prior to December 1, 1985, a discount equal to $1\frac{2}{3}\%$ of the amount of the tax up to and including the first \$700,000 paid hereunder by such distributor to the Department during any such year; $1\frac{1}{3}\%$ of the next \$700,000 of tax or any part thereof, paid hereunder by such distributor to the Department during any such year; 1% of the next \$700,000 of tax, or any part thereof, paid hereunder by such distributor to the Department during any such year, and $\frac{2}{3}$ of 1% of the amount of any additional tax paid hereunder by such distributor to the Department during any such year shall apply. On and after December 1, 1985, a discount equal to 1.75% of the amount of the tax payable under this Act up to and including the first \$3,000,000 paid hereunder by such distributor to the Department during any such year and 1.5% of the amount of any additional tax paid hereunder by such distributor to the Department during any such year shall apply.

Two or more distributors that use a common means of

affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.

(c) The taxes herein imposed are in addition to all other occupation or privilege taxes imposed by the State of Illinois, or by any political subdivision thereof, or by any municipal corporation.

(Source: P.A. 96-1027, eff. 7-12-10.)

(35 ILCS 130/4d)

Sec. 4d. Sales of cigarettes to and by retailers. In-state makers, manufacturers, and fabricators licensed as distributors under Section 4 of this Act and out-of-state makers, manufacturers, and fabricators holding permits under Section 4b of this Act may not sell original packages of cigarettes to retailers. A retailer may sell only original packages of cigarettes obtained from manufacturer representatives, licensed secondary distributors, or licensed distributors other than in-state makers, manufacturers, or fabricators licensed as distributors under Section 4 of this Act and out-of-state makers, manufacturers, or fabricators holding permits under Section 4b of this Act.

(Source: P.A. 95-1053, eff. 1-1-10; 96-782, eff. 1-1-10; 96-1027, eff. 7-12-10.)

(35 ILCS 130/4f new)

Sec. 4f. Manufacturer representatives.

(a) No manufacturer may market cigarettes produced by the manufacturer directly to retailers in this State without first having obtained authorization from the Department. Application for authority to maintain representatives in this State to market in this State cigarettes produced by the manufacturer shall be made to the Department on a form furnished and prescribed by the Department. Each applicant under this Section shall furnish the following information to the Department on a form signed and verified by the applicant under penalty of perjury:

- (1) the name and address of the applicant;
- (2) the address of every location from which the applicant proposes to engage in business in this State;
- (3) the number of manufacturer representatives the applicant requests to maintain in this State; and
- (4) any other additional information as the Department may reasonably require.

The following manufacturers are ineligible to receive authorization to maintain manufacturer representatives in this State:

- (1) a manufacturer who owes, at the time of application, any delinquent cigarette taxes that have been determined by law to be due and unpaid, unless the applicant has entered into an agreement approved by the Department to pay the amount due;

(2) a manufacturer who has had a license revoked within the past 2 years for misconduct relating to stolen or contraband cigarettes or has been convicted of a state or federal crime, punishable by imprisonment of one year or more, relating to stolen or contraband cigarettes;

(3) a manufacturer who has been found, after notice and a hearing, to have imported or caused to be imported into the United States for sale or distribution any cigarette in violation of 19 U.S.C. 1681a;

(4) a manufacturer who has been found, after notice and a hearing, to have imported or caused to be imported into the United States for sale or distribution or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331, et seq.);

(5) a manufacturer who has been found, after notice and a hearing, to have made a material false statement in an application or has failed to produce records required to be maintained by this Act;

(6) a manufacturer who has been found, after notice and hearing, to have violated any Section of this Act; or

(7) a manufacturer licensed as a distributor under Section 4 of this Act or holding a permit under Section 4b of this Act.

The Department, upon receipt of an application from a manufacturer who is eligible to maintain manufacturer

representatives in this State, shall notify the applicant in writing, not more than 60 days after an application has been received, that the applicant may or may not maintain the requested number of manufacturer representatives in this State. A copy of the notice authorizing a manufacturer to maintain manufacturer representatives in this State shall be available for inspection by the Department at each place of business identified in the application and in the motor vehicle operated by marketing representatives in the course of performing his or her duties in this State on behalf of the manufacturer.

A manufacturer representative shall notify the Department of any change in the information contained on the application form and shall do so within 30 days after any such change.

(b) Only directors, officers, and employees of the manufacturer may act as manufacturer representatives in this State. The manufacturer shall provide to the Department the names and addresses of the manufacturer representatives operating in this State and the make, model, and license plate number of each motor vehicle operated by a manufacturer representative in the course of performing his or her duties in this State on behalf of the manufacturer. The following individuals may not act as manufacturer representatives:

(1) an individual who owes any delinquent cigarette taxes that have been determined by law to be due and unpaid, unless the individual has entered into an agreement

approved by the Department to pay the amount due;

(2) an individual who has had a license revoked within the past 2 years for misconduct relating to stolen or contraband cigarettes or has been convicted of a state or federal crime, punishable by imprisonment of one year or more, relating to stolen or contraband cigarettes;

(3) an individual who has been found, after notice and a hearing, to have made a material false statement in an application or has failed to produce records required to be maintained by this Act; or

(4) an individual who has been found, after notice and hearing, to have violated any Section of this Act.

(c) Manufacturer representatives may sell to retailers in this State only original packages of cigarettes made, manufactured, or fabricated by the manufacturer and purchased or obtained from a distributor licensed under this Act, or the Cigarette Tax Use Act, and on which tax stamps have been affixed. Manufacturer representatives may sell up to 600 stamped original packages of cigarettes in a calendar year, for the purpose of promoting the manufacturer's brands of cigarettes. A manufacturer representative may not possess more than 500 stamped original packages of cigarettes made, manufactured, or fabricated by the manufacturer and purchased or obtained from a distributor licensed under this Act or the Cigarette Use Tax Act. Any original packages of cigarettes in the possession of a manufacturer representative that (i) are

not made, manufactured, or fabricated by the manufacturer and purchased or obtained from a distributor licensed under this Act or the Cigarette Use Tax Act, other than cigarettes for personal use and consumption, (ii) exceed the maximum quantity of 500 original packages of cigarettes, excluding packages of cigarettes for personal use and consumption; (iii) violate Section 3-10 of this Act; or (iv) do not have the proper tax stamps affixed, are contraband and subject to seizure and forfeiture.

Manufacturer representatives may sell stamped original packages of cigarettes to retailers on behalf of licensed distributors. The manufacturer representative shall provide the distributor with a signed receipt for the cigarettes obtained from the distributor. The distributor shall invoice the retailer, and the retailer shall pay the distributor for all cigarettes provided to retailers by manufacturer representatives on behalf of a distributor.

Manufacturer representatives may sell stamped original packages of cigarettes to retailers that are purchased from licensed distributors. Distributors shall provide manufacturer representatives with invoices for stamped original packages of cigarettes sold to manufacturer representatives. Manufacturer representatives shall invoice retailers, and the retailers shall pay the manufacturer representatives for all original packages of cigarettes sold to retailers.

(d) Any person 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 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 this Act and then issue its final administrative decision in the matter to that person. 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 130/7) (from Ch. 120, par. 453.7)

Sec. 7. The Department or any officer or employee of the Department designated, in writing, by the Director thereof, shall at its or his or her own instance, or on the written request of any distributor, secondary distributor, manufacturer with authority to maintain manufacturer representatives, or other interested party to the proceeding, issue subpoenas requiring the attendance of and the giving of testimony by witnesses, and subpoenas duces tecum requiring the production of books, papers, records or memoranda. All subpoenas and subpoenas duces tecum issued under the terms of this Act may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit court of this State; such fees to be paid when the witness is excused from further

attendance. When the witness is subpoenaed at the instance of the Department or any officer or employee thereof, such fees shall be paid in the same manner as other expenses of the Department, and when the witness is subpoenaed at the instance of any other party to any such proceeding, the cost of service of the subpoena or subpoena duces tecum and the fee of the witness shall be borne by the party at whose instance the witness is summoned. In such case the Department, in its discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena or subpoena duces tecum so issued shall be served in the same manner as a subpoena or subpoena duces tecum issued out of a court.

Any circuit court of this State, upon the application of the Department or any officer or employee thereof, or upon the application of any other party to the proceeding, may, in its discretion, compel the attendance of witnesses, the production of books, papers, records or memoranda and the giving of testimony before the Department or any officer or employee thereof conducting an investigation or holding a hearing authorized by this Act, by an attachment for contempt, or otherwise, in the same manner as production of evidence may be compelled before the court.

The Department or any officer or employee thereof, or any other party in an investigation or hearing before the Department, may cause the depositions of witnesses within the State to be taken in the manner prescribed by law for like

depositions, or depositions for discovery in civil actions in courts of this State, and to that end compel the attendance of witnesses and the production of books, papers, records or memoranda, in the same manner hereinbefore provided.

(Source: P.A. 96-1027, eff. 7-12-10.)

(35 ILCS 130/8) (from Ch. 120, par. 453.8)

Sec. 8. The Department may make, promulgate and enforce such reasonable rules and regulations relating to the administration and enforcement of this Act as may be deemed expedient.

Whenever notice is required by this Act, such notice may be given by United States certified or registered mail, addressed to the person concerned at his last known address, and proof of such mailing shall be sufficient for the purposes of this Act. Notice of any hearing provided for by this Act shall be so given not less than 7 days prior to the day fixed for the hearing.

Hearings provided for in this Act shall be held:

(1) In Cook County, if the taxpayer's or licensee's principal place of business is in that county;

(2) At the Department's office nearest the taxpayer's or licensee's principal place of business, if the taxpayer's or licensee's principal place of business is in Illinois but outside Cook County;

(3) In Sangamon County, if the taxpayer's or licensee's

principal place of business is outside Illinois.

The Circuit Court of the County wherein the hearing is held has power to review all final administrative decisions of the Department in administering this Act. The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Department under this Act. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

Service upon the Director of Revenue or Assistant Director of Revenue of summons issued in any action to review a final administrative decision shall be service upon the Department. The Department shall certify the record of its proceedings if the distributor, ~~or~~ secondary distributor, or manufacturer with authority to maintain manufacturer representatives pays to it the sum of 75¢ per page of testimony taken before the Department and 25¢ per page of all other matters contained in such record, except that these charges may be waived where the Department is satisfied that the aggrieved party is a poor person who cannot afford to pay such charges. Before the delivery of such record to the person applying for it, payment of these charges must be made, and if the record is not paid for within 30 days after notice that such record is available, the complaint may be dismissed by the court upon motion of the Department.

No stay order shall be entered by the Circuit Court unless the distributor, ~~or~~ secondary distributor, or manufacturer with authority to maintain manufacturer representatives files with the court a bond in an amount fixed and approved by the court, to indemnify the State against all loss and injury which may be sustained by it on account of the review proceedings and to secure all costs which may be occasioned by such proceedings.

Whenever any proceeding provided by this Act is begun before the Department, either by the Department or by a person subject to this Act, and such person thereafter dies or becomes a person under legal disability before such proceeding is concluded, the legal representative of the deceased person or of the person under legal disability shall notify the Department of such death or legal disability. Such legal representative, as such, shall then be substituted by the Department for such person. If the legal representative fails to notify the Department of his or her appointment as such legal representative, the Department may, upon its own motion, substitute such legal representative in the proceeding pending before the Department for the person who died or became a person under legal disability.

(Source: P.A. 96-1027, eff. 7-12-10.)

(35 ILCS 130/9) (from Ch. 120, par. 453.9)

Sec. 9. Returns; remittance. Every distributor who is

required to procure a license under this Act, but who is not a manufacturer of cigarettes in original packages which are contained in a sealed transparent wrapper, shall, on or before the 15th day of each calendar month, file a return with the Department, showing the quantity of cigarettes manufactured during the preceding calendar month, the quantity of cigarettes brought into this State or caused to be brought into this State from outside this State during the preceding calendar month without authorized evidence on the original packages of such cigarettes underneath the sealed transparent wrapper thereof that the tax liability imposed by this Act has been assumed by the out-of-State seller of such cigarettes, the quantity of cigarettes purchased tax-paid during the preceding calendar month either within or outside this State, the quantity of cigarettes sold by manufacturer representatives on behalf of the distributor, the quantity of cigarettes sold to manufacturer representatives, and the quantity of cigarettes sold or otherwise disposed of during the preceding calendar month. Such return shall be filed upon forms furnished and prescribed by the Department and shall contain such other information as the Department may reasonably require. The Department may promulgate rules to require that the distributor's return be accompanied by appropriate computer-generated magnetic media supporting schedule data in the format required by the Department, unless, as provided by rule, the Department grants an exception upon petition of a

distributor.

Illinois manufacturers of cigarettes in original packages which are contained inside a sealed transparent wrapper shall file a return by the 5th day of each month covering the preceding calendar month. Each such return shall be accompanied by the appropriate remittance for tax as provided in ~~the last paragraph of~~ Section 3 of this Act. Each such return shall show the quantity of such cigarettes manufactured during the period covered by the return, the quantity of cigarettes sold or otherwise disposed of during the period covered by the return and such other information as the Department may lawfully require. Such returns shall be filed on forms prescribed and furnished by the Department. Each such return shall be accompanied by a copy of each invoice rendered by such manufacturer to any purchaser to whom such manufacturer delivered cigarettes (or caused cigarettes to be delivered) during the period covered by the return. The Department may promulgate rules to require that the manufacturer's return be accompanied by appropriate computer-generated magnetic media supporting schedule data in the format required by the Department, unless, as provided by rule, the Department grants an exception upon petition of a manufacturer.

(Source: P.A. 92-322, eff. 1-1-02.)

(35 ILCS 130/9f new)

Sec. 9f. Manufacturer representatives; reports. Every

manufacturer with authority to maintain manufacturer representatives as defined by Section 4f of this Act shall, on or before the 15th day of each calendar month, file a report with the Department, showing the quantity of cigarettes purchased from licensed distributors during the preceding calendar month, either within or outside this State, and the quantity of cigarettes sold to retailers or otherwise disposed of during the preceding calendar month. Such reports shall be filed in the form prescribed by the Department and shall contain such other information as the Department may reasonably require. The report shall be filed electronically and be accompanied by appropriate computer generated magnetic media supporting schedule data in the format required by the Department, unless, as provided by rule, the Department grants an exception upon petition of a manufacturer with authority to maintain manufacturer representatives in this State.

A certification by the Director of the Department that a report has not been filed, or that information has not been supplied pursuant to the provisions of this Act, shall be prima facie evidence thereof.

(35 ILCS 130/10) (from Ch. 120, par. 453.10)

Sec. 10. The Department, or any officer or employee designated in writing by the Director thereof, for the purpose of administering and enforcing the provisions of this Act, may hold investigations and hearings concerning any matters

covered by this Act, and may examine books, papers, records or memoranda bearing upon the sale or other disposition of cigarettes by a distributor, ~~or~~ secondary distributor, manufacturer with authority to maintain manufacturer representatives under Section 4f of this Act, or manufacturer representative, and may issue subpoenas requiring the attendance of a distributor, ~~or~~ secondary distributor, manufacturer with authority to maintain manufacturer representatives under Section 4f of this Act, or manufacturer representative, or any officer or employee of a distributor, ~~or~~ secondary distributor, manufacturer with authority to maintain manufacturer representatives under Section 4f of this Act, or any person having knowledge of the facts, and may take testimony and require proof, and may issue subpoenas duces tecum to compel the production of relevant books, papers, records and memoranda, for the information of the Department.

In the conduct of any investigation or hearing provided for by this Act, neither the Department, nor any officer or employee thereof, shall be bound by the technical rules of evidence, and no informality in the proceedings nor in the manner of taking testimony shall invalidate any rule, order, decision or regulation made, approved or confirmed by the Department.

The Director of Revenue, or any duly authorized officer or employee of the Department, shall have the power to administer oaths to such persons required by this Act to give testimony

before the said Department.

The books, papers, records and memoranda of the Department, or parts thereof, may be proved in any hearing, investigation or legal proceeding by a reproduced copy thereof under the certificate of the Director of Revenue. Such reproduced copy shall, without further proof, be admitted into evidence before the Department or in any legal proceeding.

(Source: P.A. 96-1027, eff. 7-12-10.)

(35 ILCS 130/11b new)

Sec. 11b. Manufacturer representatives; records. Every manufacturer with authority to maintain manufacturer representatives under Section 4f of this Act shall keep within Illinois, at his business address identified under Section 4f of this Act, complete and accurate records of cigarettes purchased, sold, or otherwise disposed of, and shall preserve and keep within Illinois at his 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. All books and records and other papers and documents that are required by this 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. The Department may adopt rules

that establish requirements, including record forms and formats, for records required to be kept and maintained by manufacturers with authority to maintain manufacturer representatives under Section 4f of this Act and their manufacturer representatives. For purposes of this Section, "records" means all data maintained by the manufacturers with authority to maintain manufacturer representatives under Section 4f of this Act and their manufacturer representatives, including data on paper, microfilm, microfiche or any type of machine sensible data compilation. Those 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, unless the Department, in writing, authorizes their destruction or disposal at an earlier date. 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 this 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 this Act are being violated. If such agent or employee is denied free access or is hindered or interfered with in making such examination as herein provided, the ability to maintain

marketing representatives in Illinois may be withdrawn by the Department.

(35 ILCS 130/23) (from Ch. 120, par. 453.23)

Sec. 23. Every distributor, secondary distributor, manufacturer with authority to maintain manufacturer representatives under Section 4f of this Act and their manufacturer representatives, or other person who shall knowingly and wilfully sell or offer for sale any original package, as defined in this Act, having affixed thereto any fraudulent, spurious, imitation or counterfeit stamp, or stamp which has been previously affixed, or affixes a stamp which has previously been affixed to an original package, or who shall knowingly and wilfully sell or offer for sale any original package, as defined in this Act, having imprinted thereon underneath the sealed transparent wrapper thereof any fraudulent, spurious, imitation or counterfeit tax imprint, shall be deemed guilty of a Class 2 felony.

(Source: P.A. 96-1027, eff. 7-12-10.)

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