



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3112

Introduced 2/17/2023, by Rep. Amy Elik

SYNOPSIS AS INTRODUCED:

35 ILCS 143/10-5
35 ILCS 143/10-10
35 ILCS 143/10-30

Amends the Tobacco Products Tax Act of 1995. Provides that certain retailers maintaining a place of business in the State, as described in the Use Tax Act, may be considered distributors. Provides that, beginning on January 1, 2024, the tax per cigar or other rolled tobacco product shall not exceed \$0.50 per cigar or roll. Provides that distributors are allowed a discount in the amount of 2% of the distributor's tax liability, but not to exceed \$2,000 per return.

LRB103 29795 HLH 56202 b

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 Sections 10-5, 10-10, and 10-30 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
12 Section 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, or retailer
21 engaged in the business of selling tobacco products from
22 without this State who sells, exchanges, distributes,
23 ships, or transports tobacco products to retailers or
24 consumers located in this State, so long as that
25 manufacturer, retailer, or wholesaler (i) has or maintains
26 within this State, directly or by subsidiary, an office,

1 sales house, or other place of business, or any agent or
2 other representative operating within this State under the
3 authority of the person or subsidiary, irrespective of
4 whether the place of business or agent or other
5 representative is located here permanently or temporarily
6 or (ii) beginning on January 1, 2024, is a "retailer
7 maintaining a place of business in the State" as described
8 in Section 2 of the Use Tax Act.

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

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

17 "Electronic cigarette" means:

18 (1) any device that employs a battery or other
19 mechanism to heat a solution or substance to produce a
20 vapor or aerosol intended for inhalation, except for (A)
21 any device designed solely for use with cannabis that
22 contains a statement on the retail packaging that the
23 device is designed solely for use with cannabis and not
24 for use with tobacco or (B) any device that contains a
25 solution or substance that contains cannabis subject to
26 tax under the Compassionate Use of Medical Cannabis

1 Program Act or the Cannabis Regulation and Tax Act;

2 (2) any cartridge or container of a solution or
3 substance intended to be used with or in the device or to
4 refill the device, except for any cartridge or container
5 of a solution or substance that contains cannabis subject
6 to tax under the Compassionate Use of Medical Cannabis
7 Program Act or the Cannabis Regulation and Tax Act; or

8 (3) any solution or substance, whether or not it
9 contains nicotine, intended for use in the device, except
10 for any solution or substance that contains cannabis
11 subject to tax under the Compassionate Use of Medical
12 Cannabis Program Act or the Cannabis Regulation and Tax
13 Act.

14 The changes made to the definition of "electronic
15 cigarette" by this amendatory Act of the 102nd General
16 Assembly apply on and after June 28, 2019, but no claim for
17 credit or refund is allowed on or after the effective date of
18 this amendatory Act of the 102nd General Assembly for such
19 taxes paid during the period beginning June 28, 2019 and the
20 effective date of this amendatory Act of the 102nd General
21 Assembly.

22 "Electronic cigarette" includes, but is not limited to,
23 any electronic nicotine delivery system, electronic cigar,
24 electronic cigarillo, electronic pipe, electronic hookah, vape
25 pen, or similar product or device, and any component or part
26 that can be used to build the product or device. "Electronic

1 cigarette" does not include: cigarettes, as defined in Section
2 1 of the Cigarette Tax Act; any product approved by the United
3 States Food and Drug Administration for sale as a tobacco
4 cessation product, a tobacco dependence product, or for other
5 medical purposes that is marketed and sold solely for that
6 approved purpose; any asthma inhaler prescribed by a physician
7 for that condition that is marketed and sold solely for that
8 approved purpose; or any therapeutic product approved for use
9 under the Compassionate Use of Medical Cannabis Program Act.

10 "Little cigar" means and includes any roll, made wholly or
11 in part of tobacco, where such roll has an integrated
12 cellulose acetate filter and weighs less than 4 pounds per
13 thousand and the wrapper or cover of which is made in whole or
14 in part of tobacco.

15 "Manufacturer" means any person, wherever resident or
16 located, who manufactures and sells tobacco products, except a
17 person who makes, manufactures, or fabricates tobacco products
18 as a part of a Correctional Industries program for sale to
19 persons incarcerated in penal institutions or resident
20 patients of a State operated mental health facility.

21 Beginning on January 1, 2013, "moist snuff" means any
22 finely cut, ground, or powdered tobacco that is not intended
23 to be smoked, but shall not include any finely cut, ground, or
24 powdered tobacco that is intended to be placed in the nasal
25 cavity.

26 "Person" means any natural individual, firm, partnership,

1 association, joint stock company, joint venture, limited
2 liability company, or public or private corporation, however
3 formed, or a receiver, executor, administrator, trustee,
4 conservator, or other representative appointed by order of any
5 court.

6 "Place of business" means and includes any place where
7 tobacco products are sold or where tobacco products are
8 manufactured, stored, or kept for the purpose of sale or
9 consumption, including any vessel, vehicle, airplane, train,
10 or vending machine.

11 "Retailer" means any person in this State engaged in the
12 business of selling tobacco products to consumers in this
13 State, regardless of quantity or number of sales.

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

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

23 "Stamping distributor" means a distributor licensed under
24 this Act and also licensed as a distributor under the
25 Cigarette Tax Act or Cigarette Use Tax Act.

26 "Tobacco products" means any cigars, including little

1 cigars; cheroots; stogies; periques; granulated, plug cut,
2 crimp cut, ready rubbed, and other smoking tobacco; snuff
3 (including moist snuff) or snuff flour; cavendish; plug and
4 twist tobacco; fine-cut and other chewing tobaccos; shorts;
5 refuse scraps, clippings, cuttings, and sweeping of tobacco;
6 and other kinds and forms of tobacco, prepared in such manner
7 as to be suitable for chewing or smoking in a pipe or
8 otherwise, or both for chewing and smoking; but does not
9 include cigarettes as defined in Section 1 of the Cigarette
10 Tax Act or tobacco purchased for the manufacture of cigarettes
11 by cigarette distributors and manufacturers defined in the
12 Cigarette Tax Act and persons who make, manufacture, or
13 fabricate cigarettes as a part of a Correctional Industries
14 program for sale to residents incarcerated in penal
15 institutions or resident patients of a State operated mental
16 health facility.

17 Beginning on July 1, 2019, "tobacco products" also
18 includes electronic cigarettes.

19 "Wholesale price" means the established list price for
20 which a manufacturer sells tobacco products to a distributor,
21 before the allowance of any discount, trade allowance, rebate,
22 or other reduction. In the absence of such an established list
23 price, the manufacturer's invoice price at which the
24 manufacturer sells the tobacco product to unaffiliated
25 distributors, before any discounts, trade allowances, rebates,
26 or other reductions, shall be presumed to be the wholesale

1 price.

2 "Wholesaler" means any person, wherever resident or
3 located, engaged in the business of selling tobacco products
4 to others for the purpose of resale. "Wholesaler", when used
5 in this Act, does not include a person licensed as a
6 distributor under Section 10-20 of this Act unless expressly
7 stated in this Act.

8 (Source: P.A. 101-31, eff. 6-28-19; 101-593, eff. 12-4-19;
9 102-40, eff. 6-25-21.)

10 (35 ILCS 143/10-10)

11 Sec. 10-10. Tax imposed.

12 (a) Except as otherwise provided in this Section with
13 respect to little cigars, on the first day of the third month
14 after the month in which this Act becomes law, a tax is imposed
15 on any person engaged in business as a distributor of tobacco
16 products, as defined in Section 10-5, at the rate of (i) 18% of
17 the wholesale price of tobacco products sold or otherwise
18 disposed of to retailers or consumers located in this State
19 prior to July 1, 2012 and (ii) 36% of the wholesale price of
20 tobacco products sold or otherwise disposed of to retailers or
21 consumers located in this State beginning on July 1, 2012;
22 except that, beginning on January 1, 2013, the tax on moist
23 snuff shall be imposed at a rate of \$0.30 per ounce, and a
24 proportionate tax at the like rate on all fractional parts of
25 an ounce, sold or otherwise disposed of to retailers or

1 consumers located in this State; and except that, beginning
2 July 1, 2019, the tax on electronic cigarettes shall be
3 imposed at the rate of 15% of the wholesale price of electronic
4 cigarettes sold or otherwise disposed of to retailers or
5 consumers located in this State. The tax is in addition to all
6 other occupation or privilege taxes imposed by the State of
7 Illinois, by any political subdivision thereof, or by any
8 municipal corporation. However, the tax is not imposed upon
9 any activity in that business in interstate commerce or
10 otherwise, to the extent to which that activity may not, under
11 the Constitution and Statutes of the United States, be made
12 the subject of taxation by this State, and except that,
13 beginning July 1, 2013, the tax on little cigars shall be
14 imposed at the same rate, and the proceeds shall be
15 distributed in the same manner, as the tax imposed on
16 cigarettes under the Cigarette Tax Act. The tax is also not
17 imposed on sales made to the United States or any entity
18 thereof.

19 (b) Notwithstanding subsection (a) of this Section,
20 stamping distributors of packages of little cigars containing
21 20 or 25 little cigars sold or otherwise disposed of in this
22 State shall remit the tax by purchasing tax stamps from the
23 Department and affixing them to packages of little cigars in
24 the same manner as stamps are purchased and affixed to
25 cigarettes under the Cigarette Tax Act, unless the stamping
26 distributor sells or otherwise disposes of those packages of

1 little cigars to another stamping distributor. Only persons
2 meeting the definition of "stamping distributor" contained in
3 Section 10-5 of this Act may affix stamps to packages of little
4 cigars containing 20 or 25 little cigars. Stamping
5 distributors may not sell or dispose of little cigars at
6 retail to consumers or users at locations where stamping
7 distributors affix stamps to packages of little cigars
8 containing 20 or 25 little cigars.

9 (c) The impact of the tax levied by this Act is imposed
10 upon distributors engaged in the business of selling tobacco
11 products to retailers or consumers in this State. Whenever a
12 stamping distributor brings or causes to be brought into this
13 State from without this State, or purchases from without or
14 within this State, any packages of little cigars containing 20
15 or 25 little cigars upon which there are no tax stamps affixed
16 as required by this Act, for purposes of resale or disposal in
17 this State to a person not a stamping distributor, then such
18 stamping distributor shall pay the tax to the Department and
19 add the amount of the tax to the price of such packages sold by
20 such stamping distributor. Payment of the tax shall be
21 evidenced by a stamp or stamps affixed to each package of
22 little cigars containing 20 or 25 little cigars.

23 Stamping distributors paying the tax to the Department on
24 packages of little cigars containing 20 or 25 little cigars
25 sold to other distributors, wholesalers or retailers shall add
26 the amount of the tax to the price of the packages of little

1 cigars containing 20 or 25 little cigars sold by such stamping
2 distributors.

3 (d) Beginning on January 1, 2013, the tax rate imposed per
4 ounce of moist snuff may not exceed 15% of the tax imposed upon
5 a package of 20 cigarettes pursuant to the Cigarette Tax Act.

6 (d-5) Notwithstanding the provisions of this Section,
7 beginning January 1, 2024, the tax per cigar or other rolled
8 tobacco product sold or otherwise disposed of shall not exceed
9 \$0.50 per cigar or roll. This subsection (d-5) does not apply
10 to little cigars.

11 (e) All moneys received by the Department under this Act
12 from sales occurring prior to July 1, 2012 shall be paid into
13 the Long-Term Care Provider Fund of the State Treasury. Of the
14 moneys received by the Department from sales occurring on or
15 after July 1, 2012, except for moneys received from the tax
16 imposed on the sale of little cigars, 50% shall be paid into
17 the Long-Term Care Provider Fund and 50% shall be paid into the
18 Healthcare Provider Relief Fund. Beginning July 1, 2013, all
19 moneys received by the Department under this Act from the tax
20 imposed on little cigars shall be distributed as provided in
21 Section 2 of the Cigarette Tax Act.

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

23 (35 ILCS 143/10-30)

24 Sec. 10-30. Returns.

25 (a) Every distributor shall, on or before the 15th day of

1 each month, file a return with the Department covering the
2 preceding calendar month. The return shall disclose the
3 wholesale price for all tobacco products other than moist
4 snuff and the quantity in ounces of moist snuff sold or
5 otherwise disposed of and other information that the
6 Department may reasonably require. The return shall be filed
7 upon a form prescribed and furnished by the Department.

8 (b) In addition to the information required under
9 subsection (a), on or before the 15th day of each month,
10 covering the preceding calendar month, each stamping
11 distributor shall, on forms prescribed and furnished by the
12 Department, report the quantity of little cigars sold or
13 otherwise disposed of, including the number of packages of
14 little cigars sold or disposed of during the month containing
15 20 or 25 little cigars.

16 (c) At the time when any return of any distributor is due
17 to be filed with the Department, the distributor shall also
18 remit to the Department the tax liability that the distributor
19 has incurred for transactions occurring in the preceding
20 calendar month, less the discount allowed.

21 (d) The Department may adopt rules to require the
22 electronic filing of any return or document required to be
23 filed under this Act. Those rules may provide for exceptions
24 from the filing requirement set forth in this paragraph for
25 persons who demonstrate that they do not have access to the
26 Internet and petition the Department to waive the electronic

1 filing requirement.

2 (e) If any payment provided for in this Section exceeds
3 the distributor's liabilities under this Act, as shown on an
4 original return, the distributor may credit such excess
5 payment against liability subsequently to be remitted to the
6 Department under this Act, in accordance with reasonable rules
7 adopted by the Department.

8 (f) The distributor required to pay the tax under Section
9 10-10 shall be entitled to a discount to reimburse the
10 distributor for the expenses incurred in keeping and
11 maintaining records, preparing and filing the returns,
12 remitting the tax, and supplying the data to the Department
13 upon request. The discount shall be 2% of the distributor's
14 tax liability under this Act, but not to exceed \$2,000 per
15 return.

16 (Source: P.A. 100-1171, eff. 1-4-19.)