

1 AN ACT concerning taxes.

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
5 amended by changing Sections 10-5, 10-10, 10-20, and 10-50 as
6 follows:

7 (35 ILCS 143/10-5)

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

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

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

14 "Correctional Industries program" means a program run by
15 a State penal institution in which residents of the penal
16 institution produce tobacco products for sale to persons
17 incarcerated in penal institutions or resident patients of a
18 State operated mental health facility.

19 "Department" means the Illinois Department of Revenue.

20 "Distributor" means any of the following:

21 (1) Any manufacturer or wholesaler in this State
22 engaged in the business of selling tobacco products who
23 sells, exchanges, or distributes tobacco products to
24 retailers or consumers in this State.

25 (2) Any manufacturer or wholesaler ~~located-outside~~
26 ~~of-Illinois~~ engaged in the business of selling tobacco
27 products from without this State who sells, exchanges,
28 distributes, ships, or transports tobacco products to
29 retailers or consumers located in this State, so long as
30 that manufacturer or wholesaler has or maintains within
31 this State, directly or by subsidiary, an office, sales

1 house, or other place of business, or any agent or other
2 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
6 temporarily.

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

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

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

21 "Person" means any natural individual, firm, partnership,
22 association, joint stock company, joint venture, limited
23 liability company, or public or private corporation, however
24 formed, or a receiver, executor, administrator, trustee,
25 conservator, or other representative appointed by order of
26 any court.

27 "Place of business" means and includes any place where
28 tobacco products are sold or where tobacco products are
29 manufactured, stored, or kept for the purpose of sale or
30 consumption, including any vessel, vehicle, airplane, train,
31 or vending machine.

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

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

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

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,
22 rebate, or other reduction. In the absence of such an
23 established list price, the manufacturer's invoice price at
24 which the manufacturer sells the tobacco product to
25 unaffiliated distributors, before any discounts, trade
26 allowances, rebates, or other reductions, shall be presumed
27 to be the wholesale price.

28 "Wholesaler" means any person, wherever resident or
29 located, engaged in the business of selling tobacco products
30 to others for the purpose of resale.

31 (Source: P.A. 89-21, eff. 6-6-95.)

32 (35 ILCS 143/10-10)

33 Sec. 10-10. Tax imposed. On the first day of the third

1 month after the month in which this Act becomes law, a tax is
2 imposed on any person engaged in business as a distributor of
3 tobacco products, as defined in Section 10-5, at the rate of
4 18% of the wholesale price of tobacco products sold or
5 otherwise disposed of to retailers or consumers located in
6 this State. The tax is in addition to all other occupation or
7 privilege taxes imposed by the State of Illinois, by any
8 political subdivision thereof, or by any municipal
9 corporation. However, the tax is not imposed upon any
10 activity in that business in interstate commerce or
11 otherwise, to the extent to which that activity may not,
12 under the Constitution and Statutes of the United States, be
13 made the subject of taxation by this State. The tax is also
14 not imposed on sales made to the United States or any entity
15 thereof.

16 All moneys received by the Department under this Act
17 shall be paid into the Long-Term Care Provider Fund of the
18 State Treasury.

19 (Source: P.A. 89-21, eff. 6-6-95.)

20 (35 ILCS 143/10-20)

21 Sec. 10-20. Licenses. It shall be unlawful for any
22 person to engage in business as a distributor of tobacco
23 products ~~in-this-State~~ within the meaning of this Act without
24 first having obtained a license to do so from the Department.
25 Application for that license shall be made to the Department
26 in a form prescribed and furnished by the Department. Each
27 applicant for a license shall furnish to the Department on a
28 form, signed and verified by the applicant, the following
29 information:

30 (1) The name of the applicant.

31 (2) The address of the location at which the
32 applicant proposes to engage in business as a distributor
33 of tobacco products ~~in-this-State~~.

1 (3) Other information the Department may reasonably
2 require.

3 Except as otherwise provided in this Section, every
4 applicant who is required to procure a distributor's license
5 shall file with his or her application a joint and several
6 bond. The bond shall be executed to the Department of
7 Revenue, with good and sufficient surety or sureties residing
8 or licensed to do business within the State of Illinois,
9 conditioned upon the true and faithful compliance by the
10 licensee with all of the provisions of this Act. The
11 Department shall fix the amount of the bond for each
12 applicant, taking into consideration the amount of money
13 expected to become due from the applicant under this Act.
14 The amount of bond required by the Department shall be an
15 amount that, in its opinion, will protect the State of
16 Illinois against failure to pay the amount that may become
17 due from the applicant under this Act, but the amount of the
18 security required by the Department shall not exceed 3 times
19 the amount of the applicant's average monthly tax liability,
20 or \$50,000, whichever amount is lower. The bond, a reissue,
21 or a substitute shall be kept in full force and effect during
22 the entire period covered by the license. A separate
23 application for license shall be made, and bond filed, for
24 each place of business at which a person who is required to
25 procure a distributor's license proposes to engage in
26 business as a distributor ~~in-Ilinois~~ under this Act.

27 The Department, upon receipt of an application and bond
28 in proper form, shall issue to the applicant a license, in a
29 form prescribed by the Department, which shall permit the
30 applicant to whom it is issued to engage in business as a
31 distributor at the place shown on his or her application.
32 The license shall be issued by the Department without charge
33 or cost to the applicant. No license issued under this Act
34 is transferable or assignable. The license shall be

1 conspicuously displayed in the place of business conducted by
2 the licensee ~~in Illinois~~ under the license.

3 The bonding requirement in this Section does not apply to
4 an applicant for a distributor's license who is already
5 bonded under the Cigarette Tax Act or the Cigarette Use Tax
6 Act. Licenses issued by the Department under this Act shall
7 be valid for a period not to exceed one year after issuance
8 unless sooner revoked, canceled, or suspended as provided in
9 this Act.

10 No license shall be issued to any person who is in
11 default to the State of Illinois for moneys due under this
12 Act or any other tax Act administered by the Department.

13 The Department may, in its discretion, upon application,
14 authorize the payment of the tax imposed under Section 10-10
15 by any distributor or manufacturer not otherwise subject to
16 the tax imposed under this Act who, to the satisfaction of
17 the Department, furnishes adequate security to ensure payment
18 of the tax. The distributor or manufacturer shall be issued,
19 without charge, a license to remit the tax. When so
20 authorized, it shall be the duty of the distributor or
21 manufacturer to remit the tax imposed upon the wholesale
22 price of tobacco products sold or otherwise disposed of to
23 retailers or consumers located in this State, in the same
24 manner and subject to the same requirements as any other a
25 distributor or manufacturer licensed under this Act operating
26 ~~within this State~~.

27 Any person aggrieved by any decision of the Department
28 under this Section may, within 20 days after notice of that
29 decision, protest and request a hearing, whereupon the
30 Department must give notice to that person of the time and
31 place fixed for the hearing and must hold a hearing in
32 conformity with the provisions of this Act and then issue its
33 final administrative decision in the matter to that person.
34 In the absence of such a protest within 20 days, the

1 Department's decision becomes final without any further
2 determination being made or notice given.

3 (Source: P.A. 89-21, eff. 6-6-95.)

4 (35 ILCS 143/10-50)

5 Sec. 10-50. Violations and penalties. When the amount
6 due is under \$300, any distributor who fails to file a
7 return, wilfully fails or refuses to make any payment to the
8 Department of the tax imposed by this Act, or files a
9 fraudulent return, or any officer or agent of a corporation
10 engaged in the business of distributing tobacco products to
11 retailers and consumers located in this State who signs a
12 fraudulent return filed on behalf of the corporation, or any
13 accountant or other agent who knowingly enters false
14 information on the return of any taxpayer under this Act is
15 guilty of a Class 4 felony.

16 Any person who violates any provision of Section 10-20 of
17 this Act, fails to keep books and records as required under
18 this Act, or wilfully violates a rule or regulation of the
19 Department for the administration and enforcement of this Act
20 is guilty of a Class 4 felony. A person commits a separate
21 offense on each day that he or she engages in business in
22 violation of Section 10-20 of this Act.

23 When the amount due is under \$300, any person who accepts
24 money that is due to the Department under this Act from a
25 taxpayer for the purpose of acting as the taxpayer's agent to
26 make the payment to the Department, but who fails to remit
27 the payment to the Department when due, is guilty of a Class
28 4 felony.

29 When the amount due is \$300 or more, any distributor who
30 files, or causes to be filed, a fraudulent return, or any
31 officer or agent of a corporation engaged in the business of
32 distributing tobacco products to retailers and consumers
33 located in this State who files or causes to be filed or

1 signs or causes to be signed a fraudulent return filed on
2 behalf of the corporation, or any accountant or other agent
3 who knowingly enters false information on the return of any
4 taxpayer under this Act is guilty of a Class 3 felony.

5 When the amount due is \$300 or more, any person engaged
6 in the business of distributing tobacco products to retailers
7 and consumers located in this State who fails to file a
8 return, wilfully fails or refuses to make any payment to the
9 Department of the tax imposed by this Act, or accepts money
10 that is due to the Department under this Act from a taxpayer
11 for the purpose of acting as the taxpayer's agent to make
12 payment to the Department but fails to remit such payment to
13 the Department when due is guilty of a Class 3 felony.

14 Any person whose principal place of business is in this
15 State and who is charged with a violation under this Section
16 shall be tried in the county where his or her principal place
17 of business is located unless he or she asserts a right to be
18 tried in another venue. If the taxpayer does not have his or
19 her principal place of business in this State, however, the
20 hearing must be held in Sangamon County unless the taxpayer
21 asserts a right to be tried in another venue.

22 Any taxpayer or agent of a taxpayer who with the intent
23 to defraud purports to make a payment due to the Department
24 by issuing or delivering a check or other order upon a real
25 or fictitious depository for the payment of money, knowing
26 that it will not be paid by the depository, is guilty of a
27 deceptive practice in violation of Section 17-1 of the
28 Criminal Code of 1961.

29 A prosecution for a violation described in this Section
30 may be commenced within 3 years after the commission of the
31 act constituting the violation.

32 (Source: P.A. 89-21, eff. 6-6-95.)

33 Section 99. Effective date. This Act takes effect upon

1 becoming law.