

AN ACT concerning revenue.

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

Section 5. The Department of Revenue Law of the Civil Administrative Code of Illinois is amended by changing Section 2505-210 as follows:

(20 ILCS 2505/2505-210) (was 20 ILCS 2505/39c-1)

Sec. 2505-210. Electronic funds transfer.

(a) The Department may provide means by which persons having a tax liability under any Act administered by the Department may use electronic funds transfer to pay the tax liability.

(b) Mandatory payment by electronic funds transfer. Beginning on October 1, 2002, and through September 30, 2010, a taxpayer who has an annual tax liability of \$200,000 or more shall make all payments of that tax to the Department by electronic funds transfer. Beginning October 1, 2010, a taxpayer (other than an individual taxpayer) who has an annual tax liability of \$20,000 or more and an individual taxpayer who has an annual tax liability of \$200,000 or more shall make all payments of that tax to the Department by electronic funds transfer. Before August 1 of each year, beginning in 2002, the Department shall notify all taxpayers required to make payments

by electronic funds transfer. All taxpayers required to make payments by electronic funds transfer shall make those payments for a minimum of one year beginning on October 1. For purposes of this subsection (b), the term "annual tax liability" means, except as provided in subsections (c) and (d) of this Section, the sum of the taxpayer's liabilities under a tax Act administered by the Department, except the Motor Fuel Tax Law and the Environmental Impact Fee Law, for the immediately preceding calendar year.

(c) For purposes of subsection (b), the term "annual tax liability" means, for a taxpayer that incurs a tax liability under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Use Tax Act, Service Use Tax Act, or any other State or local occupation or use tax law that is administered by the Department, the sum of the taxpayer's liabilities under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Use Tax Act, Service Use Tax Act, and all other State and local occupation and use tax laws administered by the Department for the immediately preceding calendar year.

(d) For purposes of subsection (b), the term "annual tax liability" means, for a taxpayer that incurs an Illinois income tax liability, the greater of:

(1) the amount of the taxpayer's tax liability under Article 7 of the Illinois Income Tax Act for the immediately preceding calendar year; or

(2) the taxpayer's estimated tax payment obligation

under Article 8 of the Illinois Income Tax Act for the immediately preceding calendar year.

(e) The Department shall adopt such rules as are necessary to effectuate a program of electronic funds transfer and the requirements of this Section.

(Source: P.A. 91-239, eff. 1-1-00; 92-492, eff. 1-1-02.)

Section 10. The Illinois Income Tax Act is amended by changing Section 704A as follows:

(35 ILCS 5/704A)

Sec. 704A. Employer's return and payment of tax withheld.

(a) In general, every employer who deducts and withholds or is required to deduct and withhold tax under this Act on or after January 1, 2008 shall make those payments and returns as provided in this Section.

(b) Returns. Every employer shall, in the form and manner required by the Department, make returns with respect to taxes withheld or required to be withheld under this Article 7 for each quarter beginning on or after January 1, 2008, on or before the last day of the first month following the close of that quarter.

(c) Payments. With respect to amounts withheld or required to be withheld on or after January 1, 2008:

(1) Semi-weekly payments. For each calendar year, each employer who withheld or was required to withhold more than

\$12,000 during the one-year period ending on June 30 of the immediately preceding calendar year, payment must be made:

(A) on or before each Friday of the calendar year, for taxes withheld or required to be withheld on the immediately preceding Saturday, Sunday, Monday, or Tuesday;

(B) on or before each Wednesday of the calendar year, for taxes withheld or required to be withheld on the immediately preceding Wednesday, Thursday, or Friday.

Beginning with calendar year 2011, payment made under this paragraph (1) of subsection (c) must be made by electronic funds transfer.

(2) Semi-weekly payments. Any employer who withholds or is required to withhold more than \$12,000 in any quarter of a calendar year is required to make payments on the dates set forth under item (1) of this subsection (c) for each remaining quarter of that calendar year and for the subsequent calendar year.

(3) Monthly payments. Each employer, other than an employer described in items (1) or (2) of this subsection, shall pay to the Department, on or before the 15th day of each month the taxes withheld or required to be withheld during the immediately preceding month.

(4) Payments with returns. Each employer shall pay to the Department, on or before the due date for each return

required to be filed under this Section, any tax withheld or required to be withheld during the period for which the return is due and not previously paid to the Department.

(d) Regulatory authority. The Department may, by rule:

(1) Permit ~~If the aggregate amounts required to be withheld under this Article 7 do not exceed \$1,000 for the calendar year, permit~~ employers, in lieu of the requirements of subsections (b) and (c), to file annual returns due on or before January 31 of the ~~following~~ year for taxes withheld or required to be withheld during the previous ~~that~~ calendar year and, if the aggregate amounts required to be withheld by the employer under this Article 7 (other than amounts required to be withheld under Section 709.5) do not exceed \$1,000 for the previous calendar year, to pay the taxes required to be shown on each such return no later than the due date for such return.

(2) Provide that any payment required to be made under subsection (c)(1) or (c)(2) is deemed to be timely to the extent paid by electronic funds transfer on or before the due date for deposit of federal income taxes withheld from, or federal employment taxes due with respect to, the wages from which the Illinois taxes were withheld.

(3) Designate one or more depositories to which payment of taxes required to be withheld under this Article 7 must be paid by some or all employers.

(4) Increase the threshold dollar amounts at which

employers are required to make semi-weekly payments under subsection (c) (1) or (c) (2).

(e) Annual return and payment. Every employer who deducts and withholds or is required to deduct and withhold tax from a person engaged in domestic service employment, as that term is defined in Section 3510 of the Internal Revenue Code, may comply with the requirements of this Section with respect to such employees by filing an annual return and paying the taxes required to be deducted and withheld on or before the 15th day of the fourth month following the close of the employer's taxable year. The Department may allow the employer's return to be submitted with the employer's individual income tax return or to be submitted with a return due from the employer under Section 1400.2 of the Unemployment Insurance Act.

(f) Magnetic media and electronic filing. Any W-2 Form that, under the Internal Revenue Code and regulations promulgated thereunder, is required to be submitted to the Internal Revenue Service on magnetic media or electronically must also be submitted to the Department on magnetic media or electronically for Illinois purposes, if required by the Department.

(g) For amounts deducted or withheld after December 31, 2009, a taxpayer who makes an election under Section 5-15(f) of the Economic Development for a Growing Economy Act for a taxable year shall be allowed a credit against payments due under this Section for amounts withheld during the first

calendar year beginning after the end of that taxable year equal to the amount of the credit awarded to the taxpayer by the Department of Commerce and Economic Opportunity under the Economic Development for a Growing Economy Act for the taxable year. The credit may not reduce the taxpayer's obligation for any payment due under this Section to less than zero. If the amount of the credit exceeds the total payments due under this Section with respect to amounts withheld during the calendar year, the excess may be carried forward and applied against the taxpayer's liability under this Section in the 5 succeeding calendar years. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one taxable year that are available to offset a liability, the earlier credit shall be applied first. This Section is exempt from the provisions of Section 250 of this Act.

(h) An employer may claim a credit against payments due under this Section for amounts withheld during the first calendar year ending after date on which a tax credit certificate was issued under Section 35 of the Small Business Job Creation Tax Credit Act. The credit shall be equal to the amount shown on the certificate, but may not reduce the taxpayer's obligation for any payment due under this Section to less than zero. If the amount of the credit exceeds the total payments due under this Section with respect to amounts withheld during the calendar year, the excess may be carried

forward and applied against the taxpayer's liability under this Section in the 5 succeeding calendar years. The credit shall be applied to the earliest year for which there is a tax liability. If there are credits from more than one calendar year that are available to offset a liability, the earlier credit shall be applied first. This Section is exempt from the provisions of Section 250 of this Act.

(Source: P.A. 95-8, eff. 6-29-07; 95-707, eff. 1-11-08; 96-834, eff. 12-14-09; 96-888, eff. 4-13-10.)".

Section 15. The Cigarette Tax Act is amended by changing Sections 1, 2, 3, 3-10, 4a, 4d, 6, 7, 8, 10, 10b, 12, 15, 23, 24, 25, and 26 and by adding Sections 4c, 4e, 9e, and 11a 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.

"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.)

(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 ~~both~~ distributors, secondary distributors, and retailers, in all ~~advertisements,~~ 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. 93-839, eff. 7-30-04; 94-91, eff. 7-1-05; 94-839, eff. 6-6-06.)

(35 ILCS 130/3) (from Ch. 120, par. 453.3)

Sec. 3. Affixing tax stamp; remitting tax to the Department. Payment of the taxes imposed by Section 2 of this Act shall (except as hereinafter provided) be evidenced by revenue tax stamps affixed to each original package of cigarettes. Each distributor of cigarettes, before delivering or causing to be delivered any original package of cigarettes in this State to a purchaser, shall firmly affix a proper stamp or stamps to each such package, or (in case of manufacturers of cigarettes in original packages which are contained inside a sealed transparent wrapper) shall imprint the required language on the original package of cigarettes beneath such outside wrapper, as hereinafter provided.

No stamp or imprint may be affixed to, or made upon, any package of cigarettes unless that package complies with all requirements of the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1331 and following, for the placement of labels, warnings, or any other information upon a package of cigarettes

that is sold within the United States. Under the authority of Section 6, the Department shall revoke the license of any distributor that is determined to have violated this paragraph. A person may not affix a stamp on a package of cigarettes, cigarette papers, wrappers, or tubes if that individual package has been marked for export outside the United States with a label or notice in compliance with Section 290.185 of Title 27 of the Code of Federal Regulations. It is not a defense to a proceeding for violation of this paragraph that the label or notice has been removed, mutilated, obliterated, or altered in any manner.

Only distributors licensed under this Act and transporters, as defined in Section 9c of this Act, may possess unstamped original packages of cigarettes. Prior to shipment to a secondary distributor or an Illinois retailer, a stamp shall be applied to each original package of cigarettes sold to the secondary distributor or retailer. A distributor may apply tax stamps only to original packages of cigarettes purchased or obtained directly from an in-state maker, manufacturer, or fabricator licensed as a distributor under Section 4 of this Act or an out-of-state maker, manufacturer, or fabricator holding a permit under Section 4b of this Act. A licensed distributor may ship or otherwise cause to be delivered unstamped original packages of cigarettes in, into, or from this State. A licensed distributor may transport unstamped original packages of cigarettes to a facility, wherever

located, owned or controlled by such distributor; however, a distributor may not transport unstamped original packages of cigarettes to a facility where retail sales of cigarettes take place or to a facility where a secondary distributor makes sales for resale. Any licensed distributor that ships or otherwise causes to be delivered unstamped original packages of cigarettes into, within, or from this State shall ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand style of the cigarettes so transported, provided that this Section shall not be construed as to impose any requirement or liability upon any common or contract carrier.

The Department, or any person authorized by the Department, shall sell such stamps only to persons holding valid licenses as distributors under this Act. On and after July 1, 2003, payment for such stamps must be made by means of electronic funds transfer. The Department may refuse to sell stamps to any person who does not comply with the provisions of this Act. Beginning on the effective date of this amendatory Act of the 92nd General Assembly and through June 30, 2002, persons holding valid licenses as distributors may purchase cigarette tax stamps up to an amount equal to 115% of the distributor's average monthly cigarette tax stamp purchases over the 12 calendar months prior to the effective date of this amendatory

Act of the 92nd General Assembly.

Prior to December 1, 1985, the Department shall allow a distributor 21 days in which to make final payment of the amount to be paid for such stamps, by allowing the distributor to make payment for the stamps at the time of purchasing them with a draft which shall be in such form as the Department prescribes, and which shall be payable within 21 days thereafter: Provided that such distributor has filed with the Department, and has received the Department's approval of, a bond, which is in addition to the bond required under Section 4 of this Act, payable to the Department in an amount equal to 80% of such distributor's average monthly tax liability to the Department under this Act during the preceding calendar year or \$500,000, whichever is less. The Bond shall be joint and several and shall be in the form of a surety company bond in such form as the Department prescribes, or it may be in the form of a bank certificate of deposit or bank letter of credit. The bond shall be conditioned upon the distributor's payment of amount of any 21-day draft which the Department accepts from that distributor for the delivery of stamps to that distributor under this Act. The distributor's failure to pay any such draft, when due, shall also make such distributor automatically liable to the Department for a penalty equal to 25% of the amount of such draft.

On and after December 1, 1985 and until July 1, 2003, the Department shall allow a distributor 30 days in which to make

final payment of the amount to be paid for such stamps, by allowing the distributor to make payment for the stamps at the time of purchasing them with a draft which shall be in such form as the Department prescribes, and which shall be payable within 30 days thereafter, and beginning on January 1, 2003 and thereafter, the draft shall be payable by means of electronic funds transfer: Provided that such distributor has filed with the Department, and has received the Department's approval of, a bond, which is in addition to the bond required under Section 4 of this Act, payable to the Department in an amount equal to 150% of such distributor's average monthly tax liability to the Department under this Act during the preceding calendar year or \$750,000, whichever is less, except that as to bonds filed on or after January 1, 1987, such additional bond shall be in an amount equal to 100% of such distributor's average monthly tax liability under this Act during the preceding calendar year or \$750,000, whichever is less. The bond shall be joint and several and shall be in the form of a surety company bond in such form as the Department prescribes, or it may be in the form of a bank certificate of deposit or bank letter of credit. The bond shall be conditioned upon the distributor's payment of the amount of any 30-day draft which the Department accepts from that distributor for the delivery of stamps to that distributor under this Act. The distributor's failure to pay any such draft, when due, shall also make such distributor automatically liable to the Department for a penalty equal to

25% of the amount of such draft.

Every prior continuous compliance taxpayer shall be exempt from all requirements under this Section concerning the furnishing of such bond, as defined in this Section, as a condition precedent to his being authorized to engage in the business licensed under this Act. This exemption shall continue for each such taxpayer until such time as he may be determined by the Department to be delinquent in the filing of any returns, or is determined by the Department (either through the Department's issuance of a final assessment which has become final under the Act, or by the taxpayer's filing of a return which admits tax to be due that is not paid) to be delinquent or deficient in the paying of any tax under this Act, at which time that taxpayer shall become subject to the bond requirements of this Section and, as a condition of being allowed to continue to engage in the business licensed under this Act, shall be required to furnish bond to the Department in such form as provided in this Section. Such taxpayer shall furnish such bond for a period of 2 years, after which, if the taxpayer has not been delinquent in the filing of any returns, or delinquent or deficient in the paying of any tax under this Act, the Department may reinstate such person as a prior continuance compliance taxpayer. Any taxpayer who fails to pay an admitted or established liability under this Act may also be required to post bond or other acceptable security with the Department guaranteeing the payment of such admitted or

established liability.

Any person aggrieved by any decision of the Department under this Section may, within the time allowed by law, protest and request a hearing, whereupon the Department shall give notice and shall hold a hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to such person. In the absence of such a protest filed within the time allowed by law, the Department's decision shall become final without any further determination being made or notice given.

The Department shall discharge any surety and shall release and return any bond or security deposited, assigned, pledged, or otherwise provided to it by a taxpayer under this Section within 30 days after:

(1) Such taxpayer becomes a prior continuous compliance taxpayer; or

(2) Such taxpayer has ceased to collect receipts on which he is required to remit tax to the Department, has filed a final tax return, and has paid to the Department an amount sufficient to discharge his remaining tax liability as determined by the Department under this Act. The Department shall make a final determination of the taxpayer's outstanding tax liability as expeditiously as possible after his final tax return has been filed. If the Department cannot make such final determination within 45 days after receiving the final tax return, within such period it shall so notify the taxpayer,

stating its reasons therefor.

The Department may authorize distributors to affix revenue tax stamps by imprinting tax meter stamps upon original packages of cigarettes. The Department shall adopt rules and regulations relating to the imprinting of such tax meter stamps as will result in payment of the proper taxes as herein imposed. No distributor may affix revenue tax stamps to original packages of cigarettes by imprinting tax meter stamps thereon unless such distributor has first obtained permission from the Department to employ this method of affixation. The Department shall regulate the use of tax meters and may, to assure the proper collection of the taxes imposed by this Act, revoke or suspend the privilege, theretofore granted by the Department to any distributor, to imprint tax meter stamps upon original packages of cigarettes.

Illinois cigarette manufacturers who place their cigarettes in original packages which are contained inside a sealed transparent wrapper, and similar out-of-State cigarette manufacturers who elect to qualify and are accepted by the Department as distributors under Section 4b(a) of this Act, shall pay the taxes imposed by this Act by remitting the amount thereof to the Department by the 5th day of each month covering cigarettes shipped or otherwise delivered in Illinois to purchasers during the preceding calendar month. Such manufacturers of cigarettes in original packages which are contained inside a sealed transparent wrapper, before

delivering such cigarettes or causing such cigarettes to be delivered in this State to purchasers, shall evidence their obligation to remit the taxes due with respect to such cigarettes by imprinting language to be prescribed by the Department on each original package of such cigarettes underneath the sealed transparent outside wrapper of such original package, in such place thereon and in such manner as the Department may designate. Such imprinted language shall acknowledge the manufacturer's payment of or liability for the tax imposed by this Act with respect to the distribution of such cigarettes.

A distributor shall not affix, or cause to be affixed, any stamp or imprint to a package of cigarettes, as provided for in this Section, if the tobacco product manufacturer, as defined in Section 10 of the Tobacco Product Manufacturers' Escrow Act, that made or sold the cigarettes has failed to become a participating manufacturer, as defined in subdivision (a)(1) of Section 15 of the Tobacco Product Manufacturers' Escrow Act, or has failed to create a qualified escrow fund for any cigarettes manufactured by the tobacco product manufacturer and sold in this State or otherwise failed to bring itself into compliance with subdivision (a)(2) of Section 15 of the Tobacco Product Manufacturers' Escrow Act.

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

Sec. 3-10. Cigarette enforcement.

(a) Prohibitions. It is unlawful for any person:

(1) to sell or distribute in this State; to acquire, hold, own, possess, or transport, for sale or distribution in this State; or to import, or cause to be imported into this State for sale or distribution in this State:

(A) any cigarettes the package of which:

(i) bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

(ii) does not comply with:

(aa) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; and

(bb) all federal trademark and copyright laws;

(B) any cigarettes imported into the United States in violation of 26 U.S.C. 5754 or any other federal law, or implementing federal regulations;

(C) any cigarettes that such person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; or

(D) any cigarettes for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of the cigarettes required by the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a;

(2) to alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:

(A) any statement, label, stamp, sticker, or notice described in subdivision (a)(1)(A)(i) of this Section;

(B) any health warning that is not specified in, or does not conform with the requirements of, the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; or

(3) to affix any stamp required pursuant to this Act to the package of any cigarettes described in subdivision (a)(1) of this Section or altered in violation of

subdivision (a) (2).

(b) Documentation. On the first business day of each month, each person licensed to affix the State tax stamp to cigarettes shall file with the Department, for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month:

(1) a copy of:

(A) the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. 5713, to the person importing the cigarettes into the United States allowing the person to import the cigarettes; and

(B) the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms;

(2) a statement, signed by the person under penalty of perjury, which shall be treated as confidential by the Department and exempt from disclosure under the Freedom of Information Act, identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale; and a separate statement, signed by the individual under penalty of perjury, which shall not be treated as confidential or exempt from disclosure, separately identifying the brands and brand styles of such

cigarettes; and

(3) a statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with:

(A) the package health warning and ingredient reporting requirements of the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a, with respect to such cigarettes; and

(B) the provisions of Exhibit T of the Master Settlement Agreement entered in the case of People of the State of Illinois v. Philip Morris, et al. (Circuit Court of Cook County, No. 96-L13146), including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of Exhibit T.

(c) Administrative sanctions.

(1) Upon finding that a distributor, secondary distributor, or person has committed any of the acts prohibited by subsection (a), knowing or having reason to know that he or she has done so, or upon finding that a distributor or person has failed to comply with any requirement of subsection (b), the Department may revoke or suspend the license or licenses of any distributor or secondary distributor pursuant to the procedures set forth in Section 6 and impose, on the distributor, secondary

distributor, or ~~on the~~ person, a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000.

(2) Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this State in violation of this Section shall be deemed contraband under this Act and are subject to seizure and forfeiture as provided in this Act, and all such cigarettes seized and forfeited shall be destroyed or maintained and used in an undercover capacity. Such cigarettes shall be deemed contraband whether the violation of this Section is knowing or otherwise.

(d) Unfair trade practices. In addition to any other penalties provided for in this Act, a violation of subsection (a) or subsection (b) of this Section shall constitute an unlawful practice as provided in the Consumer Fraud and Deceptive Business Practices Act.

(d-1) Retailers and secondary distributors shall not be liable under subsections (c)(1) and (d) of this Section for unknowingly possessing, selling, or distributing to consumers or users cigarettes identified in subsection (a)(1) of this Section if the cigarettes possessed, sold, or distributed by the retailer or secondary distributor were obtained from a distributor licensed under this Act.

(e) Unfair cigarette sales. For purposes of the Trademark Registration and Protection Act and the Counterfeit Trademark

Act, cigarettes imported or reimported into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States shall be presumed to have been purchased outside of the ordinary channels of trade.

(f) General provisions.

(1) This Section shall be enforced by the Department; provided that, at the request of the Director of Revenue or the Director's duly authorized agent, the State police and all local police authorities shall enforce the provisions of this Section. The Attorney General has concurrent power with the State's Attorney of any county to enforce this Section.

(2) For the purpose of enforcing this Section, the Director of Revenue and any agency to which the Director has delegated enforcement responsibility pursuant to subdivision (f)(1) may request information from any State or local agency and may share information with and request information from any federal agency and any agency of any other state or any local agency of any other state.

(3) In addition to any other remedy provided by law, including enforcement as provided in subdivision (a)(1), any person may bring an action for appropriate injunctive or other equitable relief for a violation of this Section;

actual damages, if any, sustained by reason of the violation; and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney's fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of 3 times the actual damages sustained by reason of the violation.

(g) Definitions. As used in this Section:

"Importer" means that term as defined in 26 U.S.C. 5702(1).

"Package" means that term as defined in 15 U.S.C. 1332(4).

(h) Applicability.

(1) This Section does not apply to:

(A) cigarettes allowed to be imported or brought into the United States for personal use; and

(B) cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations; except that this Section shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

(2) The penalties provided in this Section are in addition to any other penalties imposed under other provision of law.

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

(35 ILCS 130/4a) (from Ch. 120, par. 453.4a)

Sec. 4a. If a distributor ~~licensee~~ shall be convicted of the violation of any of the provisions of this Act, or if his or her license shall be revoked and no review is had of the order or revocation, or if on review thereof the decision is adverse to the distributor ~~licensee~~, or if a distributor ~~licensee~~ fails to pay an assessment as to which no judicial review is sought and which has become final, or pursuant to which, upon review thereof, the circuit court has entered a judgment that is in favor of the Department and that has become final, the bond filed pursuant to this Act shall thereupon be forfeited, and the Department may institute a suit upon such bond in its own name for the entire amount of such bond and costs. Such suit upon the bond shall be in addition to any other remedy provided for herein.

(Source: P.A. 79-1366.)

(35 ILCS 130/4c new)

Sec. 4c. Secondary distributor's license. No person may engage in business as a secondary distributor of cigarettes in this State without first having obtained a license therefor from the Department. Application for license shall be made to the Department on a form as furnished and prescribed by the Department. Each applicant for a license 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 the location at which the applicant proposes to engage in business as a secondary distributor of cigarettes in this State; and
- (3) such other additional information as the Department may reasonably require.

The annual license fee payable to the Department for each secondary distributor's license shall be \$250. Each applicant for a license shall pay such fee to the Department at the time of submitting an application for license to the Department.

A separate application for license shall be made and separate annual license fee paid for each place of business at which a person who is required to procure a secondary distributor's license under this Section proposes to engage in business as a secondary distributor in Illinois under this Act.

The following are ineligible to receive a secondary distributor's license under this Act:

- (1) a person who is not of good character and reputation in the community in which he resides;
- (2) a person who has been convicted of a felony under any federal or State law, if the Department, after investigation and a hearing, if requested by the applicant, determines that such person has not been sufficiently rehabilitated to warrant the public trust;
- (3) a corporation, if any officer, manager, or director

thereof, or any stockholder or stockholders owning in the aggregate more than 5% of the stock of such corporation, would not be eligible to receive a license under this Act for any reason;

(4) a person who manufactures cigarettes, whether in this State or out of this State;

(5) a person, or any person who owns more than 15% of the ownership interests in a person or a related party who:

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

(B) had a license under this Act revoked within the past two years by the Department or has been convicted of a State or federal crime, punishable by imprisonment of one year or more, relating to stolen or contraband cigarettes;

(C) has been found by the Department, 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;

(D) has been found by the Department, 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.); or

(E) has been found by the Department, after notice and a hearing, to have made a material false statement in the application or has failed to produce records required to be maintained by this Act.

The Department, upon receipt of an application and license fee from a person who is eligible to receive a secondary distributor's license under this Act, shall issue to such applicant a license in such form as prescribed by the Department. The license shall permit the applicant to which it is issued to engage in business as a secondary distributor at the place shown in his application. All licenses issued by the Department under this Act shall be valid for a period not to exceed one year after issuance unless sooner revoked, canceled, or suspended as provided in this Act. No license issued under this Act is transferable or assignable. Such license shall be conspicuously displayed in the place of business conducted by the licensee in Illinois under such license. No secondary distributor licensee acquires any vested interest or compensable property right in a license issued under this Act.

A licensed secondary distributor shall notify the Department of any change in the information contained on the application form, including any change in ownership, and shall

do so within 30 days after any such change.

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 130/4d)

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 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.)

(35 ILCS 130/4e new)

Sec. 4e. Sales of cigarettes to and by secondary distributors. 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 secondary distributors. A secondary distributor may sell only original packages of cigarettes obtained from 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. Secondary distributors may sell cigarettes to Illinois retailers for resale, and are also authorized to make retail sales of cigarettes at the location on the secondary distributor's license as long as the secondary distributor sells 75% or more of the cigarettes sold at such location to retailers for resale. All sales by secondary distributors to retailers must be made at the location on the secondary distributor's license. Retailers must take possession of all cigarettes sold by the secondary distributor at the secondary distributor's licensed address. Secondary distributors may not make deliveries of cigarettes to retailers.

Secondary distributors may not file a claim for credit or

refund with the State under Section 9d of this Act.

(35 ILCS 130/6) (from Ch. 120, par. 453.6)

Sec. 6. Revocation, cancellation, or suspension of license. The Department may, after notice and hearing as provided for by this Act, revoke, cancel or suspend the license of any distributor or secondary distributor for the violation of any provision of this Act, or for noncompliance with any provision herein contained, or for any noncompliance with any lawful rule or regulation promulgated by the Department under Section 8 of this Act, or because the licensee is determined to be ineligible for a distributor's license for any one or more of the reasons provided for in Section 4 of this Act, or because the licensee is determined to be ineligible for a secondary distributor's license for any one or more of the reasons provided for in Section 4c of this Act. However, no such license shall be revoked, cancelled or suspended, except after a hearing by the Department with notice to the distributor or secondary distributor, as aforesaid, and affording such distributor or secondary distributor a reasonable opportunity to appear and defend, and any distributor or secondary distributor aggrieved by any decision of the Department with respect thereto may have the determination of the Department judicially reviewed, as herein provided.

The Department may revoke, cancel, or suspend the license

of any distributor for a violation of the Tobacco Product Manufacturers' Escrow Enforcement Act as provided in Section 30 ~~20~~ of that Act. The Department may revoke, cancel, or suspend the license of any secondary distributor for a violation of subsection (e) of Section 15 of the Tobacco Product Manufacturers' Escrow Enforcement Act.

Any distributor or secondary distributor 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 in writing to the distributor or secondary distributor requesting the hearing that contains a statement of the charges preferred against the distributor or secondary distributor and that states the time and place fixed for the hearing. The Department shall hold the hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to the distributor or secondary distributor. 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.

No license so revoked, as aforesaid, shall be reissued to any such distributor or secondary distributor within a period of 6 months after the date of the final determination of such revocation. No such license shall be reissued at all so long as the person who would receive the license is ineligible to

receive a distributor's license under this Act for any one or more of the reasons provided for in Section 4 of this Act or is ineligible to receive a secondary distributor's license under this Act for any one or more of the reasons provided for in Section 4c of this Act.

The Department upon complaint filed in the circuit court may by injunction restrain any person who fails, or refuses, to comply with any of the provisions of this Act from acting as a distributor or secondary distributor of cigarettes in this State.

(Source: P.A. 91-901, eff. 1-1-01; 92-737, eff. 7-25-02.)

(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, 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. 83-334.)

(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 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 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. 83-706.)

(35 ILCS 130/9e new)

Sec. 9e. Secondary distributors; reports. Every secondary distributor who is required to procure a license under 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 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 electronically in such form prescribed by the Department and shall contain such other information as the Department may reasonably require. The secondary distributor's report shall 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 secondary distributor.

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 ~~such~~ distributor or secondary distributor, and may issue subpoenas requiring the attendance of a ~~such~~ distributor or secondary distributor, or any officer or employee of a ~~such~~ distributor or secondary distributor, 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: Laws 1965, p. 192.)

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

Sec. 10b. All information received by the Department from returns or reports filed under this Act, or from any

investigation conducted under this Act, shall be confidential, except for official purposes, and any person who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be guilty of a Class A misdemeanor.

Nothing in this Act prevents the Director of Revenue from publishing or making available to the public the names and addresses of persons filing returns or reports under this Act, or reasonable statistics concerning the operation of the tax by grouping the contents of returns or reports so that the information in any individual return or report is not disclosed.

Nothing in this Act prevents the Director of Revenue from divulging to the United States Government or the government of any other state, or any officer or agency thereof, for exclusively official purposes, information received by the Department in administering this Act, provided that such other governmental agency agrees to divulge requested tax information to the Department.

The furnishing upon request of the Auditor General, or his authorized agents, for official use, of returns or reports filed and information related thereto under this Act is deemed to be an official purpose within the meaning of this Section.

The furnishing of financial information to a home rule unit with a population in excess of 2,000,000 that has imposed a tax similar to that imposed by this Act under its home rule powers,

upon request of the Chief Executive of the home rule unit, is an official purpose within the meaning of this Section, provided the home rule unit agrees in writing to the requirements of this Section. Information so provided is subject to all confidentiality provisions of this Section. The written agreement shall provide for reciprocity, limitations on access, disclosure, and procedures for requesting information.

The Director may make available to any State agency, including the Illinois Supreme Court, which licenses persons to engage in any occupation, information that a person licensed by such agency has failed to file returns under this Act or pay the tax, penalty and interest shown therein, or has failed to pay any final assessment of tax, penalty or interest due under this Act or has failed to file reports under this Act. An assessment is final when all proceedings in court for review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

The Director shall make available for public inspection in the Department's principal office and for publication, at cost, administrative decisions issued on or after January 1, 1995. These decisions are to be made available in a manner so that the following taxpayer or licensee information is not disclosed:

- (1) The names, addresses, and identification numbers of the taxpayer or licensee, related entities, and

employees.

(2) At the sole discretion of the Director, trade secrets or other confidential information identified as such by the taxpayer or licensee, no later than 30 days after receipt of an administrative decision, by such means as the Department shall provide by rule.

The Director shall determine the appropriate extent of the deletions allowed in paragraph (2). In the event the taxpayer or licensee does not submit deletions, the Director shall make only the deletions specified in paragraph (1).

The Director shall make available for public inspection and publication an administrative decision within 180 days after the issuance of the administrative decision. The term "administrative decision" has the same meaning as defined in Section 3-101 of Article III of the Code of Civil Procedure. Costs collected under this Section shall be paid into the Tax Compliance and Administration Fund.

Nothing contained in this Act shall prevent the Director from divulging information to any person pursuant to a request or authorization made by the taxpayer or licensee or by an authorized representative of the taxpayer or licensee.

(Source: P.A. 94-1074, eff. 12-26-06.)

(35 ILCS 130/11a new)

Sec. 11a. Secondary distributors; records. Every secondary distributor of cigarettes, who is required to procure a license

under this Act, shall keep within Illinois, at his licensed address, complete and accurate records of cigarettes held, purchased, brought in from without the State, and sold, or otherwise disposed of, and shall preserve and keep within Illinois at his licensed address all invoices, bills of lading, 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 secondary distributors. For purposes of this Section, "records" means all data maintained by the secondary distributors, 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 secondary distributor without a search warrant and may inspect the premises and the stock or 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 license of the secondary distributor at such premises shall be subject to revocation by the Department.

(35 ILCS 130/12) (from Ch. 120, par. 453.12)

Sec. 12. Every distributor or secondary distributor who is required to procure a license under this Act and who purchases cigarettes for shipment into Illinois from a point outside this State shall procure invoices in duplicate covering each such shipment, and shall furnish one copy of each such invoice to the Department at the time of filing a ~~the~~ return or a report required by this Act.

(Source: Laws 1953, p. 255.)

(35 ILCS 130/15) (from Ch. 120, par. 453.15)

Sec. 15. Any person who shall fail to safely preserve the records required by Section 11 and Section 11a of this Act for the period of three years, as required therein, in such manner as to insure permanency and accessibility for inspection by the Department, shall be guilty of a business offense and may be

fined up to \$5,000.

(Source: P.A. 88-88.)

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

Sec. 23. Every distributor, secondary distributor, 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. 83-1428.)

(35 ILCS 130/24) (from Ch. 120, par. 453.24)

Sec. 24. Punishment for sale or possession of packages of contraband cigarettes.

(a) Possession or sale of 100 or less packages of contraband cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of this Act, any person who has in his or her possession or sells 100 or less original

packages of contraband cigarettes is guilty of a Class A misdemeanor.

(b) Possession or sale of more than 100 but less than 251 packages of contraband cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of this Act, any person who has in his or her possession or sells more than 100 but less than 251 original packages of contraband cigarettes is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense.

(c) Possession or sale of more than 250 but less than 1,001 packages of contraband cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of this Act, any person who has in his or her possession or sells more than 250 but less than 1,001 original packages of contraband cigarettes is guilty of a Class 4 felony.

(d) Possession or sale of more than 1,000 packages of contraband cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of this Act, any person who has in his or her possession or sells more than 1,000 original packages of contraband cigarettes is guilty of a Class 3 felony.

(e) Any person licensed as a distributor, secondary distributor, or transporter, as defined in Section 9c of this

Act, who has in his or her possession or sells 100 or less original packages of contraband cigarettes is guilty of a Class A misdemeanor.

(f) Any person licensed as a distributor, secondary distributor, or transporter, as defined in Section 9c of this Act, who has in his or her possession or sells more than 100 original packages of contraband cigarettes is guilty of a Class 4 felony.

(g) Notwithstanding subsections (e) through (f), licensed distributors and transporters, as defined in Section 9c of this Act, may possess unstamped packages of cigarettes. Notwithstanding subsections (e) through (f), licensed distributors may possess cigarettes that bear a tax stamp of another state or taxing jurisdiction. Notwithstanding subsections (e) through (f), a licensed distributor or licensed secondary distributor may possess contraband cigarettes returned to the distributor or licensed secondary distributor by a retailer if the distributor or licensed secondary distributor immediately conducts an inventory of the cigarettes being returned, the distributor or licensed secondary distributor and the retailer returning the contraband cigarettes sign the inventory, the distributor or licensed secondary distributor provides a copy of the signed inventory to the retailer, and the distributor retains the inventory in its books and records and promptly notifies the Department of Revenue.

(h) Notwithstanding subsections (a) through (d) of this Section, a retailer unknowingly possessing contraband cigarettes obtained from a licensed distributor or licensed secondary distributor or knowingly possessing contraband cigarettes obtained from a licensed distributor is not subject to penalties under this Section if the retailer, within 48 hours after discovering that the cigarettes are contraband cigarettes, excluding Saturdays, Sundays, and holidays: (i) notifies the Department and the licensed distributor or licensed secondary distributor from whom the cigarettes were obtained, orally and in writing, that he or she possesses contraband cigarettes obtained from a licensed distributor or licensed secondary distributor; (ii) places the contraband cigarettes in one or more containers and seals those containers; and (iii) places on the containers the following or similar language: "Contraband Cigarettes. Not For Sale." All contraband cigarettes in the possession of a retailer remain subject to forfeiture under the provisions of this Act.

(Source: P.A. 96-782, eff. 1-1-10.)

(35 ILCS 130/25) (from Ch. 120, par. 453.25)

Sec. 25. Any person, or any officer, agent or employee of any person, required by this Act to make, file, render, sign or verify any report or return, who makes any false or fraudulent report or return or files any false or fraudulent report or return, or who shall fail to make such report or return or file

such report or return when due, shall be guilty of a Class 4 felony.

(Source: P.A. 83-1428.)

(35 ILCS 130/26) (from Ch. 120, par. 453.26)

Sec. 26. Whoever acts as a distributor or secondary distributor of original packages without having a license, as required by this Act, shall be guilty of a Class 4 felony.

(Source: P.A. 83-1428.)

Section 20. The Cigarette Use Tax Act is amended by changing Sections 1, 3, 3-10, 4d, 5, 6, 9, 12, 16, 17, 20, 21, 23, 29, 30, and 31 and by adding Sections 4b, 4e, 7a, 11a, and 15a as follows:

(35 ILCS 135/1) (from Ch. 120, par. 453.31)

Sec. 1. For the purpose of this Act, unless otherwise required by the context:

"Use" means the exercise by any person of any right or power over cigarettes incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes and shall include the keeping or retention of cigarettes for use, except that "use" does not include the use of cigarettes by a not-for-profit research institution conducting tests concerning the health effects of tobacco products, provided the

cigarettes are not offered for resale.

"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.

"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:

a. 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 in the course of such business.

b. Any person who makes, manufactures or fabricates cigarettes in this State for sale, except a person who makes, manufactures or fabricates cigarettes for sale to residents incarcerated in penal institutions or resident patients or a State-operated mental health facility.

c. 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 7 of this Act.

"Distributor" does not include any person 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.

"Distributor maintaining a place of business in this State", or any like term, means any distributor having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this State under the authority of the distributor or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such distributor or subsidiary is licensed to transact business within this State.

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

"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 of 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.

"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 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.

"Secondary distributor maintaining a place of business in this State", or any like term, means any secondary distributor having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this State under the authority of the secondary distributor or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily, or whether such secondary distributor or subsidiary is licensed to transact business within this State.

"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.)

(35 ILCS 135/3) (from Ch. 120, par. 453.33)

Sec. 3. Stamp payment. The tax hereby imposed shall be collected by a distributor maintaining a place of business in this State or a distributor authorized by the Department pursuant to Section 7 hereof to collect the tax, 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 or by an authorized substitute for such stamp imprinted on each original package of such cigarettes underneath the sealed transparent outside wrapper of such original package, except as hereinafter provided. Each distributor who is required or authorized to collect the tax herein imposed, before delivering or causing to be delivered any original packages of cigarettes in this State to any purchaser, shall firmly affix a proper stamp or stamps to each such package, or (in the case of manufacturers of cigarettes in original packages which are contained inside a sealed transparent wrapper) shall imprint the required language on the original package of cigarettes beneath such outside wrapper as hereinafter provided. Such stamp or stamps need not be affixed to the original package of any cigarettes with respect to which the distributor is required to affix a like stamp or stamps by virtue of the Cigarette Tax Act, however, and no tax imprint need be placed underneath the sealed transparent wrapper of an original package of cigarettes with respect to which the distributor is required or authorized to employ a like tax imprint by virtue of the Cigarette Tax Act.

No stamp or imprint may be affixed to, or made upon, any package of cigarettes unless that package complies with all requirements of the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1331 and following, for the placement of labels,

warnings, or any other information upon a package of cigarettes that is sold within the United States. Under the authority of Section 6, the Department shall revoke the license of any distributor that is determined to have violated this paragraph. A person may not affix a stamp on a package of cigarettes, cigarette papers, wrappers, or tubes if that individual package has been marked for export outside the United States with a label or notice in compliance with Section 290.185 of Title 27 of the Code of Federal Regulations. It is not a defense to a proceeding for violation of this paragraph that the label or notice has been removed, mutilated, obliterated, or altered in any manner.

Only distributors licensed under this Act and transporters, as defined in Section 9c of the Cigarette Tax Act, may possess unstamped original packages of cigarettes. Prior to shipment to an Illinois retailer or secondary distributor, a stamp shall be applied to each original package of cigarettes sold to the retailer or secondary distributor. A distributor may apply a tax stamp only to an original package of cigarettes purchased or obtained directly from an in-state maker, manufacturer, or fabricator licensed as a distributor under Section 4 of this Act or an out-of-state maker, manufacturer, or fabricator holding a permit under Section 7 of this Act. A licensed distributor may ship or otherwise cause to be delivered unstamped original packages of cigarettes in, into, or from this State. A licensed distributor may transport

unstamped original packages of cigarettes to a facility, wherever located, owned or controlled by such distributor; however, a distributor may not transport unstamped original packages of cigarettes to a facility where retail sales of cigarettes take place or to a facility where a secondary distributor makes sales for resale. Any licensed distributor that ships or otherwise causes to be delivered unstamped original packages of cigarettes into, within, or from this State shall ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand style of the cigarettes so transported, provided that this Section shall not be construed as to impose any requirement or liability upon any common or contract carrier.

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 by the retailer shall bear all the required stamps, or other indicia, for the taxes included in the price of cigarettes.

Stamps, when required hereunder, shall be purchased from the Department, or any person authorized by the Department, by distributors. On and after July 1, 2003, payment for such stamps must be made by means of electronic funds transfer. The Department may refuse to sell stamps to any person who does not comply with the provisions of this Act. Beginning on June 6, 2002 and through June 30, 2002, persons holding valid licenses as distributors may purchase cigarette tax stamps up to an amount equal to 115% of the distributor's average monthly cigarette tax stamp purchases over the 12 calendar months prior to June 6, 2002.

Prior to December 1, 1985, the Department shall allow a distributor 21 days in which to make final payment of the amount to be paid for such stamps, by allowing the distributor to make payment for the stamps at the time of purchasing them with a draft which shall be in such form as the Department prescribes, and which shall be payable within 21 days thereafter: Provided that such distributor has filed with the Department, and has received the Department's approval of, a bond, which is in addition to the bond required under Section 4 of this Act, payable to the Department in an amount equal to

80% of such distributor's average monthly tax liability to the Department under this Act during the preceding calendar year or \$500,000, whichever is less. The bond shall be joint and several and shall be in the form of a surety company bond in such form as the Department prescribes, or it may be in the form of a bank certificate of deposit or bank letter of credit. The bond shall be conditioned upon the distributor's payment of the amount of any 21-day draft which the Department accepts from that distributor for the delivery of stamps to that distributor under this Act. The distributor's failure to pay any such draft, when due, shall also make such distributor automatically liable to the Department for a penalty equal to 25% of the amount of such draft.

On and after December 1, 1985 and until July 1, 2003, the Department shall allow a distributor 30 days in which to make final payment of the amount to be paid for such stamps, by allowing the distributor to make payment for the stamps at the time of purchasing them with a draft which shall be in such form as the Department prescribes, and which shall be payable within 30 days thereafter, and beginning on January 1, 2003 and thereafter, the draft shall be payable by means of electronic funds transfer: Provided that such distributor has filed with the Department, and has received the Department's approval of, a bond, which is in addition to the bond required under Section 4 of this Act, payable to the Department in an amount equal to 150% of such distributor's average monthly tax liability to the

Department under this Act during the preceding calendar year or \$750,000, whichever is less, except that as to bonds filed on or after January 1, 1987, such additional bond shall be in an amount equal to 100% of such distributor's average monthly tax liability under this Act during the preceding calendar year or \$750,000, whichever is less. The bond shall be joint and several and shall be in the form of a surety company bond in such form as the Department prescribes, or it may be in the form of a bank certificate of deposit or bank letter of credit. The bond shall be conditioned upon the distributor's payment of the amount of any 30-day draft which the Department accepts from that distributor for the delivery of stamps to that distributor under this Act. The distributor's failure to pay any such draft, when due, shall also make such distributor automatically liable to the Department for a penalty equal to 25% of the amount of such draft.

Every prior continuous compliance taxpayer shall be exempt from all requirements under this Section concerning the furnishing of such bond, as defined in this Section, as a condition precedent to his being authorized to engage in the business licensed under this Act. This exemption shall continue for each such taxpayer until such time as he may be determined by the Department to be delinquent in the filing of any returns, or is determined by the Department (either through the Department's issuance of a final assessment which has become final under the Act, or by the taxpayer's filing of a return

which admits tax to be due that is not paid) to be delinquent or deficient in the paying of any tax under this Act, at which time that taxpayer shall become subject to the bond requirements of this Section and, as a condition of being allowed to continue to engage in the business licensed under this Act, shall be required to furnish bond to the Department in such form as provided in this Section. Such taxpayer shall furnish such bond for a period of 2 years, after which, if the taxpayer has not been delinquent in the filing of any returns, or delinquent or deficient in the paying of any tax under this Act, the Department may reinstate such person as a prior continuance compliance taxpayer. Any taxpayer who fails to pay an admitted or established liability under this Act may also be required to post bond or other acceptable security with the Department guaranteeing the payment of such admitted or established liability.

Any person aggrieved by any decision of the Department under this Section may, within the time allowed by law, protest and request a hearing, whereupon the Department shall give notice and shall hold a hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to such person. In the absence of such a protest filed within the time allowed by law, the Department's decision shall become final without any further determination being made or notice given.

The Department shall discharge any surety and shall release

and return any bond or security deposited, assigned, pledged, or otherwise provided to it by a taxpayer under this Section within 30 days after:

(1) such Taxpayer becomes a prior continuous compliance taxpayer; or

(2) such taxpayer has ceased to collect receipts on which he is required to remit tax to the Department, has filed a final tax return, and has paid to the Department an amount sufficient to discharge his remaining tax liability as determined by the Department under this Act. The Department shall make a final determination of the taxpayer's outstanding tax liability as expeditiously as possible after his final tax return has been filed. If the Department cannot make such final determination within 45 days after receiving the final tax return, within such period it shall so notify the taxpayer, stating its reasons therefor.

At the time of purchasing such stamps from the Department when purchase is required by this Act, or at the time when the tax which he has collected is remitted by a distributor to the Department without the purchase of stamps from the Department when that method of remitting the tax that has been collected is required or authorized by this Act, the distributor shall be allowed a discount during any year commencing July 1 and ending the following June 30 in accordance with the schedule set out hereinbelow, from the amount to be paid by him to the

Department for such stamps, or to be paid by him to the Department on the basis of monthly remittances (as the case may be), to cover the cost, to such distributor, of collecting the tax herein imposed by affixing such stamps to the original packages of cigarettes sold by such distributor or by placing tax imprints underneath the sealed transparent wrapper of original packages of cigarettes sold by such distributor (as the case may be): (1) Prior to December 1, 1985, a discount equal to 1-2/3% 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; 1-1/3% 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 2/3 of 1% of the amount of any additional tax paid hereunder by such distributor to the Department during any such year or (2) 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.

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.

Cigarette manufacturers who are distributors under Section 7(a) of this Act, and who place their cigarettes in original packages which are contained inside a sealed transparent wrapper, shall be required to remit the tax which they are required to collect under this Act to the Department by remitting the amount thereof to the Department by the 5th day of each month, covering cigarettes shipped or otherwise delivered to points in Illinois to purchasers during the preceding calendar month, but a distributor need not remit to the Department the tax so collected by him from purchasers under this Act to the extent to which such distributor is required to remit the tax imposed by the Cigarette Tax Act to the Department with respect to the same cigarettes. All taxes upon cigarettes under this Act are a direct tax upon the retail consumer and shall conclusively be presumed to be precollected for the purpose of convenience and facility only. Cigarette manufacturers that are distributors licensed under Section 7(a) of this Act and who place their cigarettes in original packages which are contained inside a sealed transparent wrapper, before delivering such cigarettes or causing such cigarettes to be delivered in this State to purchasers, shall evidence their obligation to collect and remit the tax due with respect to such cigarettes by imprinting language to be prescribed by the Department on each original package of such cigarettes underneath the sealed transparent outside wrapper

of such original package, in such place thereon and in such manner as the Department may prescribe; provided (as stated hereinbefore) that this requirement does not apply when such distributor is required or authorized by the Cigarette Tax Act to place the tax imprint provided for in the last paragraph of Section 3 of that Act underneath the sealed transparent wrapper of such original package of cigarettes. Such imprinted language shall acknowledge the manufacturer's collection and payment of or liability for the tax imposed by this Act with respect to such cigarettes.

The Department shall adopt the design or designs of the tax stamps and shall procure the printing of such stamps in such amounts and denominations as it deems necessary to provide for the affixation of the proper amount of tax stamps to each original package of cigarettes.

Where tax stamps are required, the Department may authorize distributors to affix revenue tax stamps by imprinting tax meter stamps upon original packages of cigarettes. The Department shall adopt rules and regulations relating to the imprinting of such tax meter stamps as will result in payment of the proper taxes as herein imposed. No distributor may affix revenue tax stamps to original packages of cigarettes by imprinting meter stamps thereon unless such distributor has first obtained permission from the Department to employ this method of affixation. The Department shall regulate the use of tax meters and may, to assure the proper collection of the

taxes imposed by this Act, revoke or suspend the privilege, theretofore granted by the Department to any distributor, to imprint tax meter stamps upon original packages of cigarettes.

The tax hereby imposed and not paid pursuant to this Section shall be paid to the Department directly by any person using such cigarettes within this State, pursuant to Section 12 hereof.

A distributor shall not affix, or cause to be affixed, any stamp or imprint to a package of cigarettes, as provided for in this Section, if the tobacco product manufacturer, as defined in Section 10 of the Tobacco Product Manufacturers' Escrow Act, that made or sold the cigarettes has failed to become a participating manufacturer, as defined in subdivision (a)(1) of Section 15 of the Tobacco Product Manufacturers' Escrow Act, or has failed to create a qualified escrow fund for any cigarettes manufactured by the tobacco product manufacturer and sold in this State or otherwise failed to bring itself into compliance with subdivision (a)(2) of Section 15 of the Tobacco Product Manufacturers' Escrow Act.

(Source: P.A. 96-782, eff. 1-1-10.)

(35 ILCS 135/3-10)

Sec. 3-10. Cigarette enforcement.

(a) Prohibitions. It is unlawful for any person:

(1) to sell or distribute in this State; to acquire, hold, own, possess, or transport, for sale or distribution

in this State; or to import, or cause to be imported into this State for sale or distribution in this State:

(A) any cigarettes the package of which:

(i) bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

(ii) does not comply with:

(aa) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; and

(bb) all federal trademark and copyright laws;

(B) any cigarettes imported into the United States in violation of 26 U.S.C. 5754 or any other federal law, or implementing federal regulations;

(C) any cigarettes that such person otherwise

knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; or

(D) any cigarettes for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of the cigarettes required by the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a;

(2) to alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:

(A) any statement, label, stamp, sticker, or notice described in subdivision (a)(1)(A)(i) of this Section;

(B) any health warning that is not specified in, or does not conform with the requirements of, the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; or

(3) to affix any stamp required pursuant to this Act to the package of any cigarettes described in subdivision (a)(1) of this Section or altered in violation of subdivision (a)(2).

(b) Documentation. On the first business day of each month, each person licensed to affix the State tax stamp to cigarettes shall file with the Department, for all cigarettes imported

into the United States to which the person has affixed the tax stamp in the preceding month:

(1) a copy of:

(A) the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. 5713, to the person importing the cigarettes into the United States allowing the person to import the cigarettes; and

(B) the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms;

(2) a statement, signed by the person under penalty of perjury, which shall be treated as confidential by the Department and exempt from disclosure under the Freedom of Information Act, identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale; and a separate statement, signed by the individual under penalty of perjury, which shall not be treated as confidential or exempt from disclosure, separately identifying the brands and brand styles of such cigarettes; and

(3) a statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied

with:

(A) the package health warning and ingredient reporting requirements of the federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a, with respect to such cigarettes; and

(B) the provisions of Exhibit T of the Master Settlement Agreement entered in the case of People of the State of Illinois v. Philip Morris, et al. (Circuit Court of Cook County, No. 96-L13146), including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of Exhibit T.

(c) Administrative sanctions.

(1) Upon finding that a distributor, secondary distributor, or a person has committed any of the acts prohibited by subsection (a), knowing or having reason to know that he or she has done so, or upon finding that a distributor or person has failed to comply with any requirement of subsection (b), the Department may revoke or suspend the license or licenses of any distributor or secondary distributor pursuant to the procedures set forth in Section 6 and impose on the distributor, secondary distributor, or ~~on the~~ person, a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000.

(2) Cigarettes that are acquired, held, owned,

possessed, transported in, imported into, or sold or distributed in this State in violation of this Section shall be deemed contraband under this Act and are subject to seizure and forfeiture as provided in this Act, and all such cigarettes seized and forfeited shall be destroyed or maintained and used in an undercover capacity. Such cigarettes shall be deemed contraband whether the violation of this Section is knowing or otherwise.

(d) Unfair trade practices. In addition to any other penalties provided for in this Act, a violation of subsection (a) or subsection (b) of this Section shall constitute an unlawful practice as provided in the Consumer Fraud and Deceptive Business Practices Act.

(d-1) Retailers and secondary distributors shall not be liable under subsections (c)(1) and (d) of this Section for unknowingly possessing, selling, or distributing to consumers or users cigarettes identified in subsection (a)(1) of this Section if the cigarettes possessed, sold, or distributed by the retailer were obtained from a distributor or secondary distributor licensed under this Act or the Cigarette Tax Act.

(e) Unfair cigarette sales. For purposes of the Trademark Registration and Protection Act and the Counterfeit Trademark Act, cigarettes imported or reimported into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes

manufactured in the United States for sale or distribution in the United States shall be presumed to have been purchased outside of the ordinary channels of trade.

(f) General provisions.

(1) This Section shall be enforced by the Department; provided that, at the request of the Director of Revenue or the Director's duly authorized agent, the State police and all local police authorities shall enforce the provisions of this Section. The Attorney General has concurrent power with the State's Attorney of any county to enforce this Section.

(2) For the purpose of enforcing this Section, the Director of Revenue and any agency to which the Director has delegated enforcement responsibility pursuant to subdivision (f)(1) may request information from any State or local agency and may share information with and request information from any federal agency and any agency of any other state or any local agency of any other state.

(3) In addition to any other remedy provided by law, including enforcement as provided in subdivision (a)(1), any person may bring an action for appropriate injunctive or other equitable relief for a violation of this Section; actual damages, if any, sustained by reason of the violation; and, as determined by the court, interest on the damages from the date of the complaint, taxable costs, and reasonable attorney's fees. If the trier of fact finds that

the violation is flagrant, it may increase recovery to an amount not in excess of 3 times the actual damages sustained by reason of the violation.

(g) Definitions. As used in this Section:

"Importer" means that term as defined in 26 U.S.C. 5702(1).

"Package" means that term as defined in 15 U.S.C. 1332(4).

(h) Applicability.

(1) This Section does not apply to:

(A) cigarettes allowed to be imported or brought into the United States for personal use; and

(B) cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations; except that this Section shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

(2) The penalties provided in this Section are in addition to any other penalties imposed under other provision of law.

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

(35 ILCS 135/4b new)

Sec. 4b. Secondary distributor's license. No person may engage in business as a secondary distributor of cigarettes in this State without first having obtained a license therefor

from the Department. A secondary distributor maintaining a place of business within this State, if required to procure a license as a secondary distributor under the Cigarette Tax Act, need not obtain an additional license or permit under this Act, but shall be deemed to be sufficiently licensed or registered by virtue of his being licensed or registered under the Cigarette Tax Act.

Every secondary distributor maintaining a place of business in this State, if not required to procure a license under the Cigarette Tax Act, shall make application for a license on a form as furnished and prescribed by the Department. Such applicant 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 the location at which the applicant proposes to engage in business as a secondary distributor of cigarettes in this State; and
- (3) such other additional information as the Department may reasonably require.

The annual license fee payable to the Department for each secondary distributor's license shall be \$250. The applicant for license shall pay such fee to the Department at the time of submitting the application for license to the Department.

A separate application for license shall be made and a separate annual license fee paid, for each place of business at

or from which the applicant proposes to act as a secondary distributor under this Act and for which the applicant is not required to procure a license as a secondary distributor under the Cigarette Tax Act.

The following are ineligible to receive a secondary distributor's license under this Act:

(1) a person who is not of good character and reputation in the community in which he resides;

(2) a person who has been convicted of a felony under any Federal or State law, if the Department, after investigation and a hearing, if requested by the applicant, determines that such person has not been sufficiently rehabilitated to warrant the public trust;

(3) a corporation, if any officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than 5% of the stock of such corporation, would not be eligible to receive a license hereunder for any reason;

(4) a person who manufactures cigarettes, whether in this State or out of this State;

(5) a person, or any person who owns more than 15 percent of the ownership interests in a person or a related party who:

(A) owes, at the time of application, any delinquent cigarette taxes that have been determined by law to be due and unpaid, unless the license

applicant has entered into an agreement approved by the Department to pay the amount due;

(B) had a license under this Act or the Cigarette Tax Act revoked within the past 2 years by the Department 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;

(C) has been found by the Department, 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;

(D) has been found by the Department, 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.); or

(E) has been found by the Department, after notice and a hearing, to have made a material false statement in the application or has failed to produce records required to be maintained by this Act.

Upon approval of such application and payment of the

required annual license fee, the Department shall issue a license to the applicant. Such license shall permit the applicant to engage in business as a secondary distributor at or from the place shown in his application. All licenses issued by the Department under this Act shall be valid for not to exceed one year after issuance unless sooner revoked, canceled or suspended as in this Act provided. No license issued under this Act is transferable or assignable. Such license shall be conspicuously displayed at the place of business for which it is issued.

No secondary distributor licensee acquires any vested interest or compensable property right in a license issued under this Act.

A licensed secondary distributor shall notify the Department of any change in the information contained on the application form, including any change in ownership, and shall do so within 30 days after any such change.

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 135/4d)

Sec. 4d. Sales of cigarettes to and by retailers. 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 7 of this Act may not sell original packages of cigarettes to retailers. A retailer may sell only original packages of cigarettes obtained from 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 7 of this Act.

(Source: P.A. 96-782, eff. 1-1-10.)

(35 ILCS 135/4e new)

Sec. 4e. Sales of cigarettes to and by secondary distributors. 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 7 of this Act may not sell original packages of cigarettes to secondary distributors. A secondary distributor may sell only original packages of cigarettes obtained from 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 7 of this Act. Secondary distributors may sell cigarettes to Illinois retailers for resale, and are also authorized to make retail sales of cigarettes at the location on the secondary distributor's license as long as the secondary distributor sells 75% or more of the cigarettes sold at such location to retailers for resale.

All sales by secondary distributors to Illinois retailers must be made at the location on the secondary distributor's license. Retailers must take possession of all cigarettes sold by the secondary distributor at the secondary distributor's licensed address. Secondary distributors may not make deliveries of cigarettes to Illinois retailers.

Secondary distributors may not file a claim for credit or refund with the State under Section 14a of this Act.

(35 ILCS 135/5) (from Ch. 120, par. 453.35)

Sec. 5. If a distributor licensee shall be convicted of the violation of this Act, or if his or her license shall be revoked and no review is had of the order of revocation, or if on review thereof the decision is adverse to the distributor licensee, or if a distributor licensee fails to pay an assessment as to which no judicial review is sought and which has become final, or pursuant to which, upon review thereof,

the circuit court has entered a judgment that is in favor of the Department and that has become final, the bond filed pursuant to this Act shall thereupon be forfeited, and the Department may institute a suit upon such bond in its own name for the entire amount of such bond and costs. Such suit upon the bond shall be in addition to any other remedy provided for herein.

(Source: P.A. 79-1366.)

(35 ILCS 135/6) (from Ch. 120, par. 453.36)

Sec. 6. Revocation, cancellation, or suspension of license. The Department may, after notice and hearing as provided for by this Act, revoke, cancel or suspend the license of any distributor or secondary distributor for the violation of any provision of this Act, or for non-compliance with any provision herein contained, or for any non-compliance with any lawful rule or regulation promulgated by the Department under Section 21 of this Act, or because the licensee is determined to be ineligible for a distributor's license for any one or more of the reasons provided for in Section 4 of this Act, or because the licensee is determined to be ineligible for a secondary distributor's license for any one or more of the reasons provided for in Section 4b or Section 7a of this Act. However, no such license shall be revoked, canceled or suspended, except after a hearing by the Department with notice to the distributor or secondary distributor, as aforesaid, and

affording such distributor or secondary distributor a reasonable opportunity to appear and defend, and any distributor or secondary distributor aggrieved by any decision of the Department with respect thereto may have the determination of the Department judicially reviewed, as herein provided.

The Department may revoke, cancel, or suspend the license of any distributor for a violation of the Tobacco Product Manufacturers' Escrow Enforcement Act as provided in Section 30 ~~20~~ of that Act. The Department may revoke, cancel, or suspend the license of any secondary distributor for a violation of subsection (e) of Section 15 of the Tobacco Product Manufacturers' Escrow Enforcement Act.

Any distributor or secondary distributor 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 in writing to the distributor or secondary distributor requesting the hearing that contains a statement of the charges preferred against the distributor or secondary distributor and that states the time and place fixed for the hearing. The Department shall hold the hearing in conformity with the provisions of this Act and then issue its final administrative decision in the matter to the distributor or secondary distributor. 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.

No license so revoked, shall be reissued to any such distributor or secondary distributor within a period of 6 months after the date of the final determination of such revocation. No such license shall be reissued at all so long as the person who would receive the license is ineligible to receive a distributor's license under this Act for any one or more of the reasons provided for in Section 4 of this Act or is ineligible to receive a secondary distributor's license under this Act for any one or more of the reasons provided for in Section 4b and Section 7a of this Act.

The Department upon complaint filed in the circuit court may by injunction restrain any person who fails, or refuses, to comply with this Act from acting as a distributor or secondary distributor of cigarettes in this State.

(Source: P.A. 91-901, eff. 1-1-01; 92-737, eff. 7-25-02.)

(35 ILCS 135/7a new)

Sec. 7a. Discretionary secondary distributor's license. The Department may, in its discretion, upon application, issue a secondary distributor's license to persons who are not required to be licensed as secondary distributors of cigarettes in this State, but who elect to qualify under this Act as secondary distributors of cigarettes. Such secondary distributor shall be issued, without charge, a license to make

sales for resale to Illinois retailers, subject to such reasonable requirements as the Department shall prescribe. Each applicant for a license under this Section shall furnish the following information to the Department on a form signed and verified by the applicant under penalty of perjury:

(a) the name and address of the applicant;

(b) the address of the location at which the applicant proposes to engage in business as a secondary distributor of cigarettes; and

(c) such other additional information as the Department may reasonably require.

A separate application for license shall be made for each place of business at or from which the applicant proposes to act as a secondary distributor under this Act and for which the applicant is not required to procure a license as a secondary distributor under the Cigarette Tax Act or Cigarette Use Tax Act.

The following are ineligible to receive a secondary distributor's license under this Act:

(1) a person who is not of good character and reputation in the community in which he resides;

(2) a person who has been convicted of a felony under any Federal or State law, if the Department, after investigation and a hearing, if requested by the applicant, determines that such person has not been sufficiently rehabilitated to warrant the public trust;

(3) a corporation, if any officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than 5% of the stock of such corporation, would not be eligible to receive a license hereunder for any reason;

(4) a person who manufactures cigarettes, whether in this State or out of this State;

(5) a person, or any person who owns more than 15 percent of the ownership interests in a person or a related party who:

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

(B) had a license under this Act or the Cigarette Tax Act revoked within the past 2 years by the Department 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;

(C) has been found by the Department, 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;

(D) has been found by the Department, 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.); or

(E) has been found by the Department, after notice and a hearing, to have made a material false statement in the application or has failed to produce records required to be maintained by this Act.

Upon approval of such application, the Department shall issue a license to the applicant. Such license shall permit the applicant to engage in business as a secondary distributor at or from the place shown in his application. All licenses issued by the Department under this Act shall be valid for not to exceed one year after issuance unless sooner revoked, canceled or suspended as in this Act provided. No license issued under this Act is transferable or assignable. Such license shall be conspicuously displayed at the place of business for which it is issued.

No secondary distributor licensee acquires any vested interest or compensable property right in a license issued under this Act.

A licensed secondary distributor shall notify the

Department of any change in the information contained on the application form, including any change in ownership, and shall do so within 30 days after any such change.

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.

Such authority and license may be suspended, canceled or revoked whenever the licensee violates any provision of this Act or any lawful rule or regulation issued by the Department pursuant to this Act or is determined to be ineligible for a secondary distributor's permit under this Act as provided in this Section, or whenever the licensee shall notify the Department in writing of his desire to have the license canceled. The Department shall have the power, in its discretion, to issue a new license after such suspension, cancellation or revocation, except when the person who would receive the license is ineligible to receive a secondary distributor's license under this Act.

(35 ILCS 135/9) (from Ch. 120, par. 453.39)

Sec. 9. It shall be unlawful for any distributor or secondary distributor to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by this Act will be assumed or absorbed by the distributor or secondary distributor or that it will not be added to the selling price of the cigarettes sold, or if added that it or any part thereof will be refunded. Any person violating any of the provisions of this Section within this State shall be guilty of a Class B misdemeanor.

(Source: P.A. 77-2229.)

(35 ILCS 135/11a new)

Sec. 11a. Secondary distributors; reports. Every secondary distributor who is required to procure, or is authorized to procure, a license under 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 during the preceding calendar month either within or outside this State, and the quantity of cigarettes sold to Illinois retailers or otherwise disposed of during the preceding calendar month. Such reports shall be filed electronically in such form prescribed by the Department and shall contain such other information as the Department may reasonably require. The secondary

distributor's report shall 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 secondary distributor.

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 135/12) (from Ch. 120, par. 453.42)

Sec. 12. Declaration of possession of cigarettes on which tax not paid.

(a) When cigarettes are acquired for use in this State by a person (including a distributor as well as any other person), who did not pay the tax herein imposed to a distributor, the person, within 30 days after acquiring the cigarettes, shall file with the Department a return declaring the possession of the cigarettes and shall transmit with the return to the Department the tax imposed by this Act.

(b) On receipt of the return and payment of the tax as required by paragraph (a), the Department may furnish the person with a suitable tax stamp to be affixed to the package of cigarettes upon which the tax has been paid if the Department determines that the cigarettes still exist.

(c) The return referred to in paragraph (a) shall contain

the name and address of the person possessing the cigarettes involved, the location of the cigarettes and the quantity, brand name, place, and date of the acquisition of the cigarettes.

(d) Nothing in this Section shall permit a secondary distributor to purchase unstamped original packages of cigarettes or to purchase original packages of cigarettes from a person other than a licensed distributor.

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

(35 ILCS 135/15a new)

Sec. 15a. Secondary distributors; records. Every secondary distributor of cigarettes who is required to procure, or is allowed to procure, a license under this Act, shall keep at his licensed address, complete and accurate records of cigarettes held, purchased, brought in from without the State, and sold, or otherwise disposed of, and shall preserve and keep within Illinois at his licensed address all invoices, bills of lading, 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 secondary distributors. For purposes of this Section, "records" means all data maintained by the secondary distributors, 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 secondary distributor without a search warrant and may inspect the premises and the stock or 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 license of the secondary distributor at such premises shall be subject to revocation by the Department.

(35 ILCS 135/16) (from Ch. 120, par. 453.46)

Sec. 16. Every person who purchases cigarettes for shipment into Illinois from a point outside this State, and who is

required to file a return or report with the Department with respect to such cigarettes, shall procure invoices in duplicate covering each such shipment and shall furnish one copy of each such invoice to the Department at the time of filing the return or report required by this Act.

(Source: Laws 1967, p. 242.)

(35 ILCS 135/17) (from Ch. 120, par. 453.47)

Sec. 17. For the purpose of administering and enforcing the provisions of this Act, the Department, or any officer or employee of the Department designated, in writing, by the Director thereof, may hold investigations and hearings concerning any matters covered by this Act and may examine any books, papers, records, documents or memoranda of any distributor, secondary distributor, or user bearing upon the sales or purchases of cigarettes the use of which is taxed hereunder and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of the facts, and may take testimony and require proof for its information. In the conduct of any investigation or hearing, neither the Department nor any officer or employee thereof shall be bound by the technical rules of evidence and no informality in any proceeding, or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made or approved or confirmed by the Department. The Director of Revenue, or any officer or employee of the

Department authorized by the Director thereof, shall have power to administer oaths to such persons. The books, papers, records, documents 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: Laws 1965, p. 195.)

(35 ILCS 135/20) (from Ch. 120, par. 453.50)

Sec. 20. All information received by the Department from returns or reports filed under this Act, or from any investigation conducted under this Act, shall be confidential, except for official purposes, and any person who divulges any such information in any manner, except in accordance with a proper judicial order or as otherwise provided by law, shall be guilty of a Class A misdemeanor.

Nothing in this Act prevents the Director of Revenue from publishing or making available to the public the names and addresses of persons filing returns or reports under this Act, or reasonable statistics concerning the operation of the tax by grouping the contents of returns or reports so that the information in any individual return is not disclosed.

Nothing in this Act prevents the Director of Revenue from divulging to the United States Government or the government of

any other state, or any officer or agency thereof, for exclusively official purposes, information received by the Department in administering this Act, provided that such other governmental agency agrees to divulge requested tax information to the Department.

The furnishing upon request of the Auditor General, or his authorized agents, for official use, of returns or reports filed and information related thereto under this Act is deemed to be an official purpose within the meaning of this Section.

The furnishing of financial information to a home rule unit with a population in excess of 2,000,000 that has imposed a tax similar to that imposed by this Act under its home rule powers, upon request of the Chief Executive of the home rule unit, is an official purpose within the meaning of this Section, provided the home rule unit agrees in writing to the requirements of this Section. Information so provided is subject to all confidentiality provisions of this Section. The written agreement shall provide for reciprocity, limitations on access, disclosure, and procedures for requesting information.

The Director may make available to any State agency, including the Illinois Supreme Court, which licenses persons to engage in any occupation, information that a person licensed by such agency has failed to file returns or reports under this Act or pay the tax, penalty and interest shown therein, or has failed to pay any final assessment of tax, penalty or interest

due under this Act. An assessment is final when all proceedings in court for review of such assessment have terminated or the time for the taking thereof has expired without such proceedings being instituted.

The Director shall make available for public inspection in the Department's principal office and for publication, at cost, administrative decisions issued on or after January 1, 1995. These decisions are to be made available in a manner so that the following taxpayer or licensee information is not disclosed:

(1) The names, addresses, and identification numbers of the taxpayer or licensee, related entities, and employees.

(2) At the sole discretion of the Director, trade secrets or other confidential information identified as such by the taxpayer or licensee, no later than 30 days after receipt of an administrative decision, by such means as the Department shall provide by rule.

The Director shall determine the appropriate extent of the deletions allowed in paragraph (2). In the event the taxpayer or licensee does not submit deletions, the Director shall make only the deletions specified in paragraph (1).

The Director shall make available for public inspection and publication an administrative decision within 180 days after the issuance of the administrative decision. The term "administrative decision" has the same meaning as defined in

Section 3-101 of Article III of the Code of Civil Procedure. Costs collected under this Section shall be paid into the Tax Compliance and Administration Fund.

Nothing contained in this Act shall prevent the Director from divulging information to any person pursuant to a request or authorization made by the taxpayer or licensee or by an authorized representative of the taxpayer or licensee.

(Source: P.A. 94-1074, eff. 12-26-06.)

(35 ILCS 135/21) (from Ch. 120, par. 453.51)

Sec. 21. 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 or her 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 shall have power to review all final administrative decisions of the Department in administering this Act. The provisions of the Administrative Review Law, as amended, 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 the Department 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 plaintiff in the action for judicial review shall pay 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. However, 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 plaintiff in the action for judicial review 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 commenced 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 or a 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. 83-345.)

(35 ILCS 135/23) (from Ch. 120, par. 453.53)

Sec. 23. Any person who shall fail to safely preserve the records required by Section 15 and Section 15a of this Act for

the period of three (3) years, as required therein, in such manner as to insure permanency and accessibility for inspection by the Department, shall be guilty of a business offense and may be fined up to One Thousand Dollars (\$1000).

This Section shall not apply if the violation in a particular case also constitutes a criminal violation of the Cigarette Tax Act.

(Source: P.A. 77-2229.)

(35 ILCS 135/29) (from Ch. 120, par. 453.59)

Sec. 29. Every distributor, secondary distributor, 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.

This Section shall not apply if the violation in a particular case also constitutes a criminal violation of the Cigarette Tax Act.

(Source: P.A. 83-1428.)

(35 ILCS 135/30) (from Ch. 120, par. 453.60)

Sec. 30. Punishment for sale or possession of unstamped packages of cigarettes, other than by a licensed distributor or transporter.

(a) Possession or sale of more than 9 but less than 101 unstamped packages of cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of the Cigarette Tax Act, any person who has in his or her possession or sells more than 9 but less than 101 original packages of contraband cigarettes is guilty of a Class A misdemeanor.

(b) Possession or sale of more than 100 but less than 251 unstamped packages of cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of the Cigarette Tax Act, any person who has in his or her possession or sells more than 100 but less than 251 original packages of contraband cigarettes is guilty of a Class A misdemeanor for the first offense and a Class 4 felony for each subsequent offense.

(c) Possession or sale of more than 250 but less than 1,001 unstamped packages of cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of the Cigarette Tax Act, any person who has in his or her possession

or sells more than 250 but less than 1,001 original packages of contraband cigarettes is guilty of a Class 4 felony.

(d) Possession or sale of more than 1,000 contraband packages of cigarettes. With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, as defined in Section 9c of the Cigarette Tax Act, any person who has in his or her possession or sells, more than 1,000 original packages of contraband cigarettes is guilty of a Class 3 felony.

(e) Any person licensed as a distributor, secondary distributor, or transporter, as defined in Section 9c of the Cigarette Tax Act, who has in his or her possession or sells 100 or less original packages of contraband cigarettes is guilty of a Class A misdemeanor.

(f) Any person licensed as a distributor, secondary distributor, or transporter, as defined in Section 9c of the Cigarette Tax Act, who has in his or her possession or sells more than 100 original packages of contraband cigarettes is guilty of a Class 4 felony.

(g) Notwithstanding subsections (e) through (f), licensed distributors and transporters, as defined in Section 9c of the Cigarette Tax Act, may possess unstamped packages of cigarettes. Notwithstanding subsections (e) through (f), licensed distributors may possess cigarettes that bear a tax stamp of another state or taxing jurisdiction. Notwithstanding subsections (e) through (f), a licensed distributor or licensed

secondary distributor may possess contraband cigarettes returned to the distributor or licensed secondary distributor by a retailer if the distributor or licensed secondary distributor immediately conducts an inventory of the cigarettes being returned, the distributor or licensed secondary distributor and the retailer returning the contraband cigarettes sign the inventory, the distributor or licensed secondary distributor provides a copy of the signed inventory to the retailer, and the distributor or licensed secondary distributor retains the inventory in its books and records and promptly notifies the Department of Revenue.

(h) Notwithstanding subsections (a) through (d) of this Section, a retailer unknowingly possessing contraband cigarettes obtained from a licensed distributor or licensed secondary distributor or knowingly possessing contraband cigarettes obtained from a licensed distributor or licensed secondary distributor is not subject to penalties under this Section if the retailer, within 48 hours after discovering that the cigarettes are contraband cigarettes, excluding Saturdays, Sundays, and holidays: (i) notifies the Department and the licensed distributor or licensed secondary distributor from whom the cigarettes were obtained, orally and in writing, that he or she possesses contraband cigarettes obtained from a licensed distributor or licensed secondary distributor; (ii) places the contraband cigarettes in one or more containers and seals those containers; and (iii) places on the containers the

following or similar language: "Contraband Cigarettes. Not For Sale." All contraband cigarettes in the possession of a retailer remain subject to forfeiture under the provisions of this Act.

(Source: P.A. 96-782, eff. 1-1-10.)

(35 ILCS 135/31) (from Ch. 120, par. 453.61)

Sec. 31. Any person, or any officer, agent or employee of any person, required by this Act to make, file, render, sign or verify any report or return, who makes any false or fraudulent return or report or files any false or fraudulent return or report, shall be guilty of a misdemeanor and shall be guilty of a Class 4 felony.

(Source: P.A. 83-1428.)

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