

H.B. 4215

A bill to amend 1993 PA 327, entitled
["Tobacco Products Tax Act,"]
by amending the title and sections 2, 5, 6, 7, 8, 9, and 12 (MCL
205.422, 205.425, 205.426, 205.427, 205.428, 205.429, and
205.432), section 9 as amended by 1995 PA 118, and by adding
sections 5a, 5b, 6a, 6b, 7a, and 7b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2 An act to provide for a tax upon the sale and distribution
3 of tobacco products; to regulate and license manufacturers,
4 wholesalers, secondary wholesalers, vending machine operators,
5 unclassified acquirers, transportation companies, transporters,
6 and retailers of tobacco products; to prescribe the powers and
7 duties of the revenue division and the department of treasury in
8 regard to tobacco products; to provide for the collection and

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1 disposition of the tax; TO PROVIDE FOR A TAX STAMP; to provide
2 for the enforcement of this act; to provide for the appointment
3 of special investigators as peace officers for the enforcement of
4 this act; to prescribe penalties and provide remedies for the
5 violation of this act; and to repeal ~~certain~~ acts and parts of
6 acts. ~~on a specific date.~~

7 Sec. 2. As used in this act:

8 (a) "Cigarette" means a roll for smoking made wholly or in
9 part of tobacco, irrespective of size or shape and irrespective
10 of the tobacco being flavored, adulterated, or mixed with any
11 other ingredient, which roll has a wrapper or cover made of paper
12 or any other material. Cigarette does not include cigars.

13 (b) "Commissioner" means the revenue commissioner.

14 (C) "COUNTERFEIT STAMP" MEANS ANY STAMP, LABEL, OR PRINT,
15 INDICIUM, OR CHARACTER, THAT EVIDENCES, OR PURPORTS TO EVIDENCE,
16 THE PAYMENT OF ANY TAX LEVIED UNDER THIS ACT AND THAT HAS NOT
17 BEEN PRINTED, MANUFACTURED, OR MADE BY AUTHORITY OF THE DEPART-
18 MENT AS PROVIDED IN THIS ACT AND HAS NOT BEEN ISSUED, SOLD, OR
19 CIRCULATED BY THE DEPARTMENT OR A TAX STAMP SALES AGENT.

20 (D) ~~(c)~~ "Department" means the department of treasury.

21 (E) "FINANCIAL INSTITUTION" MEANS A STATE OR NATIONALLY
22 CHARTERED BANK, A STATE OR FEDERALLY CHARTERED SAVINGS AND LOAN
23 ASSOCIATION, A STATE OR FEDERALLY CHARTERED SAVINGS BANK, OR A
24 STATE OR FEDERALLY CHARTERED CREDIT UNION.

25 (F) "FINANCIALLY SOUND" MEANS A DETERMINATION BY THE DEPART-
26 MENT THAT THE WHOLESALER OR UNCLASSIFIED ACQUIRER IS ABLE TO PAY

1 FOR ITS TAX STAMPS IN THE ORDINARY COURSE OF BUSINESS BASED ON
2 CRITERIA INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

3 (i) PAST FILING AND PAYMENT HISTORY WITH THE DEPARTMENT.

4 (ii) OUTSTANDING LIABILITIES.

5 (iii) REVIEW OF CURRENT FINANCIAL STATEMENTS INCLUDING, BUT
6 NOT LIMITED TO, BALANCE SHEETS AND INCOME STATEMENTS.

7 (iv) DURATION THAT THE WHOLESALER OR UNCLASSIFIED ACQUIRER
8 HAS BEEN IN BUSINESS.

9 (G) "INDIVIDUAL PACKAGE" MEANS AN INDIVIDUAL PACKET, PACK,
10 BOX, OR OTHER CONTAINER USED TO CONTAIN OR TO CONVEY CIGARETTES
11 TO THE CONSUMER. INDIVIDUAL PACKAGE DOES NOT INCLUDE CARTONS,
12 CASES, OR CONTAINER BOXES THAT CONTAIN SMALLER PACKAGING UNITS OF
13 CIGARETTES.

14 (H) ~~(d)~~ "Licensee" means a person licensed under this
15 act.

16 (I) ~~(e)~~ "Manufacturer" means a person who manufactures or
17 produces a tobacco product.

18 (J) ~~(f)~~ "Noncigarette smoking tobacco" means tobacco sold
19 in loose or bulk form that is intended for consumption by smoking
20 AND INCLUDES ROLL-YOUR-OWN CIGARETTE TOBACCO.

21 (K) ~~(g)~~ "Person" means an individual, partnership, fidu-
22 ciary, association, LIMITED LIABILITY COMPANY, corporation, or
23 other legal entity.

24 (l) ~~(h)~~ "Place of business" means a place where a tobacco
25 product is sold or where a tobacco product is brought or kept for
26 the purpose of sale or consumption, including a vessel, airplane,
27 train, or vending machine.

1 (M) ~~(i)~~ "Retailer" means a person other than a
2 transportation company who operates a place of business for the
3 purpose of making sales of a tobacco product at retail.

4 (N) ~~(j)~~ "Sale" means a transaction by which the ownership
5 of tangible personal property is transferred for consideration
6 and applies also to use, gifts, exchanges, barter, and theft.

7 (O) ~~(k)~~ "Secondary wholesaler" means a person who sells a
8 tobacco product for resale, who purchases a tobacco product from
9 a wholesaler OR UNCLASSIFIED ACQUIRER licensed under this act,
10 and who maintains an established place of business in this state
11 WHERE SUBSTANTIALLY ALL OF THE BUSINESS IS THE SALE OF TOBACCO
12 PRODUCTS AND RELATED MERCHANDISE AT WHOLESALE, AND WHERE AT ALL
13 TIMES A SUBSTANTIAL STOCK OF TOBACCO PRODUCTS AND RELATED MER-
14 CHANDISE IS AVAILABLE TO ALL RETAILERS FOR RESALE.

15 (P) ~~(l)~~ "Smokeless tobacco" means snuff, chewing tobacco,
16 and any other tobacco that is intended to be consumed by means
17 other than smoking.

18 (Q) "TAX STAMP" MEANS A DISTINCTIVE CHARACTER, INDICATION,
19 OR MARK, AS DETERMINED BY THE DEPARTMENT, ATTACHED OR AFFIXED TO
20 AN INDIVIDUAL PACKAGE OF CIGARETTES BY MECHANICAL DEVICE OR OTHER
21 MEANS AUTHORIZED BY THE DEPARTMENT TO INDICATE THAT THE TAX
22 IMPOSED UNDER THIS ACT HAS BEEN PAID. EACH TAX STAMP SHALL HAVE
23 A DISTINCT SERIAL NUMBER OR SYMBOL.

24 (R) "TAX STAMPING AGENT" MEANS A WHOLESALER OR UNCLASSIFIED
25 ACQUIRER WHO IS AUTHORIZED BY THE DEPARTMENT TO AFFIX TAX STAMPS
26 TO INDIVIDUAL PACKAGES OF CIGARETTES ON BEHALF OF OTHER
27 WHOLESALERS OR UNCLASSIFIED ACQUIRERS.

1 (S) "TAX STAMP SALES AGENT" MEANS A FINANCIAL INSTITUTION OR
2 OTHER PERSON THAT IS AUTHORIZED BY THE DEPARTMENT TO SELL TAX
3 STAMPS AND COLLECT TAX REVENUE UNDER THIS ACT.

4 (T) ~~(m)~~ "Tobacco product" means cigarettes, cigars, non-
5 cigarette smoking tobacco, or smokeless tobacco.

6 (U) ~~(n)~~ "Transportation company" means a person operating,
7 or supplying to common carriers, cars, boats, or other vehicles
8 for the transportation or accommodation of passengers and engaged
9 in the sale of a tobacco product at retail.

10 (V) ~~(o)~~ "Transporter" means a person importing or trans-
11 porting into this state, or transporting in this state, a tobacco
12 product obtained from a source located outside this state, or
13 from any person not duly licensed under this act. Transporter
14 does not include an interstate commerce carrier licensed by the
15 interstate commerce commission to carry commodities in interstate
16 commerce, or a licensee maintaining a warehouse or place of busi-
17 ness outside of this state if the warehouse or place of business
18 is licensed under this act.

19 (W) ~~(p)~~ "Unclassified acquirer" means a person, except a
20 transportation company or a purchaser at retail from a retailer
21 licensed under the general sales tax act, ~~Act No. 167 of the~~
22 ~~Public Acts of 1933, being sections 205.51 to 205.78 of the~~
23 ~~Michigan Compiled Laws~~ 1933 PA 167, MCL 205.51 TO 205.78, who
24 imports or acquires a tobacco product from a source other than a
25 wholesaler or secondary wholesaler licensed under this act for
26 use, sale, or distribution. UNCLASSIFIED ACQUIRER ALSO MEANS A
27 PERSON WHO RECEIVES CIGARS, NONCIGARETTE SMOKING TOBACCO, OR

1 SMOKELESS TOBACCO DIRECTLY FROM A MANUFACTURER LICENSED UNDER
2 THIS ACT OR FROM ANOTHER SOURCE OUTSIDE THIS STATE, WHICH SOURCE
3 IS NOT LICENSED UNDER THIS ACT. AN UNCLASSIFIED ACQUIRER DOES
4 NOT INCLUDE A WHOLESALER.

5 (X) ~~(q)~~ "Vending machine operator" means a person who
6 operates 1 or more vending machines for the sale of a tobacco
7 product and who purchases a tobacco product from a manufacturer,
8 licensed wholesaler, or secondary wholesaler.

9 (Y) ~~(r)~~ "Wholesale price" means the actual price paid for
10 a tobacco product, including any tax, by a wholesaler to a manu-
11 facturer, excluding any discounts or reductions.

12 (Z) ~~(s)~~ "Wholesaler" means a person who purchases all or
13 part of his or her tobacco products from a manufacturer, who
14 sells 75% or more of those tobacco products to others for resale,
15 and who maintains an established business where substantially all
16 of the business is the sale of tobacco products or cigarettes and
17 related merchandise at wholesale and where at all times a sub-
18 stantial stock of tobacco products and related merchandise is
19 available to retailers for resale. Wholesaler includes a chain
20 of stores retailing a tobacco product to the consumer if 75% of
21 its stock of tobacco products is purchased directly from the
22 manufacturer.

23 Sec. 5. (1) The department may suspend, revoke, or refuse
24 to issue or renew a license issued under this act for failure to
25 comply with this act or for any other good cause. A person whose
26 license is suspended, revoked, or not renewed shall not ACT AS A
27 TAX STAMPING AGENT OR PURCHASE A TAX STAMP FROM THE DEPARTMENT, A

1 TAX STAMP SALES AGENT, OR ANY OTHER PERSON, OR sell a tobacco
2 product during the period of suspension or revocation, or until
3 the license is renewed. A person aggrieved by the suspension,
4 revocation, or refusal to issue or renew a license may apply to
5 the revenue division of the department for a hearing within 20
6 days after notice of the suspension, revocation, or refusal to
7 issue or renew the license. A hearing and decision shall be had
8 in the same manner provided in section 9.

9 (2) IF A PERSON WHO IS A WHOLESALER OR UNCLASSIFIED ACQUIRER
10 LICENSED UNDER THIS ACT IS CONVICTED OF A FELONY UNDER ANY PROVI-
11 SION OF THIS ACT, THE DEPARTMENT SHALL REVOKE ANY LICENSE ISSUED
12 UNDER THIS ACT TO THAT PERSON.

13 SEC. 5A. THE DEPARTMENT SHALL PROCURE TAX STAMPS AS NEEDED
14 IN THE VARIOUS DESIGNS, DENOMINATIONS, AND FORMS NECESSARY AS
15 DETERMINED BY THE DEPARTMENT.

16 SEC. 5B. (1) THE DEPARTMENT MAY CONTRACT WITH A FINANCIAL
17 INSTITUTION OR OTHER PERSON TO ACT AS A TAX STAMP SALES AGENT
18 UNDER THIS ACT. THE CONTRACT SHALL BE IN WRITING AND SHALL CON-
19 TAIN THE TERMS AND CONDITIONS THE DEPARTMENT CONSIDERS
20 APPROPRIATE.

21 (2) THE TAX STAMP SALES AGENT SHALL ACCOUNT TO THE DEPART-
22 MENT EACH MONTH FOR EACH TAX STAMP SOLD AND FOR ALL REVENUE
23 RECEIVED FOR THE SALE OF TAX STAMPS. THE ACCOUNTING SHALL BE IN
24 A FORM AND MANNER AS PRESCRIBED BY THE DEPARTMENT OF TREASURY.

25 (3) THE DEPARTMENT SHALL ADVISE ALL TAX STAMP SALES AGENTS
26 AND ALL TAX STAMPING AGENTS OF ANY WHOLESALER, SECONDARY
27 WHOLESALER, UNCLASSIFIED ACQUIRER, OR OTHER PERSON WHOSE LICENSE

1 IS SUSPENDED OR REVOKED UNDER THIS ACT. THE DEPARTMENT SHALL
2 ADVISE ALL TAX STAMP SALES AGENTS AND TAX STAMPING AGENTS OF ANY
3 PERSON WHOSE LICENSE IS REINSTATED.

4 Sec. 6. (1) ~~Beginning May 1, 1994, a~~ A manufacturer,
5 wholesaler, secondary wholesaler, vending machine operator,
6 transportation company, unclassified acquirer, or retailer shall
7 keep a complete and accurate record of each tobacco product manu-
8 factured, purchased, or otherwise acquired. Except for a manu-
9 facturer, the records shall include a written statement contain-
10 ing the name and address of both the seller and the purchaser,
11 the date of delivery, the quantity, the trade name or brand, and
12 the price paid for each tobacco product purchased. A licensee
13 shall keep as part of the records a true copy of all purchase
14 orders, invoices, bills of lading, and other written matter sub-
15 stantiating the purchase or acquisition of each tobacco product.
16 Other records shall be kept by these persons as the department
17 reasonably prescribes.

18 (2) ~~Beginning May 1, 1994, a~~ A manufacturer, wholesaler,
19 and secondary wholesaler shall deliver with each sale or consign-
20 ment of a tobacco product a written statement containing the name
21 or trade name and address of both the seller and the purchaser,
22 the date of delivery, the quantity, and the trade name or brand
23 of the tobacco product, correctly itemizing the prices paid for
24 each brand purchased, and shall retain a duplicate of each
25 statement.

26 (3) ~~Beginning May 1, 1994, a~~ A vending machine operator
27 shall keep a detailed record of each vending machine owned for

1 the sale of tobacco products showing the location of the machine,
2 the date of placing the machine on the location, the quantity of
3 each tobacco product placed in the machine, the date when placed
4 there, and the amount of the commission paid or earned on sales
5 through the vending machine. When filling or refilling the vend-
6 ing machine, the operator shall deliver to the owner or tenant
7 occupying the premises where the machine is located a written
8 statement containing his or her own name and address, the name
9 and address of the owner or the tenant, the date when the machine
10 was filled, and the quantity of each brand of tobacco product
11 sold from the machine since the date when tobacco products were
12 last placed in the machine. A person in possession of premises
13 where a vending machine is located shall keep a record of each
14 tobacco product sold through the vending machine located on the
15 premises and the amount of commission paid by the person operat-
16 ing the vending machine. The records shall consist of written
17 statements required to be given by each person operating a vend-
18 ing machine for the sale of tobacco products as provided in this
19 section.

20 (4) ~~Beginning May 1, 1994, a~~ A licensee under this act
21 shall not issue or accept a written statement or invoice that is
22 known to the licensee to contain a statement or omission that
23 falsely indicates the name of the customer, the type OR BRAND of
24 merchandise, THE QUANTITY OF EACH TYPE OR BRAND OF MERCHANDISE,
25 the prices, the discounts, THE DATE OF THE TRANSACTION, or the
26 terms of sale. A person shall not use a device or game of chance
27 to aid, promote, or induce sales or purchases of a tobacco

1 product, or give a tobacco product in connection with a device or
2 game of chance.

3 (5) ~~Beginning May 1, 1994, all~~ ALL statements and other
4 records required by this section shall be in a form prescribed by
5 the department and shall be preserved for a period of 4 years
6 ~~and offered for inspection at any time upon oral or written~~
7 ~~demand by the department or its authorized agent~~ BY EVERY
8 LICENSEE AND RETAILER UNDER THIS ACT.

9 (6) ~~Beginning May 1, 1994, if~~ IF a tobacco product OTHER
10 THAN CIGARETTES is received or acquired within this state by a
11 wholesaler, secondary wholesaler, vending machine operator,
12 unclassified acquirer, or retailer, each original manufacturer's
13 shipping case shall bear the name and address of the person
14 making the first purchase or any other markings the department
15 prescribes. If AN INDIVIDUAL PACKAGE OF CIGARETTES IS FOUND
16 WITHOUT A TAX STAMP AFFIXED AS REQUIRED UNDER THIS ACT OR IF a
17 tobacco product OTHER THAN CIGARETTES is found in a place of
18 business or otherwise in the possession of a wholesaler, second-
19 ary wholesaler, vending machine operator, unclassified acquirer,
20 transporter, or retailer without proper markings on the shipping
21 case, box, or container of the tobacco product OTHER THAN
22 CIGARETTES and without proper substantiation by invoices or other
23 records as required by this section, the presumption shall be
24 that the tobacco product is kept in violation of this act. If a
25 tobacco product is shipped outside the state, the licensee ship-
26 ping the tobacco product shall cause to be placed on every
27 shipping case or other container in which the tobacco product is

1 shipped the name and address of the consignee OR PURCHASER to
2 whom the shipment is made outside of the state. The department
3 may require reports from a common carrier who transports a
4 tobacco product to a point within this state from another person
5 who, under contract, transports a tobacco product, or from a
6 bonded warehouseperson or bailee who has in his or her possession
7 a tobacco product. A carrier, bailee, warehouseperson, or other
8 person shall permit the INSPECTION OF THE TOBACCO PRODUCTS AND
9 examination by the department or its duly authorized agent of any
10 records relating to the shipment of a tobacco product into, from,
11 or within the state.

12 (7) ~~Beginning May 1, 1994, a~~ A transporter transporting,
13 possessing, or acquiring for the purpose of transporting a
14 tobacco product upon a public highway, road, or street of this
15 state shall have in his or her actual possession invoices or
16 bills of lading containing the name and address of both the
17 seller and the purchaser, the date of delivery, the name and
18 address of the transporter, the quantity and trade name or brand
19 of each tobacco product, the price paid for each trade name or
20 brand in the transporter's possession or custody, and the license
21 as prescribed under this act.

22 (8) ~~Beginning May 1, 1994, a~~ A transporter desiring to
23 possess or acquire for transportation or transport a tobacco pro-
24 duct upon a highway, road, or street of this state shall obtain a
25 permit from the department authorizing the transporter to possess
26 or acquire for transportation or transport tobacco products and
27 shall have the permit in his or her possession while the tobacco

1 product is in his or her possession. This permit shall be
2 obtained for each load being transported and shall contain a
3 statement setting forth the name and address of the purchaser,
4 seller, and transporter, the license number of the purchaser, the
5 date of the delivery of the tobacco product or date of importa-
6 tion into this state, the route to be followed if a tobacco pro-
7 duct is being transported from an out-of-state source, and any
8 other information the department requires. The department shall
9 provide a permit on a form prescribed by it upon the application
10 of a transporter with the remittance of a fee of \$1.00. If a
11 transporter transports a tobacco product into this state, the
12 transporter shall stop at the nearest state police post within
13 this state on the route authorized by the permit and disclose the
14 tobacco products in his or her possession and the papers required
15 by this section to be in his or her possession.

16 SEC. 6A. (1) BEGINNING JUNE 1, 1997, A WHOLESALER OR
17 UNCLASSIFIED ACQUIRER MAY APPLY TO THE DEPARTMENT OR A TAX STAMP
18 SALES AGENT FOR TAX STAMPS TO AFFIX AS PROVIDED IN THIS ACT. THE
19 DEPARTMENT AND THE TAX STAMP SALES AGENT SHALL KEEP A RECORD OF
20 ALL STAMPS DISBURSED, SERIAL NUMBERS, NAME OF WHOLESALER OR
21 UNCLASSIFIED ACQUIRER, AND DATE OF DISBURSEMENT. THE DEPARTMENT
22 MAY RELEASE THE IDENTITY OF THE WHOLESALER OR UNCLASSIFIED
23 ACQUIRER TO WHOM SPECIFIC STAMPS WERE DISBURSED TO STATE OR LOCAL
24 POLICE AGENCIES.

25 (2) BEGINNING JULY 1, 1997, PRIOR TO DELIVERY, SALE, OR
26 TRANSFER TO ANY PERSON IN THIS STATE, A WHOLESALER OR AN
27 UNCLASSIFIED ACQUIRER SHALL PLACE OR CAUSE TO BE PLACED ON EACH

1 INDIVIDUAL PACKAGE OF CIGARETTES TO BE SOLD WITHIN THIS STATE A
2 TAX STAMP PROVIDED BY THE DEPARTMENT. HOWEVER, UPON WRITTEN
3 NOTICE TO THE COMMISSIONER, A WHOLESALER ENGAGED IN THE INTER-
4 STATE BUSINESS OF SALE AND DISTRIBUTION OF CIGARETTES IS PERMIT-
5 TED TO SET ASIDE A PORTION OF THE WHOLESALER'S STOCK AS MAY BE
6 NECESSARY FOR THE CONDUCT OF INTERSTATE BUSINESS WITHOUT AFFIXING
7 TO THE PORTION SET ASIDE THE TAX STAMPS AS REQUIRED BY THIS ACT.
8 TAX STAMPS SHALL BE FIRMLY AFFIXED IN SUCH A MANNER THAT THE
9 STAMPS CANNOT BE REMOVED WITHOUT BEING MUTILATED OR DESTROYED.
10 THE TAX STAMP SHALL BE FIRMLY AFFIXED TO THE INDIVIDUAL PACKAGE
11 OF CIGARETTES IN A LOCATION ON THE INDIVIDUAL PACKAGE AS DETER-
12 MINED BY THE DEPARTMENT. A TAX STAMP SHALL BE AFFIXED TO EACH
13 PACKAGE OF AN AGGREGATE DENOMINATION EQUAL TO THE AMOUNT OF THE
14 TAX UPON THE CONTENTS OF THE INDIVIDUAL PACKAGE OF CIGARETTES.
15 THE TAX STAMP SHALL BE AFFIXED TO THE BOTTOM OF ALL PACKAGES CON-
16 TAINING 20 OR 25 CIGARETTES. THE TAX STAMP MAY BE AFFIXED TO ANY
17 PORTION OF THE OUTSIDE OF THE INDIVIDUAL PACKAGE OF ALL OTHER
18 INDIVIDUAL PACKAGES OF CIGARETTES.

19 (3) BEGINNING JULY 1, 1997, A PERSON LICENSED UNDER THIS
20 ACT, OTHER THAN A WHOLESALER OR UNCLASSIFIED ACQUIRER OR A PERSON
21 ACTING AS A TRANSPORTER FOR A WHOLESALER OR UNCLASSIFIED ACQUIR-
22 ER, SHALL NOT ACQUIRE FOR RESALE AN INDIVIDUAL PACKAGE OF CIGA-
23 RETTES OR A CIGARETTE FROM AN INDIVIDUAL PACKAGE UNLESS THAT
24 INDIVIDUAL PACKAGE OF CIGARETTES HAS AFFIXED TO IT A TAX STAMP AS
25 PROVIDED IN THIS ACT.

26 (4) BEGINNING NOVEMBER 1, 1997, A RETAILER OR VENDING
27 MACHINE OPERATOR SHALL NOT SELL OR OFFER FOR SALE AN INDIVIDUAL

1 PACKAGE OF CIGARETTES TO THE GENERAL PUBLIC THAT DOES NOT HAVE
2 AFFIXED THE TAX STAMP REQUIRED BY THIS ACT. A RETAILER, SECOND-
3 ARY WHOLESALER, VENDING MACHINE OPERATOR, WHOLESALER, OR UNCLAS-
4 SIFIED ACQUIRER SHALL REPORT ITS UNSTAMPED INVENTORY OF CIGA-
5 RETTES AS OF THE END OF THE BUSINESS DAY ON JUNE 30, 1997 ON
6 FORMS PRESCRIBED BY THE DEPARTMENT. BEGINNING NOVEMBER 1, 1997,
7 CIGARETTES WITHOUT TAX STAMPS MAY NOT BE PLACED OR STORED IN A
8 VENDING MACHINE.

9 (5) THE DEPARTMENT OR ITS AUTHORIZED AGENTS MAY INSPECT OR
10 CONDUCT AN INVENTORY OF A WHOLESALER'S OR UNCLASSIFIED ACQUIRER'S
11 STOCK OF CIGARETTES, TOBACCO PRODUCTS OTHER THAN CIGARETTES, AND
12 CIGARETTE TAX STAMPS DURING REGULAR BUSINESS HOURS AND INSPECT
13 THE RELATED STATEMENTS AND OTHER RECORDS REQUIRED IN SECTION 6.

14 (6) THE DEPARTMENT OR ITS AUTHORIZED AGENTS MAY INSPECT THE
15 OPERATIONS OF A SECONDARY WHOLESALER, VENDING MACHINE OPERATOR,
16 OR RETAILER, OR THE CONTENTS OF A SPECIFIC VENDING MACHINE,
17 DURING REGULAR BUSINESS HOURS. THIS INSPECTION SHALL INCLUDE
18 INSPECTION OF ALL STATEMENTS AND OTHER RECORDS REQUIRED BY
19 SECTION 6 OF THIS ACT, OF PACKAGES OF CIGARETTES AND TOBACCO PRO-
20 DUCTS OTHER THAN CIGARETTES, AND OF THE CONTENTS OF CARTONS AND
21 SHIPPING OR STORAGE CONTAINERS TO ASCERTAIN THAT ALL INDIVIDUAL
22 PACKAGES OF CIGARETTES HAVE AN AFFIXED TAX STAMP OF PROPER DENOM-
23 INATION AS REQUIRED BY THIS ACT. THIS INSPECTION SHALL ALSO
24 VERIFY THAT ALL THE TAX STAMPS WERE PRODUCED UNDER THE AUTHORITY
25 OF THE DEPARTMENT AND THAT THE TOBACCO PRODUCTS OTHER THAN CIGA-
26 RETTES HAVE THE MARKING ON THE SHIPPING CONTAINER AS REQUIRED BY
27 THIS ACT.

1 (7) A PERSON SHALL NOT PREVENT OR HINDER THE DEPARTMENT OR
2 ITS AUTHORIZED AGENTS FROM MAKING A FULL INSPECTION OF ANY PLACE
3 OR VENDING MACHINE WHERE CIGARETTES OR TOBACCO PRODUCTS OTHER
4 THAN CIGARETTES SUBJECT TO THE TAX UNDER THIS ACT ARE SOLD OR
5 STORED, OR PREVENT OR HINDER THE FULL INSPECTION OF INVOICES,
6 BOOKS, RECORDS, OR OTHER PAPERS REQUIRED TO BE KEPT BY THIS ACT.

7 (8) A WHOLESALER LICENSED UNDER THIS ACT WHO IS ALSO A
8 RETAILER SHALL MAINTAIN SEPARATE SECURE STORAGE FOR WHOLESALE AND
9 RETAIL INVENTORIES AND SEPARATE RECORDS FOR THE WHOLESALE AND
10 RETAIL OPERATIONS.

11 (9) THE DEPARTMENT MAY REQUIRE WHOLESALERS AND UNCLASSIFIED
12 ACQUIRERS TO EXCHANGE UNAFFIXED TAX STAMPS WITH THE DEPARTMENT AS
13 THE DEPARTMENT CONSIDERS NECESSARY. THE DEPARTMENT MAY REQUIRE
14 WHOLESALERS, UNCLASSIFIED ACQUIRERS, SECONDARY WHOLESALERS, VEND-
15 ING MACHINE OPERATORS AND RETAILERS TO DISCONTINUE OFFERING FOR
16 SALE ANY UNSOLD INDIVIDUAL PACKAGES OF CIGARETTES BEARING A PRIOR
17 VERSION OF THE TAX STAMP THAT THE DEPARTMENT HAS WITHDRAWN FROM
18 CIRCULATION. THE DEPARTMENT MAY SET A DEADLINE AFTER WHICH THE
19 PRIOR VERSION MAY NO LONGER BE OFFERED FOR SALE. A SECONDARY
20 WHOLESALER, RETAILER, OR VENDING MACHINE OPERATOR MAY RETURN CIG-
21 ARETTE PACKAGES BEARING DISCONTINUED STAMPS TO A WHOLESALER FOR
22 CREDIT. A WHOLESALER OR UNCLASSIFIED ACQUIRER MAY TAKE CREDIT ON
23 ITS TAX RETURNS FOR INDIVIDUAL PACKAGES OF CIGARETTES BEARING
24 DISCONTINUED TAX STAMPS THAT ARE RETURNED TO THE MANUFACTURER FOR
25 CREDIT.

26 (10) EXCEPT AS PROVIDED IN SUBSECTION (12), A WHOLESALER OR
27 UNCLASSIFIED ACQUIRER SHALL NOT GIVE, SELL, OR LEND ANY UNAFFIXED

HB4215, As Passed House, December 4, 1997

H.B. 4215 as amended December 4, 1997

16

1 TAX STAMPS TO ANOTHER PERSON AND EXCEPT AS OTHERWISE PROVIDED IN
2 THIS ACT, A PERSON SHALL NOT ACCEPT, PURCHASE, OR BORROW ANY
3 UNAFFIXED TAX STAMPS FROM ANOTHER PERSON.

4 (11) UPON WRITTEN AUTHORIZATION OF THE DEPARTMENT, A WHOLE-
5 SALER OR UNCLASSIFIED ACQUIRER LICENSED UNDER THIS ACT MAY
6 APPOINT A TAX STAMPING AGENT TO AFFIX TAX STAMPS TO INDIVIDUAL
7 PACKAGES OF CIGARETTES.

8 SEC. 6B. (1) BEGINNING JUNE 1, 1997, A WHOLESALER OR
9 UNCLASSIFIED ACQUIRER MAY PURCHASE TAX STAMPS FROM THE DEPARTMENT
10 OR A TAX STAMP SALES AGENT FOR CASH OR CHECK OR DRAFT DRAWN ON
11 CERTIFIED FUNDS ON A CASH ON DELIVERY BASIS, AT A [1.25%] DISCOUNT
12 FROM THE FACE AMOUNT OF THE TAX STAMPS.

13 (2) BEGINNING JUNE 1, 1997, A WHOLESALER OR UNCLASSIFIED
14 ACQUIRER MAY PURCHASE TAX STAMPS FROM THE DEPARTMENT OR A TAX
15 STAMP SALES AGENT ON 45 DAYS' CREDIT AT A [1.25%] DISCOUNT FROM THE
16 FACE AMOUNT OF THE TAX STAMPS. IF THE DEPARTMENT DETERMINES THAT
17 A WHOLESALER OR UNCLASSIFIED ACQUIRER IS NOT FINANCIALLY SOUND,
18 THE DEPARTMENT OR TAX STAMP SALES AGENT SHALL ISSUE TAX STAMPS
19 ONLY ON THE FILING WITH THE DEPARTMENT OF A BOND OR OTHER SECUR-
20 ITY AS DETERMINED BY THE DEPARTMENT IN AN AMOUNT NOT LESS THAN
21 THE VALUE OF THE TAX STAMPS ISSUED BY THE DEPARTMENT.

22 (3) IF A WHOLESALER OR UNCLASSIFIED ACQUIRER FAILS TO REMIT
23 THE TAX FOR THE TAX STAMPS WITHIN 45 DAYS AS PROVIDED IN THIS
24 ACT, THE WHOLESALER OR UNCLASSIFIED ACQUIRER SHALL REMIT THE TAX
25 FOR THE TAX STAMPS IN A FORM AND MANNER PRESCRIBED BY THE
26 DEPARTMENT. THE DEPARTMENT OR A TAX STAMP SALES AGENT SHALL NOT
27 ISSUE ANY TAX STAMPS TO THAT WHOLESALER OR UNCLASSIFIED ACQUIRER

1 UNTIL THE WHOLESALER OR UNCLASSIFIED ACQUIRER PAYS FOR ALL TAX
2 STAMPS THAT IT HAS BEEN ISSUED.

3 Sec. 7. (1) Beginning May 1, 1994, a tax is levied on the
4 sale of tobacco products sold in this state as follows:

5 (a) For cigars, noncigarette smoking tobacco, and smokeless
6 tobacco, 16% of the wholesale price.

7 (b) For cigarettes, ~~if the sales tax is levied at a rate of~~
8 ~~4% under the general sales tax act, Act No. 167 of the Public~~
9 ~~Acts of 1933, being sections 205.51 to 205.78 of the Michigan~~
10 ~~Compiled Laws, 20~~ 37.5 mills per cigarette.

11 ~~(c) For cigarettes, if the sales tax is levied at a rate of~~
12 ~~6% under the general sales tax act, Act No. 167 of the Public~~
13 ~~Acts of 1933, being sections 205.51 to 205.78 of the Michigan~~
14 ~~Compiled Laws, 37.5 mills per cigarette.~~

15 (2) On or before the twentieth day of each calendar month,
16 every licensee under section 3 other than a retailer, secondary
17 wholesaler, or vending machine operator shall file a return with
18 the department stating the amount of each tobacco PRODUCT PUR-
19 CHASED, EACH TOBACCO product sold, ~~and specifying~~ the wholesale
20 price charged for all tobacco products OTHER THAN CIGARETTES, THE
21 NUMBER OF INDIVIDUAL PACKAGES OF CIGARETTES AND THE NUMBER OF
22 CIGARETTES IN THOSE INDIVIDUAL PACKAGES, AND THE NUMBER AND
23 DENOMINATIONS OF TAX STAMPS AFFIXED TO INDIVIDUAL PACKAGES OF
24 CIGARETTES AND sold by the licensee for each place of business in
25 the preceding calendar month. THE RETURN SHALL ALSO INCLUDE THE
26 NUMBER AND DENOMINATION OF TAX STAMPS AND THE SERIAL NUMBER OF
27 EACH TAX STAMP IN THE POSSESSION OF THE LICENSEE AT THE END OF

1 THE PRECEDING CALENDAR MONTH. WHOLESALERS SHALL ALSO REPORT
2 ACCURATE INVENTORIES OF CIGARETTES, BOTH STAMPED AND UNSTAMPED AT
3 THE END OF THE PRECEDING CALENDAR MONTH. WHOLESALERS AND UNCLAS-
4 SIFIED ACQUIRERS SHALL ALSO REPORT ACCURATE INVENTORIES OF TAX
5 STAMPS BY DENOMINATION AND SERIAL NUMBER AT THE BEGINNING AND END
6 OF EACH CALENDAR MONTH AND ALL TAX STAMPS PURCHASED DURING THE
7 PRECEDING CALENDAR MONTH. The return shall be signed under pen-
8 alty of prejury. The return shall be on a form prescribed by the
9 department and shall contain or be accompanied by any further
10 information the department requires.

11 (3) At the time of the filing of the return, the licensee
12 shall pay to the department the tax levied in subsection (1) for
13 tobacco products OTHER THAN CIGARETTES sold during the calendar
14 month covered by the return, less compensation equal to 1% of the
15 total amount of the tax due to cover the cost of expenses
16 incurred in the administration of this act.

17 (4) Every licensee and retailer who, on May 1, 1994, has on
18 hand for sale any cigarettes acquired after February 1, 1994 upon
19 which a tax has been paid pursuant to ~~Act No. 265 of the Public~~
20 ~~Acts of 1947, being sections 205.501 to 205.522 of the Michigan~~
21 ~~Compiled Laws~~ FORMER 1947 PA 265, shall file a complete inven-
22 tory of those cigarettes before June 1, 1994 and shall pay to the
23 department at the time of filing this inventory a tax equal to
24 the difference between the tax imposed in subsection (1) and the
25 tax that has been paid pursuant to ~~Act No. 265 of the Public~~
26 ~~Acts of 1947~~ FORMER 1947 PA 265.

1 (5) The department may require the payment of the tax
2 imposed by this act upon the importation or acquisition of a
3 tobacco product. A tobacco product for which the tax under this
4 act has once been imposed and that has not been refunded if paid
5 is not subject upon a subsequent sale to the tax imposed by this
6 act.

7 (6) An abatement or refund of the tax provided by this act
8 may be made by the department for causes the department considers
9 expedient. The department shall certify the amount and the state
10 treasurer shall pay that amount out of the proceeds of the tax.

11 (7) A person liable for the tax may reimburse itself by
12 adding to the price of the tobacco products an amount equal to
13 the tax levied under this act.

14 (8) A WHOLESALER OR UNCLASSIFIED ACQUIRER SHALL NOT RESELL
15 OR TRANSFER ANY TAX STAMPS PURCHASED BY THE WHOLESALER OR UNCLAS-
16 SIFIED ACQUIRER FROM THE DEPARTMENT OR TAX STAMP SALES AGENT. A
17 WHOLESALER OR UNCLASSIFIED ACQUIRER WHO HAS ANY UNAFFIXED TAX
18 STAMPS ON HAND AT THE TIME ITS LICENSE IS REVOKED OR EXPIRES, OR
19 AT THE TIME IT DISCONTINUES THE BUSINESS OF SELLING CIGARETTES,
20 MUST RETURN THOSE TAX STAMPS TO THE DEPARTMENT. THE DEPARTMENT
21 SHALL REFUND THE VALUE OF THE TAX STAMPS, LESS THE APPROPRIATE
22 DISCOUNT PAID.

23 (9) THE DEPARTMENT SHALL REDEEM AND PAY A WHOLESALER OR
24 UNCLASSIFIED ACQUIRER FOR ANY UNUSED OR SPOILED TAX STAMPS AND
25 TAX STAMPS ON UNSALABLE PACKS AT THE VALUE OF THE TAX STAMPS LESS
26 THE APPROPRIATE DISCOUNT PAID. AN APPLICATION FOR REFUND OF THE
27 TAX SHALL BE FILED ON A FORM PRESCRIBED BY THE DEPARTMENT FOR

1 THAT PURPOSE, WITHIN 4 YEARS FROM THE DATE THE TAX STAMPS WERE
2 ORIGINALLY PURCHASED FROM THE DEPARTMENT OR TAX STAMP SALES
3 AGENT. A WHOLESALER OR UNCLASSIFIED ACQUIRER SHALL MAKE AVAIL-
4 ABLE FOR INSPECTION BY THE DEPARTMENT THE UNUSED OR SPOILED
5 STAMPS AND THE STAMPS AFFIXED TO UNSALABLE INDIVIDUAL PACKAGES OF
6 CIGARETTES. THE DEPARTMENT SHALL WITNESS AND CERTIFY THE
7 DESTRUCTION OF THE UNUSED OR SPOILED STAMPS AND UNSALABLE INDI-
8 VIDUAL PACKAGES OF CIGARETTES THAT ARE NOT RETURNABLE TO THE
9 MANUFACTURER. AFTER INSPECTION BY THE DEPARTMENT, THE WHOLESALER
10 OR UNCLASSIFIED ACQUIRER SHALL PROVIDE CERTIFICATION FROM THE
11 MANUFACTURER FOR ANY INDIVIDUAL PACKAGES OF CIGARETTES THAT ARE
12 RETURNED TO THE MANUFACTURER.

13 (10) ON OR BEFORE THE TWENTIETH OF EACH MONTH, EACH MANUFAC-
14 TURER SHALL FILE A REPORT WITH THE DEPARTMENT LISTING ALL SALES
15 OF TOBACCO PRODUCTS TO WHOLESALERS AND UNCLASSIFIED ACQUIRERS
16 LOCATED IN THIS STATE DURING THE PRECEDING CALENDAR MONTH AND ANY
17 OTHER INFORMATION THE DEPARTMENT FINDS NECESSARY. THIS REPORT
18 SHALL BE IN THE FORM AND MANNER SPECIFIED BY THE DEPARTMENT.

19 SEC. 7A. (1) A WHOLESALER OR UNCLASSIFIED ACQUIRER MAKING
20 SALES OR OTHER DISPOSITIONS OF CIGARETTES OR TOBACCO PRODUCTS
21 OTHER THAN CIGARETTES TO THE UNITED STATES GOVERNMENT OR ITS
22 AGENCIES OR INSTRUMENTALITIES OR TO INDIAN COMMUNITIES DOES NOT
23 INCUR TAX LIABILITY WITH RESPECT TO THOSE SALES, AND NEED NOT
24 AFFIX TAX STAMPS TO THOSE INDIVIDUAL PACKAGES OF CIGARETTES.

25 (2) A WHOLESALER OR UNCLASSIFIED ACQUIRER MAKING SALES OR
26 OTHER DISPOSITIONS OF CIGARETTES OR TOBACCO PRODUCTS OTHER THAN
27 CIGARETTES IN THIS STATE TO INDIVIDUALS, PRIVATE STORES, OR

HB4215, As Passed House, December 4, 1997

H.B. 4215 as amended December 4, 1997

21

1 CONCESSIONAIRES LOCATED UPON FEDERAL LANDS AND ENGAGED IN THE
2 BUSINESS OF SELLING CIGARETTES OR TOBACCO PRODUCTS OTHER THAN
3 CIGARETTES MUST COLLECT THE TAX FOR THESE SALES AND MUST AFFIX
4 TAX STAMPS OF PROPER DENOMINATION TO EACH INDIVIDUAL PACKAGE OF
5 CIGARETTES BEFORE DELIVERY.

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HB4215, As Passed House, December 4, 1997

H.B. 4215 as amended December 4, 1997

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19 Sec. 8. (1) ~~Beginning May 1, 1994, a~~ A person, other than
20 a licensee, who is in control or in possession of a tobacco pro-
21 duct contrary to this act, WHO IS IN CONTROL OR IN POSSESSION OF
22 AN INDIVIDUAL PACKAGE OF CIGARETTES WITHOUT A TAX STAMP IN VIOLA-
23 TION OF THIS ACT, or who offers to sell or does sell a tobacco
24 product to another for purposes of resale without being licensed
25 to do so under this act, shall be considered to have possession
26 of that tobacco product as an unclassified acquirer and shall be

1 personally liable for the tax imposed by this act, plus a penalty
2 of 100% of the amount of tax due under this act.

3 (2) THE COMMISSIONER OF REVENUE MAY PERMIT A REPRESENTATIVE
4 OF A LICENSED MANUFACTURER OF TOBACCO PRODUCTS WHOSE DUTIES
5 REQUIRE TRAVEL IN THIS STATE TO TRANSPORT UP TO 138,000 CIGA-
6 RETTES, OF WHICH NOT MORE THAN 36,000 CIGARETTES MAY BEAR THE TAX
7 INDICIA OF ANOTHER STATE. ALL 138,000 CIGARETTES MUST BEAR THE
8 TAX STAMP APPROVED BY THE DEPARTMENT OR THE TAX INDICIA OF
9 ANOTHER STATE, IF ANY. THE TOTAL VALUE OF TOBACCO PRODUCTS,
10 EXCLUDING CIGARETTES, CARRIED BY A REPRESENTATIVE SHALL NOT
11 EXCEED A WHOLESALE VALUE OF \$5,000.00. A MANUFACTURER SHALL
12 NOTIFY THE DEPARTMENT OF THE MANUFACTURER'S REPRESENTATIVES THAT
13 IT CURRENTLY EMPLOYS WHO CARRY CIGARETTES OR TOBACCO PRODUCTS
14 OTHER THAN CIGARETTES IN PERFORMING WORK DUTIES IN THIS STATE.
15 THE MANUFACTURER SHALL MAINTAIN A RECORD OF EACH TRANSACTION BY
16 THE MANUFACTURER'S REPRESENTATIVE AT AN OFFICE LOCATED IN THIS
17 STATE FOR A PERIOD OF 1 YEAR IMMEDIATELY FOLLOWING THE TRANSAC-
18 TION AND SHALL PRODUCE THE RECORDS UPON REQUEST OF THE COMMIS-
19 SIONER OR THE COMMISSIONER'S AUTHORIZED AGENT. EACH RECORD SHALL
20 IDENTIFY THE QUANTITY AND IDENTITY OF THE TOBACCO PRODUCTS
21 EXCHANGED, RECEIVED, REMOVED, OR OTHERWISE DISPOSED OF AND THE
22 IDENTITY OF THE RETAILER. A REPRESENTATIVE SHALL NOT SELL,
23 EXCHANGE, OR OTHERWISE DISPOSE OF, WITHIN THIS STATE, CIGARETTES
24 OR TOBACCO PRODUCTS OTHER THAN CIGARETTES BEARING THE TAX INDICIA
25 OF ANOTHER STATE OR RECEIVE TOBACCO PRODUCTS WITH TAX INDICIA
26 FROM RETAILERS LOCATED WITHIN THIS STATE. A REPRESENTATIVE WHO
27 SELLS, EXCHANGES, OR OTHERWISE DISPOSES OF CIGARETTES OR TOBACCO

1 PRODUCTS OTHER THAN CIGARETTES THAT DO NOT BEAR THE TAX STAMP OR
2 OTHER MARKING REQUIRED BY THE DEPARTMENT OR SELLS, EXCHANGES, OR
3 OTHERWISE DISPOSES OF CIGARETTES OR TOBACCO PRODUCTS OTHER THAN
4 CIGARETTES BEARING THE TAX INDICIA OF ANOTHER STATE IS GUILTY OF
5 A FELONY, PUNISHABLE BY A FINE OF NOT MORE THAN \$5,000.00 OR
6 IMPRISONMENT FOR NOT MORE THAN 5 YEARS, OR BOTH.

7 (3) ~~(2)~~ A person who possesses, acquires, transports, or
8 offers for sale contrary to this act 3,000 OR MORE CIGARETTES OR
9 tobacco products ~~whose~~ WITH AN AGGREGATE wholesale price
10 ~~is \$50.00~~ OF \$250.00 or more is guilty of a felony, punishable
11 by a fine of not more than \$5,000.00 or imprisonment for not more
12 than 5 years, or both.

13 (4) A PERSON WHO POSSESSES, ACQUIRES, TRANSPORTS, OR OFFERS
14 FOR SALE CONTRARY TO THIS ACT 1,200 OR MORE, BUT NOT MORE THAN
15 2,999, CIGARETTES WITH AN AGGREGATE WHOLESale VALUE OF \$100.00 OR
16 MORE BUT LESS THAN \$250.00, IS GUILTY OF A MISDEMEANOR PUNISHABLE
17 BY A FINE OF NOT MORE THAN \$1,000.00 OR IMPRISONMENT OF NOT MORE
18 THAN 1 YEAR, OR BOTH.

19 (5) ~~(3) Beginning May 1, 1994, a~~ A person who violates a
20 provision of this act for which a criminal punishment is not oth-
21 erwise provided is guilty of a misdemeanor, punishable by a fine
22 of not more than \$1,000.00 or imprisonment for not more than 1
23 year, or both.

24 (6) A PERSON WHO MANUFACTURES, POSSESSES, OR USES A TAX
25 STAMP OR MANUFACTURES, POSSESSES, OR USES A COUNTERFEIT STAMP OR
26 WRITING OR DEVICE INTENDED TO REPLICATE A TAX STAMP WITHOUT
27 AUTHORIZATION OF THE DEPARTMENT, OR A LICENSEE WHO PURCHASES OR

1 OBTAINS A TAX STAMP FROM ANY PERSON OTHER THAN THE DEPARTMENT OR
2 A TAX STAMP AGENT, IS GUILTY OF A FELONY AND SHALL BE PUNISHED BY
3 IMPRISONMENT FOR NOT LESS THAN 1 YEAR OR MORE THAN 10 YEARS AND
4 MAY BE PUNISHED BY A FINE OF NOT MORE THAN \$10,000.00.

5 (7) ~~(4)~~ The attorney general has concurrent power with the
6 prosecuting attorneys of the state to enforce this act.

7 (8) ~~(5)~~ At the request of the department or its duly
8 authorized agent, the state police and all local police authori-
9 ties shall enforce the provisions of this act.

10 Sec. 9. (1) A tobacco product held, owned, possessed,
11 transported, or in control of a person in violation of this act,
12 and a vending machine, vehicle, and other tangible personal prop-
13 erty containing a tobacco product in violation of this act AND
14 ANY RELATED BOOKS AND RECORDS are contraband and may be seized
15 and confiscated by the department as provided in this section.

16 (2) If an authorized inspector of the department or a police
17 officer has reasonable cause to believe and does believe that a
18 tobacco product is being acquired, possessed, transported, kept,
19 sold, or offered for sale in violation of this act for which the
20 penalty is a felony, the inspector or police officer may investi-
21 gate or search the vehicle of transportation in which the tobacco
22 product is believed to be located. If a tobacco product is found
23 in the vehicle, the tobacco product, vending machine, vehicle, or
24 other tangible personal property containing those tobacco pro-
25 ducts and any books and records in possession of the person in
26 control or possession of the tobacco product may be seized by the

1 inspector or police officer and are subject to forfeiture as
2 contraband as provided in this section.

3 (3) As soon as possible, but not more than 5 business days
4 after seizure of any alleged contraband, the person making the
5 seizure shall deliver personally or by registered mail to the
6 last known address of the person from whom the seizure was made,
7 if known, an inventory statement of the property seized. A copy
8 of the inventory statement shall also be filed with the
9 commissioner. The inventory statement shall also contain a
10 notice to the effect that unless demand for hearing as provided
11 in this section is made within 10 business days, the designated
12 property is forfeited to the state. If the person from whom the
13 seizure was made is not known, the person making the seizure
14 shall cause a copy of the inventory statement, together with the
15 notice provided for in this subsection, to be published at least
16 3 times in a newspaper of general circulation in the county where
17 the seizure was made. Within 10 business days after the date of
18 service of the inventory statement, or in the case of publica-
19 tion, within 10 business days after the date of last publication,
20 the person from whom the property was seized or any person claim-
21 ing an interest in the property may by registered mail, facsimile
22 transmission, or personal service file with the commissioner a
23 demand for a hearing before the commissioner or a person desig-
24 nated by the commissioner for a determination as to whether the
25 property was lawfully subject to seizure and forfeiture. The
26 person shall verify a request for hearing filed by facsimile
27 transmission by also providing a copy of the original request for

1 hearing by registered mail or personal service. The person or
2 persons are entitled to appear before the department, to be rep-
3 resented by counsel, and to present testimony and argument. Upon
4 receipt of a request for hearing, the department shall hold the
5 hearing within 15 business days. The hearing is not a contested
6 case proceeding and is not subject to the administrative proce-
7 dures act of 1969, ~~Act No. 306 of the Public Acts of 1969, being~~
8 ~~sections 24.201 to 24.328 of the Michigan Compiled Laws 1969 PA~~
9 306, MCL 24.201 TO 24.328. After the hearing, the department
10 shall render its decision in writing within 10 business days of
11 the hearing and, by order, shall either declare the seized prop-
12 erty subject to seizure and forfeiture, or declare the property
13 returnable in whole or in part to the person entitled to
14 possession. If, within 10 business days after the date of serv-
15 ice of the inventory statement, the person from whom the property
16 was seized or any person claiming an interest in the property
17 does not file with the commissioner a demand for a hearing before
18 the department, the property seized shall be considered forfeited
19 to the state by operation of law and may be disposed of by the
20 department as provided in this section. If, after a hearing
21 before the commissioner or person designated by the commissioner,
22 the department determines that the property is lawfully subject
23 to seizure and forfeiture and the person from whom the property
24 was seized or any persons claiming an interest in the property do
25 not take an appeal to the circuit court of the county in which
26 the seizure was made within the time prescribed in this section,
27 the property seized shall be considered forfeited to the state by

1 operation of law and may be disposed of by the department as
2 provided in this section.

3 (4) If a person is aggrieved by the decision of the depart-
4 ment, that person may appeal to the circuit court of the county
5 where the seizure was made to obtain a judicial determination of
6 the lawfulness of the seizure and forfeiture. The action shall
7 be commenced within 20 days after notice of the department's
8 determination is sent to the person or persons claiming an inter-
9 est in the seized property. The court shall hear the action and
10 determine the issues of fact and law involved in accordance with
11 rules of practice and procedure as in other in rem proceedings.
12 If a judicial determination of the lawfulness of the seizure and
13 forfeiture cannot be made before deterioration of any of the
14 property seized, the court shall order the sale of the property
15 with public notice as determined by the court and require the
16 proceeds to be deposited with the court until the lawfulness of
17 the seizure and forfeiture is finally adjudicated.

18 (5) The department may sell a tobacco product or other prop-
19 erty forfeited pursuant to this section at public sale. Public
20 notice of the sale shall be given at least 5 days before the day
21 of sale. The proceeds derived from the sale by the department
22 shall be credited to the general fund of the state.

23 (6) The seizure and sale of a tobacco product or other prop-
24 erty under this section does not relieve a person from a fine,
25 imprisonment, or other penalty for violation of this act.

26 (7) A person who is not an employee or officer of this state
27 or a political subdivision of this state who furnishes to the

1 department or to any law enforcement agency original information
2 concerning a violation of this act, which information results in
3 the collection and recovery of any tax or penalty or leads to the
4 forfeiture of any cigarettes, or other property, may be awarded
5 and paid by the state treasurer upon the certification of the
6 commissioner, compensation of not more than 10% of the net amount
7 received from the sale of any forfeited cigarettes or other prop-
8 erty, but not to exceed \$5,000.00 which shall be paid out of the
9 receipts from the sale of the property. If in the opinion of the
10 attorney general, the commissioner, and the director of the
11 department of state police it is deemed necessary to preserve the
12 identity of the person furnishing the information, the attorney
13 general, the commissioner, and the director of the department of
14 state police shall file with the state treasurer an affidavit
15 setting forth that necessity and a warrant may be issued jointly
16 to the attorney general, the commissioner, and the director of
17 the department of state police. Upon payment to the person fur-
18 nishing that information, the attorney general, the commissioner,
19 and the director of the department of state police shall file
20 with the state treasurer an affidavit that the money has been by
21 them paid to the person entitled to the money under this
22 section.

23 Sec. 12. (1) The proceeds derived from the payment of
24 taxes, fees, and penalties provided for under this act and the
25 license fees received by the department shall be deposited with
26 the state treasurer and disbursed only as provided in this
27 section.

1 (2) ONE PERCENT OF THE PROCEEDS OF TAXES IMPOSED UNDER THIS
2 ACT SHALL BE CREDITED TO THE DEPARTMENT OF TREASURY AND DEPART-
3 MENT OF STATE POLICE FOR THE ENFORCEMENT AND ADMINISTRATION OF
4 THIS ACT.

5 (3) ~~(2)~~ The proceeds of the tax imposed under section
6 7(1)(a) AFTER THE DISTRIBUTION IS CREDITED AS REQUIRED UNDER
7 SUBSECTION (2) shall be DISBURSED AS FOLLOWS:

8 (A) 94% SHALL BE credited to the state school aid fund
9 established by section 11 of article IX of the state constitution
10 of 1963.

11 (B) 6% SHALL BE CREDITED TO THE HEALTHY MICHIGAN FUND.

12 ~~(3) If the sales tax is levied at a rate of 4% under the~~
13 ~~general sales tax act, Act No. 167 of the Public Acts of 1933,~~
14 ~~the tax imposed on cigarettes pursuant to section 7(1)(b) shall~~
15 ~~be disbursed as follows:~~

16 ~~(a) The proceeds of 1.5 mills shall be credited to the~~
17 ~~health and safety fund created in the health and safety fund act,~~
18 ~~Act No. 264 of the Public Acts of 1987, being sections 141.471 to~~
19 ~~141.479 of the Michigan Compiled Laws.~~

20 ~~(b) The proceeds of 9.5 mills shall be credited to the gen-~~
21 ~~eral fund of this state.~~

22 ~~(c) The proceeds of 8.5 mills shall be credited to the state~~
23 ~~school aid fund established by section 11 of article IX of the~~
24 ~~state constitution of 1963.~~

25 ~~(d) The proceeds of .5 mills shall be distributed to city,~~
26 ~~district, and county health departments created pursuant to~~
27 ~~sections 2413, 2415, and 2421 of the public health code, Act~~

1 ~~No. 368 of the Public Acts of 1978, being sections 333.2413,~~
2 ~~333.2415, and 333.2421 of the Michigan Compiled Laws, on a per~~
3 ~~capita basis according to the most recent federal decennial~~
4 ~~census. The distribution under this subdivision shall be used~~
5 ~~only for public health prevention programs and services. This~~
6 ~~distribution is in addition to and is not intended as a replace-~~
7 ~~ment for any other state payments to these local health~~
8 ~~departments.~~

9 (4) ~~If the sales tax is levied at a rate of 6% under the~~
10 ~~general sales tax act, Act No. 167 of the Public Acts of 1933,~~
11 ~~being sections 205.51 to 205.78 of the Michigan Compiled Laws,~~
12 ~~the THE tax imposed on cigarettes pursuant to section 7(1)(c)-~~
13 ~~7(1)(B) AFTER THE DISTRIBUTION IS CREDITED AS REQUIRED UNDER~~
14 ~~SUBSECTION (2) shall be disbursed as follows:~~

15 (a) 4% of the proceeds shall be credited to the health and
16 safety fund created in the health and safety fund act, ~~Act~~
17 ~~No. 264 of the Public Acts of 1987, being sections 141.471 to~~
18 ~~141.479 of the Michigan Compiled Laws~~ 1987 PA 264, MCL 141.471
19 TO 141.479.

20 (b) 25.3% of the proceeds shall be credited to the general
21 fund of this state.

22 (c) 63.4% of the proceeds shall be credited to the state
23 school aid fund established by section 11 of article IX of the
24 state constitution of 1963.

25 (d) 1.3% of the proceeds shall be distributed to city, dis-
26 trict, and county health departments created pursuant to
27 sections 2413, 2415, and 2421 of the public health code, ~~Act~~

1 ~~No. 368 of the Public Acts of 1978, being sections 333.2413,~~
2 ~~333.2415, and 333.2421 of the Michigan Compiled Laws~~ 1978 PA
3 368, MCL 333.2413, 333.2415, AND 333.2421, on a per capita basis
4 according to the most recent federal decennial census. The dis-
5 tribution under this subdivision shall be used only for public
6 health prevention programs and services. This distribution is in
7 addition to and is not intended as a replacement for any other
8 state payments to these local health departments.

9 (e) 6% of the proceeds shall be ~~dedicated to improving the~~
10 ~~health care of the residents of this state~~ CREDITED TO THE
11 HEALTHY MICHIGAN FUND CREATED UNDER SECTION 5953 OF THE PUBLIC
12 HEALTH CODE, 1978 PA 368, MCL 333.5953.

13 (5) The proceeds of the fees and penalties provided for in
14 this act shall be used for the administration of this act.

15 Enacting section 1. This amendatory act takes effect June
16 1, 1997.