

HOUSE BILL NO. 4485

March 10, 2021, Introduced by Rep. Hall and referred to the Committee on Tax Policy.

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending section 7 (MCL 205.427), as amended by 2016 PA 86.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 (a) Through July 31, 2002, for cigars, noncigarette smoking
4 tobacco, and smokeless tobacco, 16% of the wholesale price.

5 (b) For cigarettes, 37.5 mills per cigarette.

1 (c) Beginning August 1, 2002, for cigarettes, in addition to
2 the tax levied in subdivision (b), an additional 15 mills per
3 cigarette.

4 (d) Beginning August 1, 2002, for cigarettes, in addition to
5 the tax levied in subdivisions (b) and (c), an additional 10 mills
6 per cigarette.

7 (e) Beginning July 1, 2004, for cigarettes, in addition to the
8 tax levied in subdivisions (b), (c), and (d), an additional 37.5
9 mills per cigarette.

10 (f) Beginning August 1, 2002 and through June 30, 2004, for
11 cigars, noncigarette smoking tobacco, and smokeless tobacco, 20% of
12 the wholesale price.

13 (g) Beginning July 1, 2004, for cigars, noncigarette smoking
14 tobacco, and smokeless tobacco, 32% of the wholesale price.
15 However, beginning November 1, 2012, ~~and through October 31, 2021,~~
16 the amount of tax levied under this subdivision on cigars shall not
17 exceed 50 cents per individual cigar.

18 (2) On or before the twentieth day of each calendar month,
19 every licensee under section 3 other than a retailer, unclassified
20 acquirer licensed as a manufacturer, or vending machine operator
21 shall file a return with the department stating the wholesale price
22 of each tobacco product other than cigarettes purchased, the
23 quantity of cigarettes purchased, the wholesale price charged for
24 all tobacco products other than cigarettes sold, the number of
25 individual packages of cigarettes and the number of cigarettes in
26 those individual packages, and the number and denominations of
27 stamps affixed to individual packages of cigarettes sold by the
28 licensee for each place of business in the preceding calendar
29 month. The return shall also include the number and denomination of

1 unaffixed stamps in the possession of the licensee at the end of
2 the preceding calendar month. Wholesalers shall also report
3 accurate inventories of cigarettes, both stamped and unstamped at
4 the end of the preceding calendar month. Wholesalers and
5 unclassified acquirers shall also report accurate inventories of
6 affixed and unaffixed stamps by denomination at the beginning and
7 end of each calendar month and all stamps acquired during the
8 preceding calendar month. The return shall be signed under penalty
9 of perjury. The return shall be on a form prescribed by the
10 department and shall contain or be accompanied by any further
11 information the department requires. The department may also
12 require licensees to report cigarette acquisition, purchase, and
13 sales information in other formats and frequency.

14 (3) To cover the cost of expenses incurred in the
15 administration of this act, at the time of the filing of the
16 return, the licensee shall pay to the department the tax levied in
17 subsection (1) for tobacco products sold during the calendar month
18 covered by the return, less compensation equal to the following:

19 (a) One percent of the total amount of the tax due on tobacco
20 products sold other than cigarettes.

21 (b) Through July 31, 2002, 1.25% of the total amount of the
22 tax due on cigarettes sold.

23 (c) Beginning August 1, 2002, 1.5% of the total amount of the
24 tax due on cigarettes sold and, beginning on June 20, 2012, for
25 sales of untaxed cigarettes to Indian tribes in this state, an
26 amount equal to 1.5% of the total amount of the tax due on those
27 cigarettes sold as if those cigarette sales were taxable sales
28 under this act.

29 (d) Beginning on the first calendar month following the

1 implementation of the use of digital stamps as provided in section
2 5a(2), for licensees who are stamping agents, 0.5% of the total
3 amount of the tax due on cigarettes sold and, for sales of untaxed
4 cigarettes to Indian tribes in this state, 0.5% of the total amount
5 of the tax due on those cigarettes sold as if those cigarette sales
6 were taxable sales under this act, until the stamping agent is
7 compensated in an amount equal to the direct cost actually incurred
8 by the stamping agent for the purchase of upgrades to technology
9 and equipment, excluding the equipment reimbursed under subdivision
10 (e), that are necessary to affix the digital stamp as determined by
11 the department. Compensation under this subdivision may also be
12 claimed by a stamping agent for the direct costs actually incurred
13 by the stamping agent, as determined by the department and
14 reflected in the net purchase price, for the initial and 1-time
15 purchase of case packers or similar machines or conveyors as
16 follows:

17 (i) Case packers or similar machines to be used exclusively to
18 repack cigarette cartons into case boxes after digital stamps have
19 been applied by eligible equipment to the individual packages of
20 cigarettes contained within those cigarette cartons. Compensation
21 under this subparagraph may only be claimed by a stamping agent if
22 the case packers or similar machines are in addition to, and not a
23 replacement for, 1 or more case packers or similar machines used in
24 connection with cigarette stamping machines which do not use the
25 digital stamp authorized under this act.

26 (ii) Conveyors to be used exclusively for that portion of a
27 cigarette stamping line that is necessary for and dedicated to
28 cigarette stamping operations using eligible equipment to affix
29 digital stamps to individual packages of cigarettes to be sold in

1 this state. Compensation under this subparagraph may only be
2 claimed by a stamping agent if the cigarette stamping line served
3 by the conveyors is in addition to 1 or more distinct and existing
4 cigarette stamping lines using stamping machines which do not use
5 the digital stamp authorized under this act and that compensation
6 shall not exceed a total of 50% of the amount reimbursed under
7 subdivision (e) for any particular stamping agent.

8 (iii) Compensation under subparagraphs (i) and (ii) shall also
9 include any applicable sales or use taxes paid, and shipping and
10 crating charges actually incurred, by the stamping agent in
11 connection with the purchase, but shall exclude any other costs
12 incurred by the stamping agent not otherwise expressly provided for
13 in this subdivision, including, but not limited to, charges for
14 installation and ongoing maintenance.

15 (e) Beginning in the first calendar month following the
16 implementation of the use of digital stamps as provided in section
17 5a(2) and continuing for the immediately succeeding 17 months, for
18 licensees who are stamping agents, reimbursement of direct costs
19 actually incurred by the stamping agent, as determined by the
20 department, for the initial purchase of eligible equipment in an
21 amount equal to 5.55% of the total net purchase price of the
22 eligible equipment necessary to affix the digital stamp. The
23 reimbursement provided under this subdivision shall also include
24 reimbursement for any applicable sales or use taxes paid and
25 shipping and crating charges actually incurred by the stamping
26 agent for the initial purchase of eligible equipment, but shall
27 exclude reimbursement for any other costs incurred by the stamping
28 agent not otherwise expressly provided for in this subdivision,
29 including, but not limited to, charges for installation and ongoing

1 maintenance related to eligible equipment. A stamping agent may
2 only receive reimbursement under this subdivision to the extent
3 that the eligible equipment purchased by the stamping agent does
4 not exceed the total number of the stamping agent's existing
5 equipment as certified by the stamping agent on a form prescribed
6 by the department.

7 (f) Beginning in the first calendar month following the
8 implementation of the use of digital stamps as provided in section
9 5a(2), for licensees who are stamping agents, reimbursement of
10 qualified equipment costs actually incurred by the stamping agent,
11 not otherwise compensated or reimbursed under subdivision (d) or
12 (e), as determined by the department. The reimbursement provided
13 under this subdivision shall not exceed \$60,000.00 for all stamping
14 agents combined.

15 (4) Every licensee and retailer who, on August 1, 2002, has on
16 hand for sale any cigarettes upon which a tax has been paid
17 pursuant to subsection (1)(b) shall file a complete inventory of
18 those cigarettes before September 1, 2002 and shall pay to the
19 department at the time of filing this inventory a tax equal to the
20 difference between the tax imposed in subsection (1)(b), (c), and
21 (d) and the tax that has been paid under subsection (1)(b). Every
22 licensee and retailer who, on August 1, 2002, has on hand for sale
23 any cigars, noncigarette smoking tobacco, or smokeless tobacco upon
24 which a tax has been paid pursuant to subsection (1)(a) shall file
25 a complete inventory of those cigars, noncigarette smoking tobacco,
26 and smokeless tobacco before September 1, 2002 and shall pay to the
27 department at the time of filing this inventory a tax equal to the
28 difference between the tax imposed in subsection (1)(f) and the tax
29 that has been paid under subsection (1)(a).

1 (5) Every licensee and retailer who, on July 1, 2004, has on
2 hand for sale any cigarettes upon which a tax has been paid
3 pursuant to subsection (1)(b), (c), and (d) shall file a complete
4 inventory of those cigarettes before August 1, 2004 and shall pay
5 to the department at the time of filing this inventory a tax equal
6 to the difference between the tax imposed in subsection (1)(b),
7 (c), (d), and (e) and the tax that has been paid under subsection
8 (1)(b), (c), and (d). Every licensee and retailer who, on July 1,
9 2004, has on hand for sale any cigars, noncigarette smoking
10 tobacco, or smokeless tobacco upon which a tax has been paid
11 pursuant to subsection (1)(f) shall file a complete inventory of
12 those cigars, noncigarette smoking tobacco, and smokeless tobacco
13 before August 1, 2004 and shall pay to the department at the time
14 of filing this inventory a tax equal to the difference between the
15 tax imposed in subsection (1)(g) and the tax that has been paid
16 under subsection (1)(f). The proceeds derived under this subsection
17 shall be credited to the Michigan Medicaid benefits trust fund
18 created under section 5 of the Michigan trust fund act, 2000 PA
19 489, MCL 12.255.

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

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

29 (8) A person liable for the tax may reimburse itself by adding

1 to the price of the tobacco products an amount equal to the tax
2 levied under this act.

3 (9) A wholesaler, unclassified acquirer, or other person shall
4 not sell or transfer any unaffixed stamps acquired by the
5 wholesaler or unclassified acquirer from the department. A
6 wholesaler or unclassified acquirer who has any unaffixed stamps on
7 hand at the time its license is revoked or expires, or at the time
8 it discontinues the business of selling cigarettes, shall return
9 those stamps to the department. The department shall refund the
10 value of the stamps, less the appropriate discount paid.

11 (10) If the wholesaler or unclassified acquirer has unsalable
12 packs returned from a retailer, secondary wholesaler, vending
13 machine operator, wholesaler, or unclassified acquirer with stamps
14 affixed, the department shall refund the amount of the tax less the
15 appropriate discount paid. If the wholesaler or unclassified
16 acquirer has unaffixed unsalable stamps, the department shall
17 exchange with the wholesaler or unclassified acquirer new stamps in
18 the same quantity as the unaffixed unsalable stamps. An application
19 for refund of the tax shall be filed on a form prescribed by the
20 department for that purpose, within 4 years from the date the
21 stamps were originally acquired from the department. A wholesaler
22 or unclassified acquirer shall make available for inspection by the
23 department the unused or spoiled stamps and the stamps affixed to
24 unsalable individual packages of cigarettes. The department may, at
25 its own discretion, witness and certify the destruction of the
26 unused or spoiled stamps and unsalable individual packages of
27 cigarettes that are not returnable to the manufacturer. The
28 wholesaler or unclassified acquirer shall provide certification
29 from the manufacturer for any unsalable individual packages of

1 cigarettes that are returned to the manufacturer.

2 (11) On or before the twentieth of each month, each
3 manufacturer shall file a report with the department listing all
4 sales of tobacco products to wholesalers and unclassified acquirers
5 during the preceding calendar month and any other information the
6 department finds necessary for the administration of this act. This
7 report shall be in the form and manner specified by the department.

8 (12) Each wholesaler or unclassified acquirer shall submit to
9 the department an unstamped cigarette sales report on or before the
10 twentieth day of each month covering the sale, delivery, or
11 distribution of unstamped cigarettes during the preceding calendar
12 month to points outside of this state. A separate schedule shall be
13 filed for each state, country, or province into which shipments are
14 made. For purposes of the report described in this subsection,
15 "unstamped cigarettes" means individual packages of cigarettes that
16 do not bear a Michigan stamp. The department may provide the
17 information contained in this report to a proper officer of another
18 state, country, or province reciprocating in this privilege.

19 (13) As used in subsection (3):

20 (a) "Eligible equipment" means a cigarette tax stamping
21 machine that meets all of the following conditions:

22 (i) Was purchased by a stamping agent who was licensed as a
23 stamping agent as of December 31, 2011.

24 (ii) Enables the stamping agent to affix digital stamps to
25 individual packages of cigarettes in accordance with the
26 requirements under section 6a(2).

27 (iii) Was purchased to be used for the primary purpose of
28 permitting the stamping agent to affix digital stamps to individual
29 packages of cigarettes to be sold in this state following the

1 implementation of the use of digital stamps as provided in section
2 5a(2).

3 (b) "Existing equipment" means a cigarette tax stamping
4 machine that meets all of the following conditions:

5 (i) Was owned by a person who was licensed as a stamping agent
6 as of December 31, 2011.

7 (ii) Was a cigarette tax stamping machine used prior to January
8 1, 2012 by the stamping agent to apply stamps using stamp rolls of
9 30,000 stamps.

10 (c) "Qualified equipment" means equipment that was placed in
11 service by a stamping agent that included conveyors and additional
12 associated electrical line and compressed air line before August
13 15, 2014 in connection with the implementation of a digital
14 stamping line under a pilot program with the department as
15 determined by the department. Qualified equipment does not include
16 the cost of installation of a conveyor.