

HOUSE BILL No. 5221

(As amended, December 17, 2003)

November 4, 2003, Introduced by Reps. Wenke, Meyer, O'Neil, Farrah, Minore, Zelenko and Nofs and referred to the Committee on Tax Policy.

A bill to amend 1993 PA 327, entitled "Tobacco products tax act," (MCL 205.421 to 205.436) by amending the title, as amended by 1997 PA 187, and by adding section 6d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; to levy an assessment; to provide for the administration, collection, <<defense,>> and disposition of

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1 **the assessment;** to provide for the enforcement of this act; to
2 provide for the appointment of special investigators as peace
3 officers for the enforcement of this act; to prescribe penalties
4 and provide remedies for the violation of this act; and to repeal
5 acts and parts of acts.

6 **Sec. 6d. (1) Before commencing sales of cigarettes in this**
7 **state, a nonparticipating manufacturer shall provide to the**
8 **department the information described in subsection (3) and shall**
9 **pay the equity assessment as provided in subsections (4) and**
10 **(5).**

11 **(2) A nonparticipating manufacturer selling cigarettes in**
12 **this state on the effective date of the amendatory act that added**
13 **this subsection shall provide to the department the information**
14 **described in subsection (3) and pay the equity assessment as**
15 **provided in subsections (4) and (5) within 30 days after the**
16 **effective date of the amendatory act that added this subsection.**
17 **If a nonparticipating manufacturer is not selling cigarettes in**
18 **this state on the effective date of the amendatory act that added**
19 **this subsection, before selling cigarettes in this state, the**
20 **nonparticipating manufacturer shall pay the equity assessment**
21 **imposed under subsections (4) and (5) for all cigarettes that are**
22 **anticipated to be sold in the current calendar year as described**
23 **in subsection (5).**

24 **(3) A nonparticipating manufacturer shall provide to the**
25 **department on a form prescribed by the department the following**
26 **information:**

27 **(a) The complete name, address, and telephone number of the**

1 nonparticipating manufacturer.

2 (b) The date that the nonparticipating manufacturer intends
3 to begin or began selling cigarettes in this state.

4 (c) The brand names of the cigarettes the nonparticipating
5 manufacturer will sell or is selling in this state.

6 (d) A statement of the nonparticipating manufacturer's
7 intention to comply with its escrow obligation under 1999 PA 244,
8 MCL 445.2051 to 445.2052, obligations under section 6c, and the
9 obligations in this section.

10 (e) The name, address, and telephone number of the resident
11 agent of the nonparticipating manufacturer.

12 (f) The name, address, telephone number, and signature of an
13 officer of the nonparticipating manufacturer attesting to all of
14 the information described in this subsection.

15 (4) An equity assessment in the amount of 17.5 mills per
16 cigarette is imposed upon all cigarettes sold by a
17 nonparticipating manufacturer in this state. The purpose of the
18 equity assessment is to fund enforcement and administration of
19 1999 PA 244, MCL 445.2051 to 445.2052, and this act. The equity
20 assessment is in addition to all other fees, assessments, and
21 taxes levied by law. The equity assessment shall be collected by
22 the department from each nonparticipating manufacturer selling
23 cigarettes in this state. The equity assessment shall be
24 collected and reconciled by April 15 of each year for cigarettes
25 sold in the previous calendar year. The department shall credit
26 a nonparticipating manufacturer with any prepayment made by the
27 nonparticipating manufacturer pursuant to subsection (5) for that

1 calendar year.

2 (5) Except as provided in subsection (2), a nonparticipating
3 manufacturer selling cigarettes in this state shall prepay the
4 equity assessment imposed in subsection (4) not later than March
5 1 for all cigarettes that are anticipated to be sold in the
6 current calendar year. The prepayment amount shall be determined
7 by multiplying 17.5 mills times the number of cigarettes that the
8 department reasonably determines that the nonparticipating
9 manufacturer will sell in this state in the current calendar year
10 or \$10,000.00, whichever is more. The department may require a
11 nonparticipating manufacturer to provide any information
12 reasonably necessary to determine the equity assessment
13 prepayment amount. Not later than February 15 of each year, the
14 department shall notify the nonparticipating manufacturer of the
15 amount of the prepayment due for the current year. The
16 department shall increase the equity assessment prepayment amount
17 during the year if the increase is justified by the
18 nonparticipating manufacturer's actual sales of cigarettes.

19 (6) A stamping agent shall not affix to any package of
20 cigarettes or shipping container of roll-your-own tobacco of a
21 nonparticipating manufacturer the stamp required under this act
22 unless the nonparticipating manufacturer is listed on the
23 department website as provided in subsection (9) or after
24 receiving notice that the nonparticipating manufacturer has not
25 prepaid or paid in full the equity assessment imposed under this
26 section. A stamping agent that violates this subsection is
27 subject to the penalties described in section 5. If a stamping

1 agent intentionally and knowingly violates this subsection, the
2 department may seize or confiscate any cigarettes in the stamping
3 agent's possession that were stamped in violation of this
4 subsection. Seizure, confiscation, forfeiture, and sale of
5 cigarettes shall be accomplished under section 9.

6 (7) A nonparticipating manufacturer that does not provide the
7 information required under subsection (3) or pay the equity
8 assessment required by this section shall not make a sale of
9 cigarettes in this state to any person for sale, distribution, or
10 consumption in this state.

11 (8) A person shall not purchase, acquire, possess, or sell
12 cigarettes acquired from or manufactured by a nonparticipating
13 manufacturer that has not provided the information required under
14 subsection (3) or made the payment of the equity assessment
15 required by this section.

16 (9) The department shall maintain and regularly update a list
17 of nonparticipating manufacturers that have complied with the
18 requirements of this section. The department shall publish the
19 list on its website and provide a copy of the list to a person
20 upon request.

21 (10) Ninety days after the department posts on its website
22 and provides wholesalers and unclassified acquirers notice that a
23 nonparticipating manufacturer is in violation of subsection (1)
24 or (2), the department may seize or confiscate from any person
25 any cigarettes in that person's possession that were acquired
26 from or manufactured by that nonparticipating manufacturer.
27 Seizure, confiscation, forfeiture, and sale of cigarettes under

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1 this section shall be accomplished under section 9.

2 (11) The department may impose on any person a civil fine not
3 to exceed \$1,000.00 for each violation of this section. The
4 civil fine is in addition to all other fines or penalties imposed
5 by this act or 1941 PA 122, MCL 205.1 to 205.31.

6 (12) A nonparticipating manufacturer shall appoint and
7 continually engage a resident agent for service of process. That
8 service shall constitute legal and valid service of process on
9 the nonparticipating manufacturer.

10 (13) For purposes of this section, a nonparticipating
11 manufacturer that intends to sell or is selling a brand of
12 cigarettes in or into this state is presumed to be the same
13 manufacturer that previously sold that same brand in or into the
14 state, unless the nonparticipating manufacturer can prove that
15 the 2 manufacturers are not affiliated. A nonparticipating
16 manufacturer shall not be authorized to sell in or into this
17 state a cigarette brand that was previously sold in or into this
18 state by another nonparticipating manufacturer if that other
19 nonparticipating manufacturer did not escrow the entire amount
20 due under 1999 PA 244, MCL 445.2051 to 445.2052, or pay the
21 equity assessment due under this section.

22 (14) The department shall conduct <<an audit or review>> of
23 nonparticipating manufacturers to ensure compliance with this section.

24 (15) As used in this section:

25 (a) "Cigarette" means that term as defined in 1999 PA 244,
26 MCL 445.2051 to 445.2052.

27 (b) "Nonparticipating manufacturer" means a manufacturer of

1 cigarettes that is not a participating manufacturer as that term
2 is defined in 1999 PA 244, MCL 445.2051 to 445.2052.
3 Nonparticipating manufacturer also includes the first purchaser
4 of cigarettes manufactured outside the United States for resale
5 in the United States.