

HOUSE BILL NO. 4114

February 03, 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, **through September 30, 2021**, 37.5 mills per

1 cigarette. **Beginning October 1, 2021, 18.75 mills per cigarette.**

2 (c) Beginning August 1, 2002 **and through September 30, 2021,**
3 for cigarettes, in addition to the tax levied in subdivision (b),
4 an additional 15 mills per cigarette. **Beginning October 1, 2021, in**
5 **addition to the tax levied in subdivision (b), an additional 7.5**
6 **mills per cigarette.**

7 (d) Beginning August 1, 2002 **and through September 30, 2021,**
8 for cigarettes, in addition to the tax levied in subdivisions (b)
9 and (c), an additional 10 mills per cigarette. **Beginning October 1,**
10 **2021, in addition to the tax levied in subdivisions (b) and (c), an**
11 **additional 5 mills per cigarette.**

12 (e) Beginning July 1, 2004 **and through September 30, 2021,** for
13 cigarettes, in addition to the tax levied in subdivisions (b), (c),
14 and (d), an additional 37.5 mills per cigarette. **Beginning October**
15 **1, 2021, in addition to the tax levied in subdivisions (b), (c),**
16 **and (d), an additional 18.75 mills per cigarette.**

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

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

25 (2) On or before the twentieth day of each calendar month,
26 every licensee under section 3 other than a retailer, unclassified
27 acquirer licensed as a manufacturer, or vending machine operator
28 shall file a return with the department stating the wholesale price
29 of each tobacco product other than cigarettes purchased, the

1 quantity of cigarettes purchased, the wholesale price charged for
2 all tobacco products other than cigarettes sold, the number of
3 individual packages of cigarettes and the number of cigarettes in
4 those individual packages, and the number and denominations of
5 stamps affixed to individual packages of cigarettes sold by the
6 licensee for each place of business in the preceding calendar
7 month. The return shall also include the number and denomination of
8 unaffixed stamps in the possession of the licensee at the end of
9 the preceding calendar month. Wholesalers shall also report
10 accurate inventories of cigarettes, both stamped and unstamped at
11 the end of the preceding calendar month. Wholesalers and
12 unclassified acquirers shall also report accurate inventories of
13 affixed and unaffixed stamps by denomination at the beginning and
14 end of each calendar month and all stamps acquired during the
15 preceding calendar month. The return shall be signed under penalty
16 of perjury. The return shall be on a form prescribed by the
17 department and shall contain or be accompanied by any further
18 information the department requires. The department may also
19 require licensees to report cigarette acquisition, purchase, and
20 sales information in other formats and frequency.

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

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

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

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

7 (d) Beginning on 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, 0.5% of the total
10 amount of the tax due on cigarettes sold and, for sales of untaxed
11 cigarettes to Indian tribes in this state, 0.5% of the total amount
12 of the tax due on those cigarettes sold as if those cigarette sales
13 were taxable sales under this act, until the stamping agent is
14 compensated in an amount equal to the direct cost actually incurred
15 by the stamping agent for the purchase of upgrades to technology
16 and equipment, excluding the equipment reimbursed under subdivision
17 (e), that are necessary to affix the digital stamp as determined by
18 the department. Compensation under this subdivision may also be
19 claimed by a stamping agent for the direct costs actually incurred
20 by the stamping agent, as determined by the department and
21 reflected in the net purchase price, for the initial and 1-time
22 purchase of case packers or similar machines or conveyors as
23 follows:

24 (i) Case packers or similar machines to be used exclusively to
25 repack cigarette cartons into case boxes after digital stamps have
26 been applied by eligible equipment to the individual packages of
27 cigarettes contained within those cigarette cartons. Compensation
28 under this subparagraph may only be claimed by a stamping agent if
29 the case packers or similar machines are in addition to, and not a

1 replacement for, 1 or more case packers or similar machines used in
2 connection with cigarette stamping machines which do not use the
3 digital stamp authorized under this act.

4 (ii) Conveyors to be used exclusively for that portion of a
5 cigarette stamping line that is necessary for and dedicated to
6 cigarette stamping operations using eligible equipment to affix
7 digital stamps to individual packages of cigarettes to be sold in
8 this state. Compensation under this subparagraph may only be
9 claimed by a stamping agent if the cigarette stamping line served
10 by the conveyors is in addition to 1 or more distinct and existing
11 cigarette stamping lines using stamping machines which do not use
12 the digital stamp authorized under this act and that compensation
13 shall not exceed a total of 50% of the amount reimbursed under
14 subdivision (e) for any particular stamping agent.

15 (iii) Compensation under subparagraphs (i) and (ii) shall also
16 include any applicable sales or use taxes paid, and shipping and
17 crating charges actually incurred, by the stamping agent in
18 connection with the purchase, but shall exclude any other costs
19 incurred by the stamping agent not otherwise expressly provided for
20 in this subdivision, including, but not limited to, charges for
21 installation and ongoing maintenance.

22 (e) Beginning in the first calendar month following the
23 implementation of the use of digital stamps as provided in section
24 5a(2) and continuing for the immediately succeeding 17 months, for
25 licensees who are stamping agents, reimbursement of direct costs
26 actually incurred by the stamping agent, as determined by the
27 department, for the initial purchase of eligible equipment in an
28 amount equal to 5.55% of the total net purchase price of the
29 eligible equipment necessary to affix the digital stamp. The

1 reimbursement provided under this subdivision shall also include
2 reimbursement for any applicable sales or use taxes paid and
3 shipping and crating charges actually incurred by the stamping
4 agent for the initial purchase of eligible equipment, but shall
5 exclude reimbursement for any other costs incurred by the stamping
6 agent not otherwise expressly provided for in this subdivision,
7 including, but not limited to, charges for installation and ongoing
8 maintenance related to eligible equipment. A stamping agent may
9 only receive reimbursement under this subdivision to the extent
10 that the eligible equipment purchased by the stamping agent does
11 not exceed the total number of the stamping agent's existing
12 equipment as certified by the stamping agent on a form prescribed
13 by the department.

14 (f) Beginning in the first calendar month following the
15 implementation of the use of digital stamps as provided in section
16 5a(2), for licensees who are stamping agents, reimbursement of
17 qualified equipment costs actually incurred by the stamping agent,
18 not otherwise compensated or reimbursed under subdivision (d) or
19 (e), as determined by the department. The reimbursement provided
20 under this subdivision shall not exceed \$60,000.00 for all stamping
21 agents combined.

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

1 any cigars, noncigarette smoking tobacco, or smokeless tobacco upon
2 which a tax has been paid pursuant to subsection (1)(a) shall file
3 a complete inventory of those cigars, noncigarette smoking tobacco,
4 and smokeless tobacco before September 1, 2002 and shall pay to the
5 department at the time of filing this inventory a tax equal to the
6 difference between the tax imposed in subsection (1)(f) and the tax
7 that has been paid under subsection (1)(a).

8 (5) Every licensee and retailer who, on July 1, 2004, has on
9 hand for sale any cigarettes upon which a tax has been paid
10 pursuant to subsection (1)(b), (c), and (d) shall file a complete
11 inventory of those cigarettes before August 1, 2004 and shall pay
12 to the department at the time of filing this inventory a tax equal
13 to the difference between the tax imposed in subsection (1)(b),
14 (c), (d), and (e) and the tax that has been paid under subsection
15 (1)(b), (c), and (d). Every licensee and retailer who, on July 1,
16 2004, has on hand for sale any cigars, noncigarette smoking
17 tobacco, or smokeless tobacco upon which a tax has been paid
18 pursuant to subsection (1)(f) shall file a complete inventory of
19 those cigars, noncigarette smoking tobacco, and smokeless tobacco
20 before August 1, 2004 and shall pay to the department at the time
21 of filing this inventory a tax equal to the difference between the
22 tax imposed in subsection (1)(g) and the tax that has been paid
23 under subsection (1)(f). The proceeds derived under this subsection
24 shall be credited to the Michigan Medicaid benefits trust fund
25 created under section 5 of the Michigan trust fund act, 2000 PA
26 489, MCL 12.255.

27 (6) The department may require the payment of the tax imposed
28 by this act upon the importation or acquisition of a tobacco
29 product. A tobacco product for which the tax under this act has

1 once been imposed and that has not been refunded if paid is not
2 subject upon a subsequent sale to the tax imposed by this act.

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

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

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

18 (10) If the wholesaler or unclassified acquirer has unsalable
19 packs returned from a retailer, secondary wholesaler, vending
20 machine operator, wholesaler, or unclassified acquirer with stamps
21 affixed, the department shall refund the amount of the tax less the
22 appropriate discount paid. If the wholesaler or unclassified
23 acquirer has unaffixed unsalable stamps, the department shall
24 exchange with the wholesaler or unclassified acquirer new stamps in
25 the same quantity as the unaffixed unsalable stamps. An application
26 for refund of the tax shall be filed on a form prescribed by the
27 department for that purpose, within 4 years from the date the
28 stamps were originally acquired from the department. A wholesaler
29 or unclassified acquirer shall make available for inspection by the

1 department the unused or spoiled stamps and the stamps affixed to
2 unsalable individual packages of cigarettes. The department may, at
3 its own discretion, witness and certify the destruction of the
4 unused or spoiled stamps and unsalable individual packages of
5 cigarettes that are not returnable to the manufacturer. The
6 wholesaler or unclassified acquirer shall provide certification
7 from the manufacturer for any unsalable individual packages of
8 cigarettes that are returned to the manufacturer.

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

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

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

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

29 (i) Was purchased by a stamping agent who was licensed as a

1 stamping agent as of December 31, 2011.

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

5 (iii) Was purchased to be used for the primary purpose of
6 permitting the stamping agent to affix digital stamps to individual
7 packages of cigarettes to be sold in this state following the
8 implementation of the use of digital stamps as provided in section
9 5a(2).

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

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

14 (ii) Was a cigarette tax stamping machine used prior to January
15 1, 2012 by the stamping agent to apply stamps using stamp rolls of
16 30,000 stamps.

17 (c) "Qualified equipment" means equipment that was placed in
18 service by a stamping agent that included conveyors and additional
19 associated electrical line and compressed air line before August
20 15, 2014 in connection with the implementation of a digital
21 stamping line under a pilot program with the department as
22 determined by the department. Qualified equipment does not include
23 the cost of installation of a conveyor.