



Rep. Michael J. Zalewski

Filed: 5/22/2018

10000SB3141ham001

LRB100 20670 HLH 40081 a

1 AMENDMENT TO SENATE BILL 3141

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 3141 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Use Tax Act is amended by changing Section  
5 11 as follows:

6 (35 ILCS 105/11) (from Ch. 120, par. 439.11)

7 Sec. 11. Every retailer required or authorized to collect  
8 taxes hereunder and every person using in this State tangible  
9 personal property purchased at retail from a retailer on or  
10 after the effective date hereof shall keep such records,  
11 receipts, invoices and other pertinent books, documents,  
12 memoranda and papers as the Department shall require, in such  
13 form as the Department shall require. The Department may adopt  
14 rules that establish requirements, including record forms and  
15 formats, for records required to be kept and maintained by  
16 taxpayers. For purposes of this Section, "records" means all

1 data maintained by the taxpayer, including data on paper,  
2 microfilm, microfiche or any type of machine-sensible data  
3 compilation. For the purpose of administering and enforcing the  
4 provisions hereof, the Department, or any officer or employee  
5 of the Department designated, in writing, by the Director  
6 thereof, may hold investigations and hearings concerning any  
7 matters covered herein and may examine any books, papers,  
8 records, documents or memoranda of any retailer or purchaser  
9 bearing upon the sales or purchases of tangible personal  
10 property, the privilege of using which is taxed hereunder, and  
11 may require the attendance of such person or any officer or  
12 employee of such person, or of any person having knowledge of  
13 the facts, and may take testimony and require proof for its  
14 information.

15 Any person who fails to keep books and records or fails to  
16 produce books and records for examination, as required by this  
17 Section and the rules adopted by the Department, is liable to  
18 pay to the Department, for deposit into the Tax Compliance and  
19 Administration Fund, a penalty of \$1,000 for the first failure  
20 to keep books and records or produce books and records for  
21 examination and a penalty of \$3,000 for each subsequent failure  
22 to keep books and records or produce books and records for  
23 examination as required by this Section and the rules adopted  
24 by the Department. The penalties imposed under this Section  
25 shall not apply if the taxpayer shows that he or she acted with  
26 ordinary business care and prudence. The Department may adopt

1 rules to administer the penalties under this Section.

2 (Source: P.A. 88-480.)

3 Section 10. The Service Use Tax Act is amended by changing  
4 Section 11 as follows:

5 (35 ILCS 110/11) (from Ch. 120, par. 439.41)

6 Sec. 11. Every serviceman required or authorized to collect  
7 taxes hereunder and every user who is subject to the tax  
8 imposed by this Act shall keep such records, receipts, invoices  
9 and other pertinent books, documents, memoranda and papers as  
10 the Department shall require, in such form as the Department  
11 shall require. The Department may adopt rules that establish  
12 requirements, including record forms and formats, for records  
13 required to be kept and maintained by taxpayers. For purposes  
14 of this Section, "records" means all data maintained by the  
15 taxpayer, including data on paper, microfilm, microfiche or any  
16 type of machine-sensible data compilation. For the purpose of  
17 administering and enforcing the provisions hereof, the  
18 Department, or any officer or employee of the Department  
19 designated, in writing, by the Director thereof, may hold  
20 investigations and hearings concerning any matters covered  
21 herein and not otherwise delegated to the Illinois Independent  
22 Tax Tribunal and may examine any relevant books, papers,  
23 records, documents or memoranda of any serviceman or any  
24 taxable purchaser for use hereunder, and may require the

1 attendance of such person or any officer or employee of such  
2 person, or of any person having knowledge of the facts, and may  
3 take testimony and require proof for its information.

4 Any person who fails to keep books and records or fails to  
5 produce books and records for examination, as required by this  
6 Section and the rules adopted by the Department, is liable to  
7 pay to the Department, for deposit into the Tax Compliance and  
8 Administration Fund, a penalty of \$1,000 for the first failure  
9 to keep books and records or produce books and records for  
10 examination and a penalty of \$3,000 for each subsequent failure  
11 to keep books and records or produce books and records for  
12 examination as required by this Section and the rules adopted  
13 by the Department. The penalties imposed under this Section  
14 shall not apply if the taxpayer shows that he or she acted with  
15 ordinary business care and prudence. The Department may adopt  
16 rules to administer the penalties under this Section.

17 (Source: P.A. 97-1129, eff. 8-28-12.)

18 Section 15. The Service Occupation Tax Act is amended by  
19 changing Section 11 as follows:

20 (35 ILCS 115/11) (from Ch. 120, par. 439.111)

21 Sec. 11. Every supplier required or authorized to collect  
22 taxes hereunder and every serviceman making sales of service in  
23 this State on or after the effective date hereof shall keep  
24 such records, receipts, invoices and other pertinent books,

1 documents, memoranda and papers as the Department shall  
2 require, in such form as the Department shall require. The  
3 Department may adopt rules that establish requirements,  
4 including record forms and formats, for records required to be  
5 kept and maintained by taxpayers. For purposes of this Section,  
6 "records" means all data maintained by the taxpayer, including  
7 data on paper, microfilm, microfiche or any type of  
8 machine-sensible data compilation. For the purpose of  
9 administering and enforcing the provisions hereof, the  
10 Department, or any officer or employee of the Department  
11 designated, in writing, by the Director thereof, may hold  
12 investigations and hearings not otherwise delegated to the  
13 Illinois Independent Tax Tribunal concerning any matters  
14 covered herein and may examine any books, papers, records,  
15 documents or memoranda of any supplier or serviceman bearing  
16 upon the sales of services or the sales of tangible personal  
17 property to servicemen, and may require the attendance of such  
18 person or any officer or employee of such person, or of any  
19 person having knowledge of the facts, and may take testimony  
20 and require proof for its information.

21 Any person who fails to keep books and records or fails to  
22 produce books and records for examination, as required by this  
23 Section and the rules adopted by the Department, is liable to  
24 pay to the Department, for deposit into the Tax Compliance and  
25 Administration Fund, a penalty of \$1,000 for the first failure  
26 to keep books and records or produce books and records for

1 examination and a penalty of \$3,000 for each subsequent failure  
2 to keep books and records or produce books and records for  
3 examination as required by this Section and the rules adopted  
4 by the Department. The penalties imposed under this Section  
5 shall not apply if the taxpayer shows that he or she acted with  
6 ordinary business care and prudence. The Department may adopt  
7 rules to administer the penalties under this Section.

8 (Source: P.A. 97-1129, eff. 8-28-12.)

9 Section 20. The Retailers' Occupation Tax Act is amended by  
10 changing Section 7 as follows:

11 (35 ILCS 120/7) (from Ch. 120, par. 446)

12 Sec. 7. Every person engaged in the business of selling  
13 tangible personal property at retail in this State shall keep  
14 records and books of all sales of tangible personal property,  
15 together with invoices, bills of lading, sales records, copies  
16 of bills of sale, inventories prepared as of December 31 of  
17 each year or otherwise annually as has been the custom in the  
18 specific trade and other pertinent papers and documents. Every  
19 person who is engaged in the business of selling tangible  
20 personal property at retail in this State and who, in  
21 connection with such business, also engages in other activities  
22 (including, but not limited to, engaging in a service  
23 occupation) shall keep such additional records and books of all  
24 such activities as will accurately reflect the character and

1 scope of such activities and the amount of receipts realized  
2 therefrom. The Department may adopt rules that establish  
3 requirements, including record forms and formats, for records  
4 required to be kept and maintained by taxpayers. For purposes  
5 of this Section, "records" means all data maintained by the  
6 taxpayer, including data on paper, microfilm, microfiche or any  
7 type of machine-sensible data compilation.

8 All books and records and other papers and documents which  
9 are required by this Act to be kept shall be kept in the  
10 English language and shall, at all times during business hours  
11 of the day, be subject to inspection by the Department or its  
12 duly authorized agents and employees.

13 To support deductions made on the tax return form, or  
14 authorized under this Act, on account of receipts from isolated  
15 or occasional sales of tangible personal property, on account  
16 of receipts from sales of tangible personal property for  
17 resale, on account of receipts from sales to governmental  
18 bodies or other exempted types of purchasers, on account of  
19 receipts from sales of tangible personal property in interstate  
20 commerce, and on account of receipts from any other kind of  
21 transaction that is not taxable under this Act, entries in any  
22 books, records or other pertinent papers or documents of the  
23 taxpayer in relation thereto shall be in detail sufficient to  
24 show the name and address of the taxpayer's customer in each  
25 such transaction, the character of every such transaction, the  
26 date of every such transaction, the amount of receipts realized

1 from every such transaction and such other information as may  
2 be necessary to establish the non-taxable character of such  
3 transaction under this Act.

4 Except in the case of a sale to a purchaser who will always  
5 resell and deliver the property to his customers outside  
6 Illinois, anyone claiming that he has made a nontaxable sale  
7 for resale in some form as tangible personal property shall  
8 also keep a record of the purchaser's registration number or  
9 resale number with the Department.

10 It shall be presumed that all sales of tangible personal  
11 property are subject to tax under this Act until the contrary  
12 is established, and the burden of proving that a transaction is  
13 not taxable hereunder shall be upon the person who would be  
14 required to remit the tax to the Department if such transaction  
15 is taxable. In the course of any audit or investigation or  
16 hearing by the Department with reference to a given taxpayer,  
17 if the Department finds that the taxpayer lacks documentary  
18 evidence needed to support the taxpayer's claim to exemption  
19 from tax hereunder, the Department is authorized to notify the  
20 taxpayer in writing to produce such evidence, and the taxpayer  
21 shall have 60 days subject to the right in the Department to  
22 extend this period either on request for good cause shown or on  
23 its own motion from the date when such notice is sent to the  
24 taxpayer by certified or registered mail (or delivered to the  
25 taxpayer if the notice is served personally) in which to obtain  
26 and produce such evidence for the Department's inspection,



1 failing which the matter shall be closed, and the transaction  
2 shall be conclusively presumed to be taxable hereunder.

3 Books and records and other papers reflecting gross  
4 receipts received during any period with respect to which the  
5 Department is authorized to issue notices of tax liability as  
6 provided by Sections 4 and 5 of this Act shall be preserved  
7 until the expiration of such period unless the Department, in  
8 writing, shall authorize their destruction or disposal prior to  
9 such expiration.

10 Any person who fails to keep books and records or fails to  
11 produce books and records for examination, as required by this  
12 Section and the rules adopted by the Department, is liable to  
13 pay to the Department, for deposit into the Tax Compliance and  
14 Administration Fund, a penalty of \$1,000 for the first failure  
15 to keep books and records or produce books and records for  
16 examination and a penalty of \$3,000 for each subsequent failure  
17 to keep books and records or produce books and records for  
18 examination as required by this Section and the rules adopted  
19 by the Department. The penalties imposed under this Section  
20 shall not apply if the taxpayer shows that he or she acted with  
21 ordinary business care and prudence. The Department may adopt  
22 rules to administer the penalties under this Section.

23 (Source: P.A. 88-480.)

24 Section 25. The Cigarette Tax Act is amended by changing  
25 Sections 12, 13, 14, 15, 18b, and 18c and by adding Sections

1 13a, 15a, and 18d as follows:

2 (35 ILCS 130/12) (from Ch. 120, par. 453.12)

3 Sec. 12. Every distributor or secondary distributor who is  
4 required to procure a license under this Act and who purchases  
5 cigarettes for shipment into Illinois from a point outside this  
6 State shall procure invoices in duplicate covering each such  
7 shipment, shall make the invoices available for inspection upon  
8 demand by a duly authorized employee of the Department, and  
9 shall, if the Department so requires, furnish one copy of each  
10 such invoice to the Department at the time of filing a return  
11 or a report required by this Act.

12 (Source: P.A. 96-1027, eff. 7-12-10.)

13 (35 ILCS 130/13) (from Ch. 120, par. 453.13)

14 Sec. 13. Whenever any original package of cigarettes is  
15 found in the place of business or in the possession of any  
16 person who is not a licensed distributor under this Act without  
17 proper stamps affixed thereto, or an authorized substitute  
18 therefor imprinted thereon, underneath the sealed transparent  
19 wrapper of such original package, as required by this Act, the  
20 prima facie presumption shall arise that such original package  
21 of cigarettes is kept therein or is held by such person in  
22 violation of the provisions of this Act. If a presumption is  
23 raised, the Department may, in addition to the penalties  
24 imposed by Sections 18b and 18c of this Act and any other civil

1 or criminal penalties provided for in this Act, assess tax,  
2 penalty, and interest on the original packages of cigarettes.

3 (Source: Laws 1953, p. 255.)

4 (35 ILCS 130/13a new)

5 Sec. 13a. Contraband cigarettes. Whenever a retailer  
6 obtains original packages of cigarettes from an unlicensed  
7 in-state or out-of-state distributor or person, a prima facie  
8 presumption shall arise that such original packages of  
9 cigarettes are contraband and are possessed by such retailer or  
10 were possessed by such retailer in violation of the provisions  
11 of this Act and subject to the penalties imposed by Sections  
12 18b and 18c of this Act. Invoices or other documents kept in  
13 the normal course of business in the possession of a retailer  
14 reflecting purchases of original packages of cigarettes from an  
15 unlicensed in-state or out-of-state distributor or person or  
16 invoices or other documents kept in the normal course of  
17 business obtained by the Department from an in-state or  
18 out-of-state distributor or person, are sufficient to raise the  
19 presumption that such original packages of cigarettes are  
20 contraband and are possessed, or were possessed, by such  
21 retailer in violation of the provisions of this Act and the  
22 retailer is subject to the penalties imposed by Sections 18b  
23 and 18c. If a presumption is raised, the Department may, in  
24 addition to the penalties imposed by Sections 18b and 18c and  
25 any other civil or criminal penalties provided for in this Act,

1 assess tax, penalty, and interest on the original packages of  
2 cigarettes.

3 (35 ILCS 130/14) (from Ch. 120, par. 453.14)

4 Sec. 14. Any person required by this Act to keep records of  
5 any kind whatsoever, who shall fail to keep the records so  
6 required or who shall falsify such records, shall be guilty of  
7 a Class 4 felony. If a person fails to produce the records for  
8 inspection by the Department upon request, a prima facie  
9 presumption shall arise that the person has failed to keep the  
10 records so required. A person who is unable to rebut this  
11 presumption is in violation of this Act and is subject to the  
12 penalties provided in this Section.

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

14 (35 ILCS 130/15) (from Ch. 120, par. 453.15)

15 Sec. 15. Any person who shall fail to safely maintain and  
16 preserve the records required by Sections Section 11, and  
17 Section 11a, 11b, and 11c of this Act for the period of 3 ~~three~~  
18 years, as required therein, in such manner as to insure  
19 permanency and accessibility for inspection by the Department,  
20 shall be guilty of a business offense and may be fined up to  
21 \$5,000.

22 (Source: P.A. 96-1027, eff. 7-12-10.)

23 (35 ILCS 130/15a new)

1       Sec. 15a. Failure to keep or produce books and records. Any  
2 person who fails to keep books and records or fails to produce  
3 books and records for inspection, as required by Sections 11,  
4 11a, 11b, and 11c of this Act, is liable to pay to the  
5 Department, for deposit in the Tax Compliance and  
6 Administration Fund, a penalty of \$1,000 for the first failure  
7 to keep books and records or failure to produce books and  
8 records for inspection, as required by Sections 11, 11a, 11b,  
9 and 11c, and \$3,000 for each subsequent failure to keep books  
10 and records or failure to produce books and records for  
11 inspection, as required by Sections 11, 11a, 11b, and 11c. The  
12 Department may adopt rules to administer the penalties under  
13 this Section.

14       (35 ILCS 130/18b) (from Ch. 120, par. 453.18b)

15       Sec. 18b. Possession of more than 100 original packages of  
16 contraband cigarettes; penalty. With the exception of licensed  
17 distributors and transporters, as defined in Section 9c of this  
18 Act, possessing unstamped original packages of cigarettes, and  
19 licensed distributors possessing original packages of  
20 cigarettes that bear a tax stamp of another state or taxing  
21 jurisdiction, anyone possessing or having possessed contraband  
22 cigarettes contained in original packages is liable to pay, to  
23 the Department for deposit in the Tax Compliance and  
24 Administration Fund, a penalty of \$25 for each such package of  
25 cigarettes in excess of 100 packages, unless reasonable cause

1 can be established by the person upon whom the penalty is  
2 imposed. This penalty is in addition to the taxes imposed by  
3 this Act. Reasonable cause shall be determined in each  
4 situation in accordance with rules adopted by the Department.  
5 The provisions of the Uniform Penalty and Interest Act do not  
6 apply to this Section.

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

8 (35 ILCS 130/18c)

9 Sec. 18c. Possession of not less than 10 and not more than  
10 100 original packages of contraband cigarettes; penalty. With  
11 the exception of licensed distributors and transporters, as  
12 defined in Section 9c of this Act, possessing unstamped  
13 original packages of cigarettes, and licensed distributors  
14 possessing original packages of cigarettes that bear a tax  
15 stamp of another state or taxing jurisdiction, anyone  
16 possessing or having possessed not less than 10 and not more  
17 than 100 packages of contraband cigarettes contained in  
18 original packages is liable to pay to the Department, for  
19 deposit into the Tax Compliance and Administration Fund, a  
20 penalty of \$15 ~~\$10~~ for each such package of cigarettes, unless  
21 reasonable cause can be established by the person upon whom the  
22 penalty is imposed. Reasonable cause shall be determined in  
23 each situation in accordance with rules adopted by the  
24 Department. The provisions of the Uniform Penalty and Interest  
25 Act do not apply to this Section.

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

2 (35 ILCS 130/18d new)

3 Sec. 18d. Cigarette package sizes; sale of individual or  
4 loose cigarettes prohibited. Cigarettes may only be sold in  
5 packages of 20 or 25 cigarettes. The sale of individual or  
6 loose cigarettes is prohibited. Any person who violates this  
7 Section of the Act is liable to pay to the Department, for  
8 deposit in the Tax Compliance and Administration Fund, a  
9 penalty of \$1,000 for the first violation and \$3,000 for any  
10 subsequent violation. Any person who violates this Section  
11 shall be guilty of a Class 4 felony. The Department may adopt  
12 rules to administer the penalties under this Section.

13 Section 30. The Cigarette Use Tax Act is amended by  
14 changing Sections 12, 22, 23, 25a, and 25b and by adding  
15 Sections 8a, 23a, and 25c as follows:

16 (35 ILCS 135/8a new)

17 Sec. 8a. Contraband cigarettes. Whenever any person  
18 obtains original packages of cigarettes from an unlicensed  
19 in-state or out-of-state distributor or person, a prima facie  
20 presumption shall arise that such original packages of  
21 cigarettes are contraband and are possessed or were possessed  
22 by such person in violation of the provisions of this Act and  
23 subject to the penalties imposed by Sections 25a and 25b.

1 Invoices or other documents kept in the normal course of  
2 business in the possession of a person reflecting purchases of  
3 original packages of cigarettes from an unlicensed in-state or  
4 out-of-state distributor or person or invoices or other  
5 documents kept in the normal course of business obtained by the  
6 Department from an in-state or out-of-state distributor or  
7 person, are sufficient to raise the presumption that such  
8 original packages of cigarettes are contraband and are  
9 possessed, or were possessed, by such person in violation of  
10 the provisions of this Act and the person is subject to the  
11 penalties imposed by Sections 25a and 25b. If a presumption is  
12 raised, the Department may, in addition to the penalties  
13 imposed by Sections 25a and 25b and any other civil or criminal  
14 penalties provided for in this Act, assess tax, penalty, and  
15 interest on the original packages of cigarettes.

16 (35 ILCS 135/12) (from Ch. 120, par. 453.42)

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

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



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

6 (c) The return referred to in paragraph (a) shall contain  
7 the name and address of the person possessing the cigarettes  
8 involved, the location of the cigarettes and the quantity,  
9 brand name, place, and date of the acquisition of the  
10 cigarettes.

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

15 (e) Any distributor who violates this Section is liable to  
16 pay to the Department, for deposit in the Tax Compliance and  
17 Administration Fund, a penalty of \$1,000 for the first  
18 violation and \$3,000 for any subsequent violation. The  
19 Department may adopt rules to administer the penalties under  
20 this Section. The Department may, in addition to the penalties  
21 imposed by this Section, and any other civil or criminal  
22 penalties provided for in this Act, assess tax, penalty, and  
23 interest on the original packages of cigarettes.

24 (Source: P.A. 96-1027, eff. 7-12-10.)

25 (35 ILCS 135/22) (from Ch. 120, par. 453.52)

1           Sec. 22. Any person required by this Act to maintain or  
2 keep records of any kind whatsoever, who shall fail to keep the  
3 records so required or who shall falsify such records, shall be  
4 guilty of a Class 4 felony ~~A misdemeanor~~. If a person fails to  
5 produce the records for inspection by the Department upon  
6 request, a prima facie presumption shall arise that the person  
7 has failed to keep the records so required. A person who is  
8 unable to rebut this presumption is in violation of this Act  
9 and is subject to the penalties provided in this Section.

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

13           (Source: P.A. 77-2229.)

14           (35 ILCS 135/23) (from Ch. 120, par. 453.53)

15           Sec. 23. Any person who shall fail to safely preserve the  
16 records required by Section 15 and Section 15a of this Act for  
17 the period of three (3) years, as required therein, in such  
18 manner as to insure permanency and accessibility for inspection  
19 by the Department, shall be guilty of a business offense and  
20 may be fined up to \$5,000 ~~One Thousand Dollars (\$1000)~~.

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

24           (Source: P.A. 96-1027, eff. 7-12-10.)

1 (35 ILCS 135/23a new)

2 Sec. 23a. Failure to keep or produce books and records. Any  
3 person who fails to keep books and records or fails to produce  
4 books and records for inspection, as required by Sections 15  
5 and 15a of this Act, is liable to pay to the Department, for  
6 deposit in the Tax Compliance and Administration Fund, a  
7 penalty of \$1,000 for the first failure to keep books and  
8 records or failure to produce books and records for inspection,  
9 as required by Sections 15 and 15a, and \$3,000 for each  
10 subsequent failure to keep books and records or failure to  
11 produce books and records for inspection, as required by  
12 Sections 15 and 15a. The Department may adopt rules to  
13 administer the penalties under this Section.

14 (35 ILCS 135/25a) (from Ch. 120, par. 453.55a)

15 Sec. 25a. Possession of more than 100 original packages of  
16 contraband cigarettes; penalty. With the exception of licensed  
17 distributors or transporters, as defined in Section 9c of the  
18 Cigarette Tax Act, possessing unstamped original packages of  
19 cigarettes, and licensed distributors possessing original  
20 packages of cigarettes that bear a tax stamp of another state  
21 or taxing jurisdiction, anyone possessing or having possessed  
22 more than 100 packages of contraband cigarettes contained in  
23 original packages is liable to pay, to the Department for  
24 deposit into the Tax Compliance and Administration Fund, a  
25 penalty of \$25 for each such package of cigarettes in excess of

1 100 packages, unless reasonable cause can be established by the  
2 person upon whom the penalty is imposed. Reasonable cause shall  
3 be determined in each situation in accordance with rules  
4 adopted by the Department. The provisions of the Uniform  
5 Penalty and Interest Act do not apply to this Section.

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

7 (35 ILCS 135/25b)

8 Sec. 25b. Possession of not less than 10 and not more than  
9 100 original packages not tax stamped or improperly tax  
10 stamped; penalty. With the exception of licensed distributors  
11 and transporters, as defined in Section 9c of the Cigarette Tax  
12 Act, possessing unstamped packages of cigarettes, and licensed  
13 distributors possessing original packages of cigarettes that  
14 bear a tax stamp of another state or taxing jurisdiction,  
15 anyone possessing or having possessed not less than 10 and not  
16 more than 100 packages of contraband cigarettes contained in  
17 original packages is liable to pay to the Department, for  
18 deposit into the Tax Compliance and Administration Fund, a  
19 penalty of \$20 for each such package of cigarettes, unless  
20 reasonable cause can be established by the person upon whom the  
21 penalty is imposed. Reasonable cause shall be determined in  
22 each situation in accordance with rules adopted by the  
23 Department. Any person who purchases and possesses a total of 9  
24 or fewer original packages of unstamped cigarettes per month is  
25 exempt from the penalties of this Section. The provisions of

1 the Uniform Penalty and Interest Act do not apply to this  
2 Section.

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

4 (35 ILCS 135/25c new)

5 Sec. 25c. Cigarette package sizes; sale of individual or  
6 loose cigarettes prohibited. Cigarettes may only be sold in  
7 packages of 20 or 25 cigarettes. The sale of individual or  
8 loose cigarettes is prohibited. Any person who violates this  
9 Section is liable to pay to the Department, for deposit in the  
10 Tax Compliance and Administration Fund, a penalty of \$1,000 for  
11 the first violation and \$3,000 for any subsequent violation.  
12 Any person who violates this Section shall be guilty of a Class  
13 4 felony. This Section shall not apply if the violation in a  
14 particular case also constitutes a violation of the Cigarette  
15 Tax Act.

16 Section 35. The Tobacco Products Tax Act of 1995 is amended  
17 by changing Sections 10-25, 10-35, 10-37, 10-40, and 10-50 and  
18 by adding Sections 10-35a and 10-38 as follows:

19 (35 ILCS 143/10-25)

20 Sec. 10-25. License actions.

21 (a) The Department may, after notice and a hearing, revoke,  
22 cancel, or suspend the license of any distributor or retailer  
23 who violates any of the provisions of this Act, fails to keep

1 books and records as required under this Act, fails to make  
2 books and records available for inspection upon demand by a  
3 duly authorized employee of the Department, or violates a rule  
4 or regulation of the Department for the administration and  
5 enforcement of this Act. The notice shall specify the alleged  
6 violation or violations upon which the revocation,  
7 cancellation, or suspension proceeding is based.

8 (b) The Department may revoke, cancel, or suspend the  
9 license of any distributor for a violation of the Tobacco  
10 Product Manufacturers' Escrow Enforcement Act as provided in  
11 Section 20 of that Act.

12 (c) If the retailer has a training program that facilitates  
13 compliance with minimum-age tobacco laws, the Department shall  
14 suspend for 3 days the license of that retailer for a fourth or  
15 subsequent violation of the Prevention of Tobacco Use by Minors  
16 and Sale and Distribution of Tobacco Products Act, as provided  
17 in subsection (a) of Section 2 of that Act. For the purposes of  
18 this Section, any violation of subsection (a) of Section 2 of  
19 the Prevention of Tobacco Use by Minors and Sale and  
20 Distribution of Tobacco Products Act occurring at the  
21 retailer's licensed location, during a 24-month period, shall  
22 be counted as a violation against the retailer.

23 If the retailer does not have a training program that  
24 facilitates compliance with minimum-age tobacco laws, the  
25 Department shall suspend for 3 days the license of that  
26 retailer for a second violation of the Prevention of Tobacco

1 Use by Minors and Sale and Distribution of Tobacco Products  
2 Act, as provided in subsection (a-5) of Section 2 of that Act.

3 If the retailer does not have a training program that  
4 facilitates compliance with minimum-age tobacco laws, the  
5 Department shall suspend for 7 days the license of that  
6 retailer for a third violation of the Prevention of Tobacco Use  
7 by Minors and Sale and Distribution of Tobacco Products Act, as  
8 provided in subsection (a-5) of Section 2 of that Act.

9 If the retailer does not have a training program that  
10 facilitates compliance with minimum-age tobacco laws, the  
11 Department shall suspend for 30 days the license of a retailer  
12 for a fourth or subsequent violation of the Prevention of  
13 Tobacco Use by Minors and Sale and Distribution of Tobacco  
14 Products Act, as provided in subsection (a-5) of Section 2 of  
15 that Act.

16 A training program that facilitates compliance with  
17 minimum-age tobacco laws must include at least the following  
18 elements: (i) it must explain that only individuals displaying  
19 valid identification demonstrating that they are 18 years of  
20 age or older shall be eligible to purchase cigarettes or  
21 tobacco products and (ii) it must explain where a clerk can  
22 check identification for a date of birth. The training may be  
23 conducted electronically. Each retailer that has a training  
24 program shall require each employee who completes the training  
25 program to sign a form attesting that the employee has received  
26 and completed tobacco training. The form shall be kept in the

1 employee's file and may be used to provide proof of training.

2 (d) The Department may, by application to any circuit  
3 court, obtain an injunction restraining any person who engages  
4 in business as a distributor of tobacco products without a  
5 license (either because his or her license has been revoked,  
6 canceled, or suspended or because of a failure to obtain a  
7 license in the first instance) from engaging in that business  
8 until that person, as if that person were a new applicant for a  
9 license, complies with all of the conditions, restrictions, and  
10 requirements of Section 10-20 of this Act and qualifies for and  
11 obtains a license. Refusal or neglect to obey the order of the  
12 court may result in punishment for contempt.

13 (Source: P.A. 98-1055, eff. 1-1-16; 99-192, eff. 1-1-16.)

14 (35 ILCS 143/10-35)

15 Sec. 10-35. Record keeping.

16 (a) Every distributor, as defined in Section 10-5, shall  
17 keep complete and accurate records of tobacco products held,  
18 purchased, manufactured, brought in or caused to be brought in  
19 from without the State, and tobacco products sold, or otherwise  
20 disposed of, and shall preserve and keep all invoices, bills of  
21 lading, sales records, and copies of bills of sale, the  
22 wholesale price for tobacco products sold or otherwise disposed  
23 of, an inventory of tobacco products prepared as of December 31  
24 of each year or as of the last day of the distributor's fiscal  
25 year if he or she files federal income tax returns on the basis



1 of a fiscal year, and other pertinent papers and documents  
2 relating to the manufacture, purchase, sale, or disposition of  
3 tobacco products. Every sales invoice issued by a licensed  
4 distributor to a retailer in this State shall contain the  
5 distributor's Tobacco Products License number unless the  
6 distributor has been granted a waiver by the Department in  
7 response to a written request in cases where (i) the  
8 distributor sells little cigars or other tobacco products only  
9 to licensed retailers that are wholly-owned by the distributor  
10 or owned by a wholly-owned subsidiary of the distributor; (ii)  
11 the licensed retailer obtains little cigars or other tobacco  
12 products only from the distributor requesting the waiver; and  
13 (iii) the distributor affixes the tax stamps to the original  
14 packages of little cigars or has or will pay the tax on the  
15 other tobacco products sold to the licensed retailer. The  
16 distributor shall file a written request with the Department,  
17 and, if the Department determines that the distributor meets  
18 the conditions for a waiver, the Department shall grant the  
19 waiver.

20 (b) Every retailer, as defined in Section 10-5, whether or  
21 not the retailer has obtained a retailer's license pursuant to  
22 Section 4g, shall keep complete and accurate records of tobacco  
23 products held, purchased, sold, or otherwise disposed of, and  
24 shall preserve and keep all invoices, bills of lading, sales  
25 records, and copies of bills of sale, returns and other  
26 pertinent papers and documents relating to the purchase, sale,

1 or disposition of tobacco products. Such records need not be  
2 maintained on the licensed premises, but must be maintained in  
3 the State of Illinois; however, if access is available  
4 electronically, the records may be maintained out of state.  
5 However, all original invoices or copies thereof covering  
6 purchases of tobacco products must be retained on the licensed  
7 premises for a period of 90 days after such purchase, unless  
8 the Department has granted a waiver in response to a written  
9 request in cases where records are kept at a central business  
10 location within the State of Illinois or in cases where records  
11 that are available electronically are maintained out of state.  
12 The Department shall adopt rules regarding the eligibility for  
13 a waiver, revocation of a waiver, and requirements and  
14 standards for maintenance and accessibility of records located  
15 at a central location out-of-State pursuant to a waiver  
16 provided under this Section.

17 (c) Books, records, papers, and documents that are required  
18 by this Act to be kept shall, at all times during the usual  
19 business hours of the day, be subject to inspection by the  
20 Department or its duly authorized agents and employees. The  
21 books, records, papers, and documents for any period with  
22 respect to which the Department is authorized to issue a notice  
23 of tax liability shall be preserved until the expiration of  
24 that period.

25 (Source: P.A. 98-1055, eff. 1-1-16; 99-192, eff. 1-1-16.)

1 (35 ILCS 143/10-35a new)

2 Sec. 10-35a. Failure to keep or produce books and records.

3 Any person who fails to keep books and records or fails to  
4 produce books and records for inspection, as required by  
5 Section 10-35, is liable to pay to the Department, for deposit  
6 in the Tax Compliance and Administration Fund, a penalty of  
7 \$1,000 for the first failure to keep books and records or  
8 failure to produce books and records for inspection, as  
9 required by Section 10-35, and \$3,000 for each subsequent  
10 failure to keep books and records or failure to produce books  
11 and records for inspection, as required by Section 10-35. The  
12 Department may adopt rules to administer the penalties under  
13 this Section.

14 (35 ILCS 143/10-37)

15 Sec. 10-37. Proof of payment of tax imposed by this Act.

16 Every licensed distributor of tobacco products in this State is  
17 required to show proof of the tax having been paid as required  
18 by this Act by displaying its Tobacco Products License number  
19 on every sales invoice issued to a retailer in this State. No  
20 retailer shall possess tobacco products without either a proper  
21 invoice indicating that the tobacco products tax was paid by a  
22 distributor for the tobacco products in the retailer's  
23 possession or other proof that the tax was paid by the retailer  
24 if it has purchased tobacco products on which tax has not been  
25 paid as required by this Act. Failure to comply with the

1 provisions of this paragraph may be grounds for revocation of a  
2 distributor's or retailer's license in accordance with Section  
3 10-25 of this Act or Section 6 of the Cigarette Tax Act. In  
4 addition, the Department may impose a civil penalty not to  
5 exceed \$1,000 for the first violation and \$3,000 for each  
6 subsequent violation, which shall be deposited into the Tax  
7 Compliance and Administration Fund.

8 (Source: P.A. 98-1055, eff. 1-1-16.)

9 (35 ILCS 143/10-38 new)

10 Sec. 10-38. Presumption for unlicensed distributors or  
11 persons. Whenever any person obtains tobacco products from an  
12 unlicensed in-state or out-of-state distributor or person, a  
13 prima facie presumption shall arise that the tax imposed by  
14 this Act on such tobacco products has not been paid in  
15 violation of this Act. Invoices or other documents kept in the  
16 normal course of business in the possession of a person  
17 reflecting purchases of tobacco products from an unlicensed  
18 in-state or out-of-state distributor or person or invoices or  
19 other documents kept in the normal course of business obtained  
20 by the Department from in-state or out-of-state distributors or  
21 persons, are sufficient to raise the presumption that the tax  
22 imposed by this Act has not been paid. If a presumption is  
23 raised, the Department may assess tax, penalty, and interest on  
24 the tobacco products. In addition, any person who violates this  
25 Section is liable to pay to the Department, for deposit in the

1 Tax Compliance and Administration Fund, a penalty of \$1,000 for  
2 the first violation and \$3,000 for any subsequent violation.  
3 The Department may adopt rules to administer the penalties  
4 under this Section.

5 (35 ILCS 143/10-40)

6 Sec. 10-40. Invoices. Every distributor or other person who  
7 purchases tobacco products for resale for shipment into  
8 Illinois from a point outside Illinois shall procure invoices  
9 in duplicate covering each shipment and shall make the invoices  
10 available for inspection upon demand by a duly authorized  
11 employee of the Department, and shall, if the Department so  
12 requires, furnish one copy of each invoice to the Department at  
13 the time of filing the return required by this Act.

14 (Source: P.A. 89-21, eff. 6-6-95.)

15 (35 ILCS 143/10-50)

16 Sec. 10-50. Violations and penalties. When the amount due  
17 is under \$300, any distributor who fails to file a return,  
18 willfully fails or refuses to make any payment to the  
19 Department of the tax imposed by this Act, or files a  
20 fraudulent return, or any officer or agent of a corporation  
21 engaged in the business of distributing tobacco products to  
22 retailers and consumers located in this State who signs a  
23 fraudulent return filed on behalf of the corporation, or any  
24 accountant or other agent who knowingly enters false

1 information on the return of any taxpayer under this Act is  
2 guilty of a Class 4 felony.

3 Any person who violates any provision of Section 10-20,  
4 10-21, or 10-22 of this Act, fails to keep books and records as  
5 required under this Act, or willfully violates a rule or  
6 regulation of the Department for the administration and  
7 enforcement of this Act is guilty of a Class 4 felony. A person  
8 commits a separate offense on each day that he or she engages  
9 in business in violation of Section 10-20, 10-21, or 10-22 of  
10 this Act. If a person fails to produce the books and records  
11 for inspection by the Department upon request, a prima facie  
12 presumption shall arise that the person has failed to keep  
13 books and records as required under this Act. A person who is  
14 unable to rebut this presumption is in violation of this Act  
15 and is subject to the penalties provided in this Section.

16 When the amount due is under \$300, any person who accepts  
17 money that is due to the Department under this Act from a  
18 taxpayer for the purpose of acting as the taxpayer's agent to  
19 make the payment to the Department, but who fails to remit the  
20 payment to the Department when due, is guilty of a Class 4  
21 felony.

22 Any person who violates any provision of Sections 10-20,  
23 10-21 and 10-22 of this Act, fails to keep books and records as  
24 required under this Act, or willfully violates a rule or  
25 regulation of the Department for the administration and  
26 enforcement of this Act is guilty of a business offense and may

1 be fined up to \$5,000. If a person fails to produce books and  
2 records for inspection by the Department upon request, a prima  
3 facie presumption shall arise that the person has failed to  
4 keep books and records as required under this Act. A person who  
5 is unable to rebut this presumption is in violation of this Act  
6 and is subject to the penalties provided in this Section. A  
7 person commits a separate offense on each day that he or she  
8 engages in business in violation of Sections 10-20, 10-21 and  
9 10-22 of this Act.

10 When the amount due is \$300 or more, any distributor who  
11 files, or causes to be filed, a fraudulent return, or any  
12 officer or agent of a corporation engaged in the business of  
13 distributing tobacco products to retailers and consumers  
14 located in this State who files or causes to be filed or signs  
15 or causes to be signed a fraudulent return filed on behalf of  
16 the corporation, or any accountant or other agent who knowingly  
17 enters false information on the return of any taxpayer under  
18 this Act is guilty of a Class 3 felony.

19 When the amount due is \$300 or more, any person engaged in  
20 the business of distributing tobacco products to retailers and  
21 consumers located in this State who fails to file a return,  
22 willfully fails or refuses to make any payment to the  
23 Department of the tax imposed by this Act, or accepts money  
24 that is due to the Department under this Act from a taxpayer  
25 for the purpose of acting as the taxpayer's agent to make  
26 payment to the Department but fails to remit such payment to

1 the Department when due is guilty of a Class 3 felony.

2 When the amount due is under \$300, any retailer who fails  
3 to file a return, willfully fails or refuses to make any  
4 payment to the Department of the tax imposed by this Act, or  
5 files a fraudulent return, or any officer or agent of a  
6 corporation engaged in the retail business of selling tobacco  
7 products to purchasers of tobacco products for use and  
8 consumption located in this State who signs a fraudulent return  
9 filed on behalf of the corporation, or any accountant or other  
10 agent who knowingly enters false information on the return of  
11 any taxpayer under this Act is guilty of a Class A misdemeanor  
12 for a first offense and a Class 4 felony for each subsequent  
13 offense.

14 When the amount due is \$300 or more, any retailer who fails  
15 to file a return, willfully fails or refuses to make any  
16 payment to the Department of the tax imposed by this Act, or  
17 files a fraudulent return, or any officer or agent of a  
18 corporation engaged in the retail business of selling tobacco  
19 products to purchasers of tobacco products for use and  
20 consumption located in this State who signs a fraudulent return  
21 filed on behalf of the corporation, or any accountant or other  
22 agent who knowingly enters false information on the return of  
23 any taxpayer under this Act is guilty of a Class 4 felony.

24 Any person whose principal place of business is in this  
25 State and who is charged with a violation under this Section  
26 shall be tried in the county where his or her principal place



1 of business is located unless he or she asserts a right to be  
2 tried in another venue. If the taxpayer does not have his or  
3 her principal place of business in this State, however, the  
4 hearing must be held in Sangamon County unless the taxpayer  
5 asserts a right to be tried in another venue.

6 Any taxpayer or agent of a taxpayer who with the intent to  
7 defraud purports to make a payment due to the Department by  
8 issuing or delivering a check or other order upon a real or  
9 fictitious depository for the payment of money, knowing that it  
10 will not be paid by the depository, is guilty of a deceptive  
11 practice in violation of Section 17-1 of the Criminal Code of  
12 2012.

13 A prosecution for a violation described in this Section may  
14 be commenced within 3 years after the commission of the act  
15 constituting the violation.

16 (Source: P.A. 100-201, eff. 8-18-17.)

17 (35 ILCS 143/10-36 rep.)

18 Section 40. The Tobacco Products Tax Act of 1995 is amended  
19 by repealing Section 10-36.

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

