

# SENATE BILL NO. 391

April 27, 2021, Introduced by Senators SCHMIDT, BUMSTEAD, HORN, SANTANA, WOJNO, BULLOCK, GEISS, LAUWERS, STAMAS, VANDERWALL, VICTORY and NESBITT and referred to the Committee on Finance.

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.

6           (c) Beginning August 1, 2002, for cigarettes, in addition to

1 the tax levied in subdivision (b), an additional 15 mills per  
2 cigarette.

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

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

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

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

17 (2) On or before the twentieth day of each calendar month,  
18 every licensee under section 3 other than a retailer, unclassified  
19 acquirer licensed as a manufacturer, or vending machine operator  
20 shall file a return with the department stating the wholesale price  
21 of each tobacco product other than cigarettes purchased, the  
22 quantity of cigarettes purchased, the wholesale price charged for  
23 all tobacco products other than cigarettes sold, the number of  
24 individual packages of cigarettes and the number of cigarettes in  
25 those individual packages, and the number and denominations of  
26 stamps affixed to individual packages of cigarettes sold by the  
27 licensee for each place of business in the preceding calendar  
28 month. The return shall also include the number and denomination of  
29 unaffixed stamps 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  
4 unclassified acquirers shall also report accurate inventories of  
5 affixed and unaffixed stamps by denomination at the beginning and  
6 end of each calendar month and all stamps acquired during the  
7 preceding calendar month. The return shall be signed under penalty  
8 of perjury. 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. The department may also  
11 require licensees to report cigarette acquisition, purchase, and  
12 sales information in other formats and frequency.

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

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

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

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

28 (d) Beginning on the first calendar month following the  
29 implementation of the use of digital stamps as provided in section

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

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

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

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

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

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

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

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

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

29 (5) Every licensee and retailer who, on July 1, 2004, has on

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

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

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

28 (8) A person liable for the tax may reimburse itself by adding  
29 to the price of the tobacco products an amount equal to the tax

1 levied under this act.

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

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



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

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

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

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

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

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

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

1 5a(2).

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

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

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

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