

HOUSE BILL No. 5252

September 19, 2007, Introduced by Reps. Meisner, Gillard, Alma Smith, Warren, Wojno, Bieda, Clack, Angerer, Kathleen Law, Byrnes, Tobocman and Condino and referred to the Committee on Tax Policy.

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending sections 7 and 7b (MCL 205.427 and 205.427b), section 7
as amended by 2004 PA 164 and section 7b as added by 2002 PA 607.

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

9 (d) Beginning August 1, 2002, for cigarettes, in addition to

1 the tax levied in subdivisions (b) and (c), an additional 10 mills
2 per cigarette.

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

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

9 (g) Beginning July 1, 2004, for cigars, noncigarette smoking
10 tobacco, and smokeless tobacco, 32% of the wholesale price.

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

25 Wholesalers shall also report accurate inventories of cigarettes,
26 both stamped and unstamped at the end of the preceding calendar
27 month. Wholesalers and unclassified acquirers shall also report

1 accurate inventories of affixed and unaffixed stamps by
2 denomination at the beginning and end of each calendar month and
3 all stamps acquired during the preceding calendar month. The return
4 shall be signed under penalty of perjury. The return shall be on a
5 form prescribed by the department and shall contain or be
6 accompanied by any further information the department requires.

7 (3) To cover the cost of expenses incurred in the
8 administration of this act, **THROUGH SEPTEMBER 30, 2007**, at the time
9 of the filing of the return, the licensee shall pay to the
10 department the tax levied in subsection (1) for tobacco products
11 sold during the calendar month covered by the return, less
12 compensation equal to both of the following:

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

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

17 (c) Beginning August 1, 2002, 1.5% of the total amount of the
18 tax due on cigarettes sold.

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

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

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

25 (6) The department may require the payment of the tax imposed
26 by this act upon the importation or acquisition of a tobacco
27 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

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

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

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

1 Sec. 7b. (1) Beginning January 1, 2003 **THROUGH SEPTEMBER 30,**
2 **2007,** a licensee may deduct the amount of bad debts from the tax
3 levied under section 7. The amount deducted must be charged off as
4 uncollectible on the books of the licensee. If a person pays all or
5 part of a bad debt with respect to which a licensee claimed a
6 deduction under this section, the licensee shall be liable for the
7 amount of taxes deducted in connection with that portion of the
8 debt for which payment is received and shall remit these taxes in
9 his or her next payment to the department under section 7.

10 (2) Any claim for a bad debt deduction under this section
11 shall be supported by all of the following:

12 (a) A copy of the original invoice.

13 (b) Evidence that the tobacco products described in the
14 invoice were delivered to the person who ordered them.

15 (c) Evidence that the person who ordered and received the
16 tobacco products did not pay the licensee for the tobacco products
17 and that the licensee used reasonable collection practices in
18 attempting to collect the debt.

19 (3) As used in this section, "bad debt" means the taxes
20 attributable to any portion of a debt that is related to a sale of
21 tobacco products subject to tax under section 7 that is not
22 otherwise deductible or excludable, that has become worthless or
23 uncollectible in the time period between the date when taxes accrue
24 to the state for the licensee's preceding tax return and the date
25 when taxes accrue to the state for the present return, and that is
26 eligible to be claimed, or could be eligible to be claimed if the
27 licensee kept accounts on an accrual basis, as a deduction pursuant

1 to section 166 of the internal revenue code. A bad debt shall not
2 include any interest on the wholesale price of a tobacco product,
3 uncollectible amounts on property that remains in the possession of
4 the licensee until the full purchase price is paid, expenses
5 incurred in attempting to collect any account receivable or any
6 portion of the debt recovered, any accounts receivable that have
7 been sold to a third party for collection, and repossessed
8 property.