TOBACCO PRODUCTS TAX ACT

Act 327 of 1993

AN ACT to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; to levy an assessment; to provide for the administration, collection, defense, and disposition of the assessment; to provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; to prescribe penalties and provide remedies for the violation of this act; to make and supplement appropriations; and to repeal acts and parts of acts.

History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997 ;-- Am. 2003, Act 285, Imd. Eff. Jan. 8, 2004 ;-- Am. 2012, Act 188, Imd. Eff. June 20, 2012

The People of the State of Michigan enact:

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205.421 Short title.

Sec. 1.

This act shall be known and may be cited as the "tobacco products tax act".

History: 1993, Act 327, Eff. Mar. 15, 1994

205.422 Definitions.

Sec. 2.

As used in this act:

(a) "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco. Cigar does not include a cigarette.

(b) "Cigarette" means a roll for smoking or heating that is made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, which roll has a wrapper or cover made of paper or any other material. Cigarette does not include cigars.

(c) "Cigarette making machine" means any machine or other mechanical device that meets all of the following criteria:

(i) Is capable of being loaded with loose tobacco, cigarette tubes or cigarette papers, and any other components related to the production of cigarettes, including, but not limited to, cigarette filters.

(ii) Is designed to automatically or mechanically produce, roll, fill, dispense, or otherwise generate cigarettes.

(iii) Is commercial-grade or otherwise designed or suitable for commercial use.

(iv) Is designed to be powered or otherwise operated by a main or primary power source other than human power.

(d) "Container" or "shipping case" means an individual receptacle within which a tobacco product or group of tobacco products is placed for shipment, storage, or distribution, such as a box, case, or tote. A container or shipping case does not include any of the following:

(i) An individual package of cigarettes or cigarette carton containing cigarettes that are not counterfeit cigarettes.

(ii) Except for counterfeit cigarettes, the package or other article containing the tobacco product that is sold or transferred directly to the ultimate consumer.

(iii) A bag or similar package containing bulk or loose hookah tobacco, pipe tobacco, or roll-your-own cigarette tobacco that a retailer uses to fill bins, barrels, or tubs located at the retailer's place of business from which either the retailer sells a specified quantity of those tobacco products or a blend or mixture of those tobacco products to the consumer, or the consumer removes or draws a specified quantity of those tobacco products or a blend or mixture of those tobacco products for purchase at retail from the retailer.

(iv) A pallet or similar article or device upon which an individual receptacle or group of receptacles, containing the tobacco products, is placed for shipment, storage, or distribution.

(v) Property used as a protective covering for, or to keep together during shipment, storage, or distribution, a receptacle or group of receptacles within which the tobacco product is placed for shipment, storage, or distribution including shrink wrap or other wrapping materials, but excluding the protective covering that forms, gives shape to, or otherwise constitutes the receptacle within which the tobacco product is placed for shipment, storage, or distribution.

(e) "Counterfeit cigarette" means a cigarette in an individual package of cigarettes or other container with a false manufacturing label or a cigarette in an individual package of cigarettes or other container with a counterfeit stamp.

(f) "Counterfeit cigarette paper" means a cigarette paper with a false manufacturing label or that has not been printed, manufactured, or made by authority of the trademark owner.

(g) "Counterfeit stamp" means any stamp, label, or print, indicium, or character, that evidences, or purports to evidence, the payment of any tax levied under this act and that has not been printed, manufactured, or made by authority of the department as provided in this act and has not been issued, sold, or circulated by the department.

(h) "Department" means the department of treasury.

(i) "Financially sound" means a determination by the department that the wholesaler or unclassified acquirer is able to pay the tax due on the tobacco products it sells, imports, or acquires, as applicable, in the ordinary course of business based on criteria including, but not limited to, all of the following:

(i) Past filing and payment history with the department.

(ii) Outstanding liabilities.

(iii) Review of current financial statements including, but not limited to, balance sheets and income statements.

(iv) Duration that the wholesaler or unclassified acquirer has been licensed under this act.

(v) Ability to pay for its stamps, if required under this act.

(j) "Gray market cigarette" means any cigarette the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, a label stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording.

(k) "Gray market cigarette paper" means any cigarette paper the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarette papers to be sold, distributed, or used in the United States, including, but not limited

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to, a label stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", "For Use in _____ (another country) Only", or similar wording.

(l) "Hookah tobacco" means tobacco that is designed, manufactured, or otherwise intended for consumption by smoking in a hookah and that is flavored with honey, molasses, fruit, or other natural or artificial flavors. Hookah tobacco includes those products commonly known or referred to as narghile, argileh, shisha, hubble-bubble, molasses tobacco, waterpipe tobacco, maassel, or goza.

(m) "Hookah" means a device, including a waterpipe, used for smoking hookah tobacco that consists of a tube connected to a chamber where the smoke is cooled passing through water.

(n) "Individual package" means an individual packet or pack used to contain or to convey cigarettes to the consumer. Individual package does not include cartons, cases, or shipping or storage containers that contain smaller packaging units of cigarettes.

(o) "Licensee" means a person licensed under this act.

(p) "Manufacturer" means, except as otherwise provided in subdivision (q), any of the following:

(i) A person who manufactures or produces a tobacco product.

(ii) A person who operates or who permits any other person to operate a cigarette making machine in this state for the purpose of producing, filling, rolling, dispensing, or otherwise generating cigarettes. A person who is a manufacturer under this subparagraph constitutes a nonparticipating manufacturer for purposes of sections 6c and 6d.

(q) Manufacturer does not include any of the following:

(i) A person who operates or otherwise uses a machine or other mechanical device, other than a cigarette making machine, to produce, roll, fill, dispense, or otherwise generate cigarettes as long as the cigarettes are produced or otherwise generated in that person's dwelling and for that person's self-consumption. As used in this subparagraph and subparagraph (ii), "self-consumption" means production for personal consumption or use and not for sale, resale, or any other profit-making endeavor.

(ii) A person who does any of the following:

(A) Mixes or blends 2 or more different tobacco products to create a custom mix or blend of those products if each of the constituent tobacco products mixed or blended together is a finished tobacco product that the person could or does otherwise sell to consumers and upon which the tax under this act has been paid.

(B) Creates or produces, by filling a fruit with hookah tobacco, what is commonly known as a fruit bowl or fruit head for use in a hookah.

(C) Rolls a cigar for his or her own self-consumption.

(r) "Noncigarette smoking tobacco" means tobacco sold in loose or bulk form that is intended for consumption by smoking and also includes roll-your-own cigarette tobacco, hookah tobacco, pipe tobacco, or a wrap.

(s) "Person" means an individual, partnership, fiduciary, association, limited liability company, corporation, or other legal entity.

(t) "Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to smoke in a pipe.

(u) "Place of business" means a place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including a vessel, airplane, train, or vending machine.

(v) "Remote retail sale" means a sale of a tobacco product to a consumer in this state if either of the following applies:

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(i) The consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mail, or the internet or other online service, or the seller is otherwise not in the physical presence of the purchaser when the request for purchase or order is made.

(ii) The tobacco product is delivered to the purchaser by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the purchaser when the purchaser obtains possession of the tobacco product.

(w) "Retailer" means a person other than a transportation company who operates a place of business in this state, or who directs, manages, or has control over the day-to-day operations of a place of business in this state, for the purpose of making, or who does make, sales of a tobacco product at retail other than a remote retail sale. A person described in this subdivision qualifies as a retailer regardless of whether that person owns the place of business.

(x) "Roll-your-own cigarette tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(y) "Sale" means a transaction by which the ownership of tangible personal property is transferred for consideration and applies also to use, gifts, exchanges, barter, and theft.

(z) "Secondary wholesaler" means either of the following:

(i) A person, other than a manufacturer or a person licensed under this act as a vending machine operator, wholesaler, or unclassified acquirer, who engages in the sale of a tobacco product for resale.

(ii) A retailer, not otherwise licensed under this act, who transfers or exchanges a tobacco product from one place of business of the retailer to another place of business of the retailer.

(aa) "Smokeless tobacco" means snuff, snus, chewing tobacco, moist snuff, and any other tobacco that is intended to be used or consumed, whether chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested, by any means other than smoking or combustion.

(bb) "Stamp" means a distinctive character, indication, or mark, as determined by the department, attached or affixed to an individual package of cigarettes by mechanical device or other means authorized by the department to indicate that the tax imposed under this act has been paid.

(cc) "Stamping agent" means a wholesaler or unclassified acquirer who is licensed and authorized by the department to affix stamps to individual packages of cigarettes on behalf of themselves and other wholesalers or unclassified acquirers.

(dd) "Tobacco product" means a product containing any amount of tobacco regardless of form including, but not limited to, cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco. A tobacco product does not include drugs, devices, or combination products authorized for sale as tobacco cessation products by the United States Food and Drug Administration, as those terms are defined in subchapter V of the federal food, drug, and cosmetic act, 21 USC 351 to 360fff-8.

(ee) "Transportation company" means a person operating, or supplying to common carriers, cars, boats, or other vehicles for the transportation or accommodation of passengers and engaged in the sale of a tobacco product at retail.

(ff) "Transporter" means a person importing or transporting into this state, or transporting in this state, a tobacco product obtained from a source located outside this state, or from any person not duly licensed under this act. Transporter does not include an interstate commerce carrier licensed by the Interstate Commerce Commission, or its successor federal agency, to carry commodities in interstate commerce, or a licensee maintaining a warehouse or place of business outside of this state if the warehouse or place of business is licensed under this act.

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(gg) "Unclassified acquirer" means a person, except a transportation company or a purchaser at retail from a retailer licensed under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, who imports or acquires a tobacco product from a source other than a wholesaler or secondary wholesaler licensed under this act for use, sale, or distribution in this state. Unclassified acquirer also means a person who purchases or receives tobacco products directly from a manufacturer licensed under this act or from another source outside this state, which source is not licensed under this act. An unclassified acquirer also includes a person not located in this state that sells a tobacco product, through a mail order, catalog sale, telephone order, internet sale, or any other means, to a retailer or other person in this state that is not licensed under this act as a wholesaler, unclassified acquirer, or secondary wholesaler. Unclassified acquirer also includes a person located within or outside of this state that makes a remote retail sale of a tobacco product to a consumer in this state. An unclassified acquirer does not include a wholesaler.

(hh) "Vending machine operator" means a person who operates 1 or more vending machines in this state for the sale of a tobacco product.

(ii) "Wholesale price" means the actual price paid to a seller for a tobacco product, by a wholesaler or unclassified acquirer to acquire that tobacco product from the seller. The wholesale price includes any tax, fee, licensing, or other charge, except as otherwise provided in this subdivision, reflected on the invoice, bill of sale, purchase order, or other document evidencing the sale or purchase of the tobacco product. Wholesale price does not include, if separately stated on the invoice, bill of sale, purchase order, or other document evidencing the sale of the tobacco product, shipping or handling charges for cigarettes, and reasonable shipping or handling charges for tobacco products other than cigarettes such as transportation, shipping, postage, handling, crating, or packing. If items or products, other than tobacco products, are included in a transaction for the purchase of tobacco products by a wholesaler or unclassified acquirer, charges for those products or items that are not tobacco products, including shipping and handling charges, may be excluded from the wholesale price if separately stated on the invoice, bill of sale, purchase order, or other document evidencing the sale or purchase. The wholesale price shall not be reduced due to any rebate, trade allowance, licensing or exclusivity agreement, volume or other discount, or any other reduction given by the seller or passed on to or otherwise received by the wholesaler or unclassified acquirer from the seller. If the wholesaler or unclassified acquirer fails to keep or maintain the records as required under section 6, or has a relationship as described in section 267(b) of the internal revenue code of 1986, 26 USC 267, with the seller, the department may establish the wholesale price for the tobacco products based on the best available information or any other reasonable proxy for the wholesale price including, but not limited to, the wholesale price paid by other taxpayers for those tobacco products within the past 4 years. If an unclassified acquirer makes a remote retail sale and fails to keep or maintain the records required under section 6 for the remote retail sale, the department may determine the wholesale price of the tobacco product sold to the consumer in that remote retail sale based on the average price paid, during the immediately preceding calendar year, by the unclassified acquirer to acquire or purchase the same type of tobacco product if that information is made available to the department by the unclassified acquirer.

(jj) "Wholesaler" means a person who purchases all or part of its tobacco products from a manufacturer and who sells 75% or more of those tobacco products to others for resale. Wholesaler includes a chain of stores retailing a tobacco product to the consumer if 75% of its stock of tobacco products is purchased directly from the manufacturer.

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(kk) "Wrap" means an individual tobacco wrapper that is made wholly or in part from tobacco, including reconstituted tobacco, whether in the form of tobacco leaf, sheet, or tube, if the wrap is designed to be offered, or is offered, for sale to consumers to create or to use as a component part of a tobacco product.

History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997 ;-- Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004 ;-- Am. 2005, Act 238, Eff. Jan. 1, 2006 ;-- Am. 2012, Act 188, Imd. Eff. June 20, 2012 ;-- Am. 2020, Act 326, Eff. Jan. 1, 2022 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.423 Purchase, possession, importation, acquisition for resale or sale of tobacco product; remote retail sale; unclassified acquirer; license required; fees; disc or marker attached to vending machine; proof to be furnished with application; surety bond; financial statement; display of license; secondary wholesaler, vending machine operator, and wholesaler requirements.

Sec. 3.

(1) Except as otherwise provided in section 3a and section 6(15), a person shall not purchase, possess, acquire for resale, import, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in or into this state unless licensed to do so. A person shall not make a remote retail sale to a consumer in this state unless that person is licensed under this act as an unclassified acquirer. A license granted under this act is not assignable.

(2) Upon proper application and the payment of the applicable fee, and subject to subsection (6), the department shall issue a license to each manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter. The application must be on a form prescribed by the department and signed under penalty of perjury. The application must state the applicant's regular business hours. Except for transportation companies, each place of business must be separately licensed. If a person acts in more than 1 capacity at any 1 place of business, a license must be procured for each capacity. Each machine for vending tobacco products is considered a place of retail business. Each license or a duplicate copy must be prominently displayed on the premises covered by the license. In the case of vending machines, a disc or marker furnished by the department showing it to be licensed must be attached to the front of the machine in a place clearly visible to the public. For unclassified acquirers that do not maintain a place of business where tobacco products are sold, brought, or kept, the department may issue a license based on the physical address of the applicant's nonresidential building, office, or other facility where the records required under this act are to be kept and maintained.

(3) The fees for licenses are as follows:

(a) A wholesaler's license, $100.00.

(b) A secondary wholesaler's license, $25.00.

(c) A license for vending machine operators, $25.00.

(d) An unclassified acquirer's license, as follows:

(i) State of Michigan, no fee.

(ii) Retail importer of tobacco products other than cigarettes, $10.00.

(iii) Retail importer of cigarettes, $100.00.

(iv) Vending machine operator buying direct from a manufacturer, $100.00.

(v) Any other importer, $100.00.

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(e) A transportation company's license, $5.00.

(f) A transporter's license, $50.00.

(g) A manufacturer's license, $100.00.

(4) If a manufacturer, wholesaler, secondary wholesaler, or vending machine operator maintains more than 1 place of business, the fee for each additional place of business is 1/4 of the fee otherwise prescribed in subsection (3). A fee, or a part of a fee, shall not be refunded by reason of relinquishment, suspension, or revocation of the license, or, except under order of a court of competent jurisdiction, for any other reason or cause.

(5) A person shall not possess a machine for vending tobacco products for a period in excess of 72 hours, or operate a machine for vending tobacco products, unless there is a disc or marker attached as provided by this section. This requirement does not apply to a machine not containing or used in selling a tobacco product. If a person possesses or operates a vending machine containing or used in selling a tobacco product that is not properly licensed or identified as required by this section, the department may seal or seize the machine, together with any tobacco products contained in the machine. The provisions of section 9 govern the seizure and subsequent disposition of a machine or tobacco product seized.

(6) Applications from persons applying for an initial license under this act must be accompanied by satisfactory proof, as determined by the department, of all the following:

(a) The applicant's financial responsibility, including but not limited to, satisfactory proof of a minimum net worth of $25,000.00.

(b) That the applicant owns, or has an executed lease for, a secure nonresidential facility for the purpose of receiving, storing, and distributing tobacco products, if applicable, and conducting its business in accordance with this act if the applicant owns or has an executed lease for such a facility. If the applicant carries on another business in conjunction with the secure nonresidential facility, the other business must also be identified.

(c) United States citizenship or eligibility to obtain employment within the United States if not a citizen. If the applicant is not an individual, the controlling shareholders, partners, directors, and principal officers shall be United States citizens or eligible to obtain employment within the United States if not a citizen.

(7) The department may require an applicant who is purchasing the business of a licensee to file a copy of the contract of sale and any related documents with its application. The department may require a licensee under this section to furnish a surety bond with a surety company authorized to do business in this state in an amount the department may fix, conditioned upon the payment of the tax provided by this act. The department may also require a licensee under this section to file a financial statement with the department showing all assets and liabilities and any other information the department may prescribe, to be filed within 30 days after the date requested. If there is a change of more than 50% of ownership or control or a change in the general partnership of a licensee, the department may require that licensee to file a new application for a license or an updated financial statement.

(8) Each place of business of a retailer, and any place of business or other nonresidential building, office, or facility licensed under this section, must display the name and address of the retailer or licensee in a manner that is readily visible to the general public from outside the place of business, nonresidential building, office, or facility, as applicable.

(9) Notwithstanding anything in this act to the contrary, the following requirements apply to a secondary wholesaler, vending machine operator, or wholesaler, as applicable:

(a) A secondary wholesaler may purchase or acquire a tobacco product for resale in this state only if that purchase or acquisition is directly from a wholesaler or unclassified acquirer

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that is licensed under this act and the tax imposed under this act has been paid on that tobacco product.

(b) Except for a secondary wholesaler described in section 2(z)(ii), a secondary wholesaler shall maintain an established place of business in this state where a substantial portion of the business is the sale of tobacco products and related merchandise at wholesale and where, at all times, a substantial stock of tobacco products and related merchandise is available for sale to retailers for resale.

(c) A wholesaler shall maintain an established place of business in this state where substantially all of the business is the sale of tobacco products and related merchandise at wholesale and where, at all times, a substantial stock of tobacco products and related merchandise is available for sale to retailers for resale.

(d) A vending machine operator may purchase a tobacco product only from a secondary wholesaler, a wholesaler, or an unclassified acquirer that is licensed under this act.

History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

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205.423a Sale of tobacco product by creditor with security interest; application; "creditor" and "security interest" defined.

Sec. 3a.

(1) A creditor that acquires a tobacco product in this state as a result of exercising a security interest may sell that tobacco product without being licensed under this act if both of the following requirements are met:

(a) The creditor receives written approval from the department.

(b) The creditor sells or transfers the tobacco product to a person in this state licensed under this act as either a wholesaler or unclassified acquirer.

(2) A creditor shall apply for approval under this section on a form and in a manner prescribed by the department.

(3) As used in this section, "creditor" and "security interest" mean those terms as defined in section 1201 of the uniform commercial code, 1962 PA 174, MCL 440.1201.

History: Add. 2022, Act 171, Imd. Eff. July 21, 2022

205.424 Expiration, return, reissue, and renewal of license.

Sec. 4.

Each license issued under section 3 expires on the June 30 next succeeding the date of issuance unless revoked by the department, unless the business for which the license was issued changes ownership, or unless the holder of the license removes the business from the location covered by the license. Upon expiration of the license, revocation of the license, change of ownership of the business, or removal of the business from the location covered by the license, the holder of the license immediately shall return the license to the department. If a business moves to another location, the license may be reissued for the new location for the balance of the unexpired term without payment of an additional fee. The holder of each license

may renew that license for another 1-year period by filing an application accompanied by the applicable fee with the department before the expiration date of that license.

History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.425 Failure to comply with act; suspension, revocation, or refusal to issue or renew license; hearing.

Sec. 5.

(1) The department may suspend, revoke, or refuse to issue or renew a license issued under this act for failure to comply with this act or for any other good cause. A person whose license is suspended, revoked, or not renewed shall not act as a stamping agent or acquire a stamp from the department or any other person, or sell a tobacco product during the period of suspension or revocation, or until the license is renewed.

(2) If a person who is a manufacturer, wholesaler, or unclassified acquirer licensed under this act is convicted of a felony under any provision of this act, the department shall revoke any license issued under this act to that person.

(3) Before the department suspends, revokes, or refuses to renew a license under this act, the department shall notify the person of its intent to hold a hearing before a representative of the state treasurer for purposes of determining whether to suspend, revoke, or refuse to renew a license not less than 14 days before the scheduled hearing date.

(4) A person aggrieved by the suspension, revocation, or refusal to issue or renew a license may apply to the department for a hearing within 20 days after notice of the suspension, revocation, or refusal to issue or renew the license. A hearing must be held in the same manner provided in section 21 of 1941 PA 122, MCL 205.21. The decision in case of suspension, revocation, or refusal to renew must be issued within 45 days of receipt of the request for hearing.

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History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.425a Procurement of stamps; designs, denominations, and forms; request for proposal.

Sec. 5a.

(1) The department shall procure stamps as needed in the various designs, denominations, and forms necessary as determined by the department. The department shall pay for the stamps.

(2) Not later than August 4, 2012, the department shall issue a request for proposal to acquire and use digital stamps that contain a unique nonrepeating code that can be read by a device that identifies the taxed product and also contain other security and enforcement features as determined by the department. The request for proposal must include a provision that requires the successful bidder on the proposal to share digital stamp technology so that handheld devices, including, but not limited to, smartphones, can be readily utilized in furtherance of the implementation of the use of digital stamps and so that the technology and

equipment used by the stamping agents to affix the stamp to the product can be supplied, as may be permitted by the department, by the successful bidder on the proposal or by any other providers. The request for proposal must also include a provision permitting the department to manage or restrict access rights to all or part of the information contained within, or accessible from, the stamps and a provision requiring the successful bidder on the proposal to guarantee that the stamps will be designed and manufactured to ensure that stamps can be affixed to individual packages of cigarettes in accordance with the requirements under section 6a(2) and (3).

History: Add. 1997, Act 187, Imd. Eff. Dec. 30, 1997 ;-- Am. 2012, Act 188, Imd. Eff. June 20, 2012 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

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205.425b Advising stamping agents of license suspension, revocation, nonrenewal, or reinstatement; disclosure of information.

Sec. 5b.

The department shall advise all stamping agents of all persons licensed under this act and any manufacturer, wholesaler, secondary wholesaler, unclassified acquirer, or other person whose license is suspended, revoked, or not renewed under this act. The department shall advise all stamping agents of any person whose license is reinstated. A stamping agent shall not disclose licensing information provided to the agent by the department. The department may disclose whether a person holds a license under this act.

History: Add. 1997, Act 187, Imd. Eff. Dec. 30, 1997

205.426 Records and statements; markings required on shipping case, box, or container; examination of records; invoices or bills of lading in possession of transporter; transporter license required; exceptions.

Sec. 6.

(1) A manufacturer, wholesaler, secondary wholesaler, vending machine operator, transportation company, unclassified acquirer, or retailer shall keep a complete and accurate record of each tobacco product manufactured, purchased, or otherwise acquired. Except for a manufacturer, the records must include a written statement containing the name and address of both the seller and the purchaser, the date of delivery, the quantity, the trade name or brand, and the price paid for each tobacco product purchased or otherwise acquired. Except as otherwise provided in this section, a licensee shall keep as part of the records a true copy of all purchase orders, invoices, bills of lading, and other written matter substantiating the purchase or acquisition of each tobacco product at the location where the tobacco product is stored or offered for sale. For an unclassified acquirer that does not maintain a place of business where tobacco products are sold, brought, or kept, the records required by this section must be kept at the physical address licensed under section 3. A retailer shall keep as part of the records a true copy of all purchase orders, invoices, bills of lading, and other written matter substantiating the purchase or acquisition of each tobacco product and related to any tobacco products subject to subsection (15), if applicable, at the location where the tobacco product is offered for sale for a period of 4 months from the date of purchase or acquisition. The department may, by giving prior written approval, authorize a person licensed under this act or a retailer to

maintain records in a manner other than that required by this subsection. Other records shall be kept by these persons as the department reasonably prescribes.

(2) A manufacturer, wholesaler, unclassified acquirer, and secondary wholesaler shall deliver with each sale or consignment of a tobacco product a written statement containing the name or trade name and address of both the seller and the purchaser, the date of delivery, the quantity, and the trade name or brand of the tobacco product, correctly itemizing the prices paid for each brand purchased, and shall retain a duplicate of each statement.

(3) A vending machine operator shall keep a detailed record of each vending machine owned for the sale of tobacco products showing the location of the machine, the date of placing the machine on the location, the quantity of each tobacco product placed in the machine, the date when placed there, and the amount of the commission paid or earned on sales through the vending machine. When filling or refilling the vending machine, the operator shall deliver to the owner or tenant occupying the premises where the machine is located a written statement containing the operator's own name and address, the name and address of the owner or the tenant, the date when the machine was filled, and the quantity of each brand of tobacco product sold from the machine since the date when tobacco products were last placed in the machine. A person in possession of premises where a vending machine is located shall keep a record of each tobacco product sold through the vending machine located on the premises and the amount of commission paid by the person operating the vending machine. The records must consist of written statements required to be given by each person operating a vending machine for the sale of tobacco products as provided in this section.

(4) A licensee under this act shall not issue or accept a written statement or invoice that is known to the licensee to contain a statement or omission that falsely indicates the name of the customer, the type, trade name, or brand of merchandise, the quantity of each type, trade name, or brand of merchandise, the prices, the discounts, the date of the transaction, or the terms of sale. A person shall not use a device or game of chance to aid, promote, or induce sales or purchases of a tobacco product, or give a tobacco product in connection with a device or game of chance.

(5) Except as otherwise provided in subsection (6), all statements and other records required by this section must be in a form prescribed by the department and must be preserved for a period of 4 years from the date of purchase or acquisition of the tobacco product and offered for inspection at any time upon oral or written demand by the department or its authorized agent by every wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, and retailer.

(6) A licensee or retailer in possession or control of a tobacco product that has not preserved the statements and records required by this section because the licensee or retailer claims the tobacco product was purchased or acquired more than 4 years ago has the burden of proving that the tobacco product was purchased or acquired more than 4 years ago. A licensee or retailer that fails to preserve documentation sufficient to meet this burden of proof is in violation of the record-keeping requirements under this section for that tobacco product.

(7) A shipping case or container of a tobacco product other than cigarettes received or acquired within this state by a wholesaler or unclassified acquirer from a manufacturer or any person located outside this state must bear either the name and address of the wholesaler or unclassified acquirer that made the first purchase of that shipping case or container or any other markings the department prescribes. The point at which a shipping case or container is considered to be received or acquired in this state is to be determined based on the facts and circumstances including, but not limited to, all of the following:

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(a) Ownership of the shipping case or container when it enters this state's borders or when it is delivered to the wholesaler or unclassified acquirer.

(b) The risk of loss.

(c) The use of a common carrier or a vehicle owned or leased by the wholesaler or unclassified acquirer to import or transport the shipping case or container into this state or deliver the shipping case or container to the wholesaler or unclassified acquirer.

(8) A wholesaler or unclassified acquirer, licensed under this act, shall place or otherwise affix the markings prescribed by the department on every shipping case or container of a tobacco product other than cigarettes that is sold, transferred, shipped, or delivered by the wholesaler or unclassified acquirer to a retailer or another licensee, in this state.

(9) If a marking prescribed by the department is to be affixed to a shipping case or container of tobacco products other than cigarettes by means of a mechanical or other device that applies the marking, the wholesaler or unclassified acquirer must obtain prior approval from the department to purchase, possess, or otherwise be permitted to use such a device. A wholesaler or unclassified acquirer whose license is revoked, is terminated, or has expired shall return all such devices in its possession to the department within 60 days of the revocation, termination, or expiration of its license. In addition to any other fine or any civil or criminal penalty or charge allowed by law, a wholesaler or unclassified acquirer that fails to return each device in its possession as required by this subsection is liable for a fine of $500.00 for each device not timely returned.

(10) The markings required by this section on shipping cases and containers of tobacco products other than cigarettes must not be affixed in a manner that makes the markings illegible or that covers up, in whole or in part, or that otherwise obstructs or makes illegible the information or markings described in subsection (7).

(11) If a tobacco product other than cigarettes is found in a place of business or otherwise in the possession of a wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transporter, or retailer without the markings prescribed by the department or the information required by this section on the shipping case or container of the tobacco product, if required by this section, or if an individual package of cigarettes is found without a stamp affixed as provided under this act or if a tobacco product is found, or was acquired, imported, transferred, or sold, without proper substantiation by invoices or other records as required by this section, the presumption shall be that the tobacco product is kept in violation of this act and constitutes contraband subject to seizure and forfeiture under section 9. Notwithstanding anything in this act to the contrary, if any tobacco product is adjudicated by a court of competent jurisdiction to have been lawfully seized under this act, and if the adjudication of lawful seizure survives the exhaustion or lapse of any appeal rights, the tobacco product shall be automatically forfeited to this state and the person from whom that tobacco product was seized shall be liable for the tax imposed under this act on that tobacco product.

(12) If a tobacco product is to be or is being transported on a public highway, road, or street in this state for shipment outside this state, as indicated by the bills of lading, invoices, packing slips, or other documentation related to that shipment, the licensee shipping the tobacco product shall cause to be placed on every shipping case or container in which the tobacco product is shipped the name and address of the consignee or purchaser to whom the shipment is made outside of the state and, for tobacco products other than cigarettes, the marking prescribed by the department unless the shipping case or other container already bears that marking from the licensee. A tobacco product that was located in this state is considered to have been shipped outside this state for purposes of this subsection if the tobacco product crosses the border of this state regardless of whether the tobacco product is

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delivered to or accepted by the consignee or purchaser to whom the shipment is made outside this state.

(13) The department may require reports from a common carrier who transports a tobacco product to a point within this state from another person who, under contract, transports a tobacco product, or from a bonded warehouseperson or bailee who has in his or her possession a tobacco product. A carrier, bailee, warehouseperson, or other person shall permit the inspection of the tobacco products and examination by the department or its duly authorized agent of any records relating to the shipment of a tobacco product into, from, or within this state.

(14) Except as otherwise provided in subsection (15), any person transporting, possessing, or acquiring for the purpose of transporting a tobacco product upon a public highway, road, or street of this state shall be licensed under this act as a transporter, unless that person is licensed under this act as an unclassified acquirer, wholesaler, transportation company, vending machine operator, or secondary wholesaler, and shall have in the person's actual possession invoices or bills of lading containing the name and address of both the seller and the purchaser, the actual or estimated date of delivery, the person's name and address, the quantity and trade name or brand of each tobacco product, the price paid for each trade name or brand in the person's possession or custody, and a copy of the license as prescribed under this act.

(15) Notwithstanding anything in this act to the contrary, a retailer in this state, or other person acting on behalf of a retailer in this state, is not required to be licensed under this act to transport a tobacco product upon a public highway, road, or street of this state for the purpose of delivering a tobacco product to a consumer in this state if all of the following conditions are met:

(a) The tobacco product was purchased by the consumer from the retailer at retail.

(b) The consumer has paid for the tobacco product in full before the shipment and delivery of the tobacco product to the consumer.

(c) The retailer or other person making the delivery has in its possession, at all times during which the tobacco product is being transported on a public highway, road, or street of this state, an invoice, receipt, or other documentation substantiating the sale to the consumer that states the name and address of the retailer, the name and address of the consumer, the delivery date, the trade name or brand of the tobacco product, the quantity, and the price paid for the tobacco product.

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History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1997, Act 187, Eff. Apr. 15, 1998 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.426a Disbursement of stamps to wholesaler or unclassified acquirer; affixing stamp; resale of package or cigarette; inspection or inventory; exchanging or discontinuing unaffixed stamps; accepting, purchasing, or borrowing unaffixed stamps; appointment of stamping agent to affix stamps to individual packages; limitation; inquiries from department of state police.

Sec. 6a.

(1) A wholesaler or unclassified acquirer may apply to the department for stamps to affix as provided in this act. The department may prescribe the method of shipment of the stamps. The department shall keep a record of all stamps disbursed, name of wholesaler or unclassified acquirer, and date of disbursement. The department may release the identity of the wholesaler

or unclassified acquirer to whom specific stamps were disbursed to state or local police agencies.

(2) Except as otherwise provided in this subsection, before delivery, sale, or transfer to any person in this state, a wholesaler or an unclassified acquirer shall place or cause to be placed on the bottom of each individual package of cigarettes to be sold within this state a stamp provided by the department. If approved by the department, a stamp may be placed in a location other than the bottom of each individual package of cigarettes.

(3) Stamps must be firmly affixed in such a manner that the stamps cannot be removed without being mutilated or destroyed. A stamp must be affixed to each individual package in an aggregate denomination equal to the amount of the tax upon the contents of the individual package of cigarettes. A stamp is considered affixed if 90% or more of the stamp is affixed to the individual package.

(4) A retailer or person licensed under this act, other than a wholesaler or unclassified acquirer or a person acting as a transporter for a wholesaler or unclassified acquirer, shall not acquire for resale an individual package of cigarettes or a cigarette from an individual package unless that individual package of cigarettes has affixed to it a stamp as provided in this act.

(5) A retailer or vending machine operator shall not sell or offer for sale an individual package of cigarettes to the general public that does not have affixed the stamp required by this act. An individual package of cigarettes without a stamp may not be sold from, or placed or stored in, a vending machine. Except as otherwise provided by law, a person shall not sell a cigarette separately from its individual package.

(6) The department or its authorized agents may inspect the operations of a wholesaler and an unclassified acquirer for purposes of ensuring compliance with this act and to conduct an inventory of a wholesaler's or unclassified acquirer's stock of cigarettes, tobacco products other than cigarettes, and stamps during regular business hours and inspect the related statements and other records required in section 6. This inspection shall also verify that shipping cases and containers of tobacco products other than cigarettes bear any markings required by this act. An inspection under this section must be conducted during the regular business hours of the wholesaler or unclassified acquirer. Unless otherwise approved by the department, the regular business hours of a wholesaler or unclassified acquirer are those hours disclosed on that wholesaler's or unclassified acquirer's license application as required under section 3.

(7) The department or its authorized agents may inspect the operations of a secondary wholesaler, vending machine operator, or retailer, or the contents of a specific vending machine, during regular business hours. This inspection shall include inspection of all statements and other records required by section 6, of packages of cigarettes and tobacco products other than cigarettes, and of the contents of cartons and shipping or storage containers to ascertain that all individual packages of cigarettes have an affixed stamp of proper denomination as required by this act. This inspection may also verify that all the stamps were produced under the authority of the department and that shipping cases and containers of tobacco products other than cigarettes bear any markings required by this act. Unless otherwise approved by the department, the regular business hours of a secondary wholesaler or vending machine operator are those hours disclosed on that secondary wholesaler's or vending machine operator's license application as required under section 3. The regular business hours of a retailer are those hours that the retailer is open for business as evidenced by the retailer's commercial activity and signage, advertisements, or other information communicated to the general public.

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(8) A person shall not prevent or hinder the department or its authorized agents from conducting an inspection authorized by this act.

(9) The department may require wholesalers and unclassified acquirers to exchange unaffixed stamps with the department as the department considers necessary. The department may require wholesalers, unclassified acquirers, secondary wholesalers, vending machine operators and retailers to discontinue offering for sale any unsold individual packages of cigarettes bearing a prior version of the stamp that the department has withdrawn from circulation. The department may set a reasonable timeline after which the prior version of the stamp may no longer be offered for sale and the new version of the stamp is required. A secondary wholesaler, retailer, or vending machine operator may return cigarette packages bearing discontinued stamps to a wholesaler for credit. A wholesaler or unclassified acquirer may take credit on its tax returns for individual packages of cigarettes bearing discontinued stamps that are returned to the manufacturer for credit less the appropriate discount paid.

(10) Except as provided in subsection (11), a wholesaler or unclassified acquirer shall not give, sell, or lend any unaffixed stamps to another person and except as otherwise provided in this act, a person shall not accept, purchase, or borrow any unaffixed stamps from another person.

(11) Upon written authorization of the department, a wholesaler or unclassified acquirer licensed under this act may appoint a stamping agent to affix stamps to individual packages of cigarettes.

(12) Stamps may only be affixed to an individual package of cigarettes if the manufacturer of the cigarettes is identified on the lists of participating manufacturers or nonparticipating manufacturers maintained by the department pursuant to sections 6c and 6d.

(13) The department of state police shall initiate inquiries to or otherwise access data from the department to support or in furtherance of its enforcement activities under this act.

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History: Add. 1997, Act 187, Imd. Eff. Dec. 30, 1997 ;-- Am. 2012, Act 188, Imd. Eff. June 20, 2012 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.426b Issuance of stamps to wholesaler or unclassified acquirer.

Sec. 6b.

(1) Upon proper request in the form and manner prescribed by the department, a wholesaler or unclassified acquirer may obtain stamps from the department.

(2) The department shall not issue any stamps to a wholesaler or unclassified acquirer that is delinquent in paying the tax under this act.

History: Add. 1997, Act 187, Eff. Apr. 15, 1998 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.426c Acquisition of cigarettes from nonparticipating manufacturer.

Sec. 6c.

(1) Every nonparticipating manufacturer whose cigarettes are sold in this state, whether directly or through a licensee or other distributor, retailer, or similar intermediary, shall by April 30 of each year certify to the department that it is not a participant in the master

settlement agreement and that it has performed its obligation to establish a qualified escrow account and deposited funds into that account under 1999 PA 244, MCL 445.2051 to 445.2052.

(2) The certification of compliance must be on a form prescribed by the department, must contain all of the information requested on the form, and must include a list of all brand names of cigarettes sold by the nonparticipating manufacturer, whether directly or through a licensee or other distributor, retailer, or similar intermediary, for consumption in this state during the calendar year immediately preceding the certification date.

(3) A nonparticipating manufacturer shall provide a copy of the certification of compliance to the attorney general and any wholesaler, unclassified acquirer, or other person to whom the nonparticipating manufacturer makes a sale of its cigarettes for subsequent sale or consumption in this state.

(4) A wholesaler, unclassified acquirer, or other person who is provided with a certification of compliance under this section shall retain the certification of compliance for not less than 4 years from the date the certification of compliance was received.

(5) A wholesaler or unclassified acquirer shall report to the department all cigarettes that it acquires that were manufactured by a nonparticipating manufacturer. The report must be on a form prescribed by the department and attached to the return required under section 7. A wholesaler or unclassified acquirer that has not acquired any cigarettes from a nonparticipating manufacturer shall file the report with the return required under section 7 stating that it has not purchased, acquired, exported, or returned cigarettes related to a nonparticipating manufacturer. The information contained in this report is for the purposes of enforcing 1999 PA 244, MCL 445.2051 to 445.2052, and does not constitute information obtained in connection with the administration of a tax under section 28(1)(f) of 1941 PA 122, MCL 205.28. A wholesaler or unclassified acquirer shall retain a copy of the report for not less than 4 years from the date the report was filed with the department. If a wholesaler or unclassified acquirer does not file a report or knowingly files an incomplete or inaccurate report under this subsection, the department may do 1 or more of the following:

(a) Assess a penalty under this section.

(b) Prohibit the wholesaler or unclassified acquirer from obtaining cigarette stamps from the department until a complete and accurate report is filed.

(c) Revoke the wholesaler's or unclassified acquirer's license under section 5, only after conducting a hearing.

(6) A nonparticipating manufacturer that has not provided the certification of compliance required by this section shall not make a sale of cigarettes in this state or a sale within or outside this state to any person for sale, distribution, or consumption in this state.

(7) A person shall not purchase, acquire, possess, or sell cigarettes acquired from or manufactured by a nonparticipating manufacturer that has not provided the certification of compliance to the department as required under this section and that has not provided the person with a copy of the certification of compliance if required to do so under subsection (3).

(8) The department shall maintain and regularly update a list of participating manufacturers and nonparticipating manufacturers that have provided the certification of compliance required under this section. The department shall publish the list on its website and provide a copy of the list to a person upon request. Subject to section 6f, the department may delist a manufacturer that no longer complies with this section.

(9) If a wholesaler or unclassified acquirer receives a certification of compliance from a nonparticipating manufacturer that is not included in the list maintained by the department, the wholesaler or unclassified acquirer shall within 10 business days after receiving the

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certification of compliance provide a copy of the certification of compliance and the name and address of the nonparticipating manufacturer to the department.

(10) Thirty days after the department posts on its website and provides wholesalers and unclassified acquirers a notice of a second or subsequent knowing violation of a provision of 1999 PA 244, MCL 445.2051 to 445.2052, or a notice of a judgment the department has against a nonparticipating manufacturer, the department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by that nonparticipating manufacturer. The department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by a nonparticipating manufacturer if that nonparticipating manufacturer has not provided the certification required by this section. Seizure, confiscation, forfeiture, and sale of cigarettes under this section shall be accomplished under section 9.

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

(12) As used in this section:

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

(b) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer as that term is defined in 1999 PA 244, MCL 445.2051 to 445.2052. Nonparticipating manufacturer also includes the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

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History: Add. 2002, Act 503, Imd. Eff. July 18, 2002 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.426d Sale of cigarettes by nonparticipating manufacturer; information to be provided to department; payment of equity assessment; prepayment; stamp; prohibited conduct; publication of list of compliant nonparticipating manufacturers; seizure or confiscation; violation; service of process; brand previously sold; audit or review; definitions.

Sec. 6d.

(1) Before commencing sales of cigarettes in this state, whether directly or through a licensee or other distributor, retailer, or similar intermediary, a nonparticipating manufacturer shall provide to the department the information described in subsection (3) and shall pay the equity assessment as provided in subsections (4) and (5).

(2) A nonparticipating manufacturer selling cigarettes in this state on January 8, 2004, shall provide to the department the information described in subsection (3) and pay the equity assessment as provided in subsections (4) and (5) before February 8, 2004. If a nonparticipating manufacturer is not selling cigarettes in this state on January 8, 2004, before selling cigarettes in this state, the nonparticipating manufacturer shall pay the equity assessment imposed under subsections (4) and (5) for all cigarettes that are anticipated to be sold in the current calendar year as described in subsection (5).

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

(a) The complete name, address, and telephone number of the nonparticipating manufacturer.

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

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

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

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

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

(4) An equity assessment in the amount of 17.5 mills per cigarette is imposed upon all cigarettes sold by a nonparticipating manufacturer, whether directly or through a licensee or other distributor, retailer, or similar intermediary, in this state. The purpose of the equity assessment is to fund enforcement and administration of 1999 PA 244, MCL 445.2051 to 445.2052, and this act. The equity assessment is in addition to all other fees, assessments, and taxes levied by law. The equity assessment shall be collected by the department from each nonparticipating manufacturer selling cigarettes in this state. The equity assessment shall be collected and reconciled by April 15 of each year for cigarettes sold in the previous calendar year. The department shall credit a nonparticipating manufacturer with any prepayment made by the nonparticipating manufacturer pursuant to subsection (5) for that calendar year.

(5) Except as provided in subsection (2), a nonparticipating manufacturer selling cigarettes in this state, whether directly or through a licensee or other distributor, retailer, or similar intermediary, shall prepay the equity assessment imposed in subsection (4) not later than March 1 for all cigarettes that are anticipated to be sold in the current calendar year. The prepayment amount shall be determined by multiplying 17.5 mills times the number of cigarettes that the department reasonably determines that the nonparticipating manufacturer will sell in this state in the current calendar year or $10,000.00, whichever is more. The department may require a nonparticipating manufacturer to provide any information reasonably necessary to determine the equity assessment prepayment amount. Not later than February 15 of each year, the department shall notify the nonparticipating manufacturer of the amount of the prepayment due for the current year. The department shall increase the equity assessment prepayment amount during the year if the increase is justified by the nonparticipating manufacturer's actual sales of cigarettes.

(6) A stamping agent shall not affix to any package of cigarettes or shipping container of roll-your-own tobacco of a nonparticipating manufacturer the stamp required under this act unless the nonparticipating manufacturer is listed on the department website as provided in subsection (9) or after receiving notice that the nonparticipating manufacturer has not prepaid or paid in full the equity assessment imposed under this section. A stamping agent that violates this subsection is subject to the penalties described in section 5. If a stamping agent intentionally and knowingly violates this subsection, the department may seize or confiscate any cigarettes in the stamping agent's possession that were stamped in violation of this subsection. Seizure, confiscation, forfeiture, and sale of cigarettes shall be accomplished under section 9.

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

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

(9) The department shall maintain and regularly update a list of nonparticipating manufacturers that have complied with the requirements of this section. The department shall publish the list on its website and provide a copy of the list to a person upon request. Subject to section 6f, the department may delist a manufacturer that no longer complies with this section.

(10) Ninety days after the department posts on its website and provides wholesalers and unclassified acquirers notice that a nonparticipating manufacturer is in violation of subsection (1) or (2), the department may seize or confiscate from any person any cigarettes in that person's possession that were acquired from or manufactured by that nonparticipating manufacturer. Seizure, confiscation, forfeiture, and sale of cigarettes under this section shall be accomplished under section 9.

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

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

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

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

(15) As used in this section:

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

(b) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer as that term is defined in 1999 PA 244, MCL 445.2051 to 445.2052. Nonparticipating manufacturer also includes the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

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History: Add. 2003, Act 285, Imd. Eff. Jan. 8, 2004 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.426e Enforcement of tobacco product manufacturer's escrow accounts act; disclosure of information to attorney general; consolidation of information received pursuant to agreements with Indian tribes; disclosure of information otherwise confidential; information received as result of NPM adjustment settlement agreement.

Sec. 6e.

(1) Notwithstanding any law to the contrary, the department shall, upon request of the attorney general, disclose to the attorney general, or his or her designee, information obtained by the department that is relevant to the enforcement of the tobacco product manufacturers' escrow accounts act, 1999 PA 244, MCL 445.2051 to 445.2052. However, with regard to information received pursuant to any tax agreement entered into between this state and any Indian tribe, that includes limitations on disclosure of such information in addition to, or in lieu of, those contained in statute, the information provided under this section shall be consolidated to include all information received pursuant to such agreements with Indian tribes so as not to enable a person to ascertain any 1 Indian tribe's information. The department and the attorney general or his or her designee, except as provided in this subsection, may disclose information provided under this section that may otherwise be confidential if 1 or more of the following apply:

(a) In discharge of the duty to enforce or defend the provisions of this act or the tobacco product manufacturers' escrow accounts act, 1999 PA 244, MCL 445.2051 to 445.2052.

(b) In the course of any litigation, arbitration, or proceeding related to the tobacco product manufacturers' escrow accounts act, 1999 PA 244, MCL 445.2051 to 445.2052, the master settlement agreement, or the NPM adjustment settlement agreement.

(c) In complying with provisions in the NPM adjustment settlement agreement related to a data clearinghouse.

(2) Tobacco product sales data provided by another state, a manufacturer, or other person or entity to a data clearinghouse pursuant to the NPM adjustment settlement agreement that is also provided to the department pursuant to that agreement shall be treated as confidential tax information subject to section 28 of 1941 PA 122, MCL 205.28. This subsection only applies to information received by the department as a result of the NPM adjustment settlement agreement.

History: Add. 2016, Act 43, Eff. June 13, 2016

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205.426f Refusal to list or the removal of a tobacco product manufacturer from the director; exception; notice; deficiencies; demand for hearing; written order; appeal; definitions.

Sec. 6f.

(1) This section establishes and sets forth the process by which the department may remove a tobacco product manufacturer or any associated or affiliated brand families of a tobacco product manufacturer from the directory, or refuse to list a tobacco product manufacturer or any associated or affiliated brand families of a tobacco product manufacturer on the directory. This section does not apply to any tobacco product manufacturer that voluntarily requests removal from, or rescinds a request to become listed on, the directory for either itself or an associated or an affiliated brand family of the tobacco product manufacturer.

(2) Except as otherwise provided in this section, the department shall not include in the directory or retain a tobacco product manufacturer or any brand family of a tobacco product manufacturer in the directory, if any of the following apply:

(a) The tobacco product manufacturer has not performed any of its obligations under this act, including those obligations set forth in sections 6c and 6d, or 1999 PA 244, MCL 445.2051 to 445.2052.

(b) The tobacco product manufacturer or any of the tobacco product manufacturer's brand families have been removed from a list maintained by another state that is equivalent to, or

otherwise serves the same purposes as, the directory, based on acts or omissions that would, if the acts or omissions occurred in this state, serve as a basis for removal from the directory.

(c) The tobacco product manufacturer, or any of its officers or directors, have, in any jurisdiction, pleaded guilty or nolo contendere to, or been found guilty of, a felony relating to the sale, distribution, or taxation of a tobacco product.

(d) The tobacco product manufacturer sold, transferred, or distributed a tobacco product to a wholesaler or unclassified acquirer that it knew or had reason to know was not licensed under this act or whose license was suspended or revoked under this act.

(3) If the department intends to remove from the directory, or not include on the directory, a tobacco product manufacturer or an associated or affiliated brand family of a tobacco product manufacturer, the department shall send a notice to the tobacco product manufacturer or, if applicable, its agent for service of process. The notice must include all of the following:

(a) The factual and legal deficiencies upon which the department's intended action rests.

(b) The action that the tobacco product manufacturer must take to cure those deficiencies.

(c) A statement that the tobacco product manufacturer has 15 calendar days, from the date of the notice, to cure those deficiencies and submit documentation of its attempt to cure.

(4) For good cause shown, as determined by the department in its discretion, the department may extend the 15 calendar day period under subsection (3) for a tobacco product manufacturer to cure its deficiencies up to an additional 15 calendar days.

(5) If the tobacco product manufacturer does not cure the deficiencies to the satisfaction of the department within the applicable period under subsections (3) and (4), the department shall issue a notice to the tobacco product manufacturer that, unless a demand for a hearing is made as provided in subsection (6), the department intends remove the tobacco product manufacturer or any of its brand families from, or not include the tobacco product manufacturer or any of its brand families on, the directory.

(6) Within 10 business days after the date of service of the notice issued under subsection (5), the tobacco product manufacturer may, by registered mail or personal service, file with the state treasurer a demand for a hearing before a representative of the department to determine whether the department's intention to remove from, or not include on, the directory the tobacco product manufacturer or any of its brand families is justified. If, within 10 business days after the date of service of the notice issued under subsection (5), the tobacco product manufacturer does not file with the state treasurer a demand for a hearing before the department as provided in this subsection, the department shall immediately remove from the directory, or refuse to include on the directory, the tobacco product manufacturer or any of its brand families at issue.

(7) Upon receipt of a demand for a hearing under subsection (6), the department shall hold the hearing within 15 business days. At the hearing, the tobacco product manufacturer is entitled to appear before the department, to be represented by counsel, and to present testimony and argument. The hearing is not a contested case proceeding and is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(8) After the hearing under subsection (7), the department shall render its decision in writing within 10 business days of the hearing and, by order, shall declare 1 of the following:

(a) That the tobacco product manufacturer or any of the associated or affiliated brand families at issue be removed from, or not included on, the directory.

(b) That the tobacco product manufacturer or any of the associated or affiliated brand families at issue be retained or included on the directory.

(9) If the department orders under subsection (8)(a) that the tobacco product manufacturer or its associated or affiliated brand families at issue should be removed from, or not included

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on, the directory and the tobacco product manufacturer does not appeal that order under subsection (10), the department shall immediately remove from the directory, or refuse to include on the directory, the tobacco product manufacturer or any of its brand families at issue.

(10) A tobacco product manufacturer aggrieved by the decision of the department under subsection (8) may appeal the department's order by filing an appeal to the Ingham County circuit court, designated as Michigan's master settlement court, within 30 days of the date the department mails the order to the aggrieved tobacco product manufacturer. If a proper appeal is taken in accordance with this section and applicable law, the department shall not remove a tobacco product manufacturer or any of its associated brand families from the directory until all appeal rights have been exhausted.

(11) As used in this section:

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

(b) "Directory" means the lists established and described under sections 6c and 6d, separately or collectively, as applicable to the tobacco product manufacturer.

(c) "Master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998, and incorporated into a consent decree and final judgment entered into on December 7, 1998, in Kelley Ex Rel. Michigan v Philip Morris Incorporated, et al., Ingham County circuit court, docket no. 96-84281CZ.

(d) "Nonparticipating manufacturer" means a manufacturer of cigarettes that is not a participating manufacturer. Nonparticipating manufacturer also includes the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

(e) "Participating manufacturer" means that term as defined in the master settlement agreement.

(f) "Tobacco product manufacturer" means a participating manufacturer or a nonparticipating manufacturer, as applicable.

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History: Add. 2022, Act 171, Imd. Eff. July 21, 2022

205.427 Levy of tax on sale of tobacco products and modified risk tobacco products; federal order; notification of rescission, withdrawal, or expiration of federal order; filing return; payment of tax; importation or acquisition of tobacco product; tax abatement or refund; reimbursement by adding to price of tobacco product; sale or transfer of unaffixed stamps by wholesaler or unclassified acquirer; prohibition; exchange of unaffixed stamps; inspection; reports; definitions.

Sec. 7.

(1) Subject to subsection (2), a tax is levied on the sale of tobacco products sold in this state or sold for consumption in this state, which consumption is presumed when sold to a retailer or consumer in this state, as follows:

(a) For cigarettes, 100 mills per cigarette.

(b) For cigars, noncigarette smoking tobacco, smokeless tobacco, and any tobacco product other than cigarettes, 32% of the wholesale price. However, beginning November 1, 2012, the amount of tax levied under this subdivision on cigars shall not exceed 50 cents per individual cigar.

(2) Notwithstanding any other provision of law and beginning 180 days after the effective date of the amendatory act that added this subsection, if the Secretary of the United States

Department of Health and Human Services has issued an order for a product under 21 USC 387k(g) and the manufacturer has notified the department of that order on a form and in a manner prescribed by the department, subject to subsections (3), (4), and (5), the tax imposed on the sale of that product under this section is as follows:

(a) If the order is a modified risk tobacco product order issued under 21 USC 387k(g)(1), reduced by 50% of the otherwise applicable rate under subsection (1).

(b) If the order is issued under 21 USC 387k(g)(2), reduced by 25% of the otherwise applicable rate under subsection (1).

(3) A rate under subsection (2) shall not take effect unless the department has received notice of the modified risk tobacco order by the manufacturer of the tobacco product, in the form and manner prescribed by the department, and the department has published notice of the rate for the tobacco product. The department shall publish notice of the rate not later than 10 days after receipt of the notice from the manufacturer. The effective date of a rate under subsection (2) for a tobacco product shall be the first day of the month following the month in which the department publishes notice of the rate as provided in this subsection.

(4) If a modified risk tobacco product order described in subsection (2) is renewed by the United States Food and Drug Administration, the manufacturer of the tobacco product subject to that order must provide notice of the renewal to the department not later than 10 days after issuance of the order or determination of renewal by the United States Food and Drug Administration, for the rate provided under subsection (2) to remain in effect for that tobacco product. If a modified risk tobacco product order described in subsection (2) is rescinded or withdrawn by the United States Food and Drug Administration or otherwise expires, the manufacturer of the tobacco product subject to that order shall notify the department of the rescission, withdrawal, or expiration of the order not later than 10 days after the issuance of the rescission or withdrawal order or determination by the United States Food and Drug Administration or the date of expiration, as applicable. The department shall publish notice of the rescission, withdrawal, or expiration of the modified risk tobacco product order not later than 10 days after receipt of the notice from the manufacturer or, if the manufacturer fails to provide the notice as required under this subsection, 10 days after the department becomes aware of the rescission, withdrawal, or expiration of the order. Except as otherwise provided in subsection (5), beginning on the first day of the month following the month in which the department publishes a notice of rescission, withdrawal, or expiration of a modified risk tobacco product order for a tobacco product, the rate under subsection (2) shall no longer apply to that tobacco product. Notices required to be made by a manufacturer to the department under this subsection shall be made in the form and manner prescribed by the department.

(5) Except as otherwise provided in this subsection, a tobacco product subject to the rate provided under subsection (2) that was purchased or otherwise acquired before the date a rescission, withdrawal, or expiration of a modified risk tobacco product order for that tobacco product becomes effective remains eligible for the rate provided under subsection (2). The tax rate provided in subsection (2) does not apply, and the otherwise applicable tax rate applies, to any of the following:

(a) A tobacco product purchased or otherwise acquired before the effective date of the rate provided under subsection (2) for that tobacco product.

(b) A tobacco product that is seized and forfeited as contraband as provided under this act.

(c) A person described in section 8(1) for purposes of determining the amount of tax and penalty under section 8(1).

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(6) On or before the twentieth day of each calendar month, every licensee under section 3 other than a manufacturer or vending machine operator shall file a return with the department stating the wholesale price of each tobacco product other than cigarettes purchased, the quantity of cigarettes purchased, the wholesale price charged for all tobacco products other than cigarettes sold, the number of individual packages of cigarettes and the number of cigarettes in those individual packages, and the number and denominations of stamps affixed to individual packages of cigarettes sold by the licensee for each place of business in the preceding calendar month. The return must also include the number and denomination of unaffixed stamps in the possession of the licensee at the end of the preceding calendar month and any other reasonable information the department requires to ensure compliance with this act. Wholesalers shall also report accurate inventories of cigarettes, both stamped and unstamped at the end of the preceding calendar month. Wholesalers and unclassified acquirers shall also report accurate inventories of affixed and unaffixed stamps by denomination at the beginning and end of each calendar month and all stamps acquired during the preceding calendar month. The return must be signed under penalty of perjury. The return must be on a form, and filed in the manner, prescribed by the department and must contain or be accompanied by any further information the department requires. The department may also require licensees to report tobacco product acquisition, purchase, and sales information in other formats and frequency.

(7) To cover the cost of expenses incurred in the administration of this act, at the time of the filing of the return, the licensee shall pay to the department the tax levied in this section for tobacco products sold during the calendar month covered by the return, less compensation equal to the following:

(a) 1% of the total amount of the tax due on tobacco products sold other than cigarettes.

(b) 1.5% of the total amount of the tax due on cigarettes sold and, for sales of untaxed cigarettes to Indian tribes in this state, an amount equal to 1.5% of the total amount of the tax due on those cigarettes sold as if those cigarette sales were taxable sales under this act.

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

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

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

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

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

(d) Beginning in the first calendar month following the implementation of the use of digital stamps as provided in section 5a(2) and continuing for the immediately succeeding 17 months, for licensees who are stamping agents, reimbursement of direct costs actually incurred by the stamping agent, as determined by the department, for the initial purchase of eligible equipment in an amount equal to 5.55% of the total net purchase price of the eligible equipment necessary to affix the digital stamp. The reimbursement provided under this subdivision shall also include reimbursement for any applicable sales or use taxes paid and shipping and crating charges actually incurred by the stamping agent for the initial purchase of eligible equipment, but shall exclude reimbursement for any other costs incurred by the stamping agent not otherwise expressly provided for in this subdivision, including, but not limited to, charges for installation and ongoing maintenance related to eligible equipment. A stamping agent may only receive reimbursement under this subdivision to the extent that the eligible equipment purchased by the stamping agent does not exceed the total number of the stamping agent's existing equipment as certified by the stamping agent on a form prescribed by the department.

(e) For licensees who are stamping agents, reimbursement of qualified equipment costs actually incurred by the stamping agent, not otherwise compensated or reimbursed under subdivision (c) or (d), as determined by the department. The reimbursement provided under this subdivision shall not exceed $60,000.00 for all stamping agents combined.

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

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

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

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

(12) If the wholesaler or unclassified acquirer has unsalable packs returned from a retailer, secondary wholesaler, vending machine operator, wholesaler, or unclassified acquirer with stamps affixed, the department shall refund the amount of the tax less the appropriate discount paid. If the wholesaler or unclassified acquirer has unaffixed unsalable stamps, the department shall exchange with the wholesaler or unclassified acquirer new stamps in the same quantity as the unaffixed unsalable stamps. An application for refund of the tax must be filed on a form

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and in the manner prescribed by the department for that purpose, within 4 years from the date the stamps were originally acquired from the department. A wholesaler or unclassified acquirer shall make available for inspection by the department the unused or spoiled stamps and the stamps affixed to unsalable individual packages of cigarettes. The department may, at its own discretion, witness and certify the destruction of the unused or spoiled stamps and unsalable individual packages of cigarettes that are not returnable to the manufacturer. The wholesaler or unclassified acquirer shall provide certification from the manufacturer for any unsalable individual packages of cigarettes that are returned to the manufacturer.

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

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

(15) As used in subsection (7):

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

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

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

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

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

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

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

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

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History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1997, Act 187, Eff. Apr. 15, 1998 ;-- Am. 2002, Act 503, Imd. Eff. July 18, 2002 ;-- Am. 2004, Act 164, Imd. Eff. June 24, 2004 ;-- Am. 2008, Act 458, Imd. Eff. Jan. 9, 2009 ;-- Am. 2012, Act 188, Imd. Eff. June 20, 2012 ;-- Am. 2012, Act 325, Imd. Eff. Oct. 9, 2012 ;-- Am. 2014, Act 298, Imd. Eff. Sept. 30, 2014 ;-- Am. 2016, Act 86, Imd. Eff. Apr. 19, 2016 ;-- Am. 2021, Act 102, Imd. Eff. Nov. 4, 2021 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.427a Imposition of tax on consumer; intent of act.

Sec. 7a.

It is the intent of this act to impose the tax levied under this act upon the consumer of the tobacco products by requiring the consumer to pay the tax at the specified rate.

History: Add. 1997, Act 187, Imd. Eff. Dec. 30, 1997

205.427b Bad debt; deduction; definition.

Sec. 7b.

(1) A licensee may deduct the amount of bad debts from the tax levied under section 7. The amount deducted must be charged off as uncollectible on the books of the licensee. If a person pays all or part of a bad debt with respect to which a licensee claimed a deduction under this section, the licensee is liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall remit these taxes in his or her next payment to the department under section 7.

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

(a) A copy of the original invoice.

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

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

(3) As used in this section, "bad debt" means the taxes attributable to any portion of a debt that is related to a sale of tobacco products subject to tax under section 7 that is not otherwise deductible or excludable, that has become worthless or uncollectible in the time period between the date when taxes accrue to the state for the licensee's preceding tax return and the date when taxes accrue to the state for the present return, and that is eligible to be claimed, or could be eligible to be claimed if the licensee kept accounts on an accrual basis, as a deduction pursuant to section 166 of the internal revenue code of 1986, 26 USC 166. A bad debt does not include any interest on the wholesale price of a tobacco product, uncollectible amounts on property that remains in the possession of the licensee until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, any accounts receivable that have been sold to a third party for collection, and repossessed property.

History: Add. 2002, Act 607, Imd. Eff. Dec. 20, 2002 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.428 Personal liability for payment of tax; penalty; duties of manufacturer's representative; violations as felony; violations as misdemeanor; enforcement; exception; additional violations.

Sec. 8.

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(1) A person, other than a licensee, is personally liable for the tax imposed by this act, plus a penalty of 500% of the amount of that tax, under any of the following circumstances:

(a) The person is in control or in possession of a tobacco product contrary to this act or is in control or in possession of an individual package of cigarettes without a stamp in violation of this act.

(b) The person offers to sell or does sell a tobacco product to another for purposes of resale without being licensed to do so under this act.

(c) The person offers to sell at retail, or does sell at retail, an individual package of cigarettes without a stamp or any tobacco product purchased or acquired from a person that was not licensed under this act as secondary wholesaler, wholesaler, or unclassified acquirer, at the time of purchase or acquisition.

(2) The department may permit a representative of a licensed manufacturer of tobacco products whose duties require travel in this state to transport up to 138,000 cigarettes, of which not more than 36,000 cigarettes may bear no tax indicia or the tax indicia of another state. All 138,000 cigarettes must bear the stamp approved by the department or the tax indicia of another state, if any. The total value of tobacco products, excluding cigarettes, carried by a representative shall not exceed a wholesale value of $5,000.00. A manufacturer shall notify the department of the manufacturer's representatives that it currently employs who carry cigarettes or tobacco products other than cigarettes in performing work duties in this state. The manufacturer shall maintain a record of each transaction by the manufacturer's representative for a period of 4 years immediately following the transaction and shall produce the records upon request of the state treasurer or the state treasurer's authorized agent. Each record must identify the quantity and identity of the tobacco products, detail whether exchanged, received, removed, or otherwise disposed of, and identify the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer involved. The representative of the manufacturer shall provide a copy of the record to the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer at the time of the exchange or disposal. The retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer shall retain the copy of the record in the same place and for the same time period as other records required by this section. A representative shall not exchange, or otherwise dispose of, within this state tobacco products bearing the tax indicia of another state or receive tobacco products bearing the tax indicia of another state from retailers located within this state. A representative who sells, exchanges, or otherwise disposes of cigarettes or tobacco products other than cigarettes that do not bear the stamp or other marking required by the department or sells, exchanges, or otherwise disposes of cigarettes or tobacco products other than cigarettes bearing the tax indicia of another state is guilty of a felony, punishable by a fine of not more than $5,000.00 or imprisonment for not more than 5 years, or both.

(3) A person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price of $250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or more counterfeit cigarette papers, 3,000 or more gray market cigarettes, or 3,000 or more gray market cigarette papers is guilty of a felony, punishable by a fine of not more than $50,000.00 or imprisonment for not more than 5 years, or both.

(4) A person who possesses, acquires, transports, or offers for sale contrary to this act 1,200 or more, but not more than 2,999, cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of $100.00 or more but less than $250.00, or 1,200 or more, but not more than 2,999, counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or

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gray market cigarette papers is guilty of a misdemeanor punishable by a fine of not more than $5,000.00 or imprisonment of not more than 1 year, or both.

(5) A person who violates a provision of this act for which a criminal punishment is not otherwise provided is guilty of a misdemeanor, punishable by a fine of not more than $1,000.00 or 5 times the retail value of the tobacco products involved, whichever is greater, or imprisonment for not more than 1 year, or both. This subsection does not apply to conduct described in subsection (12).

(6) A person who manufactures, possesses, or uses a stamp or manufactures, possesses, or uses a counterfeit stamp or writing or device intended to replicate a stamp without authorization of the department, a licensee who purchases or obtains a stamp from any person other than the department, or who falsifies a manufacturer's label on cigarettes, counterfeit cigarettes, gray market cigarette papers, or counterfeit cigarette papers is guilty of a felony and shall be punished by imprisonment for not less than 1 year or more than 10 years and may be punished by a fine of not more than $50,000.00.

(7) A person who falsely makes, counterfeits, or alters a license, vending machine disc, or marker, or who purchases or receives a false or altered license, vending machine disc, or marker, or who assists in or causes to be made a false or altered license, vending machine disc, or marker, or who possesses a device used to forge, alter, or counterfeit a license, vending machine disc, or marker is guilty of a felony punishable by a fine of not more than $5,000.00 or imprisonment for not more than 5 years, or both. A person who alters or falsifies records or markings required under this act is guilty of a felony punishable by a fine of not more than $5,000.00 or imprisonment for not more than 5 years, or both.

(8) The attorney general has concurrent power with the prosecuting attorneys of this state to enforce this act.

(9) At the request of the department or its duly authorized agent, the state police and all local police authorities shall enforce the provisions of this act.

(10) The department does not have the authority to enforce the provisions of this section regarding gray market cigarette papers or counterfeit cigarette papers.

(11) A person who knowingly possesses, acquires, transports, or offers for sale contrary to this act 600 or more, but not more than 1,199, cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of $50.00 or more but less than $100.00, or 600 or more, but not more than 1,199, counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers is guilty of a misdemeanor punishable by a fine of not more than $1,000.00 or imprisonment of not more than 90 days, or both.

(12) A person shall not possess, acquire, transport, or offer for sale contrary to this act less than 600 cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of less than $50.00, or less than 600 counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers. A person who possesses, acquires, transports, or offers for sale contrary to this act 180 or more, but not more than 599, cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of $25.00 or more but less than $50.00, or 180 or more, but not more than 599, counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than $100.00.

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History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1997, Act 187, Eff. Apr. 15, 1998 ;-- Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004 ;-- Am. 2005, Act 238, Eff. Jan. 1, 2006 ;-- Am. 2008, Act 458, Imd. Eff. Jan. 9, 2009 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.429 Seizure and confiscation of contraband; investigation or search of vehicle; inventory statement of seized property; notice; publication; hearing; disposition of forfeited property; appeal; public sale; proceeds credited to general fund; other penalties not relieved; award and payment to person furnishing information; prohibited conduct by retailer; order.

Sec. 9.

(1) A tobacco product held, owned, possessed, transported, or in control of a person in violation of this act, and a vending machine, vehicle, and other tangible personal property containing a tobacco product in violation of this act and any related books and records are contraband and may be seized and confiscated by the department as provided in this section.

(2) If an authorized inspector of the department or a police officer has reasonable cause to believe and does believe that a tobacco product is being acquired, possessed, transported, kept, sold, or offered for sale in violation of this act for which the penalty is a felony, the inspector or police officer may investigate or search the vehicle of transportation in which the tobacco product is believed to be located. If a tobacco product is found in a vehicle searched under this subsection or in a place of business inspected under this act, the tobacco product, vending machine, vehicle, other than a vehicle owned or operated by a transportation company otherwise transporting tobacco products in compliance with this act, or other tangible personal property containing those tobacco products and any books and records in possession of the person in control or possession of the tobacco product may be seized by the inspector or police officer and are subject to forfeiture as contraband as provided in this section.

(3) As soon as possible, but not more than 5 business days after seizure of any alleged contraband, the person making the seizure shall deliver personally or by registered mail to the last known address of the person from whom the seizure was made, if known, an inventory statement of the property seized. A copy of the inventory statement must also be filed with the state treasurer. The inventory statement must also contain a notice to the effect that unless demand for hearing as provided in this section is made within 10 business days, the designated property is forfeited to the state. If the person from whom the seizure was made is not known, the person making the seizure shall cause a copy of the inventory statement, together with the notice provided for in this subsection, to be published at least 3 times in a newspaper of general circulation in the county where the seizure was made. Within 10 business days after the date of service of the inventory statement, or in the case of publication, within 10 business days after the date of last publication, the person from whom the property was seized or any person claiming an interest in the property may by registered mail, facsimile transmission, or personal service file with the state treasurer a demand for a hearing before the state treasurer or a person designated by the state treasurer for a determination as to whether the property was lawfully subject to seizure and forfeiture. The person shall verify a request for hearing filed by facsimile transmission by also providing a copy of the original request for hearing by registered mail or personal service. The person or persons are entitled to appear before the department, to be represented by counsel, and to present testimony and argument. Upon receipt of a request for hearing, the department shall hold the hearing within 15 business days. The hearing is not a contested case proceeding and is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After the hearing, the department shall render its decision in writing within 10 business days of the hearing and, by order, shall either declare the seized property subject to seizure and forfeiture, or declare the property returnable in whole or in part to the person entitled to possession. If, within 10

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business days after the date of service of the inventory statement, the person from whom the property was seized or any person claiming an interest in the property does not file with the state treasurer a demand for a hearing before the department, the property seized is considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section. If, after a hearing before the state treasurer or person designated by the state treasurer, the department determines that the property is lawfully subject to seizure and forfeiture and the person from whom the property was seized or any persons claiming an interest in the property do not take an appeal to the circuit court of the county in which the seizure was made within the time prescribed in this section, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section.

(4) If a person is aggrieved by the decision of the department, that person may appeal to the circuit court of the county where the seizure was made to obtain a judicial determination of the lawfulness of the seizure and forfeiture. The action must be commenced within 20 days after notice of the department's determination is sent to the person or persons claiming an interest in the seized property. The court shall hear the action and determine the issues of fact and law involved in accordance with rules of practice and procedure as in other in rem proceedings. If a judicial determination of the lawfulness of the seizure and forfeiture cannot be made before deterioration of any of the property seized, the court shall order the destruction or sale of the property with public notice as determined by the court and require the proceeds to be deposited with the court until the lawfulness of the seizure and forfeiture is finally adjudicated.

(5) The department shall destroy all cigarettes forfeited to this state. The department may sell all tobacco products, except cigarettes, and other property forfeited pursuant to this section at public sale. Public notice of the sale must be given at least 5 days before the day of sale. The department may pay an amount not to exceed 25% of the proceeds of the sale to the local governmental unit whose law enforcement agency performed the seizure. The balance of the proceeds derived from the sale by the department must be credited to the general fund of the state.

(6) The seizure and destruction or sale of a tobacco product or other property under this section does not relieve a person from a fine, imprisonment, or other penalty for violation of this act.

(7) A person who is not an employee or officer of this state or a political subdivision of this state who furnishes to the department or to any law enforcement agency original information concerning a violation of this act, which information results in the collection and recovery of any tax or penalty or leads to the forfeiture of any cigarettes, or other property, may be awarded and paid by the state treasurer, compensation of not more than 10% of the net amount received from the sale of any forfeited cigarettes or other property, but not to exceed $5,000.00 which must be paid out of the receipts from the sale of the property. If any amount is issued to the local governmental unit under subsection (5), the amount awarded under this subsection to a person who provides original information that results in a seizure of cigarettes or other property by a local law enforcement agency must be paid from that amount issued under subsection (5). If in the opinion of the attorney general and the director of the department of state police it is considered necessary to preserve the identity of the person furnishing the information, the attorney general and the director of the department of state police shall file with the state treasurer an affidavit setting forth that necessity and a warrant may be issued jointly to the attorney general and the director of the department of state police. Upon payment to the person furnishing that information, the attorney general and the director of the

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department of state police shall file with the state treasurer an affidavit that the money has been by them paid to the person entitled to the money under this section.

(8) If a retailer possesses or sells cigarettes on which the tax imposed under this act has not been paid or accrued to a wholesaler, secondary wholesaler, or unclassified acquirer licensed under this act, the retailer shall be prohibited from purchasing, possessing, or selling any cigarettes or other tobacco products as follows:

(a) For a first violation, for a period of not more than 6 months.

(b) For a second violation within a period of 5 years, for a period of at least 6 months and not more than 36 months.

(c) For a third or subsequent violation within a period of 5 years, for a period of at least 1 year and not more than 5 years.

(9) The prohibition described in subsection (8) is effective upon service by certified mail or personal service on the retailer of notice issued by the department ordering the retailer to cease all sales and purchases of cigarettes and other tobacco products. Upon receipt of this notice, the retailer may return any tobacco products in the possession of the retailer upon which the tax imposed by this act has been paid or accrued to a wholesaler, secondary wholesaler, or unclassified acquirer licensed under this act. The department shall notify all licensed wholesalers, manufacturers, secondary wholesalers, vending machine operators, and unclassified acquirers of any retailer who has been prohibited from purchasing cigarettes or other tobacco products and the duration of the prohibition. A wholesaler, secondary wholesaler, or unclassified acquirer shall not sell cigarettes or other tobacco products to a retailer after receipt of notice from the department that the retailer is prohibited from purchasing tobacco products. Any cigarettes or other tobacco products found on the premises of the retailer during the period of prohibition are considered contraband and subject to seizure under this section, and constitute an additional improper possession under this subsection. The retailer may contest the order prohibiting purchase, possession, or sale of tobacco products in accordance with the appeal procedures and time limits provided in subsection (3) of this section. After completion of the appeals provided or upon expiration of the period to request such appeal, the department shall issue a final order and make service upon the retailer of an order to cease all purchases, possession, and sale of all cigarettes and other tobacco products for a specified period as appropriate. This order does not relieve the retailer from seizure and sale of a tobacco product or other property under this section, or relieve the retailer from a fine, imprisonment, or other penalty for violation of this act.

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History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1995, Act 118, Imd. Eff. June 29, 1995 ;-- Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997 ;-- Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.430 Defenses.

Sec. 10.

The seizure, forfeiture, sale, or destruction of a tobacco product or other property, or an action for recovery of amounts due, does not constitute a defense to the person owning or having control or possession of that property from criminal prosecution for an act or omission made or offense committed under this act or from liability to pay penalties provided by this act.

History: 1993, Act 327, Eff. Mar. 15, 1994

205.431 Sale or solicitation of orders to be shipped, mailed, sent, or brought into state; license required; sales conducted through internet, by telephone, or mail-order transaction; affirmation; purchasers responsible to pay unpaid state taxes on cigars; sign; definitions.

Sec. 11.

(1) A person, not licensed under this act as either a wholesaler or unclassified acquirer, shall not sell or solicit a sale of a tobacco product to be shipped, mailed, or otherwise imported, sent or brought into this state, to a person in this state that is not licensed under this act, unless the tobacco product is to be sold through a wholesaler or unclassified acquirer, licensed under this act.

(2) A person, in this state, that is not licensed under this act, shall not order, purchase, or otherwise engage in a transaction to acquire a tobacco product that is to be shipped, mailed, imported, sent, or brought into this state unless that tobacco product is to be sold through a wholesaler or unclassified acquirer, licensed under this act. A consumer in this state shall not purchase or otherwise acquire a tobacco product through a remote retail sale unless the seller is licensed under this act as an unclassified acquirer. A tobacco product ordered, purchased, or acquired by a person in violation of this subsection is contraband subject to seizure and forfeiture under section 9. A person who violates this subsection is considered to be in control or possession of a tobacco product in violation of this act for purposes of section 8(1), regardless of whether that tobacco product has been sold, consumed, or otherwise disposed of. Any limitation on the tax applicable to cigars under section 7(1)(b) shall not apply, or otherwise be taken into account, for purposes of determining the liability for taxes and penalties under section 8(1) arising from a violation of this subsection.

(3) Except as provided in section 8(2) regarding representatives of a licensed manufacturer, a retailer in this state shall not purchase, possess, acquire for resale at retail, or sell a tobacco product in this state unless that tobacco product was purchased or otherwise acquired directly from a wholesaler, unclassified acquirer, or secondary wholesaler, licensed under this act. A retailer who violates this subsection is considered to be in control or possession of a tobacco product in violation of this act for purposes of section 8(1), regardless of whether that tobacco product has been sold, consumed, or otherwise disposed of. Any limitation on the tax applicable to cigars under section 7(1)(b) shall not apply, or otherwise be taken into account, for purposes of determining the liability for taxes and penalties under section 8(1) arising from a violation of this subsection.

(4) A retailer is considered to have purchased or otherwise acquired a tobacco product in compliance with subsection (3) if all of the following conditions are met:

(a) The retailer obtains a copy of the license of the wholesaler, secondary wholesaler, or unclassified acquirer at the time of purchase or acquisition.

(b) The license described in subdivision (a) was not expired when the tobacco product was purchased or otherwise acquired by the retailer.

(c) The copy of the license is preserved by the retailer in the same manner, for the same period of time, and offered for inspection as required of other statements and records under section 6.

(5) Notwithstanding anything in this act to the contrary, a licensee may provide a copy of its license to a retailer for purposes of this section. A retailer that obtains a copy of the license for a particular licensee under this section is not required to obtain another copy of the license for

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subsequent purchases or acquisitions of tobacco products from that licensee that are made during the active license year and before the expiration of that license.

(6) Subject to subsection (1), all sales conducted through the internet, by telephone, or in a mail-order transaction must not be completed unless, before each delivery of tobacco products is made, whether through the mail, through a transportation company, or through any other delivery system, the seller has obtained from the purchaser an affirmation that includes a copy of a valid government-issued document that confirms the purchaser's name, address, and date of birth showing that the purchaser is at least the legal minimum age to purchase tobacco products; that the tobacco products purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase tobacco products; and a written statement signed by the purchaser that affirms the purchaser's address and that the purchaser is at least the minimum legal age to purchase tobacco products. The statement must also confirm that the purchaser understands that signing another person's name to the affirmation is illegal; that the sale of tobacco products to individuals under the legal minimum purchase age is illegal; and that the purchase of tobacco products by individuals under the legal minimum purchase age is illegal under the laws of the state of Michigan. The seller shall verify the information contained in the affirmation provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy, fax copy, or other image of the valid, government-issued identification stating the date of birth or age of the purchaser.

(7) Subject to subsection (1), all invoices, bills of lading, sales receipts, or other documents related to tobacco product sales conducted through the internet, by telephone, or in a mail-order transaction must contain the current seller's valid Michigan sales tax license number or use tax registration number, business name and address of the seller, and a statement as to whether all sales taxes or use taxes, as applicable, and taxes levied under this act have been paid. All packages of tobacco products shipped from a tobacco product seller to purchasers who reside in Michigan, including consumers in a remote retail sale, must be clearly printed or stamped with the word "TOBACCO PRODUCTS" on the outside of all sides of the package so it is clearly visible to the shipper. If an order is made as a result of advertisement over the internet, the tobacco retailer, and an unclassified acquirer making a remote retail sale, shall request the email address of the purchaser and shall receive payment by credit card or check before completing the sale. This subsection does not apply to sales by wholesalers and unclassified acquirers licensed under this act other than remote retail sales.

(8) The deliverer of the tobacco products shall obtain proof from a valid government-issued document that the person signing for the tobacco products is the purchaser.

(9) A retailer not otherwise licensed or required to be licensed under this act shall post a sign, visible to the public inside the retail establishment that informs purchasers of cigars through catalog sales, telephone or mail orders, or internet sales of their liability for any applicable unpaid state taxes on those cigars and that cigars purchased in violation of this act are contraband.

(10) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations, including logical, arithmetic, or memory functions with or on computer data or a computer program, and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

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(b) "Computer network" means the interconnection of hardwire or wireless communication lines with a computer through remote terminals or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Credit card" means a card or device issued by a person licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, or issued by a depository financial institution as defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a, under a credit card arrangement.

(f) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(g) "Internet" means the connection to the World Wide Web through the use of a computer, a computer network, or a computer system.

(h) "Sale conducted through the internet" means a sale of, a solicitation to sell, a purchase of, or an offer to purchase tobacco products conducted all or in part by accessing an internet website and includes a remote retail sale.

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History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004 ;-- Am. 2012, Act 325, Imd. Eff. Oct. 9, 2012 ;-- Am. 2016, Act 86, Imd. Eff. Apr. 19, 2016 ;-- Am. 2020, Act 326, Eff. Jan. 1, 2022 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022

205.432 Disposition of proceeds from taxes, fees, and penalties; disbursements; use of funds for enforcement and administration of act.

Sec. 12.

(1) The proceeds derived from the payment of taxes, fees, and penalties provided for under this act and the license fees received by the department shall be deposited with the state treasurer and disbursed only as provided in this section. However, before a distribution of funds is made under this section, subject to appropriation, the funds described in this section may be used by the department, the attorney general, and the department of state police for enforcement and administration of this act.

(2) The tax imposed on cigarettes under section 7(1)(a) must be disbursed as follows:

(a) 2.4375% of the proceeds must be credited to the health and safety fund created in the health and safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

(b) 41.6200% of the proceeds must be credited to the state school aid fund established by section 11 of article IX of the state constitution of 1963.

(c) 3.7500% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described in this subdivision that are used for smoking prevention programs shall be used by the department of health and human services to expand the free smokers quit kit program to include the nicotine patch or nicotine gum.

(d) 19.7625% of the proceeds must be disbursed as follows:

(i) For each fiscal year, $3,000,000.00 to the Michigan state capitol historic site fund created in section 7 of the Michigan state capitol historic site act, 2013 PA 240, MCL 4.1947. For each fiscal year, the state treasurer shall adjust the figure described in this subparagraph by an amount determined by the state treasurer at the end of each calendar year to reflect the cumulative annual percentage change in the Consumer Price Index. For each fiscal year, if the cumulative annual percentage change in the Consumer Price Index is negative, then the adjustment for that fiscal year is zero. As used in this subsection, "Consumer Price Index" means the most comprehensive index of consumer prices available for this state from the Bureau of Labor Statistics of the United States Department of Labor. From the funds described in this subparagraph, not later than February 1 of each year, the Michigan state capitol commission created in section 5 of the Michigan state capitol historic site act, 2013 PA 240, MCL 4.1945, shall report to the chairpersons of the house and senate appropriations committees. The report must contain all of the following:

(A) The proposed maintenance plan for the Michigan State Capitol Historical Site for the immediately following fiscal year.

(B) The projected 5-year maintenance plan for the Michigan State Capitol Historical Site for the immediately following 5 fiscal years.

(C) Projected large-scale projects for the Michigan State Capitol Historical Site that exceed $1,000,000.00.

(ii) The remaining proceeds must be credited to the general fund of this state.

(e) 0.5550% of the proceeds must be paid to counties with a 2000 population of more than 2,000,000, to be used only for indigent health care.

(f) 31.8750% of the proceeds must be credited to the Michigan Medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(3) The tax imposed under section 7(1)(b) must be disbursed as follows:

(a) 75.0% of the proceeds must be credited to the Michigan Medicaid benefits trust fund created under section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

(b) 25.0% of the proceeds must be credited to the general fund of this state.

(4) The proceeds of the fees and penalties provided for in this act shall be used for the administration of this act.

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History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997 ;-- Am. 2002, Act 503, Imd. Eff. July 18, 2002 ;-- Am. 2004, Act 164, Imd. Eff. June 24, 2004 ;-- Am. 2012, Act 188, Imd. Eff. June 20, 2012 ;-- Am. 2014, Act 272, Imd. Eff. July 2, 2014 ;-- Am. 2016, Act 309, Imd. Eff. Oct. 6, 2016 ;-- Am. 2018, Act 639, Eff. Mar. 29, 2019 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022
Compiler's Notes: Subsection (10) of Sec. 12, as amended by Act 188 of 2012, was vetoed by the governor on June 20, 2012.Subsection (10) of Sec. 12, as amended by Act 188 of 2012, reads as follows:“(10) For fiscal year 2011-2012 only, from the funds described in subsections (3)(d), (4)(a), (7)(c), and (8)(c), $6,000,000.00 is appropriated to the following departments in the following amounts for enforcement and administration of this act:(a) Department of treasury, $1,500,000.00.(b) Department of attorney general, $500,000.00.(c) Department of state police, $4,000,000.00.”

205.433 Administration of tax; rules; forms; additional taxes; appointment of special investigator.

Sec. 13.

(1) The tax imposed by this act shall be administered by the department pursuant to 1941 PA 122, MCL 205.1 to 205.31, and this act. In case of conflict between 1941 PA 122, MCL 205.1 to 205.31, and this act, the provisions of this act control.

(2) The department may promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) The department shall prescribe forms for use by taxpayers and the manner in which the forms must be filed.

(4) The tax imposed by this act is in addition to all other taxes for which the taxpayer may be liable.

(5) The state treasurer may appoint any department employee as a special investigator, who shall have the power to arrest a person violating this act.

History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1995, Act 131, Imd. Eff. July 10, 1995 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022
Admin Rule: R 205.401 et seq. and R 205.451 et seq. of the Michigan Administrative Code.

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205.434 Requirements or prohibitions imposed by local units of government.

Sec. 14.

Notwithstanding any other provision of law, beginning on the effective date of this act, a city, township, village, county, other local unit of government, or political subdivision of this state shall not impose any new requirement or prohibition pertaining to the sale or licensure of tobacco products for distribution purposes. This section does not invalidate or otherwise restrict a requirement or prohibition described in this section existing on the effective date of this act.

History: 1993, Act 327, Eff. Mar. 15, 1994

205.435 Repeal of MCL 205.501 to 205.522.

Sec. 15.

(1) Act No. 265 of the Public Acts of 1947, being sections 205.501 to 205.522 of the Michigan Compiled Laws, is repealed effective May 1, 1994.

(2) The provisions of Act No. 265 of the Public Acts of 1947, being sections 205.501 to 205.522 of the Michigan Compiled Laws, shall remain in effect for criminal liability and the collection and enforcement of the payment of any tax, fee, penalty, or interest due and payable under that act for any period in which that act was in effect prior to its repeal.

History: 1993, Act 327, Eff. Mar. 15, 1994

205.436 Conditional effective date.

Sec. 16.

This act shall not take effect unless Senate Joint Resolution S is submitted to the voters and the following bills are enacted into law:

(a) House Bill No. 5109.

(b) House Bill No. 5110.

(c) House Bill No. 5116.

(d) House Bill No. 5009.
(e) House Bill No. 5010.
(f) House Bill No. 5118.
(g) House Bill No. 5097.
(h) House Bill No. 5123.
(i) House Bill No. 4279.
(j) House Bill No. 5102.
(k) House Bill No. 5103.
(l) House Bill No. 5106.
(m) House Bill No. 5111.
(n) House Bill No. 5115.
(o) House Bill No. 5112.
(p) House Bill No. 5120.
(q) House Bill No. 5129.
(r) House Bill No. 5224.

History: 1993, Act 327, Eff. Mar. 15, 1994

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