

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

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 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:

(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.

(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.

(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