

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Cigarette Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 440
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
440.100	Amendment
440.110	Amendment
440.115	New Section
440.205	New Section
440.206	New Section
440.215	New Section
440.216	New Section
440.217	New Section
440.218	New Section
- 4) Statutory Authority: Implementing and authorized by the Cigarette Tax Act [35 ILCS 130].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking creates Section 440.206 to provide procedures for Seizure and Forfeiture enacted by Public Act 103-1001, effective August 9, 2024. In updating the rules regarding Seizure and Forfeiture, new sections, 440.205, 440.206, 440.215, 440.216, 440.217, and 440.218, are added to address search and seizure, license actions, violations and penalties, protest procedures, and reasonable cause determinations as authorized by statute.

This rulemaking also amends Sections 440.100 to update the required information to be reported on returns pursuant to Public Act 103-0592, effective June 7, 2024, and the electronic filing mandate enacted by Public Act 104-0006, effective June 16, 2025.

Section 440.115 is created from separating Books and Records from Penalties in Section 440.110.

Sections 440.205 and 440.206 are created to set out rules for search, seizure, and arrest as well as seizure and forfeiture procedures.

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Section 440.215 is created to set out rules for license actions including violations under the Tobacco Products Escrow Enforcement Act of 2003 as provided in Public Act 104-0006.

Sections 440.216, 440.217, and 440.218 are created to provide for violations and penalties, protest procedures, and reasonable cause considerations.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objectives: These rules do not create or enlarge a mandate as described in Section 3(b) of the State Mandates Act.
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

Kimberly Rossini
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 782-7055
REV.GCO@illinois.gov

- 13) Initial Regulatory Flexibility Analysis:

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- A) Description of the type of small business, not for profit corporations or small municipalities subject to the proposed rule: Persons making sales of cigarettes at retail and for resale are affected.
 - B) Description of the proposed reporting, bookkeeping and other procedures required for compliance with the rule: Basic accounting, computer skills, and recordkeeping.
 - C) Description of the types of professional skills necessary for compliance: Basic accounting, computer skills, and recordkeeping.
- 14) Small Business Economic Impact Analysis:
- A) Types of businesses subject to the proposed rule:
 - 42 Wholesale Trade
 - 44-45 Retail Trade
 - 48-49 Transportation and Warehousing
 - 92 Public Administration
 - B) Estimated number of small business subject to the proposed rule: There are 28 Cigarette Distributor licenses, 22 Cigarette Manufacturer licenses, 1 Cigarette Manufacturer representative license, and 14,402 Cigarette and Tobacco Retailers' Licenses. While these are the total number of license types impacted, the Department does not have data to determine whether a licensee meets the definition of small business. The Department also does not have data to determine how many retailers are cigarette only or tobacco products only.
 - C) Categories that the agency reasonably believes the rulemaking will impact, including:
 - ii. regulatory requirements
 - viii. record keeping
 - D) Projected reporting, recordkeeping and other administrative costs for compliance with the proposed rule: No additional costs.

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- E) Type of professional skills necessary for preparation of any report or record required for compliance with the proposed rule or amendment: Basic recordkeeping and reporting.
 - F) Statement of the probable positive or negative economic effect on small business: No effect on small business.
 - G) Description of any less intrusive or costly alternative methods of achieving the purposes of the rule: Not applicable as there is no economic effect on small business.
- 15) Regulatory Agenda on which this rulemaking was summarized: July 2025
- 16) Any other information or justification for the proposed rule or amendment that the agency believes would be helpful to the public regarding the proposed rule or amendment. For example, a discussion or analysis of the benefits of the proposed rule or amendment is projected to have on the Illinois public, consumers, investors or other similar groups: This rule implements the Public Act 103-1001 to permit the Department to seek a waiver and consent to forfeiture of seized products, which will reduce costs for the Department as storage is required to house seized product. This rule also implements Public Act 103-0592, updating the required information for returns, and Public Act 104-0006 mandating e-filing for payment and returns and providing for license actions for failing to file required reports.

The full text of the Proposed Amendments begins on the next page:

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TITLE 86: REVENUE

CHAPTER I: DEPARTMENT OF REVENUE

PART 440

CIGARETTE TAX ACT

Section

440.10	Nature and Rate of Tax
440.20	Tax – How Paid
440.30	Tax - Who Liable For
440.40	Design
440.50	Tax Stamps - When and By Whom Affixed: License or Permit Required
440.60	Tax Stamps – How Affixed
440.70	Tax Stamps – Affixed Out of State
440.75	Cigarette Package Sizes; Sale of Individual or Loose Cigarettes Prohibited; Penalties
440.80	Transporter Permits
440.90	Tax Stamps - Purchase of: Cost: Discount
440.100	Returns <u>and Reports</u> Required: When Filed
440.110	Books and Records; Invoices; Penalties
<u>440.115</u>	<u>Books and Records Penalties</u>
440.120	Unused Stamps: Sale of: Notice to Department
440.130	Mutilated Stamps
440.140	Tax Meters (Repealed)
440.150	Tax Meter Machine Settings (Repealed)
440.160	Vending Machines
440.170	Sales Out of Illinois
440.180	Sales to Governmental Bodies
440.190	Sample Packages of Cigarettes: Stamps or Other Evidence of Tax Payment Affixed
440.200	Credit for Stamps that Are Damaged, Unused, Destroyed or on Packages Returned to the Manufacturer
<u>440.205</u>	<u>Arrest; Search and Seizure Without a Warrant</u>
<u>440.206</u>	<u>Seizure and Forfeiture</u>
440.210	Sale of Forfeited Cigarettes and Vending Machines
<u>440.215</u>	<u>License Actions: Revocations, Cancellations, and Suspensions</u>
<u>440.216</u>	<u>Violations and Penalties</u>
<u>440.217</u>	<u>Protest Procedures for Certain Penalties</u>

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440.218	<u>Reasonable Cause</u>
440.220	Tax-Free Sales of Cigarettes for Use Aboard Ships Operating in Foreign Commerce Outside The Continental Limits of the United States
440.230	Claims for Credit or Refund
440.240	Protest Procedures
440.250	Criminal Investigations

AUTHORITY: Implementing and authorized by the Cigarette Tax Act [35 ILCS 130].

SOURCE: Filed and effective June 17, 1958; amended at 6 Ill. Reg. 2831 and 2834, effective March 3, 1982; codified at 8 Ill. Reg. 17912; amended at 13 Ill. Reg. 10678, effective June 16, 1989; amended at 14 Ill. Reg. 6794, effective April 19, 1990; amended at 15 Ill. Reg. 117, effective December 24, 1990; emergency amendment at 23 Ill. Reg. 9541, effective July 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 14748, effective December 8, 1999; amended at 24 Ill. Reg. 9903, effective June 23, 2000; emergency amendment at 24 Ill. Reg. 10752, effective July 6, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 17793, effective November 28, 2000; amended at 25 Ill. Reg. 933, effective January 8, 2001; emergency amendment at 26 Ill. Reg. 9021, effective June 10, 2002, for a maximum of 150 days; emergency expired November 5, 2002; amended at 27 Ill. Reg. 1618, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 10524, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 3906, effective February 13, 2004; amended at 32 Ill. Reg. 17575, effective October 27, 2008; amended at 39 Ill. Reg. 14719, effective October 22, 2015; amended at 42 Ill. Reg. 23174, effective November 29, 2018; amended at 43 Ill. Reg. 8898, effective July 30, 2019; amended at 44 Ill. Reg. 6061, effective April 3, 2020; amended at 46 Ill. Reg. 6763, effective April 12, 2022; amended at 47 Ill. Reg. 5800, effective April 4, 2023; amended at 50 Ill. Reg. _____, effective _____.

Section 440.100 Returns and Reports Required: When Filed

a) Filing by Non-manufacturers

- 1) Every distributor who is required to procure a license under the Act, but who is not a manufacturer of cigarettes in original packages which are contained in a sealed transparent wrapper, shall, on or before the 15th day of each calendar month, file a return with the Department, showing:

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- A) the quantity of cigarettes manufactured during the preceding calendar month;
 - B) the quantity of cigarettes brought into this State or caused to be brought into this State from outside this State during the preceding calendar month without authorized evidence on the original packages of cigarettes underneath the sealed transparent wrapper that the tax liability imposed by the Act has been assumed by the out-of-State seller of such cigarettes;
 - C) the quantity of cigarettes purchased tax-paid during the preceding calendar month either within or outside this State;
 - D) the quantity of cigarettes sold by manufacturer representatives on behalf of the distributor;
 - E) the quantity of cigarettes sold to manufacturer representatives; and
 - F) the quantity of cigarettes sold or otherwise disposed of during the preceding calendar month.
- 2) The return shall be filed on forms furnished and prescribed by the Department and shall contain such other information the Department may reasonably require. Information that the Department may reasonably require includes information related to the uniform regulation and taxation of cigarettes. All returns and supporting schedules required to be filed and all payments required to be made under Section 9 of the Act shall be by electronic means in the form prescribed by the Department. [35 ILCS 130/9]
- 3) Every secondary distributor who is required to procure a license under the Act shall, on or before the 15th day of each calendar month, file a report with the Department, showing the quantity of cigarettes purchased during the preceding calendar month either within or outside this State, and the quantity of cigarettes sold to retailers or otherwise disposed of during the preceding calendar month. Such

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reports shall be filed electronically in such form prescribed by the Department and shall contain such other information as the Department may reasonably require. Information that the Department may reasonably require includes information related to the uniform regulation and taxation of cigarettes. [35 ILCS 130/9e]

- 4) Computer generated returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered unprocessable and may subject the filer to penalties and interest for failure to file a proper return.

b) Filing by Manufacturers

- 1) Illinois manufacturers of cigarettes in original packages which are contained inside a sealed transparent wrapper shall file a return by the 5th day of each month covering the preceding calendar month. Each return shall show:
- A) the quantity of cigarettes manufactured during the period covered by the return;
 - B) the quantity of cigarettes sold or otherwise disposed of during the period covered by the return; and
 - C) such other information the Department may lawfully require. Information that the Department may lawfully require includes information related to the uniform regulation and taxation of cigarettes. All returns and supporting schedules required to be filed and all payments required to be made under Section 9 of the Act shall be by electronic means in the form prescribed by the Department. [35 ILCS 130/9]
- 2) Each out-of-State manufacturer, who is granted a permit by the Department under Section 4b(a) of the Act, shall file a return and shall disclose such information as the Department may lawfully require. Information the Department may lawfully require includes information related to the uniform regulation and taxation of cigarettes. All returns and supporting schedules required to be filed and all payments

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required to be made under Section 4b(a) of the Act shall be by electronic means in the form prescribed by the Department. [35 ILCS 130/4b(a)] The return shall be filed by the 5th day of the month and shall cover the preceding calendar month.

- 3) *Each out-of-State manufacturer, who is granted a permit by the Department under Section 4b(b) of the Act, shall file a report covering cigarettes shipped or otherwise delivered in Illinois to licensed distributors or distributed to the public for promotional purposes on a form to be prescribed and furnished by the Department and shall disclose such other information as the Department may lawfully require. Information the Department may lawfully require includes information related to the uniform regulation and taxation of cigarettes. All reports and supporting schedules required to be filed under Section 4b(b) of the Act shall be filed electronically in the form prescribed by the Department. [35 ILCS 130/4b(b)] The return shall be filed by the 5th day of the month and shall cover the preceding calendar month.*
- 4) *Every manufacturer with authority to maintain manufacturer representatives as defined by Section 4f of the Act shall, on or before the 15th day of each calendar month, file a report with the Department, showing the quantity of cigarettes purchased from licensed distributors during the preceding calendar month, either within or outside this State, and the quantity of cigarettes sold to retailers or otherwise disposed of during the preceding calendar month. Such reports shall be filed in the form prescribed by the Department and shall contain such other information as the Department may reasonably require. Information that the Department may reasonably require includes information related to the uniform regulation and taxation of cigarettes. The report and supporting schedules shall be filed electronically in the form prescribed by the Department. [35 ILCS 130/9f]*
- 5) *Computer generated returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered unprocessable and may subject the filer to penalties and interest for failure to file a proper return.*

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~~Every distributor who is required to procure a license under the Act, but who is not a manufacturer of cigarettes in original packages that are contained in a sealed transparent wrapper, shall, on or before the 15th day of each calendar month, file a return with the Department, showing:~~

- ~~A) the quantity of cigarettes manufactured during the preceding calendar month;~~
- ~~B) the quantity of cigarettes brought into this State or caused to be brought into this State from outside this State during the preceding calendar month without authorized evidence on the original packages of cigarettes underneath the sealed transparent wrapper that the tax liability imposed by the Act has been assumed by the out-of-state seller of cigarettes;~~
- ~~C) the quantity of cigarettes purchased tax-paid during the preceding calendar month either within or outside this State; and~~
- ~~D) the quantity of cigarettes sold or otherwise disposed of during the preceding calendar month.~~

- ~~2) The return shall be filed on forms furnished and prescribed by the Department and shall contain other information the Department may reasonably require.~~
- ~~3) Computer generated returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered non-processable and may subject the filer to penalties and interest for failure to file a proper return.~~

- ~~b) Illinois manufacturers of cigarettes in original packages that are contained inside a sealed transparent wrapper shall file a return by the 5th day of each month covering the preceding calendar month. Each return shall show the quantity of cigarettes manufactured during the period covered by the return, the quantity of cigarettes sold or otherwise disposed of during the period~~

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~~covered by the return, and other information the Department may lawfully require. Returns shall be filed on forms prescribed and furnished by the Department. Computer generated returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered non-processable and may subject the filer to penalties and interest for failure to file a proper return.~~

- c) ~~Each out-of-state manufacturer, who is granted a permit by the Department under Section 4b of the Act, shall file a return with the Department on a form to be prescribed and furnished by the Department and shall disclose the information as the Department may lawfully require. The return shall be filed by the 5th day of the month and shall cover the preceding calendar month. Computer generated returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered non-processable and may subject the filer to penalties and interest for failure to file a proper form.~~
- d) ~~The returns filed by both distributors required to procure a license under the Act who have 30 or more transactions per month, and by Illinois manufacturers having 30 or more transactions per month, must be accompanied by appropriate computer-generated magnetic media supporting schedule data in the format required by the Department (Section 9 of the Act).—Distributors and manufacturers who voluntarily file returns and schedules electronically are not subject to this requirement.~~

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 440.110 Books and Records; Invoices; Penalties

- a) Distributors. Every distributor of cigarettes, who is required to procure a license under the Act, shall keep within Illinois, at its licensed address, complete and accurate records of cigarettes held, purchased, manufactured, brought in or caused to be brought in from without the State, and sold or otherwise disposed of, and shall preserve and keep within Illinois at its licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a return is required of all cigarettes on hand and of all cigarette revenue stamps, both affixed and unaffixed, and other pertinent papers and documents relating to

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the manufacture, purchase, sale or disposition of cigarettes. [35 ILCS 130/11]

~~Books and Records~~

- 1) ~~Distributors. Every distributor of cigarettes, who is required to procure a license under the Act, shall keep within Illinois, at his or her licensed address, complete and accurate records of cigarettes held, purchased, manufactured, brought in or caused to be brought in from without the State, and sold or otherwise disposed of, and shall preserve and keep within Illinois at his licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a return is required of all cigarettes on hand and of all cigarette revenue stamps, both affixed and unaffixed, and other pertinent papers and documents relating to the manufacture, purchase, sale or disposition of cigarettes. A~~ distributor's records of a particular purchase from a manufacturer or distributor shall include:
 - A) ~~a~~ a copy of the distributor's purchase order, ~~(if any,)~~ to the manufacturer or distributor;
 - B) the manufacturer's or distributor's invoice to the distributor in duplicate (see subsection (b)(~~24~~));
 - C) a bill of lading or waybill pertaining to the shipment covered by the invoice;
 - D) the receiving record showing the date when the cigarettes were received by the distributor; and
 - E) evidence of payment by the distributor to the manufacturer or distributor.
- 2) Every distributor who is required to procure a license under the Act and who purchases cigarettes for shipment into Illinois from a point outside this State shall procure invoices in duplicate covering each shipment, shall make the invoices available for inspection upon

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demand by a duly authorized agent or employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to the Department upon request. [35 ILCS 130/12]

- 3) Every sales invoice issued by a licensed distributor to a retailer in this State shall contain the distributor's cigarette distributor license number unless the distributor has been granted a waiver by the Department. The distributor shall file a written request with the Department, and, if the Department determines that the distributor meets the conditions for a waiver, the Department shall grant the waiver. The Department shall grant a waiver in response to a written request when:
 - A) the distributor sells cigarettes only to licensed retailers that are wholly-owned by the distributor or owned by a wholly-owned subsidiary of the distributor;
 - B) the licensed retailer obtains cigarettes only from the distributor requesting the waiver; and
 - C) the distributor affixes the tax stamps to the original packages of cigarettes sold to the licensed retailer. [35 ILCS 130/11]
- 4) Any licensed distributor that ships or otherwise causes to be delivered unstamped original packages of cigarettes into, within, or from this State shall ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand style of the cigarettes so transported, provided that this subsection (a)(4) shall not be construed as to impose any requirement or liability upon any common or contract carrier. [35 ILCS 130/3]
- 5) When a distributor who is licensed or has a permit under the Cigarette Tax Act sells cigarettes to a federal or foreign government agency or instrumentality, the distributor shall print, stamp or otherwise write substantially the following legend on the original and all copies of the invoice covering the cigarettes: "Illinois cigarette tax paid".

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- 6) When a distributor who is licensed or has a permit under the Cigarette Tax Act sells Illinois tax-stamped or tax-imprinted original packages of cigarettes to any purchaser other than a federal or foreign government agency or instrumentality, the distributor's invoice not only shall state that the cigarette tax has been paid by the distributor, but also shall state the amount of the tax to the purchaser as a separate item from the selling price of the cigarettes.
- 7) When a permit holder or licensee under the Cigarette Use Tax Act, as distinguished from a licensee or permit holder under the Cigarette Tax Act, sells Illinois tax-stamped or tax-imprinted cigarettes to anyone other than a federal or foreign government agency or instrumentality, the distributor's invoice shall state the amount of the Cigarette Use Tax to the purchaser as a separate item from the selling price of the cigarettes. However, when a person sells cigarettes to a federal or foreign government agency or instrumentality, the invoice should omit any reference to the Cigarette Use Tax.
- 8) Each Illinois manufacturer of cigarettes in original packages that are contained inside a sealed transparent wrapper shall keep a copy of each invoice rendered by the manufacturer to any purchaser to whom the manufacturer delivered cigarettes or caused cigarettes to be delivered during the period covered by the manufacturer's return. Copies of invoices must be furnished to the Department upon request.
- 9) Each manufacturer who holds a permit under Section 4b of the Act shall keep a copy of each invoice rendered by the permittee to any purchaser to whom the permittee delivered cigarettes of the type covered by the permit or caused cigarettes of the type covered by the permit to be delivered in Illinois during the period covered by the return. Copies of invoices must be furnished to the Department upon request.

b) Secondary Distributors.

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- 1) Every secondary distributor of cigarettes, who is required to procure a license under the Act shall keep within Illinois, at its licensed address, complete and accurate records of cigarettes held, purchased, brought in from without the State, and sold, or otherwise disposed of, and shall preserve and keep within Illinois at its licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. [35 ILCS 130/11a]
- 2) Every secondary distributor of cigarettes, who is required to procure a license under the Act and who purchases cigarettes for shipment into Illinois from a point outside this State shall procure invoices in duplicate covering each shipment, shall make the invoices available for inspection upon demand by a duly authorized agent or employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to the Department upon request. [35 ILCS 130/12]
- c) Manufacturers with Manufacturer Representatives. Every manufacturer with authority to maintain manufacturer representatives under Section 4f of the Act shall keep within Illinois, at its business address identified under Section 4f of the Act, complete and accurate records of cigarettes purchased, sold, or otherwise disposed of, and shall preserve and keep within Illinois at its business address all invoices, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the manufacturers with authority to maintain manufacturer representatives under Section 4f of the Act and their manufacturer representatives, or inspect any motor vehicle used by a manufacturer representative in the course of business, without a search warrant and may inspect the premises, motor vehicle, and any packages of cigarettes therein contained to determine whether any of the provisions of the Act are being violated. [35 ILCS 130/11b]

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- d) Retailers. Every retailer who is required to procure a license under the Act shall keep within Illinois complete and accurate records of cigarettes purchased, sold, or otherwise disposed of. It shall be the duty of every retail licensee to make sales records, copies of bills of sale, and inventory at the close of each period for which a report is required of all cigarettes on hand available upon reasonable notice for the purpose of investigation and control by the Department.
- 1) The books and records need not be maintained on the licensed premises, but must be maintained in the State of Illinois. However, all original invoices or copies thereof covering purchases of cigarettes must be retained on the licensed premises for a period of 90 days after purchase, unless the Department has granted a waiver in response to a written request in cases in which records are kept at a central business location within the State of Illinois. [35 ILCS 130/11c] Prior to removing the books and records from the licensed premises, the retailer must notify the Department that the books and records will be kept at another location in Illinois and identify the location. Under these circumstances, books and records may be kept at that location in Illinois, but the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers, and documents available within 30 days at the licensed premises or an agreed upon location by the Department for the purpose of inspection and audit as the Department may deem necessary.
- 2) Books and records may be maintained out of State if access is available electronically. However, all original invoices or copies thereof covering purchases of cigarettes must be retained on the licensed premises for a period of 90 days after purchase, unless the Department has granted a waiver in response to a written request in cases in which records that are available electronically are maintained out of State. [35 ILCS 130/11c]
- 3) The Department will grant a written waiver under subsections (d)(1) and (2) when the following requirements are met by the retailer:
- A) The retailer submits a letter to the Department containing:

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- i) the retailer's license number and FEIN;
 - ii) the address or addresses of the licensed premises where records are currently maintained;
 - iii) the address of the central location or out-of-State location where the retailer intends to maintain the records;
 - iv) if the records are maintained out-of-State, an explanation of the process and system that will enable the Department or its duly authorized agents or employees to electronically access the records from the licensed premises on demand; and
 - v) an acknowledgement by the retailer that the Department, upon 30 days written notice, may revoke the waiver of the retailer for one or more licensed premises if the retailer fails to provide electronic access in accordance with the requirements of the written waiver; transfers or sells the licensed premises to another person; or changes the process or system for providing access to the records electronically.
- B) For books and records maintained out of State, the Department is given access electronically to accurate records of cigarettes held, purchased, sold, or otherwise disposed of; invoices; bills of lading; sales records; copies of bills of sale, returns, and other pertinent papers; and documents relating to the purchase, sale, or disposition of cigarettes kept at the licensed premises in the normal course of business at the time of the request; and
- C) For books and records maintained out of State, the Department has tested the process and system from the licensed premises and verified that the Department and its duly authorized agents and employees have access

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electronically to the required records from the licensed premises on demand.

e) General.

- 1) For purposes of this Section, "records" means all data maintained by distributors, secondary distributors, manufacturers with the authority to maintain manufacturer representatives and their manufacturer representatives, and retailers, including data on paper, microfilm, microfiche, or any type of machine sensible data compilation. [35 ILCS 130/11, 11a, 11b and 11c]
- 2) All books and records and other papers and documents that are required by the Act to be kept shall be kept in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. [35 ILCS 130/11, 11a, and 11b]
- 3) At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the distributor, secondary distributor, manufacturer with authority to maintain a manufacturer representative, manufacturer representative's vehicle, or retailer without a search warrant and inspect the premises and the stock or packages of cigarettes and any vending devices in the premises or motor vehicle to determine whether any of the provisions of the Act are being violated. If the agent or employee is denied free access or is hindered or interfered with in making the examination, the license of the distributor, secondary distributor, manufacturer representative, or retailer shall be subject to revocation by the Department. [35 ILCS 130/11, 11a, 11b, and 11c]
- 4) The books, records, papers and documents shall be preserved for a period of at least 3 years after the date of the documents, or the date of the entries appearing in the records, whichever is later, unless the Department, in writing, authorizes their destruction or disposal at an earlier date. [35 ILCS 130/11, 11a, 11b, and 11c]

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~~Secondary Distributors. Every secondary distributor of cigarettes who is required to procure a license under the Act shall keep within Illinois, at his or her licensed address, complete and accurate records of cigarettes held, purchased, brought in from without the State, and sold, or otherwise disposed of, and shall preserve and keep within Illinois at his or her licensed address all invoices, bills of lading, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. [35 ILCS 130/11a]~~

3) ~~Manufacturers with Manufacturer Representatives. Every manufacturer with authority to maintain manufacturer representatives under Section 4f of the Act shall keep within Illinois, at his or her business address identified under Section 4f of the Act, complete and accurate records of cigarettes purchased, sold, or otherwise disposed of, and shall preserve and keep within Illinois at his or her business address all invoices, sales records, copies of bills of sale, inventory at the close of each period for which a report is required of all cigarettes on hand, and other pertinent papers and documents relating to the purchase, sale, or disposition of cigarettes. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the manufacturers with authority to maintain manufacturer representatives under Section 4f of the Act and their manufacturer representatives, or inspect any motor vehicle used by a manufacturer representative in the course of business, without a search warrant and may inspect the premises, motor vehicle, and any packages of cigarettes therein contained to determine whether any of the provisions of the Act are being violated. [35 ILCS 130/11b]~~

4) ~~Retailers. Every retailer who is required to procure a license under the Act shall keep within Illinois complete and accurate records of cigarettes purchased, sold, or otherwise disposed of. It shall be the duty of every retail licensee to make sales records, copies of bills of sale, and inventory at the close of each period for which a report is required of all cigarettes on hand available upon reasonable notice for the purpose of investigation and control by the Department.~~

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- A) ~~The books and records need not be maintained on the licensed premises, but must be maintained in the State of Illinois. However, all original invoices or copies thereof covering purchases of cigarettes must be retained on the licensed premises for a period of 90 days after purchase, unless the Department has granted a waiver in response to a written request in cases in which records are kept at a central business location within the State of Illinois. Prior to removing the books and records from the licensed premises, the retailer must notify the Department that the books and records will be kept at another location in Illinois and identify the location. Under these circumstances, books and records may be kept at that location in Illinois, but the taxpayer must, within a reasonable time after notification by the Department, make all pertinent books, records, papers and documents available at some point within Illinois for the purpose of inspection and audit as the Department may deem necessary.~~
- B) ~~Books and records may be maintained out of state if access is available electronically. However, all original invoices or copies thereof covering purchases of cigarettes must be retained on the licensed premises for a period of 90 days after purchase, unless the Department has granted a waiver in response to a written request when records that are available electronically are maintained out of state. [35 ILCS 130/11c]~~
- C) The Department will grant a written waiver under subsections (a)(4)(A) and (B) when the retailer submits a letter to the Department containing:
- 1) ~~the retailer's license number and FEIN;~~
 - 2) ~~the address or addresses of the licensed premises where records are currently maintained;~~

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- 3) ~~the address of the central location or out-of-state location where the retailer intends to maintain the records;~~
- 4) ~~if the records are maintained out-of-state, an explanation of the process and system that will enable the Department or its duly authorized agents or employees to electronically access the records from the licensed premises on demand; and~~
- 5) ~~an acknowledgement by the retailer that the Department, upon 30 days written notice, may revoke the waiver of the retailer for one or more licensed premises if the retailer:~~
 - A) ~~fails to provide access in accordance with the requirements of the written waiver;~~
 - B) ~~transfers or sells the licensed premises to another person; or~~
 - C) ~~changes the process or system for providing access to the records electronically.~~
- 5) ~~For purposes of this Section, "records" means all data maintained by distributors, secondary distributors, manufacturers with manufacturer representatives, and retailers, including data on paper, microfilm, microfiche or any type of machine sensible data compilation. [35 ILCS 130/11, 11a, 11b and 11c]~~
- 6) ~~All books and records and other papers and documents which are required by the Act to be kept shall be kept in the English language, and shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. At all times during the usual business hours of the day, any duly authorized agent or employee of the Department may enter any place of business of the distributor, secondary distributor, manufacturer with authority to maintain a manufacturer~~

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~~representative, manufacturer representative's vehicle, or retailer without a search warrant and inspect the premises and the stock or packages of cigarettes and any vending devices in the premises to determine whether any of the provisions of the Act are being violated. If the agent or employee is denied free access or is hindered or interfered with in making the examination, the license of the distributor, secondary distributor, manufacturer representative or retailer shall be subject to revocation by the Department. [35 ILCS 130/11, 11a, 11b and 11c]~~

- 7) ~~The books, records, papers and documents shall be preserved for a period of at least 3 years after the date of the documents, or the date of the entries appearing in the records, whichever is later, unless the Department, in writing, authorizes their destruction or disposal at an earlier date. [35 ILCS 130/11, 11a, 11b and 11c]~~

b) Invoices

- 1) Every distributor who is required to procure a license under the Act and who purchases cigarettes for shipment into Illinois from a point outside this State shall procure invoices in duplicate covering each shipment, shall make the invoices available for inspection upon demand by a duly authorized agent or employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to the Department upon request.
- 2) ~~Every sales invoice issued by a licensed distributor to a retailer in this State shall contain the distributor's cigarette distributor license number unless the distributor has been granted a waiver by the Department. The distributor shall file a written request with the Department, and, if the Department determines that the distributor meets the conditions for a waiver, the Department will grant the waiver. The Department will grant a waiver in response to a written request when:~~
- A) ~~the distributor sells cigarettes only to licensed retailers that are wholly-owned by the distributor or owned by a wholly-owned subsidiary of the distributor;~~

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- B) ~~the licensed retailer obtains cigarettes only from the distributor requesting the waiver; and~~
- G) ~~the distributor affixes the tax stamps to the original packages of cigarettes sold to the licensed retailer. [35 ILCS 130/11]~~
- 3) ~~Any licensed distributor that ships or otherwise causes to be delivered unstamped original packages of cigarettes into, within, or from this State shall ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the shipment identifies the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand style of the cigarettes so transported, provided that this subsection (b)(3) shall not be construed as to impose any requirement or liability upon any common or contract carrier. [35 ILCS 130/3]~~
- 4) Each Illinois manufacturer of cigarettes in original packages that are contained inside a sealed transparent wrapper shall keep a copy of each invoice rendered by the manufacturer to any purchaser to whom the manufacturer delivered cigarettes (or caused cigarettes to be delivered) during the period covered by the manufacturer's return. Copies of invoices must be furnished to the Department upon request.
- 5) Each manufacturer who holds a permit under Section 4b of the Act shall keep a copy of each invoice rendered by the permittee to any purchaser to whom the permittee delivered cigarettes of the type covered by the permit (or caused cigarettes of the type covered by the permit to be delivered) in Illinois during the period covered by the return. Copies of invoices must be furnished to the Department upon request.
- 6) When a distributor who is licensed or has a permit under the Cigarette Tax Act sells cigarettes to a federal or foreign government agency or instrumentality under circumstances causing Illinois cigarette tax liability to be incurred (see Section 440.180), the distributor shall print, stamp or otherwise write substantially the following legend on

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~~the original and all copies of the invoice covering the cigarettes:
"Illinois cigarette tax paid".~~

- 7) ~~When a distributor who is licensed or has a permit under the Cigarette Tax Act sells Illinois tax-stamped or tax-imprinted original packages of cigarettes to any purchaser other than a federal or foreign government agency or instrumentality, the distributor's invoice not only shall state that the cigarette tax has been paid by the distributor, but also shall state the amount of the tax to the purchaser as a separate item from the selling price of the cigarettes.~~
- 8) ~~When a permit holder or licensee under the Cigarette Use Tax Act (as distinguished from a licensee or permit holder under the Cigarette Tax Act) sells Illinois tax-stamped or tax-imprinted cigarettes to anyone other than a federal or foreign government agency or instrumentality, the distributor's invoice shall state the amount of the cigarette use tax to the purchaser as a separate item from the selling price of the cigarettes. (See Section 440.50.) However, when a person sells cigarettes to a federal or foreign government agency or instrumentality, the invoice should omit any reference to the cigarette use tax.~~

c) Penalties

- 1) ~~Any person required by the Act to keep records of any kind whatsoever, who shall fail to keep the records so required or who shall falsify those records, shall be guilty of a Class 4 felony. If a person fails to produce the records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the records so required. A person who is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in this subsection (c). [35 ILCS 130/14].~~
- 2) ~~Any person who shall fail to safely maintain and preserve the records required by Sections 11, 11a, 11b, and 11c of the Act for a period of 3 years, as required in the Act, in such manner as to insure permanency and accessibility for inspection by the Department, shall be guilty of a business offense and may be fined up to \$5,000. [35 ILCS 130/15]~~

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(See subsection (a) for the requirements to maintain books and records.)

- 3) ~~The Department may, after notice and hearing as provided for by the Act, revoke, cancel or suspend the license of any distributor, secondary distributor, or retailer for any noncompliance with this subsection (c). No license so revoked shall be reissued to any such distributor, secondary distributor, or retailer within a period of 6 months after the date of the final determination of the revocation. Any distributor, secondary distributor, or retailer aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice in writing to the distributor, secondary distributor, or retailer requesting the hearing of the time and place fixed for the hearing. If a distributor, secondary distributor, or retailer protests the revocation, cancellation or suspension of a license and requests a hearing, the notice also shall contain a statement of the charges preferred against the distributor, secondary distributor or retailer. The Department shall hold the hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to the distributor, secondary distributor, or retailer. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given. [35 ILCS 130/6]~~
- 4) ~~Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c of the Act, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or failure to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c. [35 ILCS 130/15a] (See subsections (a) and (b) for the requirements to maintain books and records.)~~

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- A) ~~All books and records and other papers and documents that are required to be kept by the Act shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. (See subsection (a)(6).) A person that prohibits a duly authorized agent of the Department from inspecting books and records during usual business hours of the day has failed to produce books and records to the Department for inspection as required by this Section. The Department may issue a notice of penalty to that person pursuant to this subsection (c)(4). The Department is not required to provide the retailer with a written document request pursuant to this subsection (c)(4)(A) or provide additional time for the retailer to allow the inspection of the premises and the books and records at the location.~~
- B) ~~Except for retailers that are permitted to maintain books and records at another location pursuant to subsection (a)(4), distributors, secondary distributors, manufacturers with manufacturer representatives, and retailers must have a person at their place of business at all times during the usual business hours of the day who is authorized to produce books and records for inspection by the Department. It is presumed that a person working at a place of business has authority to permit the Department to inspect the books and records at the business location. If a retail establishment has only one employee working at the time of the request for the books and records who has no ownership interest in the establishment and is not authorized to produce books and records, the employee is required to advise the Department he or she does not have authority to provide books and records for inspection. The Department will not issue a notice of penalty to a retailer for failure to produce books and records if a person who is authorized to produce the books and records can be contacted by the employee and arrives at the place of business within 2 hours and produces the books and records. The Department may extend the period either on verbal or written request for good cause shown or on its own motion.~~

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~~EXAMPLE 1: An authorized agent of the Department attempts to inspect the books and records of a cigarette retailer. The person at the store states the books and records are at the store but refuses to provide access to the books and records because the owner of the store told him not to let anyone have access to the records. The person states the owner is unavailable and cannot be contacted. The Department issues a notice of penalty.~~

~~EXAMPLE 2: An authorized agent of the Department attempts to inspect the books and records of a cigarette retailer. The person at the store states the books and records are at the store but refuses to provide access to the books and records because the owner of the store told him not to let anyone have access to the records. The person states he can call a person responsible for making the records available to the agent. The employee calls the person and the person arrives at the store in less than 2 hours and makes the books and records available to the agent. The Department will not issue a notice of penalty.~~

~~EXAMPLE 3: An authorized agent of the Department enters a retailer's place of business and requests to see the books and records. The person at the store states the books and records are maintained at another business location in Illinois. The agent cannot issue a notice of penalty unless the retailer failed to notify the Department that the books and records are located at another location pursuant to subsection (a)(4). However, the authorized agent of the Department does have authority to inspect the premises pursuant to subsection (a)(6).~~

- C) ~~If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the books and records so required. A person who is unable to rebut this presumption is subject to the penalty provided in this~~

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~~subsection (c)(4). Except as otherwise provided by subsection (c)(4)(A), if a request for the production of books and records has been made and not honored, prior to issuing a notice of penalty for a failure to maintain books and records or a failure to produce books and records, the Department must provide the taxpayer with a document request in writing. The written document request shall contain:~~

- ~~i) the name of the person receiving the request;~~
- ~~ii) the name of the business;~~
- ~~iii) the date of the original request or requests;~~
- ~~iv) the books and records requested;~~
- ~~v) the books and records that the person failed to produce;~~
- ~~vi) the number of days the person has to produce the books and records; and~~
- ~~vii) the name of the Department agent or employee and his or her contact information.~~

- ~~D) The Department agent or employee shall sign and date the written document request and personally provide or mail a copy of the written document request to the business at its last known address. The person shall have 30 days from the date of the written document request to produce the books and records the person has failed to produce. The Department may extend the period either on written request for good cause shown or on its own motion. If the person fails to produce the books and records within the time allotted, the Department may issue a notice of penalty pursuant to this subsection (c)(4) to the business at its last known address.~~

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~~EXAMPLE: An authorized agent of the Department enters a convenience store and requests to see all the invoices for cigarettes purchased by the store in the last 60 days and all cash register receipts for sales made in the last 60 days. The person at the store produces the cash register receipts but states that they have no invoices for cigarettes purchased in the last 60 days. The agent completes a written document request, provides a copy to the person, and provides the person 30 days to produce the invoices. The agent returns 30 days later and requests the invoices. The person at the store cannot produce the invoices. The Department will issue a notice of penalty to the business at its last known address.~~

- ~~E) Any person receiving a notice of penalty may, within 20 days after the date on the notice, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to that person. If the request is made during an audit, the Department shall postpone the hearing until completion of the audit or inspection. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.~~
- ~~F) The Department cannot impose more than one penalty for failure to produce books and records for a calendar month.~~

~~EXAMPLE 1: An authorized agent of the Department inspects a cigarette retailer and requests the records for the first week in April. The retailer does not produce the records. The agent subsequently requests the records for the remaining 3 weeks in April. The retailer does not produce the records. The agent can assess only one penalty for the month of April.~~

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~~EXAMPLE 2: An authorized agent of the Department inspects a cigarette retailer and requests all purchase invoices for cigarettes for March. The invoices are not provided by the retailer and the Department issues a notice of penalty. The agent returns in May and ask to see all the cigarette sales receipts for March. The retailer fails to produce the sales receipts for March. The Department cannot issue a penalty for failure of the retailer to provide sales receipts for March because the agent has previously issued a notice of penalty for failure to produce the invoices for March.~~

- G) ~~A records request can cover multiple periods. The Department is authorized to issue a separate penalty for each period; e.g., for a taxpayer that files returns monthly, the period is one month.~~

~~EXAMPLE: An authorized agent of the Department inspects a cigarette retailer and requests the books and records for the months of January through July. The retailer cannot produce the books and records for any of the months. The agent fills out a written document request, provides a copy of the document request to the person, and provides the person 30 business days to produce the invoices. The agent returns 30 business days later and requests the invoices. The person at the store cannot produce the invoices. The Department will issue a notice of penalty in the amount of \$1,000 for the month of January and \$3,000 for each of the months February through July, for a total penalty of \$19,000.~~

(Source: Amended at 50 Ill. Reg. _____, effective _____)

Section 440.115 Books and Records Penalties

- a) ~~*Any person required by the Act to keep records of any kind whatsoever, who shall fail to keep the records so required or who shall falsify such records, shall be guilty of a Class 4 felony. If a person fails to produce the records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the records so required. A person*~~

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who is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in this subsection (a). [35 ILCS 130/14].

- b) *Any person who shall fail to safely maintain and preserve the records required by Sections 11, 11a, 11b, and 11c of the Act for a period of 3 years, as required in the Act, in such manner as to ensure permanency and accessibility for inspection by the Department, shall be guilty of a business offense and may be fined up to \$5,000. [35 ILCS 130/15] See Section 440.110.*
- c) *Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c of the Act, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or failure to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Sections 11, 11a, 11b, and 11c. [35 ILCS 130/15a] See Section 440.110.*
 - 1) *All books and records and other papers and documents that are required to be kept by the Act shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. A person that prohibits a duly authorized agent of the Department from inspecting books and records during usual business hours of the day has failed to produce books and records to the Department for inspection as required by this Section. The Department may issue a notice of penalty to that person pursuant to this subsection (c). The Department is not required to provide the retailer with a written document request pursuant to this subsection (c)(1) or provide additional time for the retailer to allow the inspection of the premises and the books and records at the location.*
 - 2) *Except for retailers that are permitted to maintain books and records at another location pursuant to Section 440.110(d), distributors, secondary distributors, manufacturers with manufacturer representatives, and retailers must have a person at their place of*

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business at all times during the usual business hours of the day who is authorized to produce books and records for inspection by the Department. It is presumed that a person working at a place of business has authority to permit the Department to inspect the books and records at the business location. If a retail establishment has only one employee working at the time of the request for the books and records who has no ownership interest in the establishment and is not authorized to produce books and records, the employee is required to advise the Department they do not have authority to provide books and records for inspection. The Department will not issue a notice of penalty to a retailer for failure to produce books and records if a person who is authorized to produce the books and records can be contacted by the employee and arrives at the place of business within 2 hours and produces the books and records. The Department may extend the period either on verbal or written request for good cause shown.

EXAMPLE 1: An authorized agent of the Department attempts to inspect the books and records of a cigarette retailer. The person at the store states the books and records are at the store but refuses to provide access to the books and records because the owner of the store told the employee not to let anyone have access to the records. The person states the owner is unavailable and cannot be contacted. The Department will issue a notice of penalty.

EXAMPLE 2: An authorized agent of the Department attempts to inspect the books and records of a cigarette retailer. The person at the store states the books and records are at the store but refuses to provide access to the books and records because the owner of the store told the employee not to let anyone have access to the records. The person offers to call a person responsible for making the records available to the agent. The employee calls the person, and the person arrives at the store in less than 2 hours and makes the books and records available to the agent. The Department will not issue a notice of penalty.

EXAMPLE 3: An authorized agent of the Department enters a retailer's place of business and requests to see the books and records. The

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person at the store states the books and records are maintained at another business location in Illinois. The agent cannot issue a notice of penalty unless the retailer failed to notify the Department that the books and records are located at another location pursuant to Section 440.110(d). However, the authorized agent of the Department does have authority to inspect the premises pursuant to subsection Section 440.110(e)(2) and (3).

- 3) If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep the books and records so required. A person who is unable to rebut this presumption is subject to the penalty provided in this subsection (c). Except as otherwise provided by subsection (c)(1), if a request for the production of books and records has been made and not honored, prior to issuing a notice of penalty for a failure to maintain books and records or a failure to produce books and records, the Department must provide the taxpayer with a document request in writing. The written document request shall contain:
 - A) the name of the person receiving the request;
 - B) the name of the business;
 - C) the date of the original request or requests;
 - D) the books and records requested;
 - E) the books and records that the person failed to produce;
 - F) the number of days the person has to produce the books and records; and
 - G) the name of the Department agent or employee and their contact information.
- 4) The Department agent or employee shall sign and date the written document request and personally provide or mail a copy of the

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written document request to the business at its last known address. The person shall have 30 days from the date of the written document request to produce the books and records the person has failed to produce. The Department may extend the period either on written request for good cause shown or on its own motion. If the person fails to produce the books and records within the time allotted, the Department may issue a notice of penalty pursuant to this subsection (c) to the business at its last known address.

EXAMPLE: An authorized agent of the Department enters a convenience store and requests to see all the invoices for cigarettes purchased by the store in the last 60 days and all cash register receipts for sales made in the last 60 days. The person at the store produces the cash register receipts but states that they have no invoices for cigarettes purchased in the last 60 days. The agent completes a written document request, provides a copy to the person, and provides the person 30 days to produce the invoices. The agent returns 30 days later and requests the invoices. The person at the store cannot produce the invoices. The Department will issue a notice of penalty to the business at its last known address.

- 5) Any person receiving a notice of penalty may, within 20 days after the date on the notice, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to that person. If the request is made during an audit, the Department shall postpone the hearing until completion of the audit or inspection. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.
- 6) The Department cannot impose more than one penalty for failure to produce books and records for a calendar month.

EXAMPLE 1: An authorized agent of the Department inspects a cigarette retailer and requests the records for the first week in April.

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The retailer does not produce the records. The agent subsequently requests the records for the remaining 3 weeks in April. The retailer does not produce the records. The agent can assess only one penalty for the month of April.

EXAMPLE 2: An authorized agent of the Department inspects a cigarette retailer and requests all purchase invoices for cigarettes for March. The invoices are not provided by the retailer and the Department issues a notice of penalty. The agent returns in May and asks to see all the cigarette sales receipts for March. The retailer fails to produce the sales receipts for March. The Department cannot issue a penalty for failure of the retailer to provide sales receipts for March because the agent has previously issued a notice of penalty for failure to produce the invoices for March.

- 7) A records request can cover multiple periods. The Department is authorized to issue a separate penalty for each period. For example, for a taxpayer that files a return monthly, the period is one month.

EXAMPLE: An authorized agent of the Department inspects a cigarette retailer and requests the books and records for the months of January through July. The retailer cannot produce the books and records for any of the months. The agent fills out a written document request, provides a copy of the document request to the person, and provides the person 30 business days to produce the invoices. The agent returns 30 business days later and requests the invoices. The person at the store cannot produce the invoices. The Department will issue a notice of penalty in the amount of \$1,000 for the month of January and \$3,000 for each of the months February through July, for a total penalty of \$19,000.

- d) The Department may, after notice and hearing as provided for by the Act, revoke, cancel or suspend the license of any distributor, secondary distributor, or retailer for any noncompliance with this Section.
- e) Any distributor, secondary distributor, or retailer aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. Upon receiving a request for a

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hearing, the Department shall give notice in writing to the distributor, secondary distributor, or retailer requesting the hearing stating the time and place fixed for the hearing and containing a statement of the charges preferred against the distributor, secondary distributor, or retailer. The Department shall hold the hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to the distributor, secondary distributor, or retailer.

- f) In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.
- g) No license so revoked shall be reissued to any such distributor, secondary distributor, or retailer within a period of 6 months after the date of the final determination of the revocation. [35 ILCS 130/6]

(Source: Added at 50 Ill. Reg. _____, effective _____)

Section 440.205 Arrest; Search and Seizure Without a Warrant

- a) Any duly authorized employee of the Department may:
 - 1) arrest without warrant any person committing in the presence of the employee a violation of any of the provisions of the Act, and
 - 2) without a search warrant inspect all cigarettes located in any place of business and seize any original packages of contraband cigarettes and any vending device in which such packages may be found.
- b) Any contraband cigarettes or vending devices so seized shall be subject to confiscation and forfeiture as provided in Sections 440.206 and 440.210. [35 ILCS 130/18]

(Source: Added at 50 Ill. Reg. _____, effective _____)

Section 440.206 Seizure and Forfeiture

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- a) After seizing any original packages of cigarettes or cigarette vending devices, as provided in Section 440.205, the Department shall hold a hearing and shall determine whether the seized original packages of cigarettes, at the time of their seizure, were contraband cigarettes, or whether the seized cigarette vending devices, at the time of their seizure, contained original packages of contraband cigarettes. The Department shall give not less than 7 days' notice of the time and place of such hearing to the owner of such property if the owner is known, and also to the person in whose possession the property so taken was found, if such person is known and if such person in possession is not the owner of said property. If neither the owner nor the person in possession of such property is known, the Department shall cause publication of the time and place of such hearing to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where such hearing is to be held.
- b) If, as a result of a hearing, the Department shall determine that the original packages of cigarettes seized were at the time of seizure contraband cigarettes, or that any cigarette vending device at the time of its seizure contained original packages of contraband cigarettes, the Department shall enter an order declaring such original packages of cigarettes or such cigarette vending devices confiscated and forfeited to the State, and to be held by the Department for disposal by it as provided in Section 21 of the Act.
- c) The Department is not required to hold a hearing if a waiver and consent to forfeiture has been executed by the owner of the property, if the owner is known, and by the person in whose possession the property so taken was found, if that person is known and if that person is not the owner of the property. Upon receipt of a properly executed waiver and consent to forfeiture as provided in this subsection (c), the Department shall enter an order declaring such original packages of cigarettes or such cigarette vending devices confiscated and forfeited to the State, and to be held by the Department for disposal by it as provided in Section 21 of the Act. [35 ILCS 130/18a]
 - 1) The waiver and consent to forfeiture is limited to declaring the contraband items, such as cigarettes or little cigars, confiscated and forfeited to the State of Illinois for disposal as provided by Section 21 of the Act.

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- 2) The waiver and consent to forfeiture does not preclude the taxpayer from requesting a hearing on the tax, penalties, and interest imposed by the Department.
- 3) The waiver and consent to forfeiture may not be introduced by the Department as evidence in any proceeding relating to the contraband items found in possession of the taxpayer.
- d) The Department shall give notice of such order to the owner of such property if the owner is known, and also to the person in whose possession the property so taken was found, if such person is known and if the person in possession is not the owner of said property. If neither the owner nor the person in possession of such property is known, the Department shall cause publication of the time and place of such hearing to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where such hearing was held. [35 ILCS 130/18a]

(Source: Added at 50 Ill. Reg. _____, effective _____)

Section 440.215 License Actions: Revocations, Cancellations, and Suspensions

- a) The Department may, after notice and hearing as provided for by the Act revoke, cancel or suspend the license of any distributor, secondary distributor, or retailer for the violation of any provision of the Act; for noncompliance with this Section; for noncompliance with any Section of this Part 440; or because the licensee is determined to be ineligible for a distributor's license, secondary distributor's license, or retailer's license for any one or more of the reasons provided for in Sections 4, 4c, or 4g of the Act.
- b) No such license shall be revoked, cancelled, or suspended, except after a hearing by the Department with notice to the distributor, secondary distributor, or retailer, providing a reasonable opportunity to appear and defend.
- c) Distributors.

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- 1) The Department may revoke, cancel or suspend the license of any distributor for a violation of Section 30 of the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167/30]. [35 ILCS 130/6]
- 2) Upon notification by the Attorney General, the Department may revoke a distributor's license for failure to submit information as required by Section 25(a) or (d) of the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003. [30 ILCS 167/30(c-5)]
- d) Secondary Distributors. The Department may revoke, cancel, or suspend, the license of any secondary distributor for a violation of Section 15(e) of the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167/15(e)]. [35 ILCS 130/6]
- e) Retailers. Violations of Minimum-Age Tobacco Laws
 - 1) If the retailer has a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 3 days the license of that retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act, as provided in Section 2(a) of that Act [720 ILCS 675]. For the purposes of this Section, any violation of Section 2(a) of the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act occurring at the retailer's licensed location, during a 24-month period, shall be counted as a violation against the retailer.
 - 2) If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend the license of that retailer for violations of the Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act, as provided in Section 2(a-5), as follows:
 - A) 3 days for a second violation;

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- B) 7 days for a third violation; and
- C) 30 days for a fourth or subsequent violation.
- 3) A training program that facilitates compliance with minimum-age tobacco laws must include at least the following elements:
 - A) it must explain that only individuals displaying valid identification demonstrating that they are 21 years of age or older shall be eligible to purchase cigarettes or tobacco products; and
 - B) it must explain where in the establishment, at the time of purchase, a clerk can check identification for a date of birth.
- 4) The training may be conducted electronically. Each retailer that has a training program shall require each employee who completes the training program to sign a form attesting that the employee has received and completed tobacco training. The form shall be kept in the employee's file and may be used to provide proof of training. [35 ILCS 130/6]
- f) Any distributor, secondary distributor, or retailer aggrieved by any decision of the Department under this Section may, within 20 days after notice of the decision, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice in writing to the distributor, secondary distributor, or retailer requesting the hearing stating the time and place fixed for the hearing and containing a statement of the charges preferred against the distributor, secondary distributor, or retailer. The Department shall hold the hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to the distributor, secondary distributor, or retailer.
- g) In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.

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- h) No license so revoked shall be reissued to any such distributor, secondary distributor, or retailer within a period of 6 months after the date of the final determination of the revocation. [35 ILCS 130/6]

(Source: Added at 50 Ill. Reg. _____, effective _____)

Section 440.216 Violations and Penalties

- a) With the exception of licensed distributors and transporters, anyone possessing or having possessed 10 to 100 packages of contraband cigarettes contained in original packages is liable to pay to the Department, for a deposit into the Tax Compliance and Administration Fund, a penalty of \$15 for each package of contraband cigarettes, unless reasonable cause can be established by the person upon whom the penalty is to be imposed. The provisions of the Uniform Penalty and Interest Act do not apply to this subsection (a). [35 ILCS 130/18c] For purposes of this Section, "contraband cigarettes" means unstamped original packages of cigarettes or original packages of cigarettes that bear a tax stamp of another state or taxing jurisdiction.
- b) With the exception of licensed distributors and transporters, any person possessing or having possessed more than 100 packages of contraband cigarettes contained in original packages is liable to pay, to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$25 for each package of contraband cigarettes in excess of 100 packages, unless reasonable cause can be established by the person upon whom the penalty is to be imposed. This penalty is in addition to the taxes imposed by the Act. The provisions of the Uniform Penalty and Interest Act do not apply to this subsection (b). [35 ILCS 130/18b]
- c) The sale of individual or loose cigarettes is prohibited. Any person who violates this subsection (c) is liable to pay to the Department for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first violation and \$3,000 for any subsequent violation. Any person who violates this subsection (c) shall be guilty of a Class 4 felony. [35 ILCS 130/18d]
- d) Any person shall be guilty of a Class 2 felony who for the purpose of evading the tax imposed by the Act:

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- 1) falsely or fraudulently makes, forges, alters, or counterfeits any stamp;
 - 2) causes or procures to be falsely or fraudulently made, forged, altered, or counterfeited any such stamp;
 - 3) knowingly and wilfully utters, publishes, passes, or tenders as genuine any such false, altered, forged, or counterfeit stamp;
 - 4) falsely or fraudulently makes, forges, alters, or counterfeits any tax imprint on an original package of cigarettes inside a sealed transparent wrapper;
 - 5) causes or procures falsely or fraudulently to be made, forged, altered, or counterfeited any such tax imprint; or
 - 6) knowingly and wilfully utters, publishes, passes, or tenders as genuine any false, altered, forged, or counterfeited tax imprint. [35 ILCS 130/22]
- e) Any person including every distributor, secondary distributor, retailer, manufacturer with authority to maintain manufacturer representatives, and their manufacturer representatives shall be deemed guilty of a Class 2 felony who shall:
- 1) knowingly and wilfully sell or offer for sale any original package having affixed to such original package any fraudulent, spurious, imitation, or counterfeit stamp, or stamp which has been previously affixed, or affixes a stamp which has previously been affixed to an original package; or
 - 2) knowingly and wilfully sell or offer for sale any original package having imprinted on such original package underneath the sealed transparent wrapper any fraudulent, spurious, imitation, or counterfeit tax imprint. [35 ILCS 130/23]
- f) Sale or Possession of Packages of Contraband Cigarettes.

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- 1) With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, any person who has in their possession or sells:
 - A) 100 or less original packages of contraband cigarettes is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense occurring within 12 months of a prior offense;
 - B) 101 to 250 original packages of contraband cigarettes is guilty of Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense;
 - C) 251 to 1000 original packages of contraband cigarettes is guilty of a Class 4 felony; or
 - D) 1001 or more original packages of contraband cigarettes is guilty of a Class 3 felony. [35 ILCS 130/24(a)-(d)]
- 2) Any licensed distributor, licensed secondary distributor, or licensed transporter who has in their possession or sells:
 - A) 100 or less original packages of contraband cigarettes is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense occurring within 12 months of a prior offense; or
 - B) 101 or more original packages of contraband cigarettes is guilty of a Class 4 felony. [35 ILCS 130/24(e) and (f)]
- 3) Notwithstanding subsections (f)(2)(A) and (B),
 - A) licensed distributors and transporters may possess unstamped packages of cigarettes;
 - B) licensed distributors may possess cigarettes that bear a tax stamp of another state or taxing jurisdiction;

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- C) a licensed distributor or licensed secondary distributor may possess contraband cigarettes returned to the distributor or secondary distributor by a retailer if:
 - i) the distributor or licensed secondary distributor immediately conducts an inventory of the cigarettes being returned;
 - ii) the distributor or licensed distributor and the retailer returning the contraband cigarettes sign the inventory;
 - iii) the distributor or licensed secondary distributor provides a copy of the signed inventory to the retailer; and
 - iv) the distributor or licensed secondary distributor retains the inventory in its books and records and promptly notifies the Department. [35 ILCS 130/24(g)]
- 4) Retailers.
 - A) Any retailer who knowingly possesses packages of cigarettes with a counterfeit stamp with intent to sell is guilty of a Class 2 felony.
 - B) Any retailer who knowingly possesses unstamped packages of cigarettes with intent to sell is guilty of a Class 4 felony.
 - C) Notwithstanding subsections (f)(1)(A)-(D), a retailer unknowingly possessing contraband cigarettes obtained from a licensed distributor or licensed secondary distributor or knowingly possessing contraband cigarettes obtained from a licensed distributor or secondary distributor is not subject to penalties under this Section if the retailer, within 48 hours after discovering that the cigarette are contraband cigarettes, excluding Saturdays, Sundays, and holidays:

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- i) notifies the Department and the licensed distributor or licensed secondary distributor from whom the cigarettes were obtained, orally and in writing, that the retailer possesses contraband cigarettes obtained from a licensed distributor or licensed secondary distributor;
- ii) places the contraband cigarettes in one or more containers and seals those containers; and
- iii) places on the containers the following or similar language: "Contraband Cigarettes. Not For Sale."
- D) All contraband cigarettes in the possession of a retailer remain subject to forfeiture under the provisions of the Act. [35 ILCS 130/24(h)]
- g) Any person, or any officer, agent or employee of a person, required by the Act to make, file, render, sign or verify any report or return, who makes any false or fraudulent report or return or files any false or fraudulent report or return, or who shall fail to make such report or return or files such report or return when due, shall be guilty of a Class 4 felony. [35 ILCS 130/25]
- h) Any person who acts as a distributor, secondary distributor, retailer, or manufacturer representative without having a license, as required by the Act, shall be guilty of a Class 4 felony. [35 ILCS 130/26]

(Source: Added at 50 Ill. Reg. _____, effective _____)

Section 440.217 Protest Procedures for Certain Penalties

Except as otherwise provided in this Part, any person aggrieved by any decision of the Department under this Part may, within 60 days after notice of the decision, protest in writing and request a hearing. Upon receiving a timely, written request for a hearing, the Department shall provide written notice of the date, time, and place of the hearing to the person requesting the hearing at least 20 days prior to the hearing date, shall hold a hearing in conformity with the provisions of this Part, and then issue its final administrative decision in the matter to that person. In the absence of a protest and request for a hearing

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within 60 days, the Department's decision shall become final without any further determination being made or notice given.

(Source: Added at 50 Ill. Reg. _____, effective _____)

Section 440.218 Reasonable Cause

- a) The penalties imposed under the Sections 18b and 18c of the Act shall not apply if the person shows that the possession of unstamped original packages of cigarettes or original packages of cigarettes that bear a tax stamp of another state or taxing jurisdiction at the time of inspection or seizure was due to reasonable cause. Reasonable cause is determined in each situation in accordance with this Section.
- b) The determination of whether a person acted with reasonable cause shall be made on a case-by-case basis considering all pertinent facts and circumstances. The most important factor to be considered in determining to abate a penalty will be the extent to which the person made a good faith effort to determine the existence of any contraband cigarettes in its possession and to timely report such contraband cigarettes to the Department.
- c) A person will be considered to have made a good faith effort to determine the existence of any contraband cigarettes if the person exercised ordinary business care and prudence in so doing. A determination of whether a person exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the person's experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that a person exercised ordinary business care and prudence, nor does reliance on incorrect facts.
- d) A person's history of compliance is also a factor to be considered in determining whether the taxpayer acted in good faith. An isolated incident of contraband cigarettes being found in a person's inventory generally will not indicate a lack of good faith.

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- e) Examples of Reasonable Cause. The following is a non-exclusive list of situations in which reasonable cause may exist for purposes of the abatement of penalties:
- 1) Reasonable cause for abatement of penalty will exist if a liability results from amendments made by the Department to regulations or formal administrative policies or positions after the discovery and seizure of contraband cigarettes.
 - 2) Reasonable cause for abatement may also be based on the death, incapacity or serious illness of the person or a death or serious illness in the person's immediate family that causes them to be away from the premises for an extended period of time. In the case of a corporation, estate, trust, etc., the death, incapacity, or serious illness of an individual having sole authority to inspect inventory or a member of that individual's immediate family, may be reasonable cause for abatement.
 - 3) An unavoidable absence of a person due to circumstances unforeseeable by a reasonable person may also constitute reasonable cause for purposes of abatement of the penalty. An unavoidable absence does not include a planned absence such as a vacation. In the case of a corporation, estate, trust, etc., the absence of an individual having sole authority to inspect and approve inventory may be reasonable cause for purposes of abatement.
 - 4) An Illinois appellate court decision, a U.S. appellate court decision, or an appellate court decision from another state (provided that the appellate court case in the other state is based upon substantially similar statutory or regulatory law) that supports the person's position will ordinarily provide a basis for a reasonable cause determination.
 - 5) The Department gave erroneous information or delayed a process under its control. In making the determination of whether the taxpayer had reasonable cause for purposes of abatement, the following factors are relevant:

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- A) Did the taxpayer timely inspect the incoming inventory of cigarettes?
- B) Was the information requested by the taxpayer easily available in instructions or bulletins?
- C) Did the taxpayer rely on the advice of the Department?
- D) Did a Department employee who was acting in an official capacity and was authorized to provide assistance provide the advice?
- E) Was the taxpayer's reliance upon the advice reasonable?
- 6) Employee fraud not reasonably within the knowledge of the taxpayer.
- f) Relevant Factors Used by the Department in Determining the Existence of Reasonable Cause.
 - 1) Did the taxpayer have sufficient procedures to review inventory and to timely report any contraband cigarettes?
 - 2) Does the taxpayer's reason address the penalty assessed?
 - 3) Does the length of time between the reason cited and the actual violation support abatement? If the taxpayer cites a specific event or set of events (e.g., illness, unexpected absence, or natural disaster) or set of events that led to the imposition of the penalty, are those events directly related to the incident under review?
 - 4) Could the event cited have been reasonably anticipated? Was the event one that should have been anticipated (e.g., a vacation or scheduled absence) or was it unexpected, unavoidable, or otherwise unplanned (e.g., an emergency or disaster)?
 - 5) Were ordinary business care and prudence exercised? In the absence of new or unusual circumstances, possession penalties for contraband cigarettes are common knowledge or are readily available

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to most taxpayers. If the taxpayer did all that could be reasonably expected of them and still possessed contraband cigarettes, reasonable cause may be present.

(Source: Added at 50 Ill. Reg. _____, effective _____)