

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Cigarette Use Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 450
- 3)

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
450.40	Amendment
450.50	Amendment
450.105	New Section
450.106	New Section
450.115	New Section
450.116	New Section
450.117	New Section
450.118	New Section
- 4) Statutory Authority: Implementing and authorized by the Cigarette Use Tax Act [35 ILCS 135].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking creates Section 450.106 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 450.105, 450.106, 450.115, 450.116, 450.117, and 450.118 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 Section 450.40 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.

Sections 450.105 and 450.106 are created to set out rules for search, seizure, and arrest as well as seizure and forfeiture procedures.

Section 450.50 is amended to add statutory language and reorganize for readability.

Section 450.115 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.

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Sections 450.116, 450.117, and 450.118 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:
 - A) Types of small businesses, small municipalities and not for profit corporations affected: Persons making sales of cigarettes at retail and for resale are affected.

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- B) Reporting, bookkeeping or other procedures required for compliance: Basic accounting, computer skills, and recordkeeping.
 - C) 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 49 Cigarette Use Distributor licenses. While this is the total number of licensees impacted, the Department does not have data to determine whether a licensee meets the definition of small business.
 - 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.
 - 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.

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- 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 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 450

CIGARETTE USE TAX ACT

Section

450.10	Nature and Rate of Tax
450.20	Tax Stamps – Affixed Out of State
450.30	Licenses and Permits – Bonds
450.40	Reports and Returns
450.50	Books and Records; Invoices; Penalties
450.60	Unused Stamps – Sale of – Notice to Department – Mutilated Stamps
450.70	Cigarettes Used Outside Illinois
450.80	Purchase of Cigarettes by Governmental Bodies for Use
450.90	Credit for Stamps that Are Damaged, Unused, Destroyed or on Packages Returned to the Manufacturer
450.100	Sample Packages of Cigarettes--Stamps or Other Evidence of Tax Collection Affixed
450.105	Arrest; Search and Seizure Without a Warrant
450.106	Seizure and Forfeiture
450.110	Forfeited Cigarettes and Vending Machines
450.115	License Actions: Revocations, Cancellations, and Suspensions
450.116	Violations and Penalties
450.117	Protest Procedures for Certain Penalties
450.118	Reasonable Cause
450.120	Claims for Credit or Refund
450.130	Protest Procedures
450.140	Criminal Investigations

AUTHORITY: Implementing and authorized by the Cigarette Use Tax Act [35 ILCS 135].

SOURCE: Filed and effective June 17, 1958; codified at 8 Ill. Reg. 13838; amended at 13 Ill. Reg. 10687, effective June 16, 1989; amended at 14 Ill. Reg. 6804, effective April 19, 1990; amended at 15 Ill. Reg. 122, effective December 24, 1990; amended by emergency rulemaking at 23 Ill. Reg. 9546, effective July 29, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 14753, effective December 8, 1999; amended at 24 Ill. Reg. 9909, effective June 23, 2000; emergency amendment at 24 Ill. Reg. 10759, effective July 6, 2000,

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for a maximum of 150 days; amended at 24 Ill. Reg. 17800, effective November 28, 2000; amended at 25 Ill. Reg. 937, effective January 8, 2001; emergency amendment at 26 Ill. Reg. 9027, effective June 10, 2002, for a maximum of 150 days; emergency expired November 5, 2002; amended at 27 Ill. Reg. 1647, effective January 15, 2003; emergency amendment at 27 Ill. Reg. 10529, effective July 1, 2003, for a maximum of 150 days; emergency expired November 27, 2003; amended at 28 Ill. Reg. 3911, effective February 13, 2004; amended at 32 Ill. Reg. 17580, effective October 27, 2008; amended at 42 Ill. Reg. 23186, effective November 29, 2018; amended at 43 Ill. Reg. 8915, effective July 30, 2019; amended at 44 Ill. Reg. 6069, effective April 3, 2020; amended at 46 Ill. Reg. 6768, effective April 12, 2022; amended at 47 Ill. Reg. 5806, effective April 4, 2023; amended at 50 Ill. Reg. _____, effective _____.

Section 450.40 Reports and Returns

- a) When cigarettes are acquired for use in this State by a person (including a distributor), who did not pay the cigarette use tax to a distributor, the person, within 30 days after acquiring the cigarettes, shall file with the Department a return declaring the possession of the cigarettes and shall transmit with the return to the Department the tax imposed by the Act. All returns and supporting schedules required to be filed and all payments required to be made under Section 12 of the Act shall be by electronic means in the form prescribed by the Department. [35 ILCS 135/12]~~When cigarettes are acquired for use in this State by a person (including a distributor as well as any other person), who did not pay the cigarette use tax to a distributor, the person, within 30 days after acquiring the cigarettes, shall file a return with the Department and shall transmit with the return to the Department the tax imposed by the Act. Computer generated returns or returns 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) Every distributor, who is required or authorized to collect the tax 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 such 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. All returns and supporting

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~~schedules required to be filed under Section 11 of the Act shall be filed electronically in the form prescribed by the Department. [35 ILCS 135/11]Every distributor, who is required or authorized to collect tax 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 the information the Department may reasonably require. Computer generated returns and schedules or returns and schedules 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) *~~Every distributor who is a manufacturer of cigarettes in original packages which are contained inside a sealed transparent wrapper, and who is required or authorized to collect tax under the Act, shall file a return by the 5th day of each month covering the preceding calendar month. Each return shall be accompanied by the appropriate remittance for tax as provided in Section 3 and Section 7 of the Act. Each return shall disclose such information as 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 11 of the Act shall be by electronic means in the form prescribed by the Department. [35 ILCS 135/11]Every distributor who is a manufacturer of cigarettes in original packages contained inside a sealed transparent wrapper, and who is required or authorized to collect tax under the Act, shall file a return by the 5th day of each month covering the preceding calendar month. Each return shall be accompanied by the appropriate remittance for tax as provided in Sections 3 and 7 of the Act. Each return shall disclose the information the Department may lawfully require. Computer generated returns and schedules or returns and schedules filed on forms that have not been approved by the Department are considered to be non-processable and may subject the filer to penalties and interest for failure to file a proper return.~~*
- d) *~~No distributor shall be required to return information to the extent to which the reporting of such information would be a duplication of the distributor's reporting of information in any return the distributor is required to file with the Department under the Cigarette Tax Act. [35 ILCS 135/11]No distributor shall be required to return information to the extent to which the reporting of~~*

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~~that information would be a duplication of the distributor's reporting of information in any return he or she is required to file with the Department under the Cigarette Tax Act. Returns shall be filed on forms prescribed 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.~~

- e) ~~*Every secondary distributor who is required or authorized 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 and outside this State, and the quantity of cigarettes sold to Illinois retailers or otherwise disposed of during the preceding calendar month. Such reports shall be filed electronically in such form prescribed by the Department and shall contain such 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 135/11a]*~~
~~The returns filed by both distributors required or authorized to collect tax 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 11 of the Act) Distributors and manufacturers who voluntarily file returns and schedules electronically are not subject to this requirement.~~
- f) ~~*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.*~~
- g) *A taxpayer who has an annual tax liability of \$20,000 or more shall make all payments of that tax to the Department by electronic funds transfer. Before August 1 of each year, the Department shall notify all taxpayers required to make payments by electronic funds transfer. [20 ILCS 2505/2505-2102502/2505-200];*

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

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Section 450.50 Books and Records; Invoices; Penalties

a) Books and Records

- 1) ~~Distributors and Persons that Have Not Paid the Tax Due Under the Act. Every distributor required or authorized to collect taxes imposed by the Act and every person using, in this State, cigarettes purchased on or after the effective date of the Act without cigarette tax stamps affixed to the original packages and without authorized tax imprints placed underneath the sealed transparent wrapper of the original packages, shall keep the records, receipts, invoices, and other pertinent books, documents, memoranda and papers as the Department shall require, in a form as the Department shall require. The books, records, papers, memoranda, and documents of a distributor pertaining to business done by the distributor at or from a licensed place of business, or at or from a place of business for which the distributor holds a permit issued by the Department under Section 7 of the Act, shall be kept by the distributor at the place of business.~~ [35 ILCS 135/15] Every distributor required or authorized to collect taxes imposed by the Cigarette Use Tax Act and every person using, in this State, cigarettes purchased on or after the effective date of this Act without Illinois cigarette tax stamps affixed to the original packages and without authorized tax imprints placed underneath the sealed transparent wrapper of the original packages, shall keep the records, receipts, invoices and other pertinent books, documents, memoranda and papers as the Department shall require, in a form as the Department shall require. The books, records, papers, memoranda and documents of a distributor pertaining to business done by him or her at or from a licensed place of business, or at or from a place of business for which he or she holds a permit issued by the Department, shall be kept by the distributor at the place of ~~business~~. A distributor's records of a particular purchase from a manufacturer or other distributor shall, at a minimum, include:
 - A) a copy of the distributor's purchase order, ~~(if any,)~~ to the manufacturer or other distributor;

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- B) the manufacturer's or other distributor's invoice to the distributor in duplicate (see subsection (b));
 - C) bill of lading or waybill pertaining to the shipment covered by the invoice;
 - D) receiving record ~~showing (the receiving record should show~~ the date when the cigarettes were received by the distributor);
 - E) evidence of payment by the other distributor to the manufacturer; and
 - F) other records as the Department may reasonably require.
- 2) *Secondary Distributors. Every secondary distributor of cigarettes who is required to procure, or is allowed to procure, a license under ~~the~~^{the} Act shall keep, at ~~its~~^{this 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 ~~its~~^{this 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 135/15a]*
- 3) *For purposes of ~~this Section~~^{this Section}, "records" means all data maintained by the secondary distributors, including data on paper, microfilm, microfiche or any type of machine sensible data compilation. ~~(See [35 ILCS 135/15 and 15a].)~~*
- 4) *All books, records, papers, memoranda, and documents that are required to be kept by the Act, shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees.*~~All books, records, papers, memoranda and documents that are required to be kept under the Act shall be kept in the English language and shall, at all times during business hours of the day, be~~

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~~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 or the secondary distributor, without a search warrant, and may inspect the premises and the stock or packages of cigarettes ~~in those premises~~in those premises to determine whether any of the provisions of ~~the~~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 secondary distributor at the premises shall be subject to revocation by the Department. [35 ILCS 135/15 and 15a]

- 5) ~~The books, records, papers, memoranda and documents that are required to be kept 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 135/15 and 15a]~~The books, records, papers, memoranda and documents that are required to be kept 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, unless the Department, in writing, authorizes their destruction or disposal at an earlier date. (See 35 ILCS 135/15 and 15a.)

- 6) It is not the purpose of this subsection (a) to require distributors and secondary distributors to keep duplicate sets of books and records. Consequently, to the extent to which a distributor is required by the Cigarette Tax Act and by the Cigarette Use Tax Act to keep the same books and records, the distributor's compliance with the requirement under the Cigarette Tax Act shall be deemed to be a compliance with the same requirement under the Cigarette Use Tax Act.

b) Invoices

- 1) Every person who purchases cigarettes for shipment into Illinois from a point outside this State, and who is required to file a return or report with the Department with respect to cigarettes, shall procure invoices covering each shipment and shall furnish one copy of each invoice to

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~~the Department upon request. [35 ILCS 135/17] Every person who purchases cigarettes for shipment into Illinois from a point outside this State, and who is required to file a return with the Department with respect to the cigarettes, shall procure invoices covering each shipment and shall furnish one copy of each invoice to the Department upon request.~~

- 2) 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 must be furnished to the Department upon request.
- 3) Each manufacturer who holds a permit under Section 7 of the Cigarette Use Tax 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 must be furnished to the Department upon request. Subsections (a)(1) through (a)(3) shall not apply to a transaction in which the same requirement applies by virtue of the provisions of 86 Ill. Adm. Code 440.110 (Cigarette Tax Act rules).
- 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 Section~~ this Section shall not be construed as to impose any requirement or liability upon any common or contract carrier. [35 ILCS 135/3]*
- 5) 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

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other than a federal or foreign government agency or instrumentality, 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.

c) Penalties

- 1) *Any person required by ~~the~~~~the~~ Act to maintain or 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~~~~the~~ Act and is subject to the penalties provided in ~~this~~~~this~~ Section. ~~This subsection (c)(1)~~~~This subsection (c)(1)~~ shall not apply if the violation in a particular case also constitutes a criminal violation of the Cigarette Tax Act. [35 ILCS 135/22]*
- 2) *Any person who shall fail to safely preserve the records required by Sections 15 and 15a of ~~the~~~~the~~ Act for the period of 3 years, as required in those Sections, 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. ~~This subsection (c)(2)~~~~This subsection (c)(2)~~ shall not apply if the violation in a particular case also constitutes a criminal violation of the Cigarette Tax Act. [35 ILCS 135/23]*
- 3) *The Department may, after notice and hearing as provided for by the Act, revoke, cancel or suspend the license of any distributor or secondary distributor for any noncompliance with this Section. Any distributor or secondary distributor 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 or secondary distributor requesting the hearing stating the time and*

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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 or secondary distributor. 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. 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 135/6]The Department may, after notice and hearing as provided for by the Act, revoke, cancel or suspend the license of any distributor or secondary distributor for any noncompliance with this Section. No license so revoked shall be reissued to any such distributor or secondary distributor within a period of 6 months after the date of the final determination of the revocation. (See 35 ILCS 135/6.) Any distributor or secondary distributor 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 or secondary distributor requesting the hearing of the time and place fixed for the hearing. If a distributor or secondary distributor 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 or secondary distributor. 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 or secondary distributor. 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.

- 4) *Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Sections 15 and 15a 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*

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records for inspection, as required by Sections 15 and 15a, 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 15 and 15a. [35 ILCS 135/23a] The provisions of the Cigarette Tax Act Regulations, 86 Ill. Adm. Code 440.115110(e) ~~(Cigarette Tax Act Regulations)~~ that are not inconsistent with the Cigarette Use Tax Act shall apply, as far as practicable, to the subject matter of this Part to the same extent as if those provisions were included in this Part.

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

Section 450.105 Arrest; Search and Seizure Without a Warrant

- a) *Any duly authorized employee of the Department may*
 - 1) *arrest without warrant any person committing in his presence a violation of any of the provisions of the Act, and*
 - 2) *without a search warrant 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 Section 450.106. [35 ILCS 135/24]*

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

Section 450.106 Seizure and Forfeiture

- a) *After seizing any original packages of cigarettes, or cigarette vending devices, as provided in Section 450.105, the Department shall hold a hearing and shall determine whether such original packages of cigarettes, at the time of their seizure by the Department, were contraband cigarettes or whether such 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*

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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 27 of the Act.
- c) The Department is not required to hold such 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 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 27 of the Act. [35 ILCS 135/25]
 - 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 27 of the Act.
 - 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.

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- 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 135/25]*

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

Section 450.115 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 or secondary distributor: for the violation of any provision of the Act; for noncompliance with this Section; for noncompliance with any Section of this Part 450; or because the licensee is determined to be ineligible for a distributor's license or secondary distributor's license for any one or more of the reasons provided for in Sections 4, 4b, or 7a of the Act. [35 ILCS 135/6]*
- b) *No such license shall be revoked, cancelled, or suspended, except after a hearing by the Department with notice to the distributor or secondary distributor providing a reasonable opportunity to appear and defend.*
- c) Distributors.
- 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].*
- 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)]*

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- 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)].
- e) Any distributor or secondary distributor 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 or secondary distributor requesting the hearing stating the time and place fixed for the hearing and containing a statement of the charges preferred against the distributor or secondary distributor. 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 or secondary distributor.
- 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 or secondary distributor within a period of 6 months after the date of the final determination of the revocation. [35 ILCS 135/6]

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

Section 450.116 Violations and Penalties

- a) With the exception of licensed distributors and transporters, anyone possessing or having possessed not less than 10 and not more than 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 \$20 for each package of contraband cigarettes, unless reasonable cause can be established by the person upon whom the penalty is to be imposed. Any person who purchases and possesses a total of 9 or fewer original packages of unstamped cigarettes per month is exempt from the penalties of this Section. The provisions of the Uniform Penalty and Interest Act do not apply to this subsection (a). [35 ILCS

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135/25b] 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. The provisions of the Uniform Penalty and Interest Act do not apply to this subsection (b). [35 ILCS 135/25a]
- 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. This subsection shall not apply if the violation in a particular case also constitutes a violation of the Cigarette Tax Act. [35 ILCS 135/25c]
- d) Any person shall be guilty of a Class 2 felony who for the purpose of evading the tax imposed by the Act:
 - 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;

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- 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 135/28]
- e) Any person including every distributor or secondary distributor 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.
 - 3) This subsection (e) shall not apply if the violation in a particular case also constitutes a criminal violation of the Cigarette Tax Act. [35 ILCS 135/29]
- f) Sale or Possession of Packages of Contraband Cigarettes.
 - 1) With the exception of licensed distributors, licensed secondary distributors, or licensed transporters, any person who has in their possession or sells:
 - A) 10 to 100 original packages of contraband cigarettes is guilty of a Class A misdemeanor for the first offense and a Class 4 felony for each subsequent offense occurring within 12 months of a prior offense;

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- B) 101 to 250 original packages of contraband cigarettes is guilty of Class A misdemeanor for the 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 135/30(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 the 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]
- 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;
 - 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;

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- 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 135/30(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. [35 ILCS 135/30(h)]
- 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 licensed 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:
 - 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

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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 135/30(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 file such report or return when due, shall be guilty of a Class 4 felony. [35 ILCS 135/31]

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

Section 450.117 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 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 450.118 Reasonable Cause

a) The penalties imposed under the Sections 25a and 25b 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.

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- 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.
- 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

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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:
 - 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.

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- 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 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 _____)