

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Tobacco Products Tax Act of 1995
- 2) Code Citation: 86 Ill. Adm. Code 660
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
660.5	Amendment
660.10	Amendment
660.15	Amendment
660.16	Amendment
660.17	New Section
660.20	Amendment
660.24	Amendment
660.25	Amendment
660.30	Amendment
660.45	Amendment
660.50	Amendment
660.51	New Section
660.60	New Section
660.65	New Section
660.70	New Section
- 4) Statutory Authority: Implementing the Tobacco Products Tax Act of 1995 [35 ILCS 143/Art. 10] and authorized by Section 2505-795 of the Civil Administrative Code of Illinois (Department of Revenue Law) [20 ILCS 2505].
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking creates Section 660.65 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 660.51, 660.60, 660.65, and 660.70 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 660.20 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 104-0006, effective June 16, 2025.

Section 660.5 is amended to update the tax rate for all tobacco products at 45% pursuant to Public Act 104-0006.

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Sections 660.10 and 660.15 are also amended to include the definition of prior continuous compliance taxpayer, nicotine, and tobacco products, and to reflect the new bonding requirements for distributors enacted by Public Acts 103-1001, 103-1055, and 104-0006.

Section 660.15 also sets forth the certification requirement for distributors.

Section 660.16 is amended to update the licensing fee for retailers pursuant to Public Act 104-0006.

Section 660.17 is created to address the addition of nicotine products to the definition of tobacco products.

Section 660.20 is updated to expand the required information for returns under tobacco uniformity and with the updated tax rate.

Sections 660.24 and 660.25 update the books and records requirements for distributors and retailers.

Section 660.30 is amended to update exemptions for sales of tobacco products to Native Americans consistent with tobacco uniformity.

Sections 660.45 and 660.50 are updated to list all license actions and associated penalties.

Sections 660.51, 660.60, 660.65, and 660.70 are created to provide rules for protest procedures, arrest procedures, seizure and forfeiture procedures, and sale of forfeited items.

- 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

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- 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) Description of the type of small business, not for profit corporations or small municipalities subject to the proposed rule: Persons making sales of tobacco products 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:

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44-45 Retail Trade
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- B) Estimated number of small business subject to the proposed rule: There are 28 Cigarette Distributor licenses for little cigars in packages of 20 or 25, 49 Cigarette Use Distributor license for little cigars in packages of 20 or 25, 607 Tobacco Distributor licenses, 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: This rule implements Public Act 103-0592, which updated the required information reasonably required for tobacco products returns to align with the tobacco uniformity standards. There may have been some upfront costs associated with tobacco uniformity, but implementation took effect February 2025 and are not a result of this rulemaking.
- 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: Any economic impact is a result of the Public Acts this rulemaking is implementing. One positive economic effect is the elimination of the bonding requirement for tobacco distributors for first applications and licensees with annual liability below \$50,000. It is possible that tobacco retailers may lose customers and revenue based on the increased tax on

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tobacco products enacted by Public Act 104-0006; however, these rules are simply implementing the Public Act and do not expand any requirements.

- G) Description of any less intrusive or costly alternative methods of achieving the purposes of the rule: Not applicable as any economic effect on small business is a result of the Public Acts this rulemaking is implementing, and not a result of the rulemaking itself.
- 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. Public Act 104-0006 mandates e-filing for payment and returns, provides for license actions for failing to file required reports, and increases and equalizes the tobacco products tax to 45% across all product types, including nicotine products not derived from tobacco.

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 660

TOBACCO PRODUCTS TAX ACT OF 1995

Section

660.5	Nature and Rate of Tobacco Products Tax
660.10	General Definitions
660.15	Distributor Licenses
660.16	Retailer Licenses
660.17	Nicotine Products
660.18	Stamping Distributors; Purchasing Tax Stamps; Affixing Tax Stamps to Packages of Little Cigars
660.19	Electronic Cigarettes
660.20	Returns
660.24	Books and Records; Invoices – Retailers
660.25	Books and Records; Invoices - Distributors
660.26	Invoices Relating to Packages of Little Cigars
660.27	Manufacturers – Sale of Little Cigars
660.28	Retailers – Purchase and Possession of Tobacco Products
660.29	Wholesalers – Possession of Little Cigars
660.30	Exempt Sales
660.35	Claims for Credit
660.40	Credit for Stamps that Are Damaged, Unused, Destroyed or Affixed to Packages of Little Cigars Returned to the Manufacturer
660.45	License Actions: Revocations, Cancellations and Suspensions
660.50	Penalties, Interest, and Procedures
660.51	Protest Procedures for Certain Penalties
660.55	Incorporation by Reference
660.60	Arrest; Search and Seizure Without a Warrant
660.65	Seizure and Forfeiture
660.70	Sale of Forfeited Tobacco Products

AUTHORITY: Implementing the Tobacco Products Tax Act of 1995 [35 ILCS 143/Art. 10] and authorized by Section 2505-795 of the Civil Administrative Code of Illinois [20 ILCS 2505].

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SOURCE: Adopted at 20 Ill. Reg. 10174, effective July 16, 1996; amended at 26 Ill. Reg. 13310, effective August 23, 2002; amended at 34 Ill. Reg. 12972, effective August 19, 2010; amended at 40 Ill. Reg. 10954, effective July 29, 2016; amended at 43 Ill. Reg. 8923, effective July 30, 2019; amended at 44 Ill. Reg. 6079, effective April 3, 2020; amended at 46 Ill. Reg. 6603, effective April 5, 2022; amended at 47 Ill. Reg. 1488, effective January 17, 2023; amended at 50 Ill. Reg. _____, effective _____.

Section 660.5 Nature and Rate of Tobacco Products Tax

The Tobacco Products Tax Act of 1995 imposes a tax on any person in business as a distributor of tobacco products. The tax is based on the wholesale price of tobacco products sold or otherwise disposed of to distributors located in Illinois, except moist snuff sold or otherwise disposed of on or after January 1, 2013 **through June 30, 2025**, and little cigars sold or otherwise disposed of on or after July 1, 2013. Beginning January 1, 2013, **and through June 30, 2025**, under the Act, moist snuff is taxed by the ounce and all fractional parts of an ounce. Beginning July 1, 2013, little cigars are taxed under the Act at the same rate as cigarettes. Little cigars in packages of 20 or 25 little cigars sold by stamping distributors must have a tax stamp affixed. Stamping distributors must purchase tax stamps from the Department in same manner as licensed cigarette distributors purchase tax stamps that are affixed to packages of cigarettes. The same tax stamps are affixed to packages of little cigars and cigarettes containing 20 or 25 little cigars or cigarettes. Taxes on packages of little cigars containing other than 20 or 25 little cigars are reported on a return to be filed no later than the 15th of the month and paid on or before the date the return is due.

- a) Except as otherwise provided in this Section with respect to moist snuff, electronic cigarettes, and little cigars, the Tobacco Products Tax is imposed upon the last distributor, as defined in Section 660.10, who sells tobacco products to a retailer or consumer located in Illinois at the rate of 18% of the wholesale price of tobacco products sold or otherwise disposed of in this State *prior to July 1, 2012 and 36% of the wholesale price of tobacco products sold or otherwise disposed of to retailers or consumers located in this State beginning on July 1, 2012 **and through June 30, 2025**. Beginning on January 1, 2013 **and through June 30, 2025**, the tax on moist snuff shall be imposed at a rate of \$0.30 per ounce, and a proportionate tax at the like rate on all fractional parts of an ounce, sold or otherwise disposed of to retailers or consumers located in this State, provided that the rate of tax imposed on moist snuff after any future rate increases may not exceed 15% of the tax*

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imposed upon a package of 20 cigarettes pursuant to the Cigarette Tax Act [35 ILCS 130]. Beginning July 1, 2013, the tax on little cigars shall be imposed at the same rate, and the proceeds shall be distributed in the same manner, as the tax imposed on cigarettes under the Cigarette Tax Act [35 ILCS 130]. [35 ILCS 143/10-10] Beginning July 1, 2013, and prior to July 1, 2019, the tax on little cigars is 99 mills per little cigar sold or otherwise disposed of. Beginning July 1, 2019, the tax on little cigars is 149 mills per little cigar sold or otherwise disposed of. Beginning July 1, 2019 and through June 30, 2025, the tax on electronic cigarettes shall be at the rate of 15% of the wholesale price of electronic cigarettes sold or otherwise disposed of to retailers or consumers located in this State. [35 ILCS 143/10-10]

- b) Beginning on July 1, 2025, except as otherwise provided in subsection (a) with respect to little cigars, the Tobacco Products Tax is imposed upon the last distributor who sells tobacco products to a retailer or consumer located in Illinois at the rate of 45% of the wholesale price of tobacco products, including moist snuff and electronic cigarettes, sold or otherwise disposed of to retailers or consumers located in this State. [35 ILCS 143/10-10]
- c) *The tax is in addition to all other occupation or privilege taxes imposed by the State of Illinois, by any political subdivision thereof, or by any municipal corporation [35 ILCS 143/10-10(a)].*
- de) A retailer is required to register as a distributor, file returns and pay the Tobacco Products Tax imposed by the Act on all sales of tobacco products on which the tax has not been paid unless the sales are exempt under Section 660.30. (See Sections 660.15, 660.20, and 660.30.) *Retailers that are not stamping distributors shall purchase stamped packages of little cigars containing 20 or 25 little cigars for resale only from stamping distributors, distributors, or wholesalers. Retailers who are not stamping distributors may not purchase or possess unstamped packages of little cigars containing 20 or 25 little cigars. Retailers who are not stamping distributors may not purchase or possess packages of little cigars containing other than 20 or 25 little cigars, unless the retailer receives an invoice from a stamping distributor, distributor, or wholesaler stating the tax on the packages has been or will be paid. [35 ILCS 143/10-27] (See Section 660.28.)*

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- ed)** The Tobacco Products Tax is paid on the wholesale price of tobacco products, except on ~~moist snuff and~~ little cigars. The wholesale price is the established list price for which a manufacturer sells tobacco products to a distributor, or the established list price for which a wholesaler or distributor sells tobacco products to the last distributor, before the allowance of any discounts, trade allowances, rebates or other reductions. Surcharges added by manufacturers or distributors are considered part of the wholesale price subject to tax.
- 1) The wholesale price for purposes of imposing the Tobacco Products Tax on the last distributor is the invoice price at which tobacco products are sold by a wholesaler or distributor to the last distributor before the allowance of any discounts, trade allowances, rebates, or other reductions. Surcharges added by distributors are considered part of the wholesale price subject to tax.
- 2) The wholesale price for purposes of imposing the tax on a retailer who receives or purchases tobacco products on which the tax has not been paid or will not be paid by a licensed distributor is the invoice price paid by the retailer to an unlicensed distributor or other supplier of tobacco products before the allowance of any discounts, trade allowances, rebates, or other reductions. Surcharges added by manufacturers, distributors or other suppliers are considered part of the wholesale price subject to tax.
- 3) The wholesale price for purposes of imposing tax on a manufacturer of a tobacco product who sells the tobacco product directly to consumers is the cost to the manufacturer to manufacture the tobacco product. When determining its cost, the time period used for purpose of the study should be long enough to include all costs incurred by the manufacturer to manufacture the product.
- fe)** Whenever any sales invoice issued by a supplier to a retailer for tobacco products sold to the retailer does not comply with the requirements of Section 660.25(d), (e), and (g), a prima facie presumption shall arise that the tax imposed by Section 10-10 of the Act and this Section has not been paid on the tobacco products listed on the sales invoice. A retailer that is unable

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to rebut this presumption is in violation of both the Act and this Part and is subject to applicable tax, penalties, and interest.

gf) *Beginning July 1, 2013, all moneys received by the Department under the Act from the tax imposed on little cigars shall be distributed as provided in Section 2 of the Cigarette Tax Act.* [35 ILCS 130]-

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

Section 660.10 General Definitions

"Act" means the Tobacco Products Tax Act of 1995. [35 ILCS 143/~~10-1~~Art. ~~10~~]-

"Business" means any trade, occupation, activity, or enterprise engaged in, at any location whatsoever, for the purpose of selling tobacco products. [35 ILCS 143/~~10-5~~]

"Contraband little cigar" means:

packages of little cigars containing 20 or 25 little cigars that do not bear a required tax stamp under ~~the~~the Act;

packages of little cigars containing 20 or 25 little cigars that bear a fraudulent, imitation, or counterfeit tax stamp;

packages of little cigars containing 20 or 25 little cigars that are improperly tax stamped, including packages of little cigars that bear only a tax stamp of another state or taxing jurisdiction; or

packages of little cigars containing other than 20 or 25 little cigars in the possession of a distributor, retailer or wholesaler, unless the distributor, retailer, or wholesaler possesses, or produces within the time frame provided in Section 10-27 or 10-28 of ~~the~~the Act, an invoice from a stamping distributor, distributor, or wholesaler showing that the tax on the packages has been or will be paid.

"Department" means the Illinois Department of Revenue.

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"Distributor" means any of the following:

Any manufacturer or wholesaler in this State engaged in the business of selling tobacco products who sells, exchanges, or distributes tobacco products to retailers or consumers in this State.

Any manufacturer or wholesaler engaged in the business of selling tobacco products from without this State who sells, exchanges, distributes, ships, or transports tobacco products to retailers or consumers located in this State, so long as that manufacturer or wholesaler has or maintains within this State, directly or by subsidiary, an office, sales house, or other place of business, or any agent or other representative operating within this State under the authority of the person or subsidiary, irrespective of whether the place of business or agent or other representative is located here permanently or temporarily.

Any retailer who receives tobacco products on which the tax has not been or will not be paid by another distributor.

"Distributor" does not include any person, wherever resident or located, who makes, manufactures, or fabricates tobacco products as a part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility. [35 ILCS 143/10-5] A Correctional Industries program is a program that employs committed persons confined in institutions and facilities of the Illinois Department of Corrections to make, manufacture, or fabricate tobacco products for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility.

"Electronic cigarette" means:

any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation, except for (A) any device designed solely for use with cannabis that contains a statement on the retail packaging that the device is designed solely for use with cannabis and not for use with tobacco or (B) any device that contains a solution or substance that contains cannabis subject to tax under the

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Compassionate Use of Medical Cannabis Program Act or the Cannabis Regulation and Tax Act;

any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device, except for any cartridge or container of a solution or substance that contains cannabis subject to tax under the Compassionate Use of Medical Cannabis Program Act or the Cannabis Regulation and Tax Act; or

any solution or substance, whether or not it contains nicotine, intended for use in the device, except for any solution or substance that contains cannabis subject to tax under the Compassionate Use of Medical Cannabis Program Act or the Cannabis Regulation and Tax Act.

"Electronic cigarette" includes, but is not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any component or part that can be used to build the product or device.

"Electronic cigarette" does not include:

cigarettes, as defined in Section 1 of the Cigarette Tax Act;

any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, a tobacco dependence product, or for other medical purposes that is marketed and sold solely for that approved purpose;

any asthma inhaler prescribed by a physician for that condition that is marketed and sold solely for that approved purpose; or

any therapeutic product approved for use under the Compassionate Use of Medical Cannabis Program Act [410 ILCS 130].

"Little cigar" means and includes any roll, made wholly or in part of tobacco, where such roll has an integrated cellulose acetate filter and weighs less than 4 pounds per thousand and the wrapper or cover of which is made in whole or in part of tobacco.

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"Manufacturer" means any person, wherever resident or located, who manufactures and sells tobacco products, except a person who makes, manufactures, or fabricates tobacco products as a part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility.

*"Moist snuff" means any finely cut, ground, or powdered tobacco that is not intended to be smoked, including tobacco products referred to as "snus", but ~~shall~~**does** not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.*

"Nicotine" means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived, and includes nicotinic alkaloids and nicotine analogs.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint venture, limited liability company, or public or private corporation, however formed, or a receiver, executor, administrator, trustee, conservator, or other representative appointed by order of any court.

"Place of business" means and includes any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

"Prior continuous compliance taxpayer" means any person who is licensed under the Act and who, having been a licensee for a continuous period of 2 years, is determined by the Department not to have been either delinquent or deficient in the payment of tax liability during that period or otherwise in violation of the Act. "Prior continuous compliance taxpayer" also means any taxpayer who has, as verified by the Department, continuously complied with the condition of the bond or other security under provisions of the Act for a period of 2 consecutive years. In calculating the consecutive period of time described in this definition for qualification as a prior continuous compliance taxpayer, a consecutive period of time of qualifying compliance immediately prior to August 9, 2024, the effective date of P.A. 103-1001, shall be credited to any licensee who became licensed on or before August 9, 2024.

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A distributor that is a prior continuous compliance taxpayer and becomes a successor to a distributor as the result of an acquisition, merger, or consolidation of that distributor shall be deemed to be a prior continuous compliance taxpayer with respect to the acquired, merged, or consolidated entity.

"Retailer" means any person in this State engaged in the business of selling tobacco products to consumers in this State, regardless of quantity or number of sales.

"Sale" means any transfer, exchange, or barter in any manner or by any means whatsoever for a consideration and includes all sales made by persons. [35 ILCS 143/10-5]

"Secondary distributor" means any person engaged in the business of selling cigarettes who purchases stamped original packages of cigarettes from a licensed distributor under ~~the Cigarette Tax~~the Cigarette Tax Act or the Cigarette Use Tax Act [35 ILCS 135], sells 75% or more of those cigarettes to retailers for resale, and maintains an established business where a substantial stock of cigarettes is available to retailers for resale. [35 ILCS 130/1]

"Stamp" or "stamps" mean the indicia required to be affixed on a package of little cigars that evidence payment of the tax on packages of little cigars containing 20 or 25 little cigars under Section 10-10 of ~~the~~the Act. These stamps shall be the same stamps used for cigarettes under the Cigarette Tax Act.

"Stamping distributor" means a distributor licensed under ~~the~~the Act and also licensed as a distributor under the Cigarette Tax Act or Cigarette Use Tax Act.

"Tobacco products" means any product that is made from or derived from tobacco that is intended for human consumption or is likely to be consumed, including but not limited to cigars, including little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff (including moist snuff) and~~or~~ snuff flour; cavendish; plug and

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twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweeping of tobacco; snus; shisha and tobacco for use in waterpipes; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking or for inhalation, absorption, or ingesting by any other means; but does not include cigarettes as defined ~~in~~by Section 1 of the Cigarette Tax Act or tobacco purchased for the manufacture of cigarettes by cigarette distributors and manufacturers defined in the Cigarette Tax Act and persons who make, manufacture, or fabricate cigarettes as a part of a Correctional Industries program for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility. Beginning on July 1, 2019, "tobacco products" also includes electronic cigarettes.

Beginning on July 1, 2025, "tobacco products" also includes any product that is made from or derived from tobacco, or that contains nicotine whether natural or synthetic, that is intended for human consumption or is likely to be consumed, including but not limited to nicotine pouches, lozenges, and gum; and other kinds and forms of nicotine prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking or for inhalation, absorption, or ingesting by any other means.

"Tobacco products" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco or smoking cessation product, a nicotine replacement therapy product, or for other medical purposes where that product is marketed and sold solely for such approved use, including but not limited to spray or inhaler prescribed by a physician, chewing gum, skin patches, or lozenges.

"Wholesale price" means the established list price for which a manufacturer sells tobacco products to a distributor, before the allowance of any discount, trade allowance, rebate, or other reduction. In the absence of such an established list price, the manufacturer's invoice price at which the manufacturer sells the tobacco product to unaffiliated distributors, before any discounts, trade allowances, rebates, or other reductions, shall be presumed to be the wholesale price. [35 ILCS 143/10-5] The wholesale price of tobacco products is the established list price at the time of purchase, by the distributor who remits tax to the Department, of such

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tobacco products. Surcharges added by manufacturers or distributors are considered part of the wholesale price subject to tax.

"Wholesaler" means any person, wherever resident or located, engaged in the business of selling tobacco products to others for the purpose of resale. ~~"Wholesaler" means any person, wherever resident or located, who is engaged solely in making sales of tobacco products to others for resale or sales that are otherwise exempt from tax. "Wholesaler", when used in the the Act, does not include a person licensed as a distributor under Section 10-20 of the the Act unless expressly stated in the the Act. [35 ILCS 143/10-5]~~

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

Section 660.15 Distributor Licenses

- a) *It shall be unlawful for any person to engage in business as a distributor of tobacco products within the meaning of the the Act without first having obtained a license to do so from the Department. Application for a distributor's license shall be made to the Department in a form prescribed and furnished by the Department and shall be accompanied by a bond, if applicable as provided in subsection (d). [35 ILCS 143/10-20]* ~~(Section 10-20 of the Act) Application for a distributor's license shall be made to the Department in a form furnished and prescribed by the Department and shall be accompanied by a joint and several bond in an amount fixed by the Department. Bonds may be furnished electronically by sureties using one of the methods contained in 86 Ill. Adm. Code 760.230(b).~~ Each licensed place of business shall be covered by a separate license. Subject to the limitations regarding little cigars imposed on retailers contained in this subsection (a) and Section 660.28, a retailer who receives or purchases tobacco products on which the tax has not been paid or will not be paid by another distributor is required to register with the Department and obtain a license, file returns, and pay the Tobacco Products Tax. Whenever any sales invoice issued by a supplier to a retailer for tobacco products sold to the retailer does not comply with the requirements of Section 660.25(d), (e), and (g), a prima facie presumption shall arise that the tax imposed by Section 10-10 of the Act and Section 660.5 has not been paid on the tobacco products listed on the sales invoice.

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- 1) Subject to the limitations regarding little cigars imposed on retailers contained in this subsection (a) and Section 660.28, a retailer who receives or purchases tobacco products from an ~~out-of-State~~~~out-of-state~~ distributor that is not registered with the Department must obtain a license.
 - 2) Subject to the limitations regarding little cigars imposed on retailers contained in this subsection (a) and Section 660.28, a retailer who receives or purchases tobacco products from a supplier, whether within or without the State, that is not registered with the Department must obtain a license.
- b) *The Department may, in its discretion, and upon application issue licenses authorizing the payment of the tax imposed by the Act on tobacco products, excluding little cigars, by any distributor or manufacturer not otherwise subject to the tax imposed under the Act who, to the satisfaction of the Department furnishes adequate security to ensure payment of the tax. [35 ILCS 143/10-20]*~~*The Department may, in its discretion, upon application, issue licenses authorizing the payment of the tax imposed by the Act on tobacco products, excluding little cigars, by any distributor or manufacturer not otherwise subject to the tax imposed under the Act who, to the satisfaction of the Department, furnishes adequate security to ensure payment of the tax.*~~
- c) Wholesalers that are not registered and licensed as distributors with the Department but claim to only sell tobacco products, excluding little cigars, in such a way that their sales are not taxable under ~~the~~~~this~~ Act (e.g., resale or to exempt purchasers) are advised to apply to the Department for a resale number so that those wholesalers are able to provide distributors with Certificates of Resale when purchasing the tobacco products, excluding little cigars, that will be resold. Those wholesalers need not file returns with the Department. ~~{See Section 660.30, Exempt Sales.}~~
- d) Bonding.
- 1) *Each distributor shall file with the Department a bond in an amount not to exceed 3 times the amount of the distributor's average monthly*

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tax liability or \$50,000, whichever is lower, on a form to be approved by the Department, except for:

- A) a distributor who is applying for a distributor's license under the Act for the first time; or
- B) a distributor who, in the preceding year, had less than \$50,000 of tax liability.

2) Any applicant applying for a distributor's license after the applicant's distributor's license has been revoked by the Department shall also file a bond with the Department in an amount equal to 3 times the amount of the applicant's average monthly tax liability under the Act, as that average monthly tax liability was calculated immediately prior to the revocation of the applicant's distributor's license. The bonding requirement in Section 10-20 of the Act does not apply to an applicant for a distributor's license who is already bonded under the Cigarette Tax Act or the Cigarette Use Tax Act. Licenses issued by the Department under the Act shall be valid for a period not to exceed one year after issuance unless sooner revoked, canceled, or suspended as provided in the Act. [35 ILCS 143/10-20]

3) The Department shall discharge any surety and shall release and return any bond provided to it by a taxpayer under this subsection within 90 days after:

- A) the taxpayer becomes a prior continuous compliance taxpayer, as defined in 660.10; or
- B) the taxpayer has ceased to collect receipts on which the taxpayer is required to remit the tax under the Act to the Department, has filed a final tax return, and has paid to the Department an amount sufficient to discharge any remaining tax liability as determined by the Department under the Act.

e) Licenses issued by the Department under the Act shall be valid for a period not to exceed one year after issuance unless sooner revoked, canceled, or suspended as provided in the Act.

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- f) *No license shall be issued to any person who is in default to the State of Illinois for moneys due under ~~the~~^{the} Act or any other tax Act administered by the Department. [35 ILCS 143/10-20]*
- g) *No person shall be issued a license or granted a renewal of a license to act as a distributor unless the person has certified in writing, under penalty of perjury, that the person will comply fully with the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003. [30 ILCS 167/35(b)]*

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

Section 660.16 Retailer Licenses

- a) *Beginning on January 1, 2016, no person may engage in business as a retailer of tobacco products in this State without first having obtained a license from the Department. Application for license shall be made to the Department, by electronic means, in a form prescribed by the Department. Each applicant for a license under this Section shall furnish to the Department, in an electronic format established by the Department, the following information:*
- 1) *the name and address of the applicant;*
 - 2) *the social security number or FEIN of the applicant;*
 - 3) *the address of the applicant's principal place of business;*
 - 4) *the address of the location or locations at which the applicant proposes to engage in business as a retailer of tobacco products in this State [35 ILCS 143/10-21];*
 - 5) *In the case of:*
 - A) *a publicly traded corporation, the FEIN of the corporation and the name and title of the Chief Financial Officer, Chief Operating Officer, and any other officer or employee with responsibility for preparing tax returns under the Act, along*

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with the last 4 digits of each of their social security numbers;
and

- B) all other corporations, the FEIN of the corporation and the name, title and social security number of each corporate officer;
 - 6) in the case of a limited liability company, the name, social security number or FEIN of each manager and member;
 - 7) in the case of a partnership, the name, title, social security number or FEIN of each general partner and each limited partner, if any; and
 - 8) such other additional information as the Department may lawfully require.
- b) *The annual license fee payable to the Department for each retailer's license shall be \$~~150~~75. Each applicant for license shall pay the fee to the Department at the time of submitting its application for license to the Department. The applicant for a license under this Section shall electronically file and pay the fee.*
- c) *A separate annual license fee shall be paid for each place of business at which a person who is required to procure a retailer's license under Section 10-21 of the Act~~Section 10-21 of the Act~~ proposes to engage in business as a retailer in Illinois under the~~the~~ Act.*
- d) *The following are ineligible to receive a retailer's license under the~~the~~ Act:*
- 1) *a person who has been convicted of a felony under any federal or State law for smuggling cigarettes or tobacco products or tobacco tax evasion~~for smuggling cigarettes or tobacco products or tobacco tax evasion~~, if the Department, after investigation and a hearing if requested by the applicant, determines that person has not been sufficiently rehabilitated to warrant the public trust; and*
 - 2) *a corporation, if any officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than 5% of*

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the stock of that corporation, would not be eligible to receive a license under ~~the~~^{the} Act for any reason.

- e) *The Department, upon receipt of an application and license fee, in proper form, from a person who is eligible to receive a retailer's license under ~~the~~^{the} Act, ~~shall~~^{will} issue to the applicant a license in ~~the~~^{the} form prescribed by the Department. ~~Such~~^{That} license shall permit the applicant to ~~whom~~^{whom} it is issued to engage in business as a retailer under ~~the~~^{the} Act at the place shown in ~~its~~^{this or her} application. All licenses issued by the Department under ~~Section 10-21 of the Act~~^{this Section} shall be valid for a period not to exceed one year after issuance unless sooner revoked, canceled or suspended as provided in ~~the~~^{the} Act. No license issued under ~~this~~^{this Section} is transferable or assignable. ~~Such~~^{The} license shall be conspicuously displayed in the place of business conducted by the licensee in Illinois under ~~the~~^{the} license. A person who obtains a license as a retailer who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, shall immediately surrender the license to the Department. The Department shall not issue a license to a retailer unless the retailer is also validly registered under the Retailers' Occupation Tax Act [35 ILCS ~~120~~¹³⁰/4g]. A retailer, as defined under ~~the~~^{the} Act, need not obtain an additional license under ~~the~~^{the} Act, but shall be deemed to be sufficiently licensed by virtue of his being properly licensed as a retailer under Section 4g of the Cigarette Tax Act [~~35~~³⁵ ILCS 130].*
- f) *Any person aggrieved by any decision of the Department under ~~Section 10-21 of the Act~~^{Section 10-21 of the Act} may, within 30 days after notice of the decision, 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~~^{the} Act 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 30 days, the Department's decision shall become final without any further determination being made or notice given. [35 ILCS 143/10-21]*

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

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Section 660.17 Nicotine Products

- a) Beginning July 1, 2025, nicotine products, whether naturally derived from tobacco or synthetically made, are included in the definition of "tobacco products" and subject to the provisions of this Part. Public Act 104-0006 changed the definition of "tobacco products."
 - 1) Effective on and after July 1, 2025, "tobacco product" includes any product that is made from or derived from tobacco, or that contains nicotine whether natural or synthetic, that is intended for human consumption or is likely to be consumed, including but not limited to nicotine pouches, lozenges, and gum; and other kinds and forms of nicotine prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking or for inhalation, absorption, or ingesting by any other means.
 - 2) However, "tobacco products" does not include any product that has been approved by the United States Food and Drug Administration (FDA) for sale as a tobacco or smoking cessation product, a nicotine replacement therapy product, or for other medical purposes where that product is marketed and sold solely for such approved use, including but not limited to spray or inhaler prescribed by a physician, chewing gum, skin patches, or lozenges. [35 ILCS 143/10-5]
- b) To be excluded from the definition of "tobacco product" as a therapeutic product or smoking cessation product, the product must be marketed as FDA-approved nicotine replacement therapy. Over-the-counter nicotine, FDA-approved replacement therapy products include a "drug facts" label on the packaging.
- c) Registration and Licenses
 - 1) Retailers selling nicotine products, including pouches, at retail to users and consumers must obtain a tobacco retailer license. See 86 Ill. Adm. Code 660.16.

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- 2) Retailers selling nicotine products on which the tax has not or will not be paid by a distributor must obtain a distributor license, file returns, and remit the tax to the Department. See 86 Ill. Adm. Code 660.15.
- 3) Manufacturers of nicotine products (e.g., pouches, lozenges) meeting the definition of "distributor" selling nicotine products directly to consumers must obtain both a distributor license and a tobacco retailer license.
- 4) Any manufacturer or wholesaler engaged in the business of selling tobacco products from outside of Illinois who sells, exchanges, distributes, ships, or transports nicotine products to retailers or consumers located in Illinois must register to become a distributor if the manufacturer or wholesaler has or maintains within Illinois, directly or by subsidiary, an office, sales house, or other place of business, or any agent or other representative operating within Illinois under the authority of the person or subsidiary, irrespective of whether the place of business or agent or other representative is located here permanently or temporarily.

EXAMPLE: An out-of-State manufacturer of nicotine products sells nicotine products over the internet at retail to consumers in this State. It also sells nicotine products to retailers in this State. The manufacturer has representatives that solicit sales by retail stores in this State. The manufacturer is required to obtain a distributor license and pay the tax on all sales made to retailers and consumers in this State.

- d) Invoices
Whenever any sales invoice issued by an in-State or out-of-State seller for nicotine products sold to a retailer does not comply with the requirements of Section 660.25 (d) and (e), a prima facie presumption shall arise that the tax imposed by Section 10-10 of the Act and Section 660.5 has not been paid on the nicotine products listed on the sales invoice. A retailer that is unable to rebut this presumption is in violation of both the Act and this Part and is subject to applicable taxes, penalties, and interest.

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

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Section 660.20 Returns

- a) *Every distributor of tobacco products shall, on or before the 15th day of each calendar month, file a return with the Department covering the preceding calendar month. For reporting periods through June 30, 2025, the return shall disclose the wholesale price for all tobacco products other than moist snuff and little cigars and the quantity of moist snuff sold or otherwise disposed of and other information that the Department may reasonably require. Beginning with the July 2025 reporting period due August 15, 2025, the return shall disclose the wholesale price for all tobacco products, including moist snuff, sold or otherwise disposed of and other information that the Department may reasonably require. Information that the Department may reasonably require includes information related to the uniform regulation and taxation of tobacco products. [35 ILCS 143/10-30] disclosing the following (Section 10-20 of the Act):*
- b) For reporting periods up to and including December 31, 2024, the following information shall be reported:
- 1) The wholesale price for tobacco products, excluding little cigars and moist snuff, manufactured and then sold or otherwise disposed of.
 - 2) The wholesale price for tobacco products, excluding little cigars and moist snuff, purchased and then sold or otherwise disposed of.
 - 3) The total cost of all tobacco products, excluding little cigars and moist snuff, sold or otherwise disposed of.
 - 4) Deductions authorized by law on tobacco products, excluding little cigars and moist snuff.
 - 5) Tobacco products tax base, excluding little cigars and moist snuff.
 - 6) Total tax based on percentage of wholesale price on tobacco products, excluding little cigars and moist snuff.

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- 7) Total quantity in ounces and fractional ounces of moist snuff purchased and then sold or otherwise disposed of.
- 8) Deductions authorized by law on moist snuff.
- 9) Total tax on moist snuff.
- 10) In addition to the items listed in subsections (a)(1) through (9):
 - A) The quantity of little cigars purchased and sold or otherwise disposed of.
 - B) The quantity of packages of little cigars containing 20 or 25 little cigars.
 - C) Deductions authorized by law on little cigars.
 - D) Total tax on little cigars.

cb) Beginning with the January 2025 reporting period due February 18, 2025, and through the June 2025 reporting period due July 15, 2025, each return shall include information related to the uniform regulation and taxation of tobacco products. [35 ILCS 143/10-30] Such information shall include the following:

- 1) The total amount of tobacco products, excluding little cigars, sold or otherwise dispersed to all customers as reported on the supporting schedules;
 - A) For tobacco products (OTP), other than little cigars, and electronic cigarettes (E-cigs), the total amount shall be reported as the total wholesale price reflecting the value of each product times the quantity of the number of products; and
 - B) For moist snuff (MS), the total amount shall be reported as the total ounces reflecting the number of products sold times the total weight/volume of the product.

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- 2) Any deductions authorized by law on tobacco products, excluding little cigars. Such deductions include in-State returns from customers located within this State for which tax was previously paid.
 - A) For OTP and E-cigs, the total amount shall be reported as summed total of wholesale prices listed on all supporting schedules for returned tobacco products, excluding little cigars; and
 - B) For MS, the total amount shall be reported as the summed total ounces listed on all supporting schedules for returned MS.
- 3) Exempt transactions, including sales to:
 - A) Native American entities, including transactions to a Native American tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as a Native American tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 [25 U.S.C. 479a];
 - B) licensed distributors or wholesalers, who will purchase for resale and not sell to retailers, consumers, or end users;
 - C) the military, government, or other exempt transactions; and
 - D) interstate commerce or out-of-State sales.
- 4) In addition to the items listed in (b)(1) through (4), each stamping distributor shall report:
 - A) the quantity of little cigars, purchased and sold or otherwise disposed of;
 - B) the quantity of packages of little cigars containing 20 or 25 little cigars [35 ILCS 143/10-30(b)];
 - C) any deductions authorized by law on little cigars; and

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- D) the total tax on little cigars.
- 5) Failure to provide the information related to the uniform regulation and taxation of tobacco products as required under this subsection (c), may subject the return and supporting schedule to be considered unprocessable and may subject the filer to penalties and interest for failure to file. Repeated violations may also result in license revocation pursuant to Section 10-25 of the Act. Such information includes tobacco products received and disbursed as follows:
 - A) received from a manufacturer or first importer;
 - B) received from a person other than a manufacturer or first importer (e.g., wholesaler, distributor, or other licensee);
 - C) received from a retailer or end user;
 - D) received by a manufacturer or first importer from a person other than a manufacturer or first importer (e.g., returned product);
 - E) disbursed by a manufacturer or first importer;
 - F) disbursed to a person other than a manufacturer or first importer (e.g., wholesaler, distributor, or other licensee);
 - G) disbursed to a retailer or end user; and
 - H) returned to the manufacturer.
- 6) Falsifying any of the information related to the uniform regulation and taxation of tobacco products as required under this subsection (c), may subject the return and supporting schedule to be considered unprocessable and may subject the filer to penalties and interest for failure to file. Repeated violations may also result in license revocation pursuant to Section 10-25 of the Act.

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- d) Beginning with the July 2025 reporting period due August 15, 2025, and all returns thereafter, each return shall include information related to the uniform regulation and taxation of tobacco products. [35 ILCS 143/10-30] Such information shall include the following:
- 1) The total amount of tobacco products, excluding little cigars, sold or otherwise dispersed to all customers as reported on the supporting schedules. For tobacco products (OTP), including electronic cigarettes (E-cigs) and moist snuff (MS), the total amount shall be reported as the total wholesale price reflecting the value of each product times the quantity of the number of products.
 - 2) Any deductions authorized by law on tobacco products, excluding little cigars. Such deductions include in-State returns from customers located within this State for which tax was previously paid. The total amount shall be reported as summed total of wholesale prices listed on all supporting schedules for returned tobacco products, excluding little cigars.
 - 3) Exempt transactions, including sales to:
 - A) Native American entities, including transactions to a Native American tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as a Native American tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 [25 U.S.C. 479a];
 - B) licensed distributors or wholesalers, who will purchase for resale and not sell to retailers, consumers, or end users;
 - C) the military, government, or other exempt transactions; and
 - D) interstate commerce or out-of-State sales.
 - 4) In addition to the items listed in (d)(1) through (4), each stamping distributor shall report:

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- A) the quantity of little cigars, purchased and sold or otherwise disposed of;
 - B) the quantity of packages of little cigars containing 20 or 25 little cigars [35 ILCS 143/10-30(b)];
 - C) any deductions authorized by law on little cigars; and
 - D) the total tax on little cigars.
- 5) Failure to provide the information related to the uniform regulation and taxation of tobacco products as required under this subsection (d), may subject the return and supporting schedule to be considered unprocessable and may subject the filer to penalties and interest for failure to file. Repeated violations may also result in license revocation pursuant to Section 10-25 of the Act. Such information includes tobacco products received and disbursed as follows:
- A) received from a manufacturer or first importer;
 - B) received from a person other than a manufacturer or first importer (e.g., wholesaler, distributor, or other licensee);
 - C) received from a retailer or end user;
 - D) received by a manufacturer or first importer from a person other than a manufacturer or first importer (e.g. returned product);
 - E) disbursed by a manufacturer or first importer;
 - F) disbursed to a person other than a manufacturer or first importer (e.g., wholesaler, distributor, or other licensee);
 - G) disbursed to a retailer or end user; and
 - H) returned to the manufacturer.

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- 6) Falsifying any of the information related to the uniform regulation and taxation of tobacco products as required under this subsection (d), may subject the return and supporting schedule to be considered unprocessable and may subject the filer to penalties and interest for failure to file. Repeated violations may also result in license revocation pursuant to Section 10-25 of the Act.
- e) ~~The return shall be filed in the format and manner prescribed by the Department.~~ Payment of the tax in the amount disclosed by the return shall accompany the return. Taxpayers whose annual liability is \$20,000 or more for the preceding calendar year are required to make payments of tax by Electronic Funds Transfer as provided in 86 Ill. Adm. Code 750. For purposes of this subsection, *the term "annual tax liability" means, for a taxpayer that incurs a tax liability under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Use Tax Act, Service Use Tax Act, or any other State or local occupation or use tax law that is administered by the Department (which includes the Act), the sum of the taxpayer's liabilities under the Retailers' Occupation Tax Act, Service Occupation Tax Act, Use Tax Act, Service Use Tax Act, and all other State and local occupation and use tax laws administered by the Department for the immediately preceding calendar year.* [20 ILCS 2505/2505-210(c)]
- fe) Tobacco products "otherwise disposed of" include samples of tobacco products. Transfers of tobacco products between divisions of a corporation that have separate Illinois Business Tax numbers are required to be reported as sales under "otherwise disposed of."
- gd) All returns and supporting schedules required to be filed and all payments required to be made under Section 10-30 of the Act shall be by electronic means in the form prescribed by the Department. [35 ILCS 143/10-30(d)] ~~Returns, schedules, documents and data required to be filed by the Act with the Department must be filed electronically in the format required by the Department. Distributors who do not have access to the Internet may petition the Department for a waiver of this requirement.~~

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

Section 660.24 Books and Records; Invoices – Retailers

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- a) ~~Every~~ Every retailer, as defined in Section 10-5 of the Act, whether or not the retailer has obtained a retailer's license pursuant to Section 4g, shall keep complete and accurate records of tobacco products held, purchased, sold, or otherwise disposed of, and shall preserve and keep all invoices, bills of lading, sales records, and copies of bills of sale, returns and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products.
- 1) ~~The books and~~ 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 ~~of those invoices~~ of those invoices covering purchases of tobacco products 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~~ in which records are kept at a central business location within the State of Illinois. [35 ILCS 143/10-35(b)] Prior to removing the books and records from the licensed premises, the retailer shall notify the Department that the books and records will be kept at another location in Illinois and shall identify the location. Under those circumstances, books and records may be kept at that location in Illinois, but the taxpayer shall, 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 at some point within Illinois for the purpose of inspection and audit as the Department may deem necessary.
- 2) ~~Books and~~ Books and records may be maintained out of state if access is available electronically. However, all original invoices or copies ~~of those invoices~~ of those invoices covering purchases of tobacco products 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~~ in which records that are available electronically are maintained out of state. [35 ILCS 143/10-35(b)]

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- 3) The Department will grant a written waiver under subsections (a)(1) and (2) when the following requirements are met by the retailer:
- A) The retailer submits a letter to the Department containing:
- 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 ~~out-of-State~~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 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 tobacco products held, purchased, sold, or otherwise disposed of; invoices; bills of lading; sales records; ~~and~~ copies of bills of sale, returns, and other pertinent papers; and

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documents relating to the purchase, sale, or disposition of tobacco products 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 employees have access electronically to the required records from the licensed premises on demand.
- b) *Books, records, papers, and documents that are required by ~~the~~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. The books, records, papers, and documents for any period with respect to which the Department is authorized to issue a notice of tax liability shall be preserved until the expiration of that period, ~~which is 3 to 3½ years for filed returns.~~ [35 ILCS 143/10-35(c)]*
- c) *Whenever any ~~retailer~~retailer obtains tobacco products from an unlicensed in-state or out-of-state distributor or person, a prima facie presumption shall arise that the tax imposed by ~~the~~the Act on ~~such~~those tobacco products has not been paid in violation of ~~the~~the Act. Invoices or other documents kept in the normal course of business in the possession of a person reflecting purchases of tobacco products from an unlicensed in-state or out-of-state distributor or person or invoices or other documents kept in the normal course of business obtained by the Department from in-state or out-of-state distributors or persons, are sufficient to raise the presumption that the tax imposed by ~~the~~the Act has not been paid. If a presumption is raised, the Department may assess tax, penalty, and interest on the tobacco products. [35 ILCS 143/10-38]*
- d) *Every ~~retailer~~retailer who purchases tobacco products for resale for shipment into Illinois from a point outside Illinois shall procure invoices in duplicate covering each shipment and shall make the invoices available for inspection upon demand by a duly authorized employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to*

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the Department at the time of filing the return required by ~~the~~the Act. [35 ILCS 143/10-40]

- e) Every retailer who purchases rolls, made wholly or in part of tobacco, when those rolls have an integrated cellulose acetate filter and a wrapper or cover that is made in whole or in part of tobacco and the rolls are contained in packages of 20 or 25, shall procure an invoice from the seller that states whether the rolls weigh less than 4 pounds per thousand or weigh 4 pounds or more per thousand. If a person fails to produce an invoice for inspection by the Department upon request that states whether the rolls weigh less than 4 pounds per thousand or weigh 4 pounds or more per thousand, a prima facie presumption shall arise that the rolls weigh less than 4 pounds per thousand. If the rolls do not contain a tax stamp in accordance with Section 10-10 of the Act, the rolls are contraband and subject to seizure and forfeiture.
- f) *The Department may, after notice and a hearing, revoke, cancel, or suspend the license of any retailer who fails to keep books and records as required under ~~the~~the Act, fails to make books and records available for inspection upon demand by a duly authorized employee of the Department, or violates this ~~Section~~Section. The notice shall specify the alleged violation or violations upon which the revocation, cancellation, or suspension proceeding is based. [35 ILCS 143/10-25]- Any retailer aggrieved by any decision of the Department under this Section may, within ~~3020~~ 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 retailer requesting the hearing that contains a statement of the charges preferred against the retailer and that states the time and place fixed for the hearing. 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 retailer. In the absence of a protest and request for a hearing within ~~3020~~ days, the Department's decision shall become final without any further determination being made or notice given.*

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

Section 660.25 Books and Records; Invoices – Distributors

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- a) ~~*Every distributor of tobacco products*~~*Every distributor of tobacco products* who is required to procure a license under the Act, including retailers who are required to procure a distributor's license under Section 660.15, ~~*shall keep*~~*shall keep* within Illinois, at ~~*the distributor's*~~*his or her* licensed address, ~~*complete and accurate records of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the State, and tobacco products sold, or otherwise disposed of, and shall preserve and keep*~~*complete and accurate records of tobacco products 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 or her licensed address*~~ all of the following:
- 1) ~~*invoices;*~~*invoices.*
 - 2) ~~*bills of lading;*~~*Bills of lading.*
 - 3) ~~*sales records;*~~*Sales records.*
 - 4) ~~*copies of bills of sale;*~~*Copies of bills of sale.*
 - 5) ~~*the wholesale price for tobacco products sold or otherwise disposed of;*~~*The wholesale price for tobacco products sold or otherwise disposed of.*
 - 6) ~~*an inventory of tobacco products prepared as of December 31 of each year or as of the last day of the distributor's fiscal year if the distributor files federal income tax returns on the basis of a fiscal year;*~~*An inventory of tobacco products prepared as of December 31 of each year or as of the last day of the distributor's fiscal year if he or she files federal income tax returns on the basis of a fiscal year.*
 - 7) ~~*other pertinent papers and documents relating to the manufacture, purchase, sale, or disposition of tobacco products [35 ILCS 143/10-35(a)]; and*~~*Other pertinent papers and documents relating to the manufacture, purchase, sale, or disposition of tobacco products.*
 - 8) ~~*any*~~ Certificates of Resale and Certificates of Exemption.

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- b) ~~All books, records, 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 143/10-35(c)]~~ 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.
- c) Such books, records, papers, and documents shall be preserved for the period during which the Department is authorized to issue notices of tax liability ~~Notices of Tax Liability~~, which is 3 ~~generally for a maximum of~~ 3½ years for filed returns.
- d) ~~Every sales invoice issued by a licensed distributor for tobacco products shall contain the distributor's Tobacco Products License number. Every~~ sales invoice issued by a licensed distributor to a retailer in this State shall contain the distributor's Tobacco Products License number unless the distributor has been granted a waiver by the Department in response to a written request in cases in which ~~in which~~
- 1) ~~the distributor sells little cigars or other tobacco products only to licensed retailers that are wholly-owned by the distributor or owned by a wholly-owned subsidiary of the distributor;~~
 - 2) ~~the licensed retailer obtains little cigars or other tobacco products only from the distributor requesting the waiver;~~ and
 - 3) ~~the distributor affixes the tax stamps to the original packages of little cigars or has or will pay the tax on the other tobacco products sold to the licensed retailer. [35 ILCS 143/10-35(a)]~~

Upon written request submitted to the Department by the distributor, the Department shall grant the waiver if the above conditions are met. 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. [35 ILCS 143/10-35(a)] Every sales invoice for packages of little cigars containing other than 20 or 25 little

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~~cigars issued by a stamping distributor to a person who is not a stamping distributor shall contain, in addition to the stamping distributor's Tobacco Products License number, the stamping distributor's Cigarette Tax Distributor's License number or Cigarette Use Tax Distributor's License number. (See Section 660.26 for additional rules regarding invoices for little cigars.)~~

- e) Every sales invoice issued by a licensed distributor shall state whether:
 - 1) the tax imposed by the Act has been or will be paid in full; or
 - 2) the sale is exempt in whole or in part under Section 660.30 and the specific subsections under which the exemption is claimed.
 - A) If the sale is exempt in part, the invoice additionally shall state:
 - i) the amount of tax actually paid or what will be paid; or
 - ii) the percentage of tax actually paid based on the amount of the invoice before the allowance of any discount, trade allowance, rebate, or other reduction, and including any added surcharges.
 - B) The distributor making an exempt sale of tobacco products shall document the exemption by obtaining a certification required by Section 660.30(hg).
- f) Whenever any sales invoice issued by a supplier to a retailer for tobacco products sold to the retailer does not comply with the requirements of subsections (d), ~~and~~ (e), ~~and~~ (g) a prima facie presumption shall arise that the tax imposed by Section 10-10 of the Act and Section 660.5 has not been paid on the tobacco products listed on the sales invoice. A retailer that is unable to rebut this presumption is in violation of both the Act and this Part and is subject to the penalties provided in Section 10-50 of the Act.
- g) ~~Every~~ Every licensed distributor of tobacco products in this State is required to show proof of the tax having been paid as required by ~~the~~ the Act by

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displaying its Tobacco Products License number on every sales invoice issued ~~to a retailer~~ in this State. [35 ILCS 143/10-37]

h) Every sales invoice for packages of little cigars containing other than 20 or 25 little cigars issued by a stamping distributor to a person who is not a stamping distributor shall contain both the stamping distributor's Tobacco Products License number and either the stamping distributor's Cigarette Tax Distributor's License number or Cigarette Use Tax Distributor's License number. [35 ILCS 143/10-29] See Section 660.26 for additional rules regarding invoices for little cigars.

ih) Every distributor who purchases tobacco products for resale for shipment into Illinois from a point outside Illinois shall procure invoices in duplicate covering each shipment and shall make the invoices available for inspection upon demand by a duly authorized employee of the Department, and shall, if the Department so requires, furnish one copy of each invoice to the Department at the time of filing the return required by ~~the~~the Act. [35 ILCS 143/10-40]

ji) Every distributor who purchases rolls, made wholly or in part of tobacco, when those rolls have an integrated cellulose acetate filter and a wrapper or cover that is made in whole or in part of tobacco and the rolls are contained in packages of 20 or 25, shall procure an invoice from the seller that states whether the rolls weigh less than 4 pounds per thousand or weigh 4 pounds or more per thousand. If a distributor fails to procure an invoice or produce an invoice for inspection by the Department upon request, a prima facie presumption shall arise that the rolls weigh less than 4 pounds per thousand. A distributor that sells these rolls must provide all purchasers with invoices that state whether the rolls weigh less than 4 pounds per thousand or weigh 4 pounds or more per thousand.

kj) Whenever any person obtains tobacco products from an unlicensed in-state or out-of-state distributor or person, a prima facie presumption shall arise that the tax imposed by ~~the~~the Act on ~~such~~those tobacco products has not been paid in violation of ~~the~~the Act. Invoices or other documents kept in the normal course of business in the possession of a person reflecting purchases of tobacco products from an unlicensed in-state or out-of-state distributor or person or invoices or other documents kept in the normal

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course of business obtained by the Department from in-state or out-of-state distributors or persons, are sufficient to raise the presumption that the tax imposed by ~~the~~ Act has not been paid. If a presumption is raised, the Department may assess tax, penalty, and interest on the tobacco products. [35 ILCS 143/10-38] See Section 660.50(r) for the penalties that may be imposed for a violation of this Section.

- ~~(k)~~ *The Department may, after notice and a hearing, revoke, cancel, or suspend the license of any distributor who fails to keep books and records as required under ~~the~~ Act, fails to make books and records available for inspection upon demand by a duly authorized employee of the Department, or violates ~~this Section~~. The notice shall specify the alleged violation or violations upon which the revocation, cancellation, or suspension proceeding is based. [35 ILCS 143/10-25] Any distributor aggrieved by any decision of the Department under this Section may, within ~~3020~~ 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 requesting the hearing that contains a statement of the charges preferred against the distributor and that states the time and place fixed for the hearing. 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. In the absence of a protest and request for a hearing within ~~3020~~ days, the Department's decision shall become final without any further determination being made or notice given.*

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

Section 660.30 Exempt Sales

- a) Sales of tobacco products, excluding little cigars, by distributors or wholesalers who will not sell the product to a retailer or consumer are exempt from the tax imposed by the Act. For example, sales by a distributor to another distributor as sales for resale are exempt from the tax imposed by the Act. Sales of tobacco products to retailers or consumers are not exempt sales ~~(unless the retailer is a registered distributor. See; see subsection (g)).~~
- b) *The tax is not imposed upon any activity in the business as a distributor in interstate commerce or otherwise, to the extent to which that activity may*

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not, under the Constitution and Statutes of the United States, be made the subject of taxation by this State. [35 ILCS 143/10-10(a)] (~~Section 10-10 of the Act~~) Sales of tobacco products, excluding little cigars, delivered by a distributor to persons located outside of Illinois are exempt from the tax imposed by the Act.

- c) Sales of tobacco products, excluding little cigars, to retailers who will deliver the tobacco products outside of Illinois are exempt.
- d) The tax imposed by the Act shall not apply to sales or other disposition of tobacco products to the United States Government or any entity of the United States government. For instance, sales of tobacco products to U.S. Veterans' Hospitals and U.S. Military personnel through officially recognized agencies physically located at military bases are exempt from the tax imposed by the Act.
- e) The tax imposed by the Act shall not apply to sales of tobacco products to penal institutions for use in a Correctional Industries program that makes, manufactures, or fabricates tobacco products for sale to residents incarcerated in penal institutions or resident patients of a State operated mental health facility. However, sales of tobacco products to a penal institution that will sell tobacco products through its commissary are taxable.
- f) The tax imposed by the Act shall not apply to sales of tobacco products to Native Americans. Native American transactions include sales to a Native American tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as a Native American tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 [25 U.S.C. 479a].
- g) Under certain circumstances, a blanket Certificate of Resale may be provided by a purchaser to a distributor. These circumstances include the following:
 - 1) Retailers who purchase tobacco products, excluding little cigars, for delivery outside of Illinois are exempt under subsection (c). However, when the retailer may deliver tobacco products, excluding little

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cigars, outside of Illinois but may deliver some within Illinois and when it is impracticable, at the time of purchasing the tobacco products, for the retailer to determine in which way ~~they~~~~he or she~~ will dispose of the tobacco products, the retailer may certify to the distributor that ~~the retailer~~~~he or she~~ is buying all of the tobacco products, excluding little cigars, for resale and provide a blanket Certificate of Resale to the distributor. A retailer may provide such a certificate only if ~~the retailer~~~~he or she~~ is registered as a distributor under the Act and agrees to assume responsibility for reporting and remitting tax on ~~their~~~~his or her~~ taxable Illinois sales (e.g., sales to consumers or retailers).

- 2) Often times, a distributor registered under the Act will also sell tobacco products to consumers. This distributor may similarly find it impracticable, at the time of purchasing the tobacco products, to determine in which way ~~they~~~~he or she~~ will dispose of the tobacco products. Consequently, except for little cigars, the distributor may provide the selling distributor with a blanket Certificate of Resale and assume responsibility for reporting and remitting tax on ~~their~~~~his or her~~ taxable sales to consumers.

~~hg)~~ A distributor making an exempt sale of tobacco products shall document this exemption by obtaining a certification of exemption or resale from the purchaser containing the distributor's name and address, the purchaser's name and address, the date of purchase, the purchaser's signature, the purchaser's tobacco products tax license number, if applicable, and a statement that the purchaser is purchasing for one of the purposes or activities identified in subsections (a) through ~~(fe)~~ or is assuming responsibility for reporting and *remitting* tax as provided for under subsection ~~(gf)~~.

~~ih)~~ *A retailer must be a stamping distributor to make tax exempt sales of packages of little cigars containing 20 or 25 little cigars for use outside of this State. A retailer who is a stamping distributor making sales of stamped packages of little cigars for use outside of this State may file a claim for credit for such sales with the Department on forms and in the manner provided by the Department. [35 ILCS 143/10-27(a)] A retailer must be a stamping distributor to make tax exempt sales of packages of little cigars containing*

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other than 20 or 25 little cigars for use outside of this State. A retailer who is a stamping distributor making sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State on which the tax has been or will be paid by another stamping distributor or was paid by the retailer may file a claim for credit for those sales with the Department on forms and in the manner provided by the Department. [35 ILCS 143/10-27(b)]

- ji) A wholesaler must be a stamping distributor to make tax exempt sales of packages of little cigars containing 20 or 25 little cigars for use outside of this State. A wholesaler who is a stamping distributor making sales of stamped packages of little cigars for use outside of this State may file a claim for credit for those sales with the Department on forms and in the manner provided by the Department. [35 ILCS 143/10-28(a)] A wholesaler must be a stamping distributor to make tax exempt sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State. A wholesaler who is a stamping distributor making sales of packages of little cigars containing other than 20 or 25 little cigars for use outside of this State on which the tax has been or will be paid by another stamping distributor or was paid by the wholesaler may file a claim for credit for those sales with the Department on forms and in the manner provided by the Department. [35 ILCS 143/10-28(b)]*

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

Section 660.45 License Actions: Revocations, Cancellations, and Suspensions

- a) *The Department has the power, after notice and an opportunity for a hearing, to revoke a license issued by the Department if the holder of the license fails to file a return, or to pay the tax, fee, penalty, or interest shown in a filed return, or to pay any final assessment of tax, fee, penalty, or interest, as required by ~~the Tobacco Products Tax Act of 1995~~ ~~the Act~~ or any other tax or fee Act administered by the Department. [20 ILCS 2505/2505-380(a)]*
- b) *The Department may refuse to issue, ~~reissue, or renew~~ a license if a person who is named as the owner, a partner, a corporate officer, or, in the case of a limited liability company, a manager or member, of the applicant on the application for the license, is or has been named as the owner, a partner, a*

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corporate officer, or in the case of a limited liability company, a manager or member, on the application for the ~~certificate of registration, permit, or~~ license of a person that is in default for moneys due under ~~the Act~~the Act or any other tax or fee Act administered by the Department. ~~For purposes of this subsection~~this Section only, in determining whether a person is in default for moneys due, the Department shall include only amounts established as a final liability within the 23 years prior to the date of the Department's notice of refusal to issue ~~or reissue the certificate of registration, permit, or~~ license. ~~For purposes of this Section~~Section, "person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court. [20 ILCS 2505/2505-380(-b)]

- c) ~~The Department may, after notice and a hearing, revoke, cancel, or suspend the license of any distributor~~ and, beginning January 1, 2016~~beginning January 1, 2016~~, any retailer who violates any of the provisions of ~~the~~the Act. The notice shall specify the alleged violation or violations upon which the revocation, cancellation, or suspension proceeding is base. [35 ILCS 143/10-25(a)]
- d) ~~The Department may revoke, cancel or suspend the license of any distributor for a violation of the Tobacco Products Manufacturers' Escrow Enforcement Act of 2003 as provided in Section 30 of that Act [30 ILCS 167]. [35 ILCS 143/10-25(b)]~~
- e) Upon a determination that a distributor has violated Section 15(e) of the Tobacco ~~Products~~Product Manufacturers' Escrow Enforcement Act of 2003 [30 ILCS 167] or any regulation adopted pursuant thereto, the Department may revoke or suspend the license of any distributor in the manner provided by Section 10-25 of ~~the Tobacco Products Tax Act of 1995~~. [30 ILCS 167/30(a)]
- f) ~~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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- ge) The Department may, by application to any circuit court, obtain an injunction restraining any person who engages in business as a distributor of tobacco products without a license (either because ~~the~~*his or her* license has been revoked, canceled, or suspended or because of a failure to obtain a license in the first instance) from engaging in that business until that person, as if that person were a new applicant for a license, complies with all of the conditions, restrictions, and requirements of Section 10-20 of ~~the~~*the* Act and qualifies for and obtains a license. Refusal or neglect to obey the order of the court may result in punishment for contempt. [35 ILCS 143/10-25(d)]*
- hf) Beginning January 1, 2016, failure to comply with the provisions of Section ~~10-37 of the Act~~*660.26(c)* may be grounds for revocation of a distributor's or retailer's license in accordance with Section 10-25 of ~~the~~*the* Act or Section 6 of the Cigarette Tax Act. [35 ILCS 143/10-37]*
- ig) Retailers. ~~Violations of Minimum-Age Tobacco Laws Training Programs~~ Beginning January 1, 2016:*
- 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~~*Minors* 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~~*this Section*, any violation of Section 2(a) of the Prevention of Tobacco Use by ~~Persons under 21 Years of Age~~*Minors* and Sale and Distribution of Tobacco Products Act ~~[720 ILCS 675]~~ 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 for 3 days the license of that retailer for a second violation of the Prevention of Tobacco Use by ~~Persons under 21 Years of Age~~*Minors* and Sale and Distribution of Tobacco Products Act, as provided in Section 2(a-5) of that Act.*

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- 3) *If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 7 days the license of that retailer for a third violation of the Prevention of Tobacco Use by Persons under 21 Years of Age~~Minors~~ and Sale and Distribution of Tobacco Products Act, as provided in Section 2(a-5) of that Act.*
- 4) *If the retailer does not have a training program that facilitates compliance with minimum-age tobacco laws, the Department shall suspend for 30 days the license of a retailer for a fourth or subsequent violation of the Prevention of Tobacco Use by Persons under 21 Years of Age~~Minors~~ and Sale and Distribution of Tobacco Products Act, as provided in Section 2(a-5) of that Act.*
- 5) *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~~18 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.*
- 6) *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 143/10-25(c)]*

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

Section 660.50 Penalties, Interest, and Procedures

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- a) The provisions of the Uniform Penalty and Interest Act [35 ILCS 735] that are not inconsistent with the Act apply to the enforcement of the Act. See Section 3-1A of the Uniform Penalty and Interest Act.
- b) *When the amount due is under \$300, any distributor who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by ~~the~~~~the~~ Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under ~~the~~~~the~~ Act is guilty of a Class 4 felony.*
- c) *When the amount due is under \$300, any person who accepts money that is due to the Department under ~~the~~~~the~~ Act from a taxpayer for the purpose of acting as the taxpayer's agent to make the payment to the Department, but who fails to remit the payment to the Department when due, is guilty of a Class 4 felony.*
- d) *When the amount due is \$300 or more, any distributor who files, or causes to be filed, a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who files or causes to be filed or signs or causes to be signed a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under ~~the~~~~the~~ Act is guilty of a Class 3 felony.*
- e) *When the amount due is \$300 or more, any person engaged in the business of distributing tobacco products to retailers and consumers located in this State who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by ~~the~~~~the~~ Act, or accepts money that is due to the Department under ~~the~~~~the~~ Act from a taxpayer for the purpose of acting as the taxpayer's agent to make payment to the Department but fails to remit that payment to the Department when due is guilty of a Class 3 felony.*
- f) *Any person who violates any provision of ~~Sections~~~~Section~~ 10-20, of the Act and, beginning January 1, 2016, Sections 10-21, and 10-22 of ~~the~~~~the~~ Act, fails*

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to keep books and records as required under ~~the~~~~the~~ Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of ~~the~~~~the~~ Act, is guilty of a Class 4 felony. A person commits a separate offense on each day that ~~the person~~~~he or she~~ engages in business in violation of ~~Sections~~~~Section~~ 10-20, ~~of the Act and, beginning January 1, 2016,~~ ~~Section~~ 10-21, or 10-22 of ~~the~~ Act. If a person fails to produce the books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under ~~the~~~~this~~ Act. 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 ~~subsection (f)~~~~Section~~.

- g) Any taxpayer or agent of a taxpayer who, with the intent to defraud, purports to make a payment due to the Department by issuing or delivering a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository, is guilty of a deceptive practice in violation of Section 17-1 of the Criminal Code of 2012 [\[720 ILCS 5\]](#).
- h) Any person who violates any provision of Sections 10-20, 10-21 and 10-22 of ~~the~~~~the~~ Act, fails to keep books and records as required under ~~the~~~~the~~ Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of ~~the~~~~the~~ Act, is guilty of a business offense and may be fined up to \$5,000. 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 books and records as required under ~~the~~~~the~~ Act. 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 ~~subsection~~ [\(h\)](#)~~Section~~. A person commits a separate offense on each day that ~~the person~~~~he or she~~ engages in business in violation of Sections 10-20, 10-21 and 10-22 of ~~the~~~~the~~ Act.
- i) When the amount due is under \$300, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by ~~the~~~~the~~ Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and consumption located in this State who signs a fraudulent return filed on behalf of the corporation, or any

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accountant or other agent who knowingly enters false information on the return of any taxpayer under ~~the~~~~the~~ Act is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense.

- j) When the amount due is \$300 or more, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by ~~the~~~~the~~ Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and consumption located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under ~~the~~~~the~~ Act is guilty of a Class 4 felony.
- k) A prosecution for a violation described in ~~subsections (b) through (j)~~~~subsections (b) through (j)~~ may be commenced within 3 years after the commission of the act constituting the violation. [35 ILCS 143/10-50]
- l) Any person who knowingly acts as a retailer of tobacco products in this State without first having obtained a license to do so in compliance with Section 10-21 of ~~the~~~~the~~ Act or a license in compliance with Section 4g of the Cigarette Tax Act shall be guilty of a Class A misdemeanor for the first offense and a Class 4 felony for a second or subsequent offense. Each day the person operates as a retailer without a license constitutes a separate offense. [35 ILCS 143/10-53]
- m) Licensed distributors and retailers of tobacco products are required to show proof that the tax imposed by the Act has been paid. Failure to comply with this subsection may be grounds for revocation of the distributor's or retailer's license. The Department may impose a civil penalty on distributors and retailers not to exceed \$1,000 for the first violation and \$3,000 for each subsequent violation of ~~Section 10-37 of the~~~~Section 10-37 of the~~ Act. [35 ILCS 143/10-37]
- n) Any person whose principal place of business is in ~~this~~~~the~~ State and who is charged with a violation under ~~Section 10-50 of the Act~~~~Section 10-50 of the Act~~ shall be tried in the county where ~~the person's~~~~his or her~~ principal place of business is located unless ~~the person~~~~he or she~~ asserts a right to be tried in another venue. If the taxpayer does not have ~~its~~~~his or her~~ principal place of

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business in this State, however, the hearing must be held in Sangamon County unless the taxpayer asserts a right to be tried in another venue. [35 ILCS 143/10-50]

- o) 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 written 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 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.
- p) *Except as provided by the Constitution of the United States, the Constitution of the State of Illinois, or any statutes of this State, including, but not limited to, the State Officers and Employees Money Disposition Act [30 ILCS 230], the Tax Tribunal established pursuant to the Illinois Independent Tax Tribunal Act of 2012 [35 ILCS 1010] shall have original jurisdiction over all determinations of the Department reflected on a Notice of Deficiency, Notice of Tax Liability, Notice of Claim Denial, or Notice of Penalty Liability issued under the Tobacco Products Tax Act of 1995 or the Uniform Penalty and Interest Act. Jurisdiction of the Tax Tribunal is limited to Notices of Tax Liability, Notices of Deficiency, Notices of Claim Denial, and Notices of Penalty Liability when the amount at issue in a notice, or the aggregate amount at issue in multiple notices issued for the same tax year or audit period, exceeds \$15,000, exclusive of penalties and interest. In notices solely asserting either an interest or penalty assessment, or both, the Tax Tribunal shall have jurisdiction over cases in which the combined total of all penalties or interest assessed exceeds \$15,000. [35 ILCS 1010/1-45]*
- q) *Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Section 10-35, 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 Section 10-35, and \$3,000 for each subsequent failure to keep books and records or failure to*

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produce books and records for inspection, as required by Section 10-35. [35 ILCS 143/10-35a]

- 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. ~~(See Sections 660.24(b) and 660.25(b).)~~ 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 (q)(1). The Department is not required to provide the retailer with a written document request pursuant to this subsection (q)(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 660.24(a), distributors 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 distributor or 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 tobacco retailer. The person at the store states the 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 will issue a notice of penalty.

EXAMPLE 2: An authorized agent of the Department attempts to inspect the books and records of a tobacco retailer. The person at the store states the 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 60 minutes and makes the 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 Section 660.24(a). However, the authorized agent of the Department does have authority to inspect the premises pursuant to Section 620.24(b).

- 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 as required. A person who is unable to rebut this presumption is subject to the penalty provided in this subsection (q).
- 4) Except as otherwise provided by subsection (q)(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

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must provide the taxpayer with a document request in writing. The written document request must contain:

- A) the name of the person receiving the request;
 - B) the name of the business;
 - C) the date and time 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 his or her contact information.
- 5) 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 (q) 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 tobacco products 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 tobacco products purchased in the last 60 days. The agent fills out a written document request, provides a copy of the written document request to the person, and provides the person 30

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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 issues a notice of penalty to the business at its last known address.

- 6) Any person receiving a notice of penalty may, within 20 days after the date on the notice of penalty, 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.
- 7) The Department cannot impose more than one penalty for failing to produce books and records for a calendar month.

EXAMPLE 1: An authorized agent of the Department inspects a tobacco 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.

EXAMPLE 2: An authorized agent of the Department inspects a tobacco 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 tobacco sales receipts for March. The retailer fails to produce the sales receipts. The Department cannot issue a notice of 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 records for March.

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- 8) 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 tobacco 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 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.

- r) Any ~~distributor or retailer~~ *distributor or retailer* who violates Section 10-38 of the Act ~~Section 10-38 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 violation and \$3,000 for any subsequent violation. [35 ILCS 143/10-38] ~~(See Sections 660.24(c) and 660.25(ki).)~~

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

Section 660.51 Protest Procedures for Certain Penalties

- a) Any person aggrieved by any action of the Department under item Sections 10-35a, 10-37, or 10-38 of the Tobacco Products Act of 1995 may protest the action by making a written request for a hearing within 60 days after the original action.
- b) Hearings that have been timely requested will be scheduled by the Department. The Department will provide written notice of the date, time, and place of the hearing at least 20 days prior to the hearing date.
- c) Hearings shall be conducted in accordance with the provisions of the Illinois Administrative Procedure Act [5 ILCS 100] and regulations promulgated thereunder found at 86 Ill. Adm. Code 200.101 through 200.225.

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- d) The Department shall notify the licensee of the findings of fact and ruling on the hearing. If, within 35 days from the date the licensee receives notice of the decision, proceedings for review thereof are not instituted in the manner provided by the Administrative Review Law [735 ILCS 5/Art. III], the decision shall become final.

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

Section 660.60 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 employee's presence a violation of any of the provisions of the Act,
 - 2) without a search warrant inspect all tobacco products located in any place of business,
 - 3) seize any tobacco products in accordance with the provisions of the Act, and
 - 4) seize any vending device in which those tobacco products are found.
- b) The tobacco products and vending devices so seized are subject to confiscation and forfeiture as provided in Sections 10-56 through 10-58 of the Act. [35 ILCS 143/10-55]

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

Section 660.65 Seizure and Forfeiture

- a) After seizing any tobacco products or vending devices, as provided in Section 10-55 of the Act, the Department must hold a hearing and determine whether the distributor or retailer was properly licensed to sell the tobacco products at the time of their seizure by the Department. The Department shall give not less than 20 days' notice of the time and place of the hearing to the owner of the property, if the owner is known, and also to the person in whose

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possession the property was found, if that person is known and if the person in possession is not the owner of the property. If neither the owner nor person in possession of the property is known, the Department must cause publication of the time and place of the hearing to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing is to be held.

b) 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.

c) If, as the result of the hearing, the Department determines that the distributor or retailer was not properly licensed at the time the tobacco products were seized, or upon receipt of a properly executed waiver and consent to forfeiture as provided in subsection (b), the Department must enter an order declaring the tobacco products or vending devices confiscated and forfeited to the State, to be held by the Department for disposal by it as provided in Section 10-58. The Department must give notice of the order to the owner of the property, if the owner is known, and also to the person in whose possession the property was found, if that person is known and if the person in possession is not the owner of the property. If neither the owner nor the person in possession of the property is known, the Department must cause publication of the order to be made at least once in each week for 3 weeks successively in a newspaper of general circulation in the county where the hearing was held. [35 ILCS 143/10-56]

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

Section 660.70 Sale of Forfeited Tobacco Products

When any tobacco products or any vending devices are declared forfeited to the State by the Department, and when all proceedings for the judicial review of the Department's decision have terminated, the Department shall, to the extent its decision is sustained on review, sell the property for the best price obtainable and shall pay over the proceeds of the sale to the State Treasurer. [35 ILCS 143/10-58]

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