House Engrossed Senate Bill

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MICHELE REAGAN
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CHAPTER 85

SENATE BILL 1240

AN ACT

AMENDING SECTIONS 13-3711, 36-798.06, 41-2170.05, 42-1102, 42-1124, 42-1125, 42-1127, 42-2003, 42-3001 AND 42-3006, ARIZONA REVISED STATUTES; REPEALING SECTION 42-3007, ARIZONA REVISED STATUTES; AMENDING SECTIONS 42-3008 AND 42-3010, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLES 10, 11 AND 12; PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING SECTIONS 42-3253, 42-3303, 42-3303.01 AND 42-3306, ARIZONA REVISED STATUTES; AMENDING SECTION 42-3401, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 42, CHAPTER 3, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-3402; AMENDING SECTIONS 42-3403, 42-3404 AND 42-3405, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 42, CHAPTER 3, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-3406; AMENDING SECTIONS 42-3451, 42-3452 AND 42-3453, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 42, CHAPTER 3, ARTICLE 11, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-3454; AMENDING SECTIONS 42-3455, 42-3456, 42-3457, 42-3458, 42-3459, 42-3460, 42-3461, 42-3462 AND 42-3501, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 42, CHAPTER 3, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 42-3502 AND 42-3503; RELATING TO TOBACCO TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-3711, Arizona Revised Statutes, is amended to read:

13-3711. Unlawful commercial use of cigarette machines; civil penalties; forfeiture; classification

A. It is unlawful to possess, use or make available for use for commercial purposes a tobacco product rolling vending machine. A tobacco product rolling vending machine located in a nonresidential premises is presumed to be possessed, used or available for use for commercial purposes unless the machine is for sale. This subsection does not apply to:

1. A tobacco product rolling vending machine that is to be used exclusively for the owner's personal consumption or use if the machine is not located on a retail or other business premises.

2. Tobacco product manufacturers who have obtained a current federal manufacturer of tobacco products permit issued by the federal alcohol and tobacco tax and trade bureau to operate as a tobacco product manufacturer.

B. The department of revenue is authorized to seize the machine and all related tubes, papers, tobacco products and materials, which shall be forfeited to this state following the process prescribed in section 42-1124. All forfeited tobacco products shall also be destroyed pursuant to section 42-1124 and deemed contraband under section ~~42-3201, subsection K~~ 42-3402.

C. A person who knowingly violates this section is guilty of a class 3 misdemeanor and is also subject to the following:

1. The revocation or termination of a license issued pursuant to section ~~42-3201~~ 42-3401.

2. A civil penalty not to exceed fifty thousand dollars for each violation.

3. An injunction to restrain a threatened or actual violation of this section.

4. Recovery by this state for the costs of enforcing this section or of any action or proceeding pertaining to a violation of this section, including the costs of investigation and reasonable attorney fees in the trial and appellate courts. Payments shall be deposited into the state general fund.

Sec. 2. Section 36-798.06, Arizona Revised Statutes, is amended to read:

36-798.06. Delivery sales prohibited; common carriers; civil penalty; forfeiture; unlawful practice; exceptions; violation; classification; definitions

A. A person shall not do either of the following:

1. Cause a tobacco product to be ordered or purchased by anyone other than a licensed person or a retailer who orders or purchases from a licensed person, including by ordering or purchasing a tobacco product.

2. Knowingly provide substantial assistance to a person who violates this section.

B. A common carrier shall not knowingly transport a tobacco product for a person who is in violation of this section.

C. Each order or purchase of a tobacco product in violation of subsection A, paragraph 1 of this section constitutes a separate violation under this section.

D. In addition to any other penalty, a person who violates this section is subject to all of the following:

1. A civil penalty in an amount not to exceed five thousand dollars for each violation.

2. An injunction to restrain a threatened or actual violation of this section.

3. Recovery by this state for:

(a) The costs of any investigation related to a violation of this section.

(b) The cost of expert witness fees in any action related to a violation of this section.

(c) The cost of the action related to a violation of this section.

(d) Reasonable attorney fees.

4. All state tobacco taxes due under title 42, chapter 3 and all transaction privilege or use taxes due under title 42, chapter 5, including any penalties and interest.

E. All tobacco products that are seized for a violation of this section shall be forfeited to the state and destroyed pursuant to section 42-1124.

F. A violation of this section is an unlawful practice under section 44-1522 and is in addition to all other causes of action, remedies and penalties that are available to this state. The attorney general may investigate and take appropriate action pursuant to title 44, chapter 10, article 7.

G. This section does not apply to either of the following:

1. The shipment of a tobacco product to a foreign trade zone that is established under 19 United States Code section 81 and title 44, chapter 18 and that is located in this state if the tobacco product is from outside of this country, was ordered by a distributor in another state and is not distributed in this state.

2. A government employee who is acting in the course of the employee's official duties.

H. A person who violates this section is guilty of a class 6 felony.

I. For the purposes of this section:

1. "Licensed person" means a person who is required to be licensed under section ~~42-3201~~ 42-3401.

2. "Order or purchase" means any of the following:

(a) By mail or delivery service.

(b) Through the internet or a computer network.

(c) By telephone.

(d) Through any other electronic method.

3. "Person" means an individual, partnership, firm, association, corporation, limited liability company or partnership, joint venture or other entity.

4. "Retailer" has the same meaning prescribed in section 42-5001.

5. "Tobacco product" means all luxuries included in section 42-3052, paragraphs 5, 6 and 7. Tobacco product does not include pipe tobacco or cigars.

Sec. 3. Section 41-2170.05, Arizona Revised Statutes, is amended to read:

41-2170.05. Implementation; rule making; inspection of cigarettes; definitions

A. The state fire marshal shall implement this article pursuant to the implementation and substance of the New York fire safety standards for cigarettes in section 156-c of the New York executive law and part 429 of title 19 of the New York Code of Rules and Regulations.

B. The state fire marshal may adopt rules to enforce this article.

C. As authorized pursuant to section 42-3151, the department of revenue in the regular course of conducting inspections of ~~cigarette~~ distributors and retailers may inspect cigarettes to determine if the cigarettes are marked as required by section 41-2170.03. If the cigarettes are not marked as required, the department of revenue shall notify the state fire marshal.

D. An agent of the department of revenue who is also a law enforcement agent or investigator may conduct inspections pursuant to section 41-2170.04, subsection G.

E. This section applies beginning August 1, 2009.

F. For the purpose of this section, "cigarette", "~~cigarette~~ distributor" and "retailer" have the same meanings prescribed in section 42-3001.

Sec. 4. Section 42-1102, Arizona Revised Statutes, is amended to read:

42-1102. Taxpayer bonds; definition

A. If the department deems it necessary to protect the revenues to be collected under this title and title 43, it may require a person liable for the tax to file a bond to secure the payment of the tax, penalty or interest which may become due from that person. The bond shall be:

1. Issued by a surety company authorized to transact business in this state and approved by the director of insurance of this state as to solvency and responsibility or composed of securities or cash that are deposited with, and kept in the custody of, the department.

2. Except as otherwise provided in this section, in the amount which the department prescribes by administrative rule to secure the payment of any tax, penalty or interest which may become due from the person.

B. For the purposes of licenses to sell tobacco products issued under section ~~42-3201~~ 42-3401, the amount of the bond required under this section is the greater of five hundred dollars or four times the average monthly tax liability. For the purposes of determining the bond amount, the average monthly tax liability is equal to the average monthly tax due from the applicant for the preceding six consecutive months. If an applicant does not have a six-month payment history, the bond amount is a minimum of five hundred dollars. If an applicant provides a surety bond and the bond lapses, the applicant shall deposit with the department cash or other security in an amount equal to the lapsed surety bond within five business days after the applicant's receipt of written notification by the department. The bond amount may be increased or decreased as necessary based on any reason listed in subsection D of this section or a change in the applicant's previous filing period, filing compliance record or payment history. If the bond amount is increased above the amount computed under this subsection, the applicant may request a hearing pursuant to subsection C of this section to show why the order increasing the bond amount is in error.

C. If the department determines that a person is to file such a bond it shall notify him to that effect, specifying the amount of the bond required. The person shall file the bond within five days after the giving of notice unless within that time he requests in writing a hearing before the department at which time the department shall determine the necessity, propriety and amount of the bond. The determination is final unless within fifteen days after the giving of notice of the determination the person appeals the determination to the state board of tax appeals. The board shall decide on the appeal within fifteen days of its receipt. The bond, at any time without notice, may be applied to any tax, penalties or interest due, and for that purpose the securities may be sold at public or private sale without notice to the depositor.

D. For purposes of this section a bond may be required if:

1. After investigation of financial status, the department determines that an applicant for a new license would be unable to timely remit amounts due.

2. An applicant for a new license held a license for a prior business, and the remittance record for the prior business falls within one of the conditions in paragraph 5.

3. The department experienced collection problems while the applicant was engaged in business under a prior license.

4. The applicant is substantially similar to a person who would have been required to post a bond under paragraph 5 of this subsection or the person had a previous license that was revoked. An applicant is substantially similar if it is owned or controlled by persons who owned or controlled a previous licensee.

5. An existing licensee has had two or more delinquencies in remitting tax during the preceding twenty-four months if filing on a quarterly or less

frequent basis or four or more delinquencies during the preceding twenty-four months if filing on a monthly or more frequent basis.

E. If a licensee who is required to post a bond or security maintains a good filing and payment record for a period of two years, the licensee may request that the department waive the continued bond or security requirement.

F. In this section "person" includes a firm, partnership, joint venture, association, corporation, sole proprietorship or any other business or governmental entity subject to a tax administered by this article but does not include an individual subject to individual income tax.

Sec. 5. Section 42-1124, Arizona Revised Statutes, is amended to read:

42-1124. Failure to affix stamps or pay or account for tax; forfeiture of commodity; sale of forfeited commodity; effect of seizure and sale; request for administrative hearing; definitions

A. If the department or its authorized agents or representatives discover any luxury subject to tax under chapter 3 of this title to which official stamps have not been affixed as required or on which the tax has not been paid or accounted for, the department or its agent or representative may seize and take possession of the luxury, and it is deemed forfeited to this state. Except as provided in subsection D or E of this section, the department, ~~shall~~ within a reasonable time thereafter, pursuant to a notice posted on the premises or by publication in a newspaper of general circulation in the county where the sale is to take place, not fewer than five days before the date of sale, SHALL offer for sale and sell the forfeited luxuries. The department shall pay the proceeds of the sale into the state general fund. The sale shall take place in the county which is most convenient and economical. The department need not offer any property for sale if, in its opinion, the probable cost of sale exceeds the value of the property.

B. The seizure and sale do not relieve any person from the penalties provided for violating this title.

C. The department of revenue may enter into an interagency agreement with the department of transportation for the purpose of carrying out tobacco enforcement under chapter 3 of this title at ports of entry.

D. All cigarettes that are seized for violations under this title shall be forfeited to this state. All cigarettes that are forfeited to this state pursuant to section 13-3711, 36-798.06 or ~~42-3210~~ 42-3461 or section 44-7111, section 6(b) shall be destroyed. If a ~~cigarette~~ distributor defrauds this state by knowingly and intentionally failing to keep or make any record, return, report or inventory pertaining to cigarettes, by refusing to pay any luxury tax for cigarettes subject to tax under chapter 3 of this title or by attempting to evade or defeat any requirement of this title, the ~~cigarette~~ distributor shall forfeit to this state all fixtures, equipment and all other materials and personal property that are located on the premises of the ~~cigarette~~ distributor. Alternatively, at the request of the department,

the ~~cigarette~~ distributor may be enjoined by an action commenced by the attorney general or a county attorney in the name of the state from engaging or continuing in any business for which a tax is imposed by this chapter until the tax has been paid and until such person has complied with this title.

E. The department may sell or otherwise dispose of any cigarettes forfeited to this state on such conditions as it deems most advantageous and just under the circumstances, unless such cigarettes are forfeited pursuant to section 13-3711, 36-798.06 or ~~42-3210~~ 42-3461 or section 44-7111, section 6(b). The department shall deposit the proceeds of any sales made pursuant to this subsection in the state general fund.

F. The department shall give notice of the seizure and forfeiture of cigarettes described in this section by personal service or by certified mail to all persons known by the department to have any right, title or interest in the property. Notice shall include a description of the cigarettes seized, the reason for the seizure and the time and place of the seizure. The following apply to the notice under this subsection:

1. Except as provided in paragraph 2 of this subsection, the department shall post and maintain an ~~on-line~~ ONLINE notice of seizure and forfeiture on its ~~web site~~ WEBSITE for a period of at least six months, beginning no later than ten business days after the date of the personal service of the notice to a person or the date of the mailing of the notice. The ~~on-line~~ ONLINE notice shall display the date on which the department posts the notice to the ~~web site~~ WEBSITE, which shall serve as the date of publication of the notice.

2. An ~~on-line~~ ONLINE notice is not required if the amount of cigarettes seized is less than sixty-one cartons of two hundred cigarettes each.

G. Any person whose legal rights, duties or privileges are determined by the notice of seizure and forfeiture may file a request for an administrative hearing with the department on a form prescribed by the department. The request for an administrative hearing shall contain a statement of the petitioner's interest in the cigarettes and an explanation of why the release or recovery of the cigarettes is warranted on the ground that the cigarettes were erroneously or illegally seized.

H. The seizure and forfeiture of cigarettes or other tobacco products by the department is an appealable agency action as defined in section 41-1092 and is governed by title 41, chapter 6, article 10 and section 42-1251, except that:

1. A request for an administrative hearing that is filed under subsection G of this section is deemed to be timely filed if the request is filed with the department within ten days after the date of personal service on the petitioner or the date of mailing the notice to the petitioner. Any person not served personally or by mail shall file the request within ten days after the date of publication of the notice. The failure of a person to

file a timely request constitutes a bar to that person's right to any interest in the cigarettes or other tobacco products, except insofar as the rights of that person may be established in an action filed by the department under this chapter.

2. If a request for an administrative hearing is not filed with the department at the expiration of ten days after the notice has been personally served, mailed or published, the department's determination is final. If a timely request for an administrative hearing has been filed with the department, the department shall request a hearing by the office of administrative hearings and the department shall suspend action until the final order of the department has been issued. An order that is issued by the office of administrative hearings shall be the final order of the department thirty days after the petitioner receives the decision unless a decision by the director is issued pursuant to section 42-1251. If the director issues a decision, that decision is the final order of the department.

I. For the purposes of this section, "cigarette" and "~~cigarette~~ distributor" have the same meanings prescribed in section 42-3001.

Sec. 6. Section 42-1125, Arizona Revised Statutes, is amended to read:

42-1125. Civil penalties; definition

A. If a taxpayer fails to make and file a return for a tax administered pursuant to this article on or before the due date of the return or the due date as extended by the department, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect, four and one-half ~~per cent~~ PERCENT of the tax required to be shown on such return shall be added to the tax for each month or fraction of a month elapsing between the due date of the return and the date on which it is filed. The total penalty shall not exceed twenty-five ~~per cent~~ PERCENT of the tax found to be remaining due. The penalty so added to the tax is due and payable on notice and demand from the department. For the purpose of computing the penalty imposed under this subsection, the amount required to be shown as tax on a return shall be reduced by the amount of any part of the tax which is paid on or before the beginning of such month and by the amount of any credit against the tax which may be claimed on the return. If the amount required to be shown as tax on a return is less than the amount shown as tax on such return, the penalty described in this subsection shall be applied by substituting such lower amount.

B. If a taxpayer fails or refuses to file a return on notice and demand by the department, the taxpayer shall pay a penalty of twenty-five ~~per cent~~ PERCENT of the tax, which is due and payable on notice and demand by the department, in addition to any penalty prescribed by subsection A of this section, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. This penalty is payable on notice and demand from the department.

C. If a taxpayer fails or refuses to furnish any information requested in writing by the department, the department may add a penalty of twenty-five ~~per cent~~ PERCENT of the amount of any deficiency tax assessed by the department concerning the assessment of which the information was required, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect.

D. If a person fails to pay the amount shown as tax on any return within the time prescribed, a penalty of one-half of one ~~per cent~~ PERCENT, not to exceed a total of ten ~~per cent~~ PERCENT, shall be added to the amount shown as tax for each month or fraction of a month during which the failure continues, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. If the department determines that the person's failure to pay was due to reasonable cause and not due to wilful neglect and that a payment agreement pursuant to section 42-2057 is appropriate, the department shall not impose the penalty unless the taxpayer fails to comply with the payment agreement. If the taxpayer is also subject to a penalty under subsection A of this section for the same tax period, the total penalties under subsection A of this section and this subsection shall not exceed twenty-five ~~per cent~~ PERCENT. For the purpose of computing the penalty imposed under this subsection:

1. The amount shown as tax on a return shall be reduced by the amount of any part of the tax that is paid on or before the beginning of that month and by the amount of any credit against the tax that may be claimed on the return.

2. If the amount shown as tax on a return is greater than the amount required to be shown as tax on that return, the penalty shall be applied by substituting the lower amount.

E. If a person fails to pay any amount required to be shown on any return that is not so shown within twenty-one calendar days after the date of notice and demand, a penalty of one-half of one ~~per cent~~ PERCENT, not to exceed a total of ten ~~per cent~~ PERCENT, shall be added to the amount of tax for each month or fraction of a month during which the failure continues, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. If the taxpayer is also subject to penalty under subsection A of this section for the same tax period, the total penalties under subsection A of this section and this subsection shall not exceed twenty-five ~~per cent~~ PERCENT. For the purpose of computing the penalty imposed under this subsection, any amount required to be shown on any return shall be reduced by the amount of any part of the tax that is paid on or before the beginning of that month and by the amount of any credit against the tax that may be claimed on the return.

F. In the case of a deficiency, for which a determination is made of an additional amount due, which is due to negligence but without intent to defraud, the person shall pay a penalty of ten ~~per cent~~ PERCENT of the amount of the deficiency.

G. If part of a deficiency is due to fraud with intent to evade tax, fifty ~~per cent~~ PERCENT of the total amount of the tax, in addition to the deficiency, interest and other penalties provided in this section, shall be assessed, collected and paid as if it were a deficiency.

H. If the amount, whether determined by the department or the taxpayer, required to be withheld by the employer pursuant to title 43, chapter 4 is not paid to the department on or before the date prescribed for its remittance, the department may add a penalty of twenty-five ~~per cent~~ PERCENT of the amount required to be withheld and paid, unless it is shown that the failure is due to reasonable cause and not due to wilful neglect.

I. A person who, with or without intent to evade any requirement of this article or any lawful administrative rule of the department of revenue under this article, fails to file a return or to supply information required under this article or who, with or without such intent, makes, prepares, renders, signs or verifies a false or fraudulent return or statement or supplies false or fraudulent information shall pay a penalty of not more than one thousand dollars. This penalty shall be recovered by the department of law in the name of this state by an action in any court of competent jurisdiction.

J. If the taxpayer files what purports to be a return of any tax administered pursuant to this article but that is frivolous or that is made with the intent to delay or impede the administration of the tax laws, that person shall pay a penalty of five hundred dollars.

K. If any person who is required to file or provide an information return under this title or title 43 or who is required to file or provide a return or report under chapter 3 of this title fails to file the return or report at the prescribed time or in the manner required, or files a return or report that fails to show the information required, that person shall pay a penalty of one hundred dollars for each month or fraction of a month during which the failure continues unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. The total penalties for each return or report under this subsection shall not exceed five hundred dollars.

L. If it appears to the superior court that proceedings before it have been instituted or maintained by a taxpayer primarily for delay or that the taxpayer's position is frivolous or groundless, the court may award damages in an amount not to exceed one thousand dollars to this state. Damages so awarded shall be collected as a part of the tax.

M. A person who is required under section 43-413 to furnish a statement to an employee and who wilfully furnishes a false or fraudulent statement, or who wilfully fails to furnish a statement required by section 43-413, is for each such failure subject to a penalty of fifty dollars.

N. A person who is required to collect or truthfully account for and pay a tax administered pursuant to this article, including any luxury privilege tax, and who wilfully fails to collect the tax or truthfully account for and pay the tax, or wilfully attempts in any manner to evade or

defeat the tax or its payment, is, in addition to other penalties provided by law, liable for a penalty equal to the total amount of the tax evaded, not collected or not accounted for and paid. Except as provided in subsections U, V and W of this section, no other penalty under this section relating to failure to pay tax may be imposed for any offense to which this subsection applies.

O. For reporting periods beginning from and after February 28, 2011, if a taxpayer who is required under section 42-1129 to make payment by electronic funds transfer fails to do so, that taxpayer shall pay a penalty of five ~~per cent~~ PERCENT of the amount of the payment not made by electronic funds transfer unless it is shown that the failure is due to reasonable cause and not due to wilful neglect. For the reporting periods beginning on July 1, 2015, the penalty in this subsection applies to any taxpayer who is required under section 42-3053 to make payment by electronic funds transfer and fails to do so unless it is shown that the failure is due to reasonable cause and not due to wilful neglect.

P. Unless due to reasonable cause and not to wilful neglect:

1. A person who fails to provide that person's taxpayer identification number in any return, statement or other document as required by section 42-1105, subsection A shall pay a penalty of five dollars for each such failure.

2. A person, when filing any return, statement or other document for compensation on behalf of a taxpayer, who fails to include that person's own taxpayer identification number and the taxpayer's identification number shall pay a penalty of fifty dollars for each such failure.

3. A person, when filing any return, statement or other document without compensation on behalf of a taxpayer, who fails to include that person's own taxpayer identification number and the taxpayer's identification number is not subject to a penalty.

No other penalty under this section may be imposed if the only violation is failure to provide taxpayer identification numbers.

Q. If a taxpayer fails to pay the full amount of estimated tax required by title 43, chapter 5, article 6, a penalty is assessed equal to the amount of interest that would otherwise accrue under section 42-1123 on the amount not paid for the period of nonpayment, not exceeding ten ~~per cent~~ PERCENT of the amount not paid. The penalty prescribed by this subsection is in lieu of any other penalty otherwise prescribed by this section and in lieu of interest prescribed by section 42-1123.

R. Beginning January 1, 2015, if a taxpayer continues in business without timely renewing a municipal privilege tax license as prescribed in section 42-5005, subsection D, a civil penalty of up to twenty-five dollars shall be added to the renewal fee for each jurisdiction.

S. The department of law, with the consent of the department of revenue, may compromise any penalty for which it may bring an action under this section.

T. Penalties shall not be assessed under subsection D of this section on additional amounts of tax paid by a taxpayer at the time the taxpayer voluntarily files an amended return. This subsection does not apply if:

1. The taxpayer is under audit by the department.

2. The amended return was filed on demand or request by the department.

3. The total additional tax paid and due for the tax period represents a substantial understatement of tax liability. For the purposes of this paragraph, there is a substantial understatement of tax for any tax period if the amount of the understatement for the tax period exceeds the greater of ten ~~per cent~~ PERCENT of the actual tax liability for the tax period or two thousand dollars.

U. In addition to other penalties provided by law, a person who knowingly and intentionally does not comply with any requirement under chapter 3~~, article 5~~ of this title relating to cigarettes shall pay a penalty of one thousand dollars. A person who knowingly and intentionally does not pay any luxury tax that relates to cigarettes imposed by chapter 3 of this title shall pay a penalty that is equal to ten ~~per cent~~ PERCENT of the amount of the unpaid tax.

V. A ~~cigarette~~ manufacturer, ~~cigarette~~ importer or ~~cigarette~~ distributor, as defined in section 42-3001, who knowingly and intentionally sells or possesses cigarettes with false manufacturing labels or cigarettes with counterfeit tax stamps, or who obtains cigarettes through the use of a counterfeit license, shall pay the following penalties:

1. For a first violation involving two thousand or more cigarettes, one thousand dollars.

2. For a subsequent violation involving two thousand or more cigarettes, five thousand dollars.

W. The civil penalties in this section are in addition to any civil penalty under chapter 3, article ~~5~~ 10, 11 OR 12 of this title.

X. For the purposes of this section, and only as applied to the taxes imposed by chapter 5, articles 1 through 6 and chapter 6, articles 1, 2 and 3 of this title, "reasonable cause" means a reasonable basis for the taxpayer to believe that the tax did not apply to the business activity or the storage, use or consumption of the taxpayer's tangible personal property in this state.

Sec. 7. Section 42-1127, Arizona Revised Statutes, is amended to read:

42-1127. Criminal violations; classifications; place of trial; definition

A. It is a class 4 felony to:

1. Corruptly or by force or threats of force or injury:

(a) Attempt to intimidate, impede or injure an employee of the department acting in an official capacity.

(b) Obstruct, impede or attempt to obstruct or impede the administration of this title or title 43.

2. Attempt by means of bribery, misrepresentation, intimidation or force or threats of force to obstruct, delay or prevent the communication of information or testimony relating to a violation of this title or title 43 to an employee or officer of the department, or knowingly injure another personally or injure the person's property on account of the person giving, personally or by any other person, any such information or testimony to an employee of the department.

3. Make, forge, alter or counterfeit with the intent to defraud a stamp or meter impression prepared or prescribed by the department under chapter 3 of this title, or to knowingly utter, publish, pass or tender as true a false, altered, forged or counterfeited stamp or meter impression, or to use a stamp provided for and required by chapter 3 of this title which has already once been used, with the intent to evade the tax imposed by chapter 3 of this title.

4. Tamper with, or cause to be tampered with, any metering machine authorized to be used under chapter 3 of this title.

B. It is a class 5 felony to:

1. Knowingly fail to pay any tax administered pursuant to this article due or believed due by the taxpayer with intent to evade the tax.

2. Knowingly prepare, present or aid, procure or advise in preparing or presenting any return, affidavit, claim or other document which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the taxpayer authorized or required to present the return, affidavit, claim or document.

3. Simulate or falsely or fraudulently execute or sign any license or other required document, or cause the license or document to be falsely or fraudulently executed or advise or aid in such execution, with the intent to conceal or cover up a material fact relating to a tax administered pursuant to this article.

4. Knowingly fail to file a return or supply required information, or falsify or conceal a material fact, document or record, make a false, fictitious or fraudulent statement or representation or make or use a false writing or document knowing it to contain a false, fictitious or fraudulent statement or entry, with intent that the department rely on the false, fictitious or fraudulent statement or entry in determining tax liability under this article.

C. A ~~cigarette~~ distributor as defined in section 42-3001 who violates section ~~42-3202~~ 42-3452, subsection A, paragraph 2 is guilty of a class 1 misdemeanor. If the ~~cigarette~~ distributor is convicted of a second violation of section ~~42-3202~~ 42-3452, subsection A, paragraph 2, the department may revoke the ~~cigarette~~ distributor's license issued pursuant to section ~~42-3201~~ 42-3401.

D. A distributor as defined in section 42-3001 who violates any provision of section ~~42-3201~~ 42-3401, section ~~42-3202~~ 42-3452, subsection A, paragraph 1 or section ~~42-3203~~ 42-3456 is guilty of a class 1 misdemeanor.

If the distributor is a licensee under section ~~42-3201~~ 42-3401 and is convicted of a second violation of section ~~42-3203~~ 42-3456, the department may revoke the distributor's license.

E. It is a class 3 felony for any person to:

1. Except as provided in section ~~42-3205~~ 42-3457, transport, in an unstamped or unlawfully stamped condition, for the purpose of sale ten thousand or more cigarettes that were subject to the tax imposed by chapter 3, article 2, 6, ~~or~~ 7 OR 9 of this title.

2. Wilfully sell or offer for sale, in an unstamped or unlawfully stamped condition, ten thousand or more cigarettes that were subject to the tax imposed by chapter 3, article 2, 6 or 7 of this title.

3. Wilfully sell or offer for sale off an Indian reservation ten thousand or more cigarettes that are stamped for on-reservation sales.

F. For the purposes of subsection E of this section, the possession or transportation in this state at any time by any person, other than a licensed distributor, as defined in section 42-3001, of ten thousand or more cigarettes in an unstamped or unlawfully stamped condition, other than in interstate shipment consistent with ~~the~~ federal contraband cigarette trafficking ~~act of 1978~~ LAWS (~~P.L. 95-575; 92 stat. 2463;~~ 18 United States Code chapter 114), is presumptive evidence that the cigarettes:

1. Are possessed or transported for the purpose of sale.

2. Are subject to the taxes imposed by chapter 3, article 2, 6, ~~or~~ 7 OR 9 of this title.

G. A person who knowingly sells a luxury on which the tax has not been paid or accounted for as required by chapter 3 of this title is guilty of a class 1 misdemeanor.

H. A retailer who possesses any package, bottle or other container containing a luxury which does not bear the stamps required to be affixed by chapter 3 of this title is guilty of a class 1 misdemeanor.

I. A person is guilty of a class 3 misdemeanor who:

1. Is engaged in the business of selling a luxury, either at wholesale or retail, and who knowingly refuses or fails to produce on demand by the department invoices of all luxuries the person purchased or received within two years immediately before the demand, unless the person shows by satisfactory proof that the person is unable to do so for reasons beyond the person's control.

2. Makes a false entry on an invoice, package or container of luxuries, or who with intent to avoid the taxes imposed by chapter 3 of this title presents a false entry for inspection of the department.

3. Knowingly prevents or hinders the department from making a full inspection of any place where a luxury is sold or stored, or knowingly prevents or hinders the inspection of invoices, books, records or papers required to be kept.

4. Violates any provision of this article or an administrative rule adopted by the department for which no other penalty is prescribed.

J. The place of trial for the offenses enumerated in this section is in the county of residence or principal place of business of the defendant or defendants. If the defendant has no residence or principal place of business in this state, the trial shall be held in Maricopa county.

K. A person who defrauds this state by violating any requirement under chapter 3 of this title, with criminal intent to evade any such requirement, is guilty of a class 4 felony and shall pay a penalty of three times the retail value of the cigarettes involved.

L. A person who knowingly violates any requirement under chapter 3 of this title, with the criminal intent to evade any such requirement, is guilty of a class 6 felony.

M. A person who knowingly sells or offers to sell off an Indian reservation more than two thousand but less than ten thousand cigarettes that are stamped for on-reservation sales, with the criminal intent to evade the tax imposed by chapter 3 of this title, is guilty of a class 5 felony.

N. Any distributor, as defined in section 42-3001, who sells or possesses more than two thousand cigarettes with false manufacturing labels or cigarettes with counterfeit tax stamps, with the criminal intent to evade any requirement under chapter 3 of this title, is guilty of a class 5 felony and shall pay a penalty of:

1. For a first violation involving two thousand or more cigarettes, two thousand dollars or three times the retail value of the cigarettes, whichever is greater.

2. For a subsequent violation involving two thousand or more cigarettes, fifty thousand dollars or three times the retail value of the cigarettes, whichever is greater.

O. For the purposes of this section, "luxury" means any article, object or device on which a tax is imposed under chapter 3 of this title.

Sec. 8. Section 42-2003, Arizona Revised Statutes, is amended to read:

42-2003. Authorized disclosure of confidential information

A. Confidential information relating to:

1. A taxpayer may be disclosed to the taxpayer, its successor in interest or a designee of the taxpayer who is authorized in writing by the taxpayer. A principal corporate officer of a parent corporation may execute a written authorization for a controlled subsidiary.

2. A corporate taxpayer may be disclosed to any principal officer, any person designated by a principal officer or any person designated in a resolution by the corporate board of directors or other similar governing body.

3. A partnership may be disclosed to any partner of the partnership. This exception does not include disclosure of confidential information of a particular partner unless otherwise authorized.

4. An estate may be disclosed to the personal representative of the estate and to any heir, next of kin or beneficiary under the will of the decedent if the department finds that the heir, next of kin or beneficiary

has a material interest which will be affected by the confidential information.

5. A trust may be disclosed to the trustee or trustees, jointly or separately, and to the grantor or any beneficiary of the trust if the department finds that the grantor or beneficiary has a material interest that will be affected by the confidential information.

6. Any taxpayer may be disclosed if the taxpayer has waived any rights to confidentiality either in writing or on the record in any administrative or judicial proceeding.

7. The name and taxpayer identification numbers of persons issued direct payment permits may be publicly disclosed.

B. Confidential information may be disclosed to:

1. Any employee of the department whose official duties involve tax administration.

2. The office of the attorney general solely for its use in preparation for, or in an investigation that may result in, any proceeding involving tax administration before the department or any other agency or board of this state, or before any grand jury or any state or federal court.

3. The department of liquor licenses and control for its use in determining whether a spirituous liquor licensee has paid all transaction privilege taxes and affiliated excise taxes incurred as a result of the sale of spirituous liquor, as defined in section 4-101, at the licensed establishment and imposed on the licensed establishments by this state and its political subdivisions.

4. Other state tax officials whose official duties require the disclosure for proper tax administration purposes if the information is sought in connection with an investigation or any other proceeding conducted by the official. Any disclosure is limited to information of a taxpayer who is being investigated or who is a party to a proceeding conducted by the official.

5. The following agencies, officials and organizations, if they grant substantially similar privileges to the department for the type of information being sought, pursuant to statute and a written agreement between the department and the foreign country, agency, state, Indian tribe or organization:

(a) The United States internal revenue service, alcohol and tobacco tax and trade bureau of the United States treasury, United States bureau of alcohol, tobacco, firearms and explosives of the United States department of justice, United States drug enforcement agency and federal bureau of investigation.

(b) A state tax official of another state.

(c) An organization of states, federation of tax administrators or multistate tax commission that operates an information exchange for tax administration purposes.

(d) An agency, official or organization of a foreign country with responsibilities that are comparable to those listed in subdivision (a), (b) or (c) of this paragraph.

(e) An agency, official or organization of an Indian tribal government with responsibilities comparable to the responsibilities of the agencies, officials or organizations identified in subdivision (a), (b) or (c) of this paragraph.

6. The auditor general, in connection with any audit of the department subject to the restrictions in section 42-2002, subsection D.

7. Any person to the extent necessary for effective tax administration in connection with:

(a) The processing, storage, transmission, destruction and reproduction of the information.

(b) The programming, maintenance, repair, testing and procurement of equipment for purposes of tax administration.

(c) The collection of the taxpayer's civil liability.

8. The office of administrative hearings relating to taxes administered by the department pursuant to section 42-1101, but the department shall not disclose any confidential information:

(a) Regarding income tax or withholding tax.

(b) On any tax issue relating to information associated with the reporting of income tax or withholding tax.

9. The United States treasury inspector general for tax administration for the purpose of reporting a violation of internal revenue code section 7213A (26 United States Code section 7213A), unauthorized inspection of returns or return information.

10. The financial management service of the United States treasury department for use in the treasury offset program.

11. The United States treasury department or its authorized agent for use in the state income tax levy program and in the electronic federal tax payment system.

12. The Arizona commerce authority for its use in:

(a) Qualifying renewable energy operations for the tax incentives under sections 42-12006, 43-1083.01 and 43-1164.01.

(b) Qualifying businesses with a qualified facility for income tax credits under sections 43-1083.03 and 43-1164.04.

(c) Fulfilling its annual reporting responsibility pursuant to section 41-1511, subsections U and V and section 41-1512, subsections U and V.

(d) Certifying computer data centers for tax relief under section 41-1519.

13. A prosecutor for purposes of section 32-1164, subsection C.

14. The state fire marshal for use in determining compliance with and enforcing title 41, chapter 16, article 3.1.

15. The department of transportation for its use in administering taxes, surcharges and penalties prescribed by title 28.

16. The Arizona health care cost containment system administration for its use in administering nursing facility provider assessments.

C. Confidential information may be disclosed in any state or federal judicial or administrative proceeding pertaining to tax administration pursuant to the following conditions:

1. One or more of the following circumstances must apply:

(a) The taxpayer is a party to the proceeding.

(b) The proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability, with respect to any tax imposed under this title or title 43.

(c) The treatment of an item reflected on the taxpayer's return is directly related to the resolution of an issue in the proceeding.

(d) Return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer and directly affects the resolution of an issue in the proceeding.

2. Confidential information may not be disclosed under this subsection if the disclosure is prohibited by section 42-2002, subsection C or D.

D. Identity information may be disclosed for purposes of notifying persons entitled to tax refunds if the department is unable to locate the persons after reasonable effort.

E. The department, on the request of any person, shall provide the names and addresses of bingo licensees as defined in section 5-401, verify whether or not a person has a privilege license and number, a tobacco product distributor's license and number or a withholding license and number or disclose the information to be posted on the department's website or otherwise publicly accessible pursuant to section 42-1124, subsection F and section ~~42-3201, subsection A~~ 42-3401.

F. A department employee, in connection with the official duties relating to any audit, collection activity or civil or criminal investigation, may disclose return information to the extent that disclosure is necessary to obtain information that is not otherwise reasonably available. These official duties include the correct determination of and liability for tax, the amount to be collected or the enforcement of other state tax revenue laws.

G. If an organization is exempt from this state's income tax as provided in section 43-1201 for any taxable year, the name and address of the organization and the application filed by the organization on which the department made its determination for exemption together with any papers submitted in support of the application and any letter or document issued by the department concerning the application are open to public inspection.

H. Confidential information relating to transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and any other tax collected by the department on behalf of any jurisdiction may be disclosed to any county, city or town tax official if the information relates to a taxpayer

who is or may be taxable by a county, city or town or who may be subject to audit by the department pursuant to section 42-6002. Any taxpayer information released by the department to the county, city or town:

1. May only be used for internal purposes, including audits.

2. May not be disclosed to the public in any manner that does not comply with confidentiality standards established by the department. The county, city or town shall agree in writing with the department that any release of confidential information that violates the confidentiality standards adopted by the department will result in the immediate suspension of any rights of the county, city or town to receive taxpayer information under this subsection.

I. The department may disclose statistical information gathered from confidential information if it does not disclose confidential information attributable to any one taxpayer. The department may disclose statistical information gathered from confidential information, even if it discloses confidential information attributable to a taxpayer, to:

1. The state treasurer in order to comply with the requirements of section 42-5029, subsection A, paragraph 3.

2. The joint legislative income tax credit review committee and the joint legislative budget committee staff in order to comply with the requirements of section 43-221.

J. The department may disclose the aggregate amounts of any tax credit, tax deduction or tax exemption enacted after January 1, 1994. Information subject to disclosure under this subsection shall not be disclosed if a taxpayer demonstrates to the department that such information would give an unfair advantage to competitors.

K. Except as provided in section 42-2002, subsection C, confidential information, described in section 42-2001, paragraph 1, subdivision (a), item (ii), may be disclosed to law enforcement agencies for law enforcement purposes.

L. The department may provide transaction privilege tax license information to property tax officials in a county for the purpose of identification and verification of the tax status of commercial property.

M. The department may provide transaction privilege tax, luxury tax, use tax, property tax and severance tax information to the ombudsman-citizens aide pursuant to title 41, chapter 8, article 5.

N. Except as provided in section 42-2002, subsection D, a court may order the department to disclose confidential information pertaining to a party to an action. An order shall be made only upon a showing of good cause and that the party seeking the information has made demand upon the taxpayer for the information.

O. This section does not prohibit the disclosure by the department of any information or documents submitted to the department by a bingo licensee. Before disclosing the information the department shall obtain the name and address of the person requesting the information.

P. If the department is required or permitted to disclose confidential information, it may charge the person or agency requesting the information for the reasonable cost of its services.

Q. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the department of economic security pursuant to section 42-1122 or 46-291. Information disclosed under this subsection is limited to the same type of information that the United States internal revenue service is authorized to disclose under section 6103(l)(6) of the internal revenue code.

R. Except as provided in section 42-2002, subsection D, the department of revenue shall release confidential information as requested by the courts and clerks of the court pursuant to section 42-1122.

S. To comply with the requirements of section 42-5031, the department may disclose to the state treasurer, to the county stadium district board of directors and to any city or town tax official that is part of the county stadium district confidential information attributable to a taxpayer's business activity conducted in the county stadium district.

T. The department shall release to the attorney general confidential information as requested by the attorney general for purposes of determining compliance with or enforcing any of the following:

1. Any public health control law relating to tobacco sales as provided under title 36, chapter 6, article 14.

2. Any law relating to reduced cigarette ignition propensity standards as provided under title 41, chapter 16, article 3.1.

3. Sections 44-7101 and 44-7111, the master settlement agreement referred to in those sections and all agreements regarding disputes under the master settlement agreement.

U. For proceedings before the department, the office of administrative hearings, the board of tax appeals or any state or federal court involving penalties that were assessed against a return preparer, an electronic return preparer or a payroll service company pursuant to section 42-1103.02, 42-1125.01 or 43-419, confidential information may be disclosed only before the judge or administrative law judge adjudicating the proceeding, the parties to the proceeding and the parties' representatives in the proceeding prior to its introduction into evidence in the proceeding. The confidential information may be introduced as evidence in the proceeding only if the taxpayer's name, the names of any dependents listed on the return, all social security numbers, the taxpayer's address, the taxpayer's signature and any attachments containing any of the foregoing information are redacted and if either:

1. The treatment of an item reflected on such return is or may be related to the resolution of an issue in the proceeding.

2. Such return or return information relates or may relate to a transactional relationship between a person who is a party to the proceeding

and the taxpayer which directly affects the resolution of an issue in the proceeding.

3. The method of payment of the taxpayer's withholding tax liability or the method of filing the taxpayer's withholding tax return is an issue for the period.

V. The department and attorney general may share the information specified in subsection T of this section with any of the following:

1. Federal, state or local agencies for the purposes of enforcement of corresponding laws of other states.

2. A court, arbitrator, data clearinghouse or similar entity for the purpose of assessing compliance with or making calculations required by the master settlement agreement or agreements regarding disputes under the master settlement agreement, and with counsel for the parties or expert witnesses in any such proceeding, if the information otherwise remains confidential.

W. The department may provide the name and address of qualifying hospitals and qualifying health care organizations, as defined in section 42-5001, to a business classified and reporting transaction privilege tax under the utilities classification.

X. The department may disclose to an official of any city, town or county in a current agreement or considering a prospective agreement with the department as described in section 42-5032.02, subsection F any information relating to amounts subject to distribution required by section 42-5032.02. Information disclosed by the department under this subsection:

1. May only be used by the city, town or county for internal purposes.

2. May not be disclosed to the public in any manner that does not comply with confidentiality standards established by the department. The city, town or county must agree with the department in writing that any release of confidential information that violates the confidentiality standards will result in the immediate suspension of any rights of the city, town or county to receive information under this subsection.

Sec. 9. Section 42-3001, Arizona Revised Statutes, is amended to read:

42-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Affix" and "affixed" include imprinting tax meter stamps on packages and individual containers as authorized by the department.

2. "Brand family" has the same meaning prescribed in section 44-7111.

3. "Cider" means vinous liquor that is made from the normal alcoholic fermentation of the juice of sound, ripe apples, pears or other pome fruit, including flavored, sparkling and carbonated cider and cider made from condensed apple, pear or other pome fruit must, and that contains more than one-half of one ~~per cent~~ PERCENT of alcohol by volume but not more than seven ~~per cent~~ PERCENT of alcohol by volume.

4. "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco other than any roll of tobacco that is a cigarette, as defined in paragraph 5, subdivision (b) of this section.

5. "Cigarette" means either of the following:

(a) Any roll of tobacco wrapped in paper or any substance not containing tobacco.

(b) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by a consumer as a cigarette described in subdivision (a) of this paragraph. This subdivision shall be interpreted consistently with the classification guidelines established by the federal alcohol and tobacco tax and trade bureau.

~~6. "Cigarette distributor" means a distributor of cigarettes without stamps affixed as required by this article who is required to be licensed under section 42-3201. Cigarette distributor does not include a retailer or any person who holds a permit as a cigarette manufacturer, export warehouse proprietor or importer under 26 United States Code section 5712 if the person sells or distributes cigarettes in this state only to licensed cigarette distributors or to another person who holds a permit under 26 United States Code section 5712 as an export warehouse proprietor or manufacturer.~~

~~7. "Cigarette importer" means a distributor who directly or indirectly imports into the United States a finished cigarette for sale or distribution and who is required to be licensed under section 42-3201.~~

~~8. "Cigarette manufacturer" means a distributor who manufactures, fabricates, assembles, processes or labels a finished cigarette, including a distributor who uses or makes available for use a tobacco product rolling vending machine in the manufacture, fabrication, assembly or processing of tobacco products.~~

~~9.~~ 6. "Consumer" means a person in this state ~~who~~ THAT comes into possession of any luxury subject to the tax imposed by this chapter and ~~who~~ THAT, on coming into possession of the luxury, is not a distributor intending to sell or distribute the luxury, retailer or wholesaler.

~~10.~~ 7. "Craft distiller" means a distiller in the United States or in a territory or possession of the United States that holds a license pursuant to section 4-205.10.

~~11.~~ 8. "Distributor" means any person ~~who~~ THAT manufactures, produces, ships, transports or imports into this state or in any manner acquires or possesses for the purpose of making the first sale of the following:

(a) Cigarettes without Arizona tax stamps affixed as required by this article.

(b) ROLL-YOUR-OWN TOBACCO OR other tobacco products on which the taxes have not been paid as required by this chapter.

~~12.~~ 9. "Farm winery" has the same meaning prescribed in section 4-101.

~~13.~~ 10. "First sale" means the initial sale or distribution in intrastate commerce or the initial use or consumption of cigarettes, ROLL-YOUR-OWN TOBACCO or other tobacco products.

~~14.~~ 11. "Luxury" means any article, object or device on which a tax is imposed under this chapter.

~~15.~~ 12. "Malt liquor" means any liquid that contains more than one-half of one ~~per cent~~ PERCENT alcohol by volume and that is made by the process of fermentation and not distillation of hops or grains, but not including:

(a) Liquids made by the process of distillation of such substances.

(b) Medicines that are unsuitable for beverage purposes.

~~16.~~ 13. "Master settlement agreement" has the same meaning prescribed in section 44-7101.

~~17.~~ 14. "Microbrewery" has the same meaning prescribed in section 4-101.

~~18.~~ 15. "Nonparticipating manufacturer" has the same meaning prescribed in section 44-7111.

16. "OTHER TOBACCO PRODUCTS" MEANS TOBACCO PRODUCTS OTHER THAN CIGARETTES AND ROLL-YOUR-OWN TOBACCO.

~~19.~~ 17. "Participating manufacturer" has the same meaning prescribed in section 44-7111.

~~20.~~ 18. "Person" means any individual, firm, partnership, joint venture, association, corporation, municipal corporation, estate, trust, club, society or other group or combination acting as a unit, and the plural as well as the singular number.

~~21.~~ 19. "Place of business" means a place where an order is received or where tobacco products are sold, distributed or transferred.

~~22.~~ 20. "Retailer" means any person that comes into possession of any luxury subject to the taxes imposed by this chapter for the purpose of selling it for consumption and not for resale.

21. "ROLL-YOUR-OWN TOBACCO" MEANS ANY TOBACCO THAT, BECAUSE OF ITS APPEARANCE, TYPE, PACKAGING OR LABELING, IS SUITABLE FOR USE AND LIKELY TO BE OFFERED TO OR PURCHASED BY CONSUMERS AS TOBACCO FOR MAKING CIGARETTES. THIS PARAGRAPH SHALL BE INTERPRETED CONSISTENTLY WITH THE TERM AS USED IN SECTION 44-7101. THIS PARAGRAPH SHALL BE INTERPRETED CONSISTENTLY WITH THE CLASSIFICATION GUIDELINES ESTABLISHED BY THE FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU.

~~23.~~ 22. "Spirituous liquor" means any liquid that contains more than one-half of one ~~per cent~~ PERCENT alcohol by volume, that is produced by distillation of any fermented substance and that is used or prepared for use as a beverage. Spirituous liquor does not include medicines that are unsuitable for beverage purposes.

~~24.~~ 23. "Tobacco product manufacturer" has the same meaning prescribed in section 44-7101.

~~25.~~ 24. "Tobacco products" means all luxuries included in section 42-3052, paragraphs 5 through 9.

~~26.~~ 25. "Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on the roads of this state

regardless of the means by which it is propelled or whether it runs on a track.

~~27.~~ 26. "Vinous liquor" means any liquid that contains more than one-half of one ~~per cent~~ PERCENT alcohol by volume and that is made by the process of fermentation of grapes, berries, fruits, vegetables or other substances but does not include:

(a) Liquids in which hops or grains are used in the process of fermentation.

(b) Liquids made by the process of distillation of hops or grains.

(c) Medicines that are unsuitable for beverage purposes.

~~28.~~ 27. "Wholesaler" means a person that sells any spirituous, vinous or malt liquor taxed under this chapter to retail dealers or for the purposes of resale only.

Sec. 10. Section 42-3006, Arizona Revised Statutes, is amended to read:

42-3006. Tax stamps; general requirements

A. The department shall prepare and have on hand official adhesive stamps ~~of the various types~~ according to the classifications ~~set forth~~ in section 42-3052 of luxuries upon which a tax is imposed by this chapter AND FOR WHICH THE DEPARTMENT EITHER COLLECTS PAYMENT OR PREPAYMENT OF THE TAX THROUGH THE PURCHASE OF SUCH STAMPS OR REQUIRES THE AFFIXATION OF STAMPS TO INDICATE THE TAX-EXEMPT NATURE OF THE LUXURIES.

B. The stamps shall HAVE BOTH OF THE FOLLOWING CHARACTERISTICS:

1. Be of a character so that they cannot be removed when once attached to an article without destroying them.

~~C. The stamps shall~~ 2. Be printed in the form and manner prescribed by the director.

C. ANY TAX STAMP REQUIRED UNDER THIS CHAPTER MUST BE SECURELY AFFIXED TO SOME VISIBLE PART OF THE PACKAGE OR CONTAINER AND MUST REMAIN FIRMLY ADHERED TO THE PACKAGE OR CONTAINER DURING POSSESSION BY THE CONSUMER, EXCEPT AS OTHERWISE PROVIDED.

~~D. The department shall prescribe by rule or procedure the method and manner in which stamps are to be affixed to cigarettes and may provide for the cancellation of stamps.~~

~~E.~~ D. Cigarette stamps shall also meet the requirements of article ~~5~~ 11 of this chapter.

Sec. 11. Repeal

Section 42-3007, Arizona Revised Statutes, is repealed.

Sec. 12. Section 42-3008, Arizona Revised Statutes, is amended to read:

42-3008. Refunds; definitions

A. Except as provided in subsection C of this section, the tax imposed by this chapter ~~upon~~ ON any luxury shall be refunded when the amount of the tax has been paid and when ~~either~~ ONE OF THE FOLLOWING APPLIES:

1. Proof is made to the department that the luxuries were exported from this state or that the stamps have been affixed to luxuries ~~upon~~ ON which stamps are not required.

2. Proof is made to the department that the luxury becomes unfit for sale due to breakage or spoilage within either six months from the date that the distributor originally receives the luxury for sale or two months from the date that the luxury was returned to the distributor by a retailer, whichever occurs later.

3. WITHIN SIX MONTHS AFTER A DISTRIBUTOR RETURNS A LUXURY TO THE MANUFACTURER OR IMPORTER, PROOF OF THE RETURN IS MADE TO THE DEPARTMENT.

B. The manner of making proof shall be in accordance with rules adopted by the department.

C. The department shall not refund the tax for stamps that are affixed to luxuries that are deemed contraband under this chapter.

D. Except as otherwise provided in section 42-1123, interest is calculated sixty days after receipt by the department of a claim for refund under this section.

E. For the purposes of this section:

1. "Breakage" means damage to the outer wrapping or container of a tobacco product.

2. "IMPORTER" AND "MANUFACTURER" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 42-3451.

~~2.~~ 3. "Spoilage" means mutilation, ~~or~~ product expiration OR UNFIT FOR INTENDED CONSUMPTION.

Sec. 13. Section 42-3010, Arizona Revised Statutes, is amended to read:

42-3010. Transaction invoices and other records; retention period

A. When any wholesaler or distributor in this state sells or delivers to any person any of the luxuries on which a tax is imposed by this chapter, the wholesaler or distributor shall make a duplicate invoice of the transaction, showing the date of delivery, the amount and value of each sale, shipment or consignment, and the name and location of the purchaser or person to whom delivery is made. Except as otherwise provided in section ~~42-3212~~ 42-3405, the wholesaler or distributor shall file and retain the invoice for a period of two years, subject to inspection and use by the department.

B. Every wholesaler, distributor or retailer shall procure and retain invoices showing the amount and value of each purchase or shipment of any luxuries received, the date of the shipment, the name and location of the shipper and the value of the purchase or shipment. Except as otherwise provided in section ~~42-3212~~ 42-3405, the wholesaler, distributor or retailer shall retain the invoices for a period of two years, subject to inspection and use by the department.

C. Transactions that involve tobacco products shall also meet the requirements of article ~~5~~ 11 of this chapter.

Sec. 14. Title 42, chapter 3, Arizona Revised Statutes, is amended by adding articles 10, 11 and 12, to read:

ARTICLE 10. DISTRIBUTORS AND RETAILERS OF TOBACCO PRODUCTS

ARTICLE 11. CIGARETTES AND ROLL-YOUR-OWN TOBACCO

ARTICLE 12. TOBACCO PRODUCTS OTHER THAN CIGARETTES

Sec. 15. Transfer and renumber

A. Sections 42-3201, 42-3201.02, 42-3202.02 and 42-3212, Arizona Revised Statutes, are transferred and renumbered from title 42, chapter 3, article 5, Arizona Revised Statutes, for placement in title 42, chapter 3, article 10 as sections 42-3401, 42-3403, 42-3404 and 42-3405, respectively.

B. Sections 42-3201.01, 42-3202, 42-3202.01, 42-3202.03, 42-3203, 42-3205, 42-3206, 42-3207, 42-3209, 42-3210 and 42-3211, Arizona Revised Statutes, are transferred and renumbered from title 42, chapter 3, article 5, Arizona Revised Statutes, for placement in title 42, chapter 3, article 11 as sections 42-3451, 42-3452, 42-3453, 42-3455, 42-3456, 42-3457, 42-3458, 42-3459, 42-3460, 42-3461 and 42-3462, respectively.

C. Section 42-3208, Arizona Revised Statutes, is transferred and renumbered from title 42, chapter 3, article 5, Arizona Revised Statutes, for placement in title 42, chapter 3, article 12 as section 42-3501.

Sec. 16. Heading repeal

The article heading of title 42, chapter 3, article 5, Arizona Revised Statutes, is repealed.

Sec. 17. Section 42-3253, Arizona Revised Statutes, is amended to read:

42-3253. Administration

Unless otherwise provided, the administration of this article is vested in and shall be exercised by the department according to chapters 1 and 2 of this title and articles 1 ~~through 5~~, 2, 3 AND 4 of this chapter, ~~and~~ this article AND ARTICLES 10, 11 AND 12 OF THIS CHAPTER.

Sec. 18. Section 42-3303, Arizona Revised Statutes, is amended to read:

42-3303. Tax on the consumer; precollection and remission by distributor

A. The taxes levied pursuant to this article are conclusively presumed to be direct taxes on the consumer but shall be precollected and remitted to the department by the distributor for purposes of convenience and facility only. The taxes that the distributor precollects and pays to the department:

1. Are considered to be an advance payment.

2. Shall be added to the price of the cigarettes, cigars, smoking tobacco, plug tobacco, snuff and other forms of tobacco.

3. Shall be recovered from the consumer.

B. For the purpose of the precollection and remittance of the tax imposed by this article, the ~~cigarette~~ distributor shall purchase and affix revenue stamps pursuant to article ~~5~~ 11 of this chapter.

Sec. 19. Section 42-3303.01, Arizona Revised Statutes, is amended to read:

42-3303.01. Stamps required for cigarettes sold on Indian reservations to enrolled tribal members; definition

A. From and after December 31, 2014, for cigarettes purchased on an Indian reservation by an enrolled member of the governing tribe:

1. Where that tribe does not levy an excise tax on tobacco products or exempts its enrolled members from the tax, a ~~cigarette~~ distributor shall affix tax-exempt stamps that are distinguishable from any other tax stamp required by this chapter.

2. Where that tribe levies an excise tax on tobacco products and does not exempt its members from the tax, a ~~cigarette~~ distributor shall purchase and affix tax stamps pursuant to article ~~5~~ 11 of this chapter that are distinguishable from any other tax or tax-exempt stamp required by this chapter.

B. For the purposes of this section, "excise tax on tobacco products" has the same meaning prescribed for "luxury, sales, transaction privilege or similar tax" under section 42-3301.

Sec. 20. Section 42-3306, Arizona Revised Statutes, is amended to read:

42-3306. Administration

Unless otherwise provided, the administration of this article is vested in and shall be exercised by the department according to chapters 1 and 2 of this title and articles 1 ~~through 5~~, 2, 3 AND 4 of this chapter, ~~and~~ this article AND ARTICLES 10, 11 AND 12 OF THIS CHAPTER.

Sec. 21. Section 42-3401, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3401. Tobacco distributor licenses; application; conditions; revocations, suspensions and cancellations

A. Every distributor acquiring or possessing for the purpose of making the initial sale or distribution in this state of any tobacco products on which a tax is imposed by this chapter shall obtain from the department a license to sell tobacco products. The application for the license shall be in the form provided by the department and shall be accompanied by a fee of twenty-five dollars for each place of business listed in the application. The form shall state that the identity of the applicant may be posted to the department's website for public inspection. The application for a license shall include the applicant's name and address, the applicant's principal place of business, all other places of business where the applicant's business is conducted for the purpose of making the initial sale or distribution of tobacco products in this state, including any location that maintains an inventory of tobacco products and any other information required by the department. If the applicant is a firm, partnership, limited liability company, limited liability partnership or association, the

applicant shall list the name and address of each of the applicant's members. If the applicant is a corporation, the application shall list the name and address of the applicant's officers and any person who directly or indirectly owns an aggregate amount of ten ~~per cent~~ PERCENT or more of the ownership interest in the corporation. If a licensee changes its business location, the licensee under this subsection shall notify the department within thirty days after a change in location. If the licensee is making a change in its business location by adding or replacing one or more additional places of business that are not currently listed on its application, the licensee must remit a fee of twenty-five dollars for each additional place of business.

B. For the purposes of subsection A of this section, an applicant with a controlling interest in more than one business engaged in activities as a distributor shall apply for a single license encompassing all such businesses and list each place of business in its application. For the purposes of this subsection, "controlling interest" means direct or indirect ownership of at least eighty ~~per cent~~ PERCENT of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.

C. The department shall issue a license authorizing the applicant to acquire or possess tobacco products in this state upon the condition that the applicant complies with this chapter and the rules of the department. The license:

1. Shall be nontransferable. A licensee may not transfer its license to a new owner when selling its business, and any court-appointed trustee, receiver or other person shall obtain a license in its own name in cases of liquidation, insolvency or bankruptcy if the business remains in operation as a distributor of tobacco products. A licensee shall apply for a new license if it changes its legal entity status or otherwise changes the legal structure of its business.

2. Shall be valid for one year unless earlier revoked by the department.

3. Shall be displayed in a conspicuous place at the ~~applicant's~~ LICENSEE'S place of business. If the ~~applicant~~ LICENSEE operates from more than one place of business, the ~~applicant~~ LICENSEE must display a copy of its license in a conspicuous place at each location.

~~D. A person may not hold, store or transport unstamped cigarettes or other untaxed tobacco products for sale or distribution in this state in any vehicle pursuant to section 36-798.06. This subsection does not apply to either of the following:~~

~~1. A vehicle that is owned, operated or contracted by a person who holds a valid license issued under this section and is transporting unstamped cigarettes or other untaxed tobacco products from one to another of the licensee's places of business listed on its application.~~

~~2. A vehicle that is transporting unstamped cigarettes or other untaxed tobacco products to a licensed distributor as part of a lawful sale~~

~~or in interstate commerce to a person lawfully operating as a manufacturer, distributor or retailer of cigarettes or other tobacco products.~~

~~E.~~ D. As a condition of licensure under this section, an applicant agrees to the following conditions:

1. A person may not hold or store any tobacco products, whether within or outside of this state, for sale or distribution in this state by or on behalf of a distributor at any place other than a location that has been disclosed to the department pursuant to subsection A of this section. This paragraph does not include a person holding or storing tobacco products by or on behalf of the distributor when the tobacco products are in transit to a distributor or retailer as part of a lawful sale.

2. All tobacco products held or stored, whether within or outside of this state, for sale or distribution in this state by or on behalf of a distributor shall be accessible to the department during normal business hours without a judicial warrant or prior written consent of the distributor, excluding residential locations.

~~F. An individual must be licensed as a cigarette distributor if the individual acquires or possesses unstamped cigarettes in this state for sale, barter or exchange or for any other purpose besides or in addition to that individual's own use or consumption.~~

~~G.~~ E. A person who is convicted of an offense described in section 42-1127, subsection E is permanently ineligible to hold a license issued under this section.

~~H.~~ F. The department may not issue or renew a license to an applicant and may revoke a license issued under subsection ~~B~~ C of this section if any of the following applies:

1. The applicant owes one thousand dollars or more in delinquent cigarette taxes that are not under protest or subject to a payment agreement.

2. The department has revoked any license held by the applicant within the previous two years.

3. The applicant has been convicted of a crime that relates to stolen or counterfeit cigarettes.

4. The applicant has imported cigarettes into the United States for sale or distribution in violation of 19 United States Code section 1681a.

5. The applicant has imported cigarettes into the United States for sale or distribution without fully complying with the federal cigarette labeling and advertising act (P.L. 89-92; 79 Stat. 282; 15 United States Code section 1331).

6. The applicant is in violation of section 13-3711 or 36-798.06, subsection A.

7. Pursuant to section 44-7111, section 6(a), the applicant is in violation of section 44-7111, section 3(c).

8. The applicant's civil rights have been suspended under section 13-904. An applicant whose civil rights have been suspended will be

ineligible to hold a license for a period of five years following the restoration of the applicant's civil rights.

~~I.~~ G. In addition to any other civil or criminal penalty and except as otherwise provided in this section, the department may suspend or revoke a license issued under subsection ~~B~~ C of this section if the person violates any requirement under this title more than two times within a three-year period.

~~J.~~ H. The department shall publish on its website the names of each person who is issued a license under subsection ~~B~~ C of this section. The department shall update the published names at least once each month.

~~K. Tobacco products that are ordered, purchased or transported in violation of section 13-3711, 36-798.06 or 42-3210 or section 44-7111, section 3(c) or any other statute for which the tobacco products are subject to seizure and destruction are deemed contraband for which taxes that are imposed under this chapter cannot be reported and remitted.~~

~~L.~~ I. A person may not apply for or hold a distributor's license if that person does not engage in the activities described in subsection A of this section. In addition to any other applicable penalty, the department may:

1. Revoke the license of any licensee that fails to file a return or report required under this chapter for twelve consecutive months.

2. Cancel the license of any licensee that fails to incur any tax liability under this chapter for twelve consecutive months.

~~M.~~ J. Any suspension, revocation or denial of a license issued under this section must comply with section 41-1092.11, subsection B.

~~N.~~ K. Notwithstanding any other law, for THE purposes of subsection ~~G~~ F, paragraphs 1 and 2 of this section, section 42-1127, subsection C and section ~~42-3210~~ 42-3461, subsection B, if a distributor has listed in its application more than one place of business, any suspension, revocation or nonrenewal of a distributor's license shall apply only with effect to remove the place of business at which the activity occurred that resulted in the violation from the distributor's license. If such a removal occurs, the distributor shall be subject to restrictions that the department prescribes by rule.

Sec. 22. Title 42, chapter 3, article 10, Arizona Revised Statutes, is amended by adding section 42-3402, to read:

42-3402. Contraband tobacco products

NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, TOBACCO PRODUCTS THAT ARE ORDERED, PURCHASED OR TRANSPORTED IN VIOLATION OF SECTION 13-3711, 36-798.06 OR 42-3461 OR SECTION 44-7111, SECTION 3, SUBPARAGRAPH (c) OR ANY OTHER STATUTE UNDER WHICH THE TOBACCO PRODUCTS ARE SUBJECT TO SEIZURE AND DESTRUCTION ARE CONSIDERED TO BE CONTRABAND FOR WHICH TAXES THAT ARE IMPOSED UNDER THIS CHAPTER MAY NOT BE REPORTED AND REMITTED.

Sec. 23. Section 42-3403, Arizona Revised Statutes, as transferred and renumbered by this act, is amended to read:

42-3403. Tobacco product retailers; license required; vehicle sales prohibited; exceptions

A. A retailer may sell any tobacco product that is not otherwise prohibited by federal or state law from sale for resale, but a retailer may not acquire or possess unstamped cigarettes, or other tobacco products on which taxes levied under this chapter have not been paid, unless the retailer holds a valid license issued under section ~~42-3201~~ 42-3401.

B. A retailer may not use a vehicle as a place of business for selling tobacco products. This subsection does not prohibit the lawful delivery of tobacco products by a person who holds a valid license issued under section ~~42-3201~~ 42-3401 using a vehicle that is owned, operated or contracted by that person.

C. THIS SECTION DOES NOT PROHIBIT BUSINESS ACTIVITIES THAT ARE PERMITTED UNDER SECTIONS 42-3454 AND 42-3502.

Sec. 24. Section 42-3404, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3404. Exemptions and exclusions of certain tobacco products from tobacco taxes

A. The taxes imposed by this chapter do not apply to:

1. Tobacco products that are sold to the United States army, air force, navy, marine corps or coast guard exchanges and commissaries and navy or coast guard ships' stores.

2. Tobacco products that are sold to the United States ~~veterans' administration~~ DEPARTMENT OF VETERANS AFFAIRS.

3. Tobacco products that are non-tax-paid under subtitle E, chapter 52 of the internal revenue code and that are under internal revenue bond or customs control.

4. Tobacco products that are sold or transferred to a law enforcement agency for use in a criminal investigation if the sale or transfer is authorized by the department. A law enforcement agency authorized by the department to receive or purchase tobacco products is not required to:

(a) Be licensed as a distributor.

(b) Collect or remit the tax imposed by this chapter with respect to authorized distributions.

5. Tobacco products that are sold by a distributor licensed under section ~~42-3201~~ 42-3401 to a common carrier engaged in foreign passenger service or to a retailer that sells tobacco products on the facilities of the carrier that are dedicated to foreign passenger service.

6. Federally tax free tobacco products that are sold or given for delivery directly from the manufacturer under internal revenue bond to a veterans' home of this state or a hospital or domiciliary facility of the United States ~~veterans' administration~~ DEPARTMENT OF VETERANS AFFAIRS for gratuitous issue to veterans receiving hospitalization or domiciliary care.

The taxes are not imposed with respect to the use or consumption of the tobacco products by the institution, veteran patients or domiciliaries.

7. Tobacco products that are sold by a manufacturer to a distributor licensed under section ~~42-3201~~ 42-3401.

8. Tobacco products that are manufactured outside the United States and that are sold by an importer to a distributor licensed under section ~~42-3201~~ 42-3401.

B. Subsection A, paragraphs 1 and 2 of this section do not apply after the first day of the first calendar month beginning more than sixty days after existing federal law is amended to permit state taxation of cigarettes sold by or through federal military installations.

C. Sales of tobacco products by a licensed distributor to an instrumentality of the United States government must be supported by a separate sales invoice and a properly completed federal exemption certificate. Each sales invoice must be numbered, be dated and show the name of the seller, the name of the purchaser and the destination.

D. This section does not affect the imposition of transaction privilege and use taxes pursuant to chapter 5 of this title to any transactions described in subsection A of this section if the transaction is otherwise subject to transaction privilege tax or use tax.

E. The exemptions and exclusions provided in subsection A of this section do not affect the taxability under this chapter of tobacco products that are sold, given or transferred to a person in this state subsequent to the transactions described in subsection A of this section.

Sec. 25. Section 42-3405, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3405. Tobacco manufacturers, importers, distributors and retailers; recordkeeping and invoicing requirements; retention period

A. Except for retail transactions with consumers, each manufacturer, importer and distributor of tobacco products shall maintain copies of invoices or equivalent documentation for each facility and for each transaction that involves the sale, purchase, transfer, consignment or receipt of tobacco products within this state. The invoices or EQUIVALENT documentation FOR EACH TRANSACTION SHALL BE IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT AND shall indicate the name and address of the other party and the quantity by brand style of the tobacco products involved in the transaction.

B. A distributor of tobacco products shall issue an invoice or equivalent documentation for each transaction that involves the sale, purchase or consignment of tobacco products to a retailer. The invoice or equivalent documentation must include the license number of the distributor, which the retailer may use to ascertain whether the license is current and valid.

C. Any retailer of tobacco products shall retain all invoices or equivalent documentation received under subsection B of this section.

D. Records required under this section shall be preserved on the premises described in the relevant license in a manner as to ensure accessibility for inspection at reasonable hours by authorized personnel of the department. With the department's permission, persons with multiple places of business may retain centralized records, but shall transmit duplicates of the invoices or the equivalent documentation to each place of business within three business days after a request by the department.

E. The records required by this section shall be retained for a period of four years after the date of the transaction.

F. On request, the department and the United States secretary of the treasury or secretary's designee shall have access to records required under this section and reports required under section ~~42-3211~~ 42-3462. The department at its sole discretion may share the records and reports required by this chapter with other law enforcement officials of federal and state governments under conditions that assume the confidentiality of taxpayer information contained in the records and reports.

Sec. 26. Title 42, chapter 3, article 10, Arizona Revised Statutes, is amended by adding section 42-3406, to read:

42-3406. Refunds and rebates of tobacco taxes; supporting documentation; distributor's burden of proof

A. EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION B OF THIS SECTION OR BY THE DEPARTMENT FOR A REFUND OR REDEMPTION ISSUED UNDER SECTION 42-3008 OR 42-3460, A DISTRIBUTOR REQUESTING ANY REFUND OR REBATE OF TAXES PAID ON TOBACCO PRODUCTS PURSUANT TO ARTICLE 2, 6, 7 OR 9 OF THIS CHAPTER SHALL ESTABLISH ENTITLEMENT TO THE REFUND OR REBATE BY OBTAINING A REPORT EXECUTED BY THE RETAILER THAT PURCHASED THE TOBACCO PRODUCTS ON WHICH THE DISTRIBUTOR PAID TAXES, INDICATING THE NAME AND ADDRESS OF THE RETAILER AND THE QUANTITIES OF TOBACCO PRODUCTS SOLD, SEPARATELY IDENTIFIED BY THE TAX CATEGORY OF TOBACCO PRODUCT AND THE NECESSARY FACTS TO ESTABLISH THE APPROPRIATE AMOUNT OF REFUND OR REBATE. THE REPORT IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. THE REPORT SHALL BE PROVIDED IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT. UNDER SUCH RULES AS IT MAY PRESCRIBE, THE DEPARTMENT MAY IDENTIFY TRANSACTIONS FOR WHICH A DISTRIBUTOR MAY NOT RELY SOLELY ON THE INFORMATION IN THE RETAILER'S REPORT BUT MUST INSTEAD OBTAIN ADDITIONAL INFORMATION AS REQUIRED BY THE RULES IN ORDER TO BE ENTITLED TO THE REFUND OR REBATE.

2. THE BURDEN OF PROOF FOR THE REFUND OR REBATE IS ON THE DISTRIBUTOR, BUT IF THE DISTRIBUTOR COMPLIES IN ALL OTHER RESPECTS WITH THIS SECTION, THE DEPARTMENT MAY REQUIRE THE RETAILER THAT CAUSED THE EXECUTION OF THE REPORT TO ESTABLISH THE ACCURACY AND COMPLETENESS OF THE INFORMATION REQUIRED TO BE CONTAINED IN THE REPORT THAT WOULD ENTITLE THE DISTRIBUTOR TO THE REFUND OR REBATE. IF THE RETAILER CANNOT ESTABLISH THE ACCURACY AND COMPLETENESS OF

THE INFORMATION, THE RETAILER IS LIABLE IN AN AMOUNT EQUAL TO ANY TAX, PENALTY AND INTEREST THAT THE DISTRIBUTOR WOULD HAVE BEEN LIABLE FOR UNDER THIS CHAPTER IF THE DISTRIBUTOR HAD NOT OTHERWISE COMPLIED WITH THIS SECTION. PAYMENT OF THE AMOUNT UNDER THIS SECTION BY THE RETAILER EXEMPTS THE DISTRIBUTOR FROM LIABILITY FOR THE UNDERLYING TAX, PENALTY AND INTEREST. ALL AMOUNTS PAID BY A RETAILER UNDER THIS PARAGRAPH SHALL BE TREATED AS TAX REVENUES COLLECTED FROM THE DISTRIBUTOR IN ORDER TO DESIGNATE THE DISTRIBUTION BASE FOR THE PURPOSES OF THIS CHAPTER.

B. IN ITS DISCRETION AND IN CIRCUMSTANCES WHERE A RETAILER IS UNCOOPERATIVE OR NO LONGER IN BUSINESS, THE DEPARTMENT MAY ACCEPT PROOF OTHER THAN A REPORT DESCRIBED IN SUBSECTION A OF THIS SECTION IF THE DISTRIBUTOR SHOWS, TO THE SATISFACTION OF THE DEPARTMENT, THAT IT EXERCISED ORDINARY BUSINESS CARE AND PRUDENCE BUT WAS UNABLE TO FURNISH A REPORT EXECUTED BY THE RETAILER. ACCEPTABLE FORMS OF PROOF PRESENTED BY THE DISTRIBUTOR PURSUANT TO THIS SUBSECTION MUST CONSIST OF BOOKS, RECORDS OR PAPERS MAINTAINED BY THE DISTRIBUTOR OR RETAILER IN THE REGULAR COURSE OF BUSINESS.

Sec. 27. Section 42-3451, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3451. Acquisition and possession of cigarettes and roll-your-own tobacco; definitions

A. A ~~cigarette~~ manufacturer or ~~cigarette~~ importer may sell or distribute cigarettes OR ROLL-YOUR-OWN TOBACCO to a person who is located or doing business in this state, including Indian reservations located in this state, only if the person is ~~a licensed cigarette~~ AN importer or ~~cigarette~~ LICENSED distributor or the ~~cigarette~~ manufacturer sells or distributes cigarettes OR ROLL-YOUR-OWN TOBACCO on which a tax has been paid pursuant to section ~~42-3202~~ 42-3452.

B. ~~A cigarette~~ AN importer may obtain cigarettes only from a ~~licensed cigarette~~ manufacturer or ~~licensed cigarette~~ importer.

C. A ~~cigarette~~ distributor may sell or distribute cigarettes to a person located or doing business in this state, including an Indian reservation in this state, only if the ~~cigarette~~ distributor is a licensed ~~cigarette~~ distributor.

D. A ~~cigarette~~ distributor shall obtain cigarettes only from a ~~licensed cigarette~~ manufacturer, ~~cigarette~~ importer or ~~cigarette~~ LICENSED distributor.

E. FOR THE PURPOSES OF THIS SECTION:

1. "IMPORTER" MEANS A PERSON WHO HAS RECEIVED APPROVAL FROM THE FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO DIRECTLY OR INDIRECTLY IMPORT FINISHED TOBACCO PRODUCTS INTO THE UNITED STATES FOR SALE OR DISTRIBUTION, PURSUANT TO 26 UNITED STATES CODE SECTION 5712 AND 27 CODE OF FEDERAL REGULATIONS PART 41.

2. "MANUFACTURER" MEANS A PERSON WHO HAS RECEIVED APPROVAL FROM THE FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO MANUFACTURE, FABRICATE,

ASSEMBLE, PROCESS OR LABEL FINISHED TOBACCO PRODUCTS, PURSUANT TO 26 UNITED STATES CODE SECTION 5712 AND 27 CODE OF FEDERAL REGULATIONS PART 40.

Sec. 28. Section 42-3452, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3452. Payment of tax required to sell, distribute or transfer cigarettes

A. Except as provided in subsection B of this section, a person may not:

1. Sell or offer for sale any cigarettes upon which a tax is imposed by this ~~article~~ CHAPTER to any person within this state unless at the time of the sale, distribution or transfer the tax has been paid on the cigarettes as evidenced by an Arizona tax stamp or any other official indicia. The department shall consider tobacco taxes paid at the time of the sale, distribution or transfer of tobacco products other than cigarettes if a licensed distributor reports and remits the taxes on the products in accordance with the manner, method and time prescribed by section ~~42-3208~~ 42-3501. Sworn returns that are prepared and remitted by a licensed distributor under section ~~42-3208~~ 42-3501 constitute official indicia that tobacco taxes have been paid on the tobacco products.

2. Sell cigarettes that have Arizona tax stamps affixed unless the tax evidenced by the stamps is actually paid. The department shall not refund any amount of that tax on the grounds that the stamps are not required to be affixed to the cigarettes.

B. A distributor licensed pursuant to section ~~42-3201~~ 42-3401 may not sell, distribute or transfer tobacco products for which the distributor is licensed to another such licensed distributor without paying the tax at the time of the sale, distribution or transfer.

Sec. 29. Section 42-3453, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3453. Presumption of tax on unstamped cigarettes

Except as otherwise provided in section 42-1127, subsection F and section ~~42-3202~~ 42-3452, subsection B, for the purpose of proper administration and to prevent evasion of the taxes imposed by this chapter, until the contrary is established, it is presumed that cigarettes that are sold, distributed, used or consumed by a person in this state, but not placed in packages or containers on which official tax stamps are affixed, are intended for first sale by the person and are subject to the taxes imposed by this chapter.

Sec. 30. Title 42, chapter 3, article 11, Arizona Revised Statutes, as added by this act, is amended by adding section 42-3454, to read:

42-3454. Transport of unstamped cigarettes and untaxed roll-your-own tobacco prohibited; exceptions

A. A PERSON MAY NOT HOLD, STORE OR TRANSPORT UNSTAMPED CIGARETTES OR UNTAXED ROLL-YOUR-OWN TOBACCO FOR SALE OR DISTRIBUTION IN THIS STATE IN ANY VEHICLE PURSUANT TO SECTION 36-798.06.

B. THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

1. A VEHICLE THAT IS OWNED, OPERATED OR CONTRACTED BY A PERSON WHO HOLDS A VALID LICENSE ISSUED UNDER SECTION 42-3401 AND IS TRANSPORTING UNSTAMPED CIGARETTES OR UNTAXED ROLL-YOUR-OWN TOBACCO FROM ONE TO ANOTHER OF THE LICENSEE'S PLACES OF BUSINESS LISTED ON ITS APPLICATION.

2. A VEHICLE THAT IS TRANSPORTING UNSTAMPED CIGARETTES OR UNTAXED ROLL-YOUR-OWN TOBACCO TO A LICENSED DISTRIBUTOR AS PART OF A LAWFUL SALE OR IN INTERSTATE COMMERCE TO A PERSON LAWFULLY OPERATING AS A MANUFACTURER, DISTRIBUTOR OR RETAILER OF CIGARETTES OR ROLL-YOUR-OWN TOBACCO.

Sec. 31. Section 42-3455, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3455. Cigarette tax stamps; description and characteristics; use by licensed distributors; affixation standards; metering

A. THE DEPARTMENT SHALL PRESCRIBE BY RULE OR PROCEDURE THE METHOD AND MANNER IN WHICH TAX STAMPS ARE TO BE AFFIXED TO CIGARETTES AND MAY PROVIDE FOR THE CANCELLATION OF STAMPS. IN ADDITION TO ANY SPECIFICATIONS PROVIDED UNDER THIS ARTICLE, THE STAMPS SHALL ALSO MEET THE REQUIREMENTS PROVIDED IN SECTION 42-3006.

~~A.~~ B. Each roll or sheet of stamps for cigarettes that are required under this chapter shall have a separate serial number that is legible at the point of sale to the ~~cigarette~~ distributor. The department shall use the serial number to keep records of each ~~cigarette~~ distributor who purchases each roll or sheet of stamps. The department shall not sell stamps that have the same serial number to more than one ~~cigarette~~ distributor. The department may sell a partial roll or sheet of stamps to a ~~cigarette~~ distributor and shall retain the remainder of the roll or sheet to subsequently sell to the same ~~cigarette~~ distributor or shall destroy the remainder of the roll or sheet.

~~B.~~ C. Only licensed ~~cigarette~~ distributors may purchase, obtain or affix cigarette stamps. ~~Cigarette~~ Distributors shall not sell or provide stamps to any other ~~cigarette~~ distributor or person. When affixing cigarette stamps to cigarettes, ~~cigarette~~ distributors shall ensure that the affixation method that is used maintains the legibility of the serial numbers on the stamps.

~~C.~~ D. If, during compliance inspections of a distributor or retailer, the department discovers cigarette packages that appear not to be stamped in accordance with subsection ~~B~~ C of this section and if the distributor or retailer has substantially complied with the other provisions of this chapter, the following shall be considered a properly stamped cigarette package:

1. A questioned individual cigarette package that does not have an affixed cigarette stamp containing a fully legible serial number but the legible digits of the serial number of the cigarette stamp on the questioned individual cigarette package match the corresponding digits of the serial

numbers from other properly stamped cigarette packages that are packaged or shelved together with the questioned individual cigarette package.

2. A questioned individual cigarette package that is part of an originally unopened pallet, master carton or carton that contains other properly stamped cigarettes when the pallet, master carton or carton is subsequently opened during a compliance inspection by the department.

3. A questioned individual cigarette package if the distributor or retailer can demonstrate through books, records or other indicia to the satisfaction of the department that the questioned individual cigarette package was purchased as part of the same pallet, master carton or carton that contained properly stamped cigarette packages.

~~D.~~ E. The department may authorize the use of a metering machine. If the department authorizes the use of a metering machine, the department shall assign a unique meter impression number to each ~~cigarette~~ distributor and ensure that the impression is legible at the point of sale. The department shall keep records that indicate the assigned meter impression number for each ~~cigarette~~ distributor.

Sec. 32. Section 42-3456, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3456. Tax stamps as indicia of taxes paid; exception; definitions

A. Except as otherwise provided in this chapter, all cigarettes on which a tax is imposed by this chapter shall be placed in packages or containers, and on each package or container shall be affixed an official stamp described in section ~~42-3006 or 42-3202.03~~ 42-3455. An affixed stamp shall be evidence that the taxes levied by sections 42-3052, 42-3251 and 42-3251.01 are paid.

B. ~~Cigarette~~ Distributors are liable for affixing official stamps or otherwise applying tax indicia to cigarettes that are subject to a tax imposed by this chapter. A licensed ~~cigarette~~ distributor shall apply a stamp to each package of cigarettes that is sold or distributed in this state and that is subject to tax under this chapter, including cigarettes that are subject to tax under section 42-3302. A licensed ~~cigarette~~ distributor shall apply a tax exempt stamp to cigarette packages that are not subject to tax under section 42-3304, subsection A, paragraph 2.

C. Cigarettes that are sold, distributed or transferred by a distributor licensed pursuant to section ~~42-3201~~ 42-3401 to sell cigarettes are required to have affixed the luxury stamps described in section ~~42-3006~~ 42-3455 at the time the cigarettes are sold, distributed or transferred to another licensed distributor.

D. Notwithstanding subsection C of this section, a licensed distributor can submit a written request in the form and manner prescribed by the department in rule or procedure to sell, distribute or transfer unstamped cigarettes to another licensed distributor. Once an accurate and complete request is submitted to the department, the department will approve or deny

the request as prescribed in rule or procedure within ten days of receipt of the request.

E. Cigarettes that are exempt from tax under 26 United States Code section 5701 and that are distributed according to federal regulations are not subject to tax and do not require a stamp under this chapter.

F. A retailer shall not offer for sale cigarettes in quantities that are not packaged as such for sale by the ~~cigarette~~ manufacturer.

G. ~~Cigarette~~ Distributors may apply stamps only to cigarette packages that the ~~cigarette~~ distributors have directly received from a licensed ~~cigarette~~ distributor, ~~licensed cigarette~~ manufacturer or ~~licensed cigarette~~ importer.

H. FOR THE PURPOSES OF THIS SECTION:

1. "IMPORTER" MEANS A PERSON WHO HAS RECEIVED APPROVAL FROM THE FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO DIRECTLY OR INDIRECTLY IMPORT FINISHED TOBACCO PRODUCTS INTO THE UNITED STATES FOR SALE OR DISTRIBUTION, PURSUANT TO 26 UNITED STATES CODE SECTION 5712 AND 27 CODE OF FEDERAL REGULATIONS PART 41.

2. "MANUFACTURER" MEANS A PERSON WHO HAS RECEIVED APPROVAL FROM THE FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO MANUFACTURE, FABRICATE, ASSEMBLE, PROCESS OR LABEL FINISHED TOBACCO PRODUCTS, PURSUANT TO 26 UNITED STATES CODE SECTION 5712 AND 27 CODE OF FEDERAL REGULATIONS PART 40.

Sec. 33. Section 42-3457, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3457. Unstamped cigarettes

A. A person shall not possess an unstamped cigarette package unless the person is shipping or transporting unstamped cigarettes pursuant to subsection B of this section, is a licensed ~~cigarette~~ manufacturer or ~~licensed cigarette~~ importer or is a licensed ~~cigarette~~ distributor who receives unstamped cigarette packages directly from a licensed ~~cigarette~~ manufacturer or ~~cigarette~~ importer.

B. Except for a licensed ~~cigarette~~ manufacturer, ~~cigarette~~ importer or ~~cigarette~~ distributor and if lawful under section 36-798.06, a person who ships unstamped cigarette packages in or into this state shall first file with the department a notice of shipment. This subsection does not apply to any common or contract carrier that is transporting cigarettes through this state to another location under a proper bill of lading or freight bill that states the quantity, source and destination of the cigarettes.

C. If lawful under section 36-798.06, a person who transports unstamped cigarette packages in or into this state shall carry in the vehicle used to convey the shipment invoices or equivalent documentation of the shipment for all cigarettes in the shipment. The invoices or documentation shall indicate the name and address of the consignor or seller, the name and address of the consignee or purchaser and the quantity of each brand of cigarettes that is transported.

Sec. 34. Section 42-3458, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3458. Discount purchases of tax stamps; refund and rebate amounts

A. The official stamps to be affixed to packages of cigarettes shall be obtainable from the department by each licensed ~~cigarette~~ distributor by purchase:

1. On or before September 30, 2014, at the following discount rates:

(a) Ninety-six ~~per cent~~ PERCENT of the face value for the first thirty-six thousand dollars worth of stamps purchased by the distributor in any month.

(b) Ninety-seven ~~per cent~~ PERCENT of the face value for the second thirty-six thousand dollars worth of stamps purchased by the distributor in any month.

(c) Ninety-eight ~~per cent~~ PERCENT of the face value on all stamps in excess of seventy-two thousand dollars purchased by the distributor in any month, except that if a distributor purchases more than one hundred sixty-five thousand dollars worth of stamps in one month, the department shall offset against the discount under this subdivision, or the distributor shall refund to the department, the difference between the face value and the discounted value of the first seventy-two thousand dollars worth of stamps under subdivisions (a) and (b) of this paragraph.

2. After September 30, 2014, at the rate of ninety-six ~~per cent~~ PERCENT of the face value of the stamps.

B. Any refund of or rebates on tax stamps requested by a licensed distributor must be issued in an amount of the total face value of the stamps minus four ~~per cent~~ PERCENT of the total face value of the stamps.

Sec. 35. Section 42-3459, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3459. Secured cigarette stamp purchases on credit; cancellation of credit privileges; collection action; bonding requirement; waiver

A. Subject to subsections B and C OF THIS SECTION, and except as provided in subsection D of this section, a licensed ~~cigarette~~ distributor who furnishes a bond of a surety company qualified to do business in this state, in an amount equal to two times the amount of the distributor's current monthly stamp purchases and conditioned upon the payment within the time prescribed, may make payment for the official stamp on or before the twentieth day of the month next following the purchase of an official stamp. All other ~~cigarette~~ distributors shall pay for each stamp at the time of purchase.

B. Upon a finding that the amount of stamp purchases, or meter machine usage, exceeds seventy-five ~~per cent~~ PERCENT of the amount of the bond, the department may cancel the credit privileges provided to qualified ~~cigarette~~ distributors pursuant to subsection A OF THIS SECTION.

C. If the indebtedness of a ~~cigarette~~ distributor whose credit privileges have been canceled pursuant to this section remains unpaid for thirty days after cancellation, the director shall request the attorney general to take suitable action on behalf of the department to collect either on the indebtedness or the surety bond.

D. The ~~cigarette~~ distributor may request that the department waive the bonding requirement in subsection A of this section if the distributor maintains a timely, accurate and complete filing and payment record for a period of two years and otherwise complies with all requirements of a licensed distributor pursuant to ~~title 42, chapter 3~~ THIS CHAPTER and title 44, chapter 27. The waiver of the bonding requirement applies only to the distributor's purchases of tax stamps with which the distributor prepays the Indian reservation tobacco tax, pursuant to section 42-3303.

Sec. 36. Section 42-3460, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3460. Redemption of unused or spoiled tax stamps and meter registration; definitions

A. The department shall redeem unused or spoiled Arizona tax stamps that a ~~cigarette~~ distributor presents for redemption if those stamps are unaffixed and purchased within two years of the date of the request for redemption and shall pay for them from monies collected under this chapter.

B. Under rules adopted by the department, the department shall redeem the unused amount of tax for which any meter is registered and shall pay for it from monies collected under this chapter.

C. Nothing in this section shall be construed to provide for redemption in the case of loss or theft of tax stamps.

D. For the purposes of this section:

1. "Redeem" means repurchase or replace Arizona tax stamps.

2. "Spoiled" means mutilated or illegible.

Sec. 37. Section 42-3461, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3461. Unlawful use of stamps; classification; definition

A. A person may not affix a tax stamp to a package of cigarettes if the package:

1. Differs from the requirements of the federal cigarette labeling and advertising act (P.L. 89-92; 79 Stat. 282; 15 United States Code section 1331) relating to label warnings or other information on packages of cigarettes for sale in the United States.

2. Is labeled "for export only", "U.S. tax exempt", "for use outside U.S." or with similar words that indicate the manufacturer did not intend for the product to be sold in the United States.

3. Has been altered by adding or deleting the wording, labels or warnings described in paragraph 1 or 2 of this subsection.

4. Is placed in a carton, or any other package containing several individually stamped packages, that has been altered by adding or deleting the wording, labels or warnings described in paragraph 1 or 2 of this subsection.

5. Has been imported into the United States on or after January 1, 2000 in violation of 26 United States Code section 5754 or is the subject of a violation of 19 United States Code sections 1681 through 1681b or 15 United States Code section 1335a.

6. Violates federal trademark or copyright laws.

B. The director:

1. May revoke any license issued to a ~~cigarette~~ distributor who sells or offers for sale cigarette packages that are stamped in violation of subsection A OF THIS SECTION.

2. Shall seize and destroy packages of cigarettes that are stamped in violation of subsection A OF THIS SECTION.

C. A person who sells or offers for sale cigarette packages that are stamped in violation of subsection A OF THIS SECTION is guilty of a class 2 misdemeanor.

D. Any person who sells, distributes or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of this section may bring an action in good faith for appropriate injunctive relief.

E. This section does not apply to cigarettes allowed to be imported or brought into the United States for personal use, or to cigarettes sold or intended to be sold as duty free merchandise by a duty free sales enterprise pursuant to 19 United States Code section 1555(b). This subsection does not apply to cigarettes that are brought back into the customs territory for resale within the customs territory.

F. A violation of this section is also a violation of title 44, chapter 10, article 7.

G. For the purposes of this section, "package" means any kind of pack, carton or container in which cigarettes are sold, offered for sale or otherwise distributed or intended for distribution to consumers.

Sec. 38. Section 42-3462, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3462. Cigarette and roll-your-own tobacco distributors; filing requirements; definitions

A. Each ~~cigarette~~ distributor shall file a return in a form prescribed by the department for each place of business on or before the twentieth day of the month next succeeding the month for which the return is filed. The return shall contain all of the following:

1. The brand names and quantities of each brand of cigarettes AND ROLL-YOUR-OWN TOBACCO in possession at the beginning and end of the reporting period.

2. The brand names and quantities of each brand of cigarettes AND ROLL-YOUR-OWN TOBACCO received during the reporting period and the name and address of each person from whom each product was received.

3. The brand names and quantities of each brand of cigarettes AND ROLL-YOUR-OWN TOBACCO distributed or shipped into this state or between locations in this state during the reporting period, except for sales directly to consumers, and the name and address of each person to whom each product was distributed or shipped, WITH REFERENCE TO THE DATES OF DISTRIBUTION OR SHIPMENT AND CORRESPONDING INVOICE NUMBERS FROM THE INVOICES DOCUMENTING THE DISTRIBUTION OR SHIPMENTS.

4. The brand names and quantities of each brand of cigarettes AND ROLL-YOUR-OWN TOBACCO distributed or shipped to any destination wherever located, including the quantities reported under paragraph 3 of this subsection during the reporting period, except for sales directly to consumers, and the name and address of each person to whom each product was distributed or shipped, WITH REFERENCE TO THE DATES OF DISTRIBUTION OR SHIPMENT AND CORRESPONDING INVOICE NUMBERS FROM THE INVOICES DOCUMENTING THE DISTRIBUTION OR SHIPMENTS.

5. The brand names and quantities of each brand of cigarettes AND ROLL-YOUR-OWN TOBACCO sold to consumers that are itemized to show sales to consumers in this state and sale to consumers outside of this state.

6. Copies of the customs certificates with respect to such cigarettes AND ROLL-YOUR-OWN TOBACCO required to be submitted by 19 United States Code section 1681a(c).

7. The name and address of each nonparticipating manufacturer of each brand of cigarettes AND ROLL-YOUR-OWN TOBACCO identified by the distributor in the return.

8. The number of individual cigarettes AND OUNCES OF ROLL-YOUR-OWN TOBACCO of each brand of each nonparticipating manufacturer sold in this state by the distributor during the preceding month, separately stating each of the following:

(a) The number of cigarette packages sold and the number of individual cigarettes in each package.

(b) The number of roll-your-own tobacco containers sold and the number of ~~individual cigarettes~~ OUNCES OF ROLL-YOUR-OWN TOBACCO in each container.

9. The amount of luxury taxes paid or to be paid on the cigarettes and roll-your-own tobacco prescribed in paragraph 8 of this subsection, separately stating each of the following:

(a) The amount of luxury taxes paid by purchasing and affixing tax stamps to cigarette packages.

(b) The amount of luxury taxes to be paid for roll-your-own tobacco containers.

(c) Any other amount of excise taxes to be paid on the cigarettes.

10. The number of individual cigarettes AND OUNCES OF ROLL-YOUR-OWN TOBACCO of each brand of each nonparticipating manufacturer received by the distributor, separately stating each of the following:

(a) The number of cigarette packages received and the number of individual cigarettes in each package.

(b) The number of roll-your-own tobacco containers received and the number of ~~individual cigarettes~~ AND OUNCES OF ROLL-YOUR-OWN TOBACCO in each container.

11. The number of individual cigarettes AND OUNCES OF ROLL-YOUR-OWN TOBACCO of each brand of each nonparticipating manufacturer that the distributor exported from this state without payment of Arizona luxury taxes, separately stating each of the following:

(a) The number of cigarette packages exported and the number of individual cigarettes in each package.

(b) The number of roll-your-own tobacco containers exported and the number of ~~individual cigarettes~~ OUNCES OF ROLL-YOUR-OWN TOBACCO in each container.

12. The number of individual cigarettes AND OUNCES OF ROLL-YOUR-OWN TOBACCO of each brand of each nonparticipating manufacturer for which the distributor obtained a refund under section 42-3008, separately stating each of the following:

(a) The number of cigarette packages for which the distributor obtained a refund and the number of individual cigarettes in each package.

(b) The number of roll-your-own tobacco containers for which the distributor obtained a refund and the number of ~~individual cigarettes~~ OUNCES OF ROLL-YOUR-OWN TOBACCO in each container.

13. The invoice, ~~number and a copy of each invoice relating to each of~~ IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT, FOR the following transactions:

(a) The distributor's purchase or acquisition of any nonparticipating manufacturer's cigarettes received or sold by the tobacco distributor in this state.

(b) The distributor's export, if any, of any nonparticipating manufacturer's cigarettes from this state.

B. ~~Cigarette~~ Manufacturers and ~~cigarette~~ importers who ship cigarettes AND ROLL-YOUR-OWN TOBACCO into or in this state shall file a monthly report with, AND IN THE FORM AND MANNER PRESCRIBED BY, the department. The report shall contain the information regarding cigarettes described under subsection A, paragraph 3 of this section.

C. ~~Cigarette~~ Distributor reports that are submitted under subsection A of this section shall be itemized to disclose the quantity of reported cigarettes bearing tax stamps of this state, tax exempt stamps of this state, stamps of another state and unstamped cigarettes. The distributor reports shall also include, if applicable, the following:

1. The quantity of Arizona tax and tax exempt stamps that were not affixed to cigarettes.

2. The quantity of Arizona tax and tax exempt stamps that the distributor possessed at the beginning and end of the reporting period.

3. The quantity of each type of Arizona stamp received during the reporting period.

4. The quantity of each type of Arizona stamp applied during the reporting period.

D. The department may adopt rules requiring additional information in the monthly reports as necessary for the purposes of enforcing this article.

E. For the purposes of this section, ~~"cigarette" has the same meaning prescribed in section 44-7101, section 2(d) except if differing reporting requirements are specified for roll-your-own tobacco.~~ "IMPORTER" AND "MANUFACTURER" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 42-3451.

Sec. 39. Section 42-3501, Arizona Revised Statutes, as transferred and renumbered, is amended to read:

42-3501. Return and payment by distributors of tobacco products other than cigarettes

A. Except for tobacco products described in ~~subsection F of this~~ section 42-3402, every distributor of ~~cigars or~~ tobacco products other than cigarettes shall pay the tax imposed by this chapter on all those products received within the state and shall add the amount of the tax to the sales price.

B. The distributor shall pay the tax to the department monthly on or before the twentieth day of the month next succeeding the month in which the tax accrues.

C. On or before that date the distributor shall prepare a sworn return for the month in which the tax accrues in the form prescribed by the department, showing:

1. The amount of ~~cigars or~~ tobacco products other than cigarettes received in this state during the month in which the tax accrues.

2. The amount of tax for the period covered by the return.

3. Any other information the department deems necessary for the proper administration of this chapter, including information required for roll-your-own tobacco provided under section ~~42-3211~~ 42-3462.

D. The distributor shall deliver the return, together with a remittance of the amount of the tax due, to the department.

E. A taxpayer who fails to pay the tax within ten days of the date on which the payment becomes due is subject to and shall pay a penalty determined under section 42-1125 plus interest at the rate determined pursuant to section 42-1123 from the time the tax was due and payable until paid.

~~F. Tobacco products that are ordered, purchased or transported in violation of section 13-3711, 36-798.06 or 42-3210 or section 44-7111, section 3(c) or any other statute for which the tobacco products are subject~~

~~to seizure and destruction are deemed contraband for which taxes that are imposed under this chapter cannot be reported and remitted.~~

~~G. Except as otherwise provided by the department for a refund or redemption issued under section 42-3008 or 42-3209, a distributor requesting any refund or rebate of taxes paid on tobacco products pursuant to this section or under article 7 of this chapter must establish entitlement to the refund or rebate by obtaining a report executed by the retailer that purchased the tobacco products on which the distributor paid taxes indicating the name and address of the retailer and the quantities of tobacco products sold, separately identified by the tax category of tobacco product and the necessary facts to establish the appropriate amount of refund or rebate. The report is subject to the following conditions:~~

~~1. The report must be provided in the form and manner prescribed by the department. Under such rules as it may prescribe, the department may identify transactions for which a distributor may not rely solely on the information in the retailer's report but must instead obtain additional information as required by the rules in order to be entitled to the refund or rebate.~~

~~2. The burden of proof for the refund or rebate is on the distributor, but if the distributor complies in all other respects with this subsection, the department may require the retailer that caused the execution of the report to establish the accuracy and completeness of the information required to be contained in the report that would entitle the distributor to the refund or rebate. If the retailer cannot establish the accuracy and completeness of the information, the retailer is liable in an amount equal to any tax, penalty and interest that the distributor would have been liable for under this chapter if the distributor had not otherwise complied with this subsection. Payment of the amount under this subsection by the retailer exempts the distributor from liability for the underlying tax, penalty and interest. All amounts paid by a retailer under this paragraph shall be treated as tax revenues collected from the distributor in order to designate the distribution base for purposes of this chapter.~~

Sec. 40. Title 42, chapter 3, article 12, Arizona Revised Statutes, is amended by adding sections 42-3502 and 42-3503, to read:

42-3502. Transport of untaxed other tobacco products prohibited; exceptions; definition

A. A PERSON MAY NOT HOLD, STORE OR TRANSPORT UNTAXED OTHER TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE IN ANY VEHICLE PURSUANT TO SECTION 36-798.06.

B. THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

1. A VEHICLE THAT IS OWNED, OPERATED OR CONTRACTED BY A PERSON WHO HOLDS A VALID LICENSE ISSUED UNDER SECTION 42-3401 AND IS TRANSPORTING UNTAXED OTHER TOBACCO PRODUCTS FROM ONE TO ANOTHER OF THE LICENSEE'S PLACES OF BUSINESS LISTED ON ITS APPLICATION.

2. A VEHICLE THAT IS TRANSPORTING UNTAXED OTHER TOBACCO PRODUCTS TO A LICENSED DISTRIBUTOR AS PART OF A LAWFUL SALE OR IN INTERSTATE COMMERCE TO A PERSON LAWFULLY OPERATING AS A MANUFACTURER, DISTRIBUTOR OR RETAILER OF OTHER TOBACCO PRODUCTS.

C. FOR THE PURPOSES OF THIS SECTION, "UNTAXED OTHER TOBACCO PRODUCTS" MEANS OTHER TOBACCO PRODUCTS ON WHICH APPLICABLE TAXES HAVE NOT BEEN REMITTED PURSUANT TO THIS CHAPTER.

42-3503. Acquisition and possession of untaxed other tobacco products; definitions

A. A PERSON, OTHER THAN A MANUFACTURER OR AN IMPORTER SHIPPING INTO THE STATE, SHALL BE LICENSED AS A DISTRIBUTOR IF THE PERSON ACQUIRES OR POSSESSES UNTAXED OTHER TOBACCO PRODUCTS FOR SALE, BARTER OR EXCHANGE OR FOR ANY OTHER PURPOSE BESIDES OR IN ADDITION TO PERSONAL USE OR CONSUMPTION IN THIS STATE, INCLUDING INDIAN RESERVATIONS LOCATED IN THIS STATE.

B. A DISTRIBUTOR SHALL OBTAIN OTHER TOBACCO PRODUCTS ONLY FROM A MANUFACTURER OR AN IMPORTER, OR A DISTRIBUTOR WITH A CURRENT LICENSE ISSUED UNDER SECTION 42-3401.

C. FOR THE PURPOSES OF THIS SECTION:

1. "IMPORTER" MEANS A PERSON WHO HAS RECEIVED APPROVAL FROM THE FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO DIRECTLY OR INDIRECTLY IMPORT FINISHED TOBACCO PRODUCTS INTO THE UNITED STATES FOR SALE OR DISTRIBUTION, PURSUANT TO 26 UNITED STATES CODE SECTION 5712 AND 27 CODE OF FEDERAL REGULATIONS PART 41.

2. "MANUFACTURER" MEANS A PERSON WHO HAS RECEIVED APPROVAL FROM THE FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO MANUFACTURE, FABRICATE, ASSEMBLE, PROCESS OR LABEL FINISHED TOBACCO PRODUCTS, PURSUANT TO 26 UNITED STATES CODE SECTION 5712 AND 27 CODE OF FEDERAL REGULATIONS PART 40.

Sec. 41. Exemption from rulemaking

For the purposes of implementing this act, the attorney general and department of revenue are exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

APPROVED BY THE GOVERNOR MARCH 30, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 31, 2015.

Passed the House March 19, 2015,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 25, 2015,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1240

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate March 24, **20** 15

by the following vote: 26 **Ayes,**

2 **Nays,** 2 **Not Voting**

[signature]
President of the Senate

Charmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

24th **day of** March, **20** 15

at 4:27 **o'clock** P. **M.**

Trista Grzyman
Secretary to the Governor

Approved this 30th **day of**

March

at 1:40 **o'clock** P. **M.**

[signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 31st **day of** March, **20** 15

S.B. 1240

at 10:00 **o'clock** A **M.**

Michele Reagan
Secretary of State