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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

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A N A C T

RELATING TO TAXATION – CIGARETTE TAX

Introduced By: Representative Peter T. Ginaitt

Date Introduced: February 15, 2006

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-20-1, 44-20-2, 44-20-12, 44-20-13, 44-20-20, 44-20-37, 44-20-
2 38 and 44-20-40 of the General Laws in Chapter 44-20 entitled "Cigarette Tax" are hereby
3 amended to read as follows:

4 **44-20-1. Definitions.** -- Whenever used in this chapter, unless the context requires
5 otherwise:

6 (1) "Administrator" means the tax administrator;

7 (2) "Brand style" means a variety of cigarettes distinguished by the tobacco used, tar and
8 nicotine content, flavoring used, size of the cigarette, filtration on the cigarette or packaging;

9 ~~(2)~~ (3) "Cigarettes" means and includes any cigarettes suitable for smoking in cigarette
10 form, and each sheet of cigarette rolling paper;

11 (4) "Consumer" means an individual who acquires or seeks to acquire cigarettes for
12 personal use;

13 (5) "Contraband cigarettes" means:

14 (a) cigarettes which do not bear a required stamp under this chapter;

15 (b) cigarettes for which any required federal taxes have not been paid;

16 (c) cigarettes which bear a counterfeit stamp;

17 (d) cigarettes that are manufactured, fabricated, assembled, processed, packaged, or
18 labeled by any person other than: (i) the owner of the trademark rights in the cigarette brand; or
19 (ii) a person who is directly or indirectly authorized by such owner; or

1 (e) cigarettes imported into the United States, or otherwise distributed, in violation of the
2 Federal Imported Cigarette Compliance Act of 2000 (Title IV of Public Law 106-476);

3 ~~(3)~~ (6) "Dealer" means any person other than a distributor ~~who is engaged in this state in~~
4 ~~the business of selling cigarettes~~ , whether located within or outside of this state, who sells or
5 distributes cigarettes to a consumer within this state;

6 (7) "Delivery sale" means any sale of cigarettes to a consumer within this state where
7 either:

8 (i) the purchaser submits the order for such sale by means of a telephonic or other method
9 of voice transmission, the mails or any other delivery service, facsimile transmission, or the
10 Internet or other online service; or

11 (ii) the cigarettes are delivered by use of the mails or other delivery service. A sale of
12 cigarettes that meets the requirements of this paragraph shall constitute a delivery sale regardless
13 whether the seller is located within or without this state.

14 (8) "Delivery service" means any person (other than a person who makes a delivery sale)
15 who delivers to the consumer the cigarettes sold in a delivery sale;

16 (9) "Department of taxation" means the state of Rhode Island taxation division, its
17 employees, agents or assigns;

18 ~~(4)~~ (10) (i) "Distributor" means any person:

19 (A) Engaged in this state in the business of manufacturing cigarettes or any person
20 engaged in the business of selling cigarettes to dealers, or to other persons, for the purpose of
21 resale only; provided, that seventy-five percent (75%) of all cigarettes sold by that person in this
22 state are sold to dealers or other persons for resale;

23 (B) Selling cigarettes directly to consumers at retail, and maintaining one or more
24 regular places of business in this state for that purpose; provided, that seventy-five percent (75%)
25 of the sold cigarettes are purchased directly from the manufacturer; or

26 (C) Selling cigarettes directly to consumers in this state by means of at least twenty-five
27 (25) cigarette vending machines;

28 (ii) Provided, that any person who owns or maintains five (5) or more retail outlets in
29 Rhode Island, having one hundred percent (100%) common ownership, through which cigarettes
30 are sold at retail may apply for a distributor's license, and upon issuance of the license, that
31 person is deemed to be a distributor under this chapter;

32 (11) "Importer" means any person who imports into the United States, either directly or
33 indirectly, a finished cigarette sold or distributed within this state;

34 (12) "Licensed" when used in reference to a "cigarette manufacturer, importer,

1 distributor, subjobber or dealer" means only those persons who hold a valid and current license
2 issued under this chapter, as well as any permit required under chapter 52 of title 26 of the United
3 States Code, for the type of business in which the person is engaged. When the term "licensed" is
4 used before a list of entities, such as "licensed cigarette manufacturer, importer, distributor,
5 subjobber or dealer," such term shall apply to each entity in the list;

6 ~~(5) "Licensed dealer" means a dealer licensed under the provisions of this chapter;~~

7 ~~(6) "Licensed distributor" means a distributor licensed under the provisions of this~~
8 ~~chapter;~~

9 (13) "Mails" or "mailing" means the shipment of cigarettes through the United States
10 Postal Service;

11 (14) "Cigarette manufacturer" means any person who manufactures, fabricates,
12 assembles, processes, or labels a finished cigarette sold or distributed within this state;

13 ~~(7)~~ (15) "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or
14 limited liability company, association, or other organization, however formed, that engages in any
15 for-profit or not-for-profit activities;

16 ~~(8)~~ (16) "Place of business" means and includes any place where cigarettes are sold or
17 where cigarettes are stored or kept for the purpose of sale or consumption, including any vessel,
18 vehicle, airplane, train, or vending machine;

19 (17) "Priority compliance requirements" means the provisions contained in sections 44-
20 20-2, 44-20-2.1, 44-20-3, 44-20-12, 44-20-13, 44-20-20, 44-20-33, 44-20-37, 44-20-38 and 44-
21 20-40 of this chapter;

22 ~~(9)~~ (18) "Sale" or "sell" includes and applies to gifts, exchanges, and barter;

23 ~~(10)~~ (19) "Stamp" or "stamps" means the impression, device, stamp, label, or print
24 manufactured, printed, or made as prescribed by the administrator to be affixed to packages of
25 cigarettes, as evidence of the payment of the tax provided by this chapter; , or the indicia used to
26 indicate that cigarettes are intended for a sale or distribution within this state that is exempt from
27 state tax under any applicable provision of law. "Stamp" and also includes impressions made by
28 metering machines authorized to be used under the provisions of this chapter;

29 (20) "Subjobber" means any person, whether located within or outside of this state, other
30 than a person who is acting as a licensed dealer, who sells or distributes cigarettes within or into
31 this state. Such term shall not include any cigarette manufacturer, export warehouse proprietor,
32 or importer with a valid permit under chapter 52 of title 26 of the United States Code, if such
33 person sells or distributes cigarettes within this state only to licensed subjobbers, or to an export
34 warehouse proprietor or another cigarette manufacturer with a valid permit under such chapter.

1 (21) "Within this state" means within the exterior limits of the state of Rhode Island and
2 includes all territory within these limits owned by or ceded to the United States of America.

3 **44-20-2. Distributors' and dealers' licenses required.** -- Each person engaging in the
4 business of selling cigarette products in this state, including any distributor, cigarette
5 manufacturer, importer, subjobber or dealer, shall secure a license from the administrator before
6 engaging in that business, or continuing to engage in it. A separate application and license is
7 required for each place of business operated by a distributor, cigarette manufacturer, importer,
8 subjobber or dealer; provided, that an operator of vending machines for cigarette products is not
9 required to obtain a distributor's license for each machine. A separate license is required for each
10 class of business if the applicant is engaged in business both as distributor and dealer. No person
11 shall maintain or operate or cause to be operated a vending machine for cigarette products
12 without procuring a dealer's license for each machine.

13 **44-20-12. Tax imposed on cigarettes sold.** -- A tax is imposed on all cigarettes sold or
14 held for sale in the state by any person, the payment of the tax to be evidenced by stamps affixed
15 to the packages containing the cigarettes and as required by the tax administrator.

16 (a) Stamps required. – Each licensed subjobber shall, within ten (10) days of receipt of a
17 pack of cigarettes, apply stamps to each pack of cigarettes imported, distributed, or sold within
18 this state. This requirement shall apply whether or not such cigarettes are subject to state tax
19 under this or any other provision of state law. Nothing in this chapter shall prohibit a subjobber
20 from applying stamps to packs of cigarettes for another subjobber. Any cigarettes on which the
21 proper amount of tax provided for in this chapter has been paid, payment being evidenced by the
22 stamp, is not subject to a further tax under this chapter. The tax is at the rate of one hundred
23 twenty-three (123) mills for each cigarette.

24 (b) Stamp markings. – Each stamp applied top a pack of cigarettes pursuant to this
25 section shall note whether the state tax required under this section was paid or whether the pack
26 of cigarettes was not subject to state tax.

27 (c) Stamp numbering. – Each roll, sheet or package of stamps shall have a separate serial
28 number, which shall be visible and clearly identifiable at the point of sale on each pack of
29 cigarettes. The tax administrator shall keep records of which subjobber purchases each roll,
30 group of sheets or package of stamps identified by serial number. If the tax administrator permits
31 subjobbers to purchase partial rolls or sheets, in no case may stamps bearing the same serial
32 number be sold to more than one subjobber.

33 (d) Stamp distribution. – Only licensed subjobbers may possess, purchase, or obtain
34 cigarette stamps. Subjobbers shall not provide, sell, distribute, give, otherwise transfer, or assist,

1 aid or abet a person in selling, distributing, giving, or otherwise transferring such stamps to any
2 other subjobber or person.

3 **44-20-13. Tax imposed on unstamped cigarettes.** – (a) A tax is imposed at the rate of
4 one hundred twenty-three (123) mills for each cigarette upon the storage or use within this state
5 of any cigarettes not stamped in accordance with the provisions of this chapter in the possession
6 of any person other than a licensed distributor, cigarette manufacturer, importer, subjobber or
7 dealer, or a carrier for transit from outside of this state to a licensed distributor, subjobber or
8 dealer within this state.

9 (b) Receipt of unstamped cigarettes. – Except as provided in this section, only a licensed
10 cigarette manufacturer, importer, or subjobber may receive unstamped packs of cigarettes, and a
11 subjobber may only receive unstamped packs of cigarettes directly from a licensed cigarette
12 manufacturer or importer and shall hold such cigarettes in accordance with this section.

13 (c) Maintenance and transfer of unstamped product. – Subjobbers may set aside, without
14 application of stamps, only such packs of cigarettes that are identified for sale or distribution
15 outside of this state and such unstamped packs of cigarettes shall be stored separately from the
16 subjobber's stamped packs of cigarettes. A subjobber may mail, ship, or otherwise cause to be
17 delivered unstamped packs of cigarettes to another licensed facility within this state that is owned
18 or operated by such subjobber.

19 (d) Transportation of unstamped cigarettes. – (1) Any person who mails, ships, or
20 otherwise causes to be delivered unstamped packs of cigarettes into or within this state shall
21 ensure that the invoice or equivalent documentation and the bill of lading or freight bill for the
22 shipment identifies the true name and address of the consignor or seller, the true name and
23 address of the consignee or purchaser, and the quantity by brand style of the cigarettes so
24 transported.

25 (2) This subsection shall not be construed as to impose any requirement or liability upon
26 any common or contract carrier; provided, that the common or contract carrier is transporting
27 cigarettes through or into this state under a proper bill of lading or freight bill, which states the
28 quantity, source, and destination of such cigarettes.

29 **44-20-20. Use of metering machine in lieu of stamps.** -- The tax administrator, if he or
30 she determines that it is practicable to stamp by impression packages of cigarettes by means of a
31 metering machine, may, in lieu of selling stamps under the provisions of section 44-20-19,
32 authorize any licensed distributor, licensed subjobber or licensed dealer to use any metering
33 machine approved by the tax administrator, the machine to be sealed by the tax administrator
34 before being used and to be used in accordance with regulations prescribed by the tax

1 administrator. Each licensed subjobber authorized to make a meter impression shall be assigned
2 a unique meter impression number, which number shall not be used by any other subjobber and
3 shall be visible and easily identifiable on the impression at the point of sale on each pack of
4 cigarettes. The tax administrator shall keep records detailing each subjobber and noting the
5 subjobber's assigned meter impression number. Any licensed distributor, licensed subjobber or
6 licensed dealer authorized by the tax administrator to affix stamps to packages by means of a
7 metering machine shall make a prepayment, allowing for the discount, if any, provided for in
8 section 44-20-19, covering the amount of tax for which his or her meter register is set, or in the
9 discretion of the tax administrator file with the tax administrator a bond in an amount and with a
10 surety as the tax administrator may determine, conditioned upon the payment of the tax upon
11 stamped cigarettes. The bond shall be in full force and effect for a period of one year and a day
12 after the expiration of the bond, unless a certificate is issued by the tax administrator to the effect
13 that all taxes due to the state have been paid. The tax administrator shall cause each metering
14 machine approved by the tax administrator to be read and inspected at least once a month and,
15 unless being used on a prepayment basis, shall determine at the time of each inspection the
16 amount of tax due from the distributor, subjobber or dealer using the machine after allowing for
17 the discount, if any, provided for in section 44-20-19, which tax is due and payable upon demand
18 of the tax administrator or his or her authorized agent.

19 **44-20-37. Seizure and sale of unstamped cigarettes.** – (a) Any cigarettes found at any
20 place in this state without stamps affixed as required by this chapter are declared to be contraband
21 goods and may be seized by the tax administrator, his or her agents, or employees, or by any
22 sheriff, deputy sheriff, or police officer when directed by the tax administrator to do so, without a
23 warrant; provided, that nothing in this section shall be construed to require the tax administrator
24 to confiscate unstamped cigarettes when the tax administrator has reason to believe that the owner
25 of the cigarettes is not willfully or intentionally evading the tax imposed by this chapter. ~~Any~~
26 ~~cigarettes seized under the provisions of this chapter may, in his or her discretion, be offered by~~
27 ~~the tax administrator for sale at public auction to the highest bidder after advertisement, as~~
28 ~~provided in section 44-20-38. Before delivering any cigarettes so sold to the purchaser, the tax~~
29 ~~administrator shall require the purchaser to affix to the packages the amount of stamps required~~
30 ~~by this chapter.~~ The seizure ~~and sale~~ of any cigarettes under the provisions of this section does
31 not relieve any person from a fine or other penalty for violation of this chapter.

32 (b) Forfeiture.

33 (1) In addition to any other penalty provided by law, all cigarettes which are held for sale
34 or distribution within this state in violation of the priority compliance requirements shall be

1 forfeited to this state. All cigarettes forfeited to this state under this section shall be destroyed.
2 The department of taxation may, prior to any destruction of cigarettes, permit the true holder of
3 the trademark rights in the cigarette brand to inspect such contraband cigarettes, in order to assist
4 the department of taxation in any investigation regarding such cigarettes.

5 (2) Except as provided in paragraph (3) and to the extent permitted by federal law, all
6 fixtures, equipment, and all other materials and personal property on the premises of any person
7 who, with intent to defraud the state:

8 (A) fails to keep or make any record, return, report or inventory required by the priority
9 compliance requirements;

10 (B) keeps or makes any false or fraudulent record, return, report or inventory required by
11 the priority compliance requirements;

12 (C) refuses to pay any tax imposed by the priority compliance requirements;

13 (D) attempts in any manner to evade or defeat the priority compliance requirements;
14 shall be forfeited to the state.

15 (3) A subjobber or dealer shall not be required to forfeit fixtures, equipment, and all other
16 materials and personal property on the premises if such subjobber or dealer:

17 (A) acted in good faith;

18 (B) was not involved in or aware of the unlawful activity prohibited by the priority
19 compliance requirements; and

20 (C) did all that reasonably could be expected under the circumstances to prevent
21 violations of the priority compliance requirements.

22 **44-20-38. ~~Advertisement and hearing on cigarettes seized. Hearing on cigarettes~~**
23 **seized. --** When any cigarettes are seized under the provisions of section 44-20-37, ~~the tax~~
24 ~~administrator may, at his or her discretion, after a hearing as provided in section 44-20-47,~~
25 ~~advertise them for sale, in a newspaper published or having a circulation in the city or town in~~
26 ~~which the seizure took place, at least five (5) days before the sale. Any any person claiming an~~
27 interest in the cigarettes may make written application to the tax administrator for a hearing,
28 stating his or her interest in the cigarettes and his or her reasons why they should not be forfeited.
29 Further proceedings on the application for a hearing are taken as provided in sections 44-20-47
30 and 44-20-48. ~~No sale of any cigarettes under the provisions of section 44-20-37 shall be made~~
31 ~~while an application for a hearing is pending before the tax administrator, but the pendency of an~~
32 ~~appeal under the provisions of section 44-20-48 shall not prevent the sale unless the appellant~~
33 ~~posts a satisfactory bond, with surety, in an amount double the estimated value of the cigarettes,~~
34 ~~conditioned upon the successful termination of the appeal.~~

1 ~~44-20-40. Records of distributors and dealers --- Investigation and inspection of~~
2 ~~books, premises and stock.~~ **Records of cigarette manufacturers, subjobbers and dealers --**
3 **Investigation and inspection of books, premises and stock.** -- ~~Each distributor and each dealer~~
4 ~~must keep complete and accurate records of all cigarettes manufactured, produced, purchased, or~~
5 ~~sold, in a kind and form as the tax administrator may prescribe.~~ All records and invoices required
6 under this section, or as may be required by the tax administrator in support of the provisions of
7 this section, must be safely preserved on the premises described in the relevant license for three
8 (3) years in a manner to insure permanency and accessibility for inspection by the tax
9 administrator or his or her authorized agents. The tax administrator or his or her authorized agents
10 may examine the books, papers, and records of any distributor or dealer in this state for the
11 purpose of determining whether taxes imposed by this chapter have been fully paid, and may
12 investigate the stock of cigarettes in or upon any premises for the purpose of determining whether
13 the provisions of this chapter are being obeyed.

14 (a) Transaction records. – Each cigarette manufacturer, importer, subjobber or dealer
15 shall maintain copies of invoices or equivalent documentation for, or itemized for, each of its
16 facilities for each transaction involving the sale, purchase, transfer, consignment, or receipt of
17 packs of cigarettes. The invoices or documentation shall show the name and address of the other
18 party (other than a consumer) and the quantity by brand style involved in the transaction.

19 (b) Inventory records. – Each cigarette manufacturer, importer, subjobber or dealer shall
20 maintain records showing the quantities of cigarettes, by brand style, on hand both at the
21 beginning and ending of each month.

22 (c) Retention period. – All records required by this section shall be preserved for a period
23 of three (3) years after the date the records were created.

24 (d) Access. – The tax administrator and his or her designee shall, upon notice, have
25 access to records required under this chapter. Upon notice from the tax administrator or his or her
26 designee, a cigarette manufacturer, importer, subjobber or dealer shall submit copies of such
27 records to the tax administrator. The tax administrator is authorized to disclose to the attorney
28 general any information received under this part and requested by the attorney general for
29 purposes of determining compliance with and enforcing the provisions of this part. The tax
30 administrator and the attorney general shall share with each other the information received under
31 this part and may share the information with other federal, state, or local agencies for purposes of
32 enforcement of this part or the laws of the federal government or of other states.

33 SECTION 2. Chapter 44-20 of the General Laws entitled "Cigarette Tax" is hereby
34 amended by adding thereto the following sections:

1 **44-20-2.1. Licensure, generally.** – (a) Transactions only with licensed cigarette
2 manufacturers, importers, subjobbers and dealers:

3 (1) A cigarette manufacturer or importer may sell or distribute cigarettes to a person
4 located or doing business within this state, only if such person is a licensed importer, or
5 subjobber.

6 (2) An importer may obtain cigarettes only from a licensed cigarette manufacturer.

7 (3) A subjobber may sell or distribute cigarettes to a person located or doing business
8 within this state, only if such person is a licensed subjobber or dealer.

9 (4) A subjobber may obtain cigarettes only from a licensed cigarette manufacturer, or
10 subjobber.

11 (5) A dealer may only sell cigarettes obtained from a licensed subjobber.

12 (b) Issuance. – The administrator shall issue separate revocable licenses to cigarette
13 manufacturers, importers, distributors, subjobbers and dealers pursuant to this chapter and under
14 such terms and conditions that are specified in this chapter and that he or she may determine to be
15 consistent with this chapter for each separate place of business of the cigarette manufacturer,
16 importer, distributor, subjobber or dealer. If the applicant does not have a place of business
17 within this state, the license shall be issued for such applicant's principal place of business,
18 wherever located. In issuing such licenses, to assist in the valid administrative needs of the
19 department of taxation, the administrator shall assign each licensee a unique numerical identifier.
20 A person that is engaged in more than one of the business activities listed in the first sentence of
21 this subsection shall apply for, and may be issued, a separate license for each such activity and
22 each associated business location. A cigarette manufacturer, importer, distributor, subjobber or
23 dealer which operates at multiple locations within this state must possess a separate, individual
24 license for each such location.

25 (c) Licensing period and renewal. – By regulation, the administrator shall, as specified by
26 this chapter, specify the length of time for which a license remains in effect; in no case, however,
27 shall a license issued under this chapter remain in effect for a period longer than five (5) years.
28 Such licenses shall be renewed only upon timely application and payment of the required fee
29 prior to expiration.

30 (d) Application form. – Every application for a license or a renewal thereof under this
31 subsection shall be submitted on a form established by the tax administrator and shall require, at a
32 minimum, the following information to be submitted, under penalty of perjury:

33 (1) if the applicant is an individual, the name and business address of applicant;

34 (2) if the applicant is a firm, partnership or association, the name and business address of

1 each of its members;

2 (3) if the applicant is a corporation or limited liability company, the name and address of
3 each of its officers and the name and business address of any person who owns, directly or
4 indirectly, in the aggregate, more than ten percent (10%) of the ownership interests in the
5 corporation or limited liability company;

6 (4) the name under which such applicant regularly does business;

7 (5) the physical address of the applicant's principal place of business and any other place
8 of business within this state;

9 (6) in the case of a cigarette manufacturer or importer, the brand styles of cigarettes the
10 applicant manufactures or imports;

11 (7) the kind or nature of the business to be conducted; and

12 (8) sufficient information to demonstrate that the applicant has complied or will comply
13 with all of the requirements of this chapter.

14 (e) Notification of change. – A licensee shall notify the department of taxation of any
15 change in the information contained on the application form, including any change in ownership
16 and shall do so within thirty (30) days of any such change.

17 (f) License availability. – The tax administrator shall not grant or renew a license or allow
18 such a license to be maintained if he or she determines the applicant:

19 (1) owes five hundred dollars (\$500) or more in delinquent cigarette taxes;

20 (2) had a license under this chapter revoked by the department of taxation within the past
21 two (2) years;

22 (3) has been convicted of a crime relating to stolen or contraband cigarettes, under state
23 or federal law;

24 (4) is a cigarette manufacturer that is neither:

25 (i) a participating cigarette manufacturer as defined in subsection II(jj) of the "Master
26 Settlement Agreement" as defined in section 23-71-2; nor

27 (ii) in full compliance with the requirements of section 23-71-3, the Tobacco Product
28 Manufacturers Escrow Funds Statute;

29 (5) has been found to have violated, at least two (2) times in a six (6) month period, any
30 law related to the sale of tobacco to minors;

31 (6) has been found to have imported or caused to be imported into the United States for
32 sale or distribution any cigarette in violation of 19 U.S.C. 1681a; or

33 (7) has been found to have imported or caused to be imported into the United States for
34 sale or distribution or manufactured for sale or distribution in the United States any cigarette that

1 does not fully comply with the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1331,
2 et seq.).

3 (g) Suspension or revocation. – The tax administrator may revoke or suspend any license
4 or permit issued under this chapter if he or she finds, after reasonable notice and opportunity for
5 hearing, that the person:

6 (1) would be ineligible to obtain a new license or renew an existing license by reason of
7 any of the conditions for licensure provided in this section; or

8 (2) has violated any other provision of this chapter or any rule or regulation prescribed by
9 the tax administrator under this chapter.

10 (h) Maintenance of and publication of list of licenses issued. – Within thirty (30) days of
11 the enactment of this act, the tax administrator shall create and maintain a website setting forth
12 the identity of all persons issued licenses under this chapter and the business locations of each
13 licensee, itemized by type of license possessed, and shall update the website no less frequently
14 than once per month. The tax administrator shall, at a minimum, include in such publication the
15 legal name of the licensee, the unique numerical identifier issued to the licensee, and any name
16 under which such licensee regularly does business.

17 (i) Maintenance of and publication of list of licensees whose licenses have been
18 suspended or revoked. – Within thirty (30) days of the enactment of this act, the tax administrator
19 shall create and maintain a website setting forth the identity of all persons whose licenses have
20 been suspended or revoked under this chapter within the past three (3) years, itemized by type of
21 license, and shall update the website within thirty (30) days of the date the tax administrator
22 suspends or revokes any person's license. The tax administrator shall, at a minimum, include in
23 such publication the legal name of the licensee, the business locations of the licensee, the unique
24 numerical identifier issued to the licensee prior to the suspension or revocation of the license, and
25 any name under which such licensee regularly does business.

26 (j) License is a privilege. – The granting or renewal of a license under this chapter shall
27 not be deemed a property right or other guarantee under any federal or state laws. Such a license
28 is a privilege indicating the ability of a cigarette manufacturer, importer, distributor, subjobber or
29 dealer to engage in such business.

30 (k) Not transferable. – A license issued under this chapter shall not be transferable to
31 other cigarette manufacturers, importers, distributors, subjobbers or dealers or to another location
32 other than that designated on the license.

33 (l) Proof of license required. – A cigarette manufacturer, importer, distributor, subjobber
34 or dealer shall, prior to the initial sale or exchange of cigarettes with any person who is required

1 to be licensed under this chapter, require proof of a valid license for the relevant business location
2 issued under this chapter.

3 (m) Display of license. – A cigarette manufacturer, importer, distributor, subjobber or
4 dealer shall prominently display a separate license issued under this chapter in each place of
5 business operated by the cigarette manufacturer, importer, distributor, subjobber or dealer to
6 whom such license is issued. Such license must be displayed in such a manner as to insure that it
7 is visible to all persons entering the place of business of the cigarette manufacturer, importer,
8 distributor, subjobber or dealer.

9 (n) Retail sales. – A dealer shall not sell or distribute more than ten (10) cartons of
10 cigarettes to any person in a single transaction or in any series of transactions within a twenty-
11 four (24) hour period. Provided, however, that a dealer which is also licensed as a subjobber may
12 make any sales permitted to be made by a subjobber under this chapter when acting in that
13 capacity.

14 **44-20-12.3. Computation of tax. –** The department of taxation shall add a line item to
15 individual income tax returns requiring each person filing such returns to compute the amount of
16 cigarette taxes owed but not paid to the state.

17 **44-20-12.4. Averments. –** Notwithstanding the provisions of section 44-20-12.3, the
18 department of taxation shall require that any person filing individual income taxes within this
19 state attest to the following: "I declare under penalty of perjury that I have paid [or am paying
20 with this return] all state taxes due on my purchase of cigarettes from out-of-state vendors."

21 **44-20-59. Civil penalties for violations of priority compliance requirements. –** (a)
22 Manufacturers, subjobbers and importers. – Except as otherwise provided in this section, a first
23 violation of any provision of the priority compliance requirements by a cigarette manufacturer,
24 subjobber or importer shall, in addition to any other penalty provided by law, be punishable by a
25 fine of five thousand dollars (\$5,000) for each separate violation, which shall be recovered, with
26 costs of suit, in a civil action. Any subsequent violation of any provision contained in the priority
27 compliance requirements by a cigarette manufacturer, subjobber or importer shall be punishable
28 by a fine of ten thousand dollars (\$10,000) for each separate violation. In no case can the fine
29 imposed under this paragraph exceed ten (10) times the retail value of the cigarettes.

30 (b) Dealers. – Except as otherwise provided in this section, a first violation of any
31 provision contained in the priority compliance requirements by a dealer shall, in addition to any
32 other penalty provided by law, be punishable by a fine of one thousand dollars (\$1,000) for each
33 separate violation, which shall be recovered, with costs of suit, in a civil action. Any subsequent
34 violation of any provision contained in the priority compliance requirements by a dealer shall be

1 punishable by a fine of two thousand dollars (\$2,000) for each separate violation. In no case can
2 the fine imposed under this paragraph exceed ten (10) times the retail value of the cigarettes.

3 (c) Failure to pay tax. – Any person who fails to pay any tax imposed by this state at the
4 time prescribed by law or regulations shall, in addition to any other penalty provided by law, be
5 liable to a penalty of three (3) times the tax due but unpaid, to help defray the costs of detection
6 and investigation and any consequential damages. In no case can the fine imposed under this
7 paragraph exceed ten (10) times the retail value of the cigarettes.

8 (d) False statements. – Any person who knowingly and willfully makes a false statement
9 regarding the payment of cigarette excise taxes when filing individual income taxes within this
10 state shall, in addition to any other penalty provided by law, be fined fifteen thousand dollars
11 (\$15,000), which shall be recovered with costs of suit, in a civil action. In no case can the fine
12 imposed under this subsection exceed ten (10) times the retail value of the cigarettes.

13 (e) Authority. – Notwithstanding any other provision of law, the department of taxation
14 may use proceeds from civil penalties imposed under this section to offset necessary and
15 reasonable expenses incurred in the detection and investigation of the failure of any person to pay
16 any cigarette tax imposed by this state.

17 **44-20-60. Criminal penalties for violations of priority compliance requirements. --**

18 (a) Fraudulent offenses. – Whoever, with intent to defraud this state fails to comply with any of
19 the priority compliance requirements or regulations prescribed hereunder shall, in addition to any
20 other penalty provided by law, for each such offense, be fined ten thousand dollars (\$10,000) or
21 be imprisoned for not more than five (5) years, or both.

22 (b) Knowing offenses. – Whoever, knowingly violates any of the priority compliance
23 requirements of this chapter or regulations prescribed hereunder shall, in addition to any other
24 penalty provided by law, for each such offense, be fined not more than five thousand dollars
25 (\$5,000), or imprisoned for not more than one year, or both.

26 (c) Contraband cigarettes. – Notwithstanding any other provision of law, the sale or
27 possession for sale of contraband cigarettes by a cigarette manufacturer, importer, subjobber, or
28 dealer shall result in the seizure of the product and related machinery by the department of
29 taxation or any law enforcement agency and shall be punishable as follows:

30 (1) A first violation involving a total quantity of less than two (2) carton of cigarettes
31 shall be punishable by a fine of one thousand dollars (\$1,000) or imprisonment not to exceed five
32 (5) years, or both.

33 (2) A subsequent violation involving a total quantity of less than two (2) cartons of
34 cigarettes shall be punishable by a fine of five thousand dollars (\$5,000) or imprisonment not to

1 exceed five (5) years, or both, and shall also result in the revocation by the department of taxation
2 of the cigarette manufacturer, importer, subjobber, or dealer license. In no case can the fine
3 imposed under this paragraph exceed ten (10) times the retail value of cigarettes.

4 (3) A first violation involving a total quantity of two (2) cartons of cigarettes or more
5 shall be punishable by a fine of two thousand dollars (\$2,000) or imprisonment not to exceed five
6 (5) years, or both. In no case can the fine imposed under this paragraph exceed ten (10) times the
7 retail value of the cigarettes.

8 (4) A subsequent violation involving a quantity of two (2) cartons of cigarettes or more
9 shall be punishable by a fine of fifty thousand dollars (\$50,000) or imprisonment not to exceed
10 five (5) years, or both, and shall also result in the revocation by the department of taxation of the
11 license of the cigarette manufacturer, importer, subjobber, or dealer. In no case can the fine
12 imposed under this paragraph exceed ten (10) times the retail value of the cigarettes.

13 (d) For purposes of this section, contraband cigarettes includes cigarettes that have false
14 manufacturing labels or packs of cigarettes bearing counterfeit stamps. Any contraband
15 cigarettes seized by this state shall be destroyed. The department of taxation may, prior to any
16 destruction of cigarettes, permit the true holder of the trademark rights in the cigarette brand to
17 inspect such contraband cigarettes, in order to assist the department of taxation in any
18 investigation regarding such cigarettes.

19 **44-20-61. Tip line.** -- (a) Not later than one hundred twenty (120) days after the date of
20 enactment of this act, the department of taxation shall establish, publicize, and maintain a toll-free
21 telephone number to receive information related to violations of this chapter.

22 (b) The attorney general may pay a reward of up to five thousand dollars (\$5,000) to any
23 person who furnishes information leading to the department of taxation's collection of excise
24 taxes imposed upon delivery sales which otherwise would not have been collected but for the
25 information provided by the person.

26 **44-20-62. Construction.** -- The requirements imposed by this chapter shall not apply
27 where such application would be contrary to the constitution and laws of the United States.

28 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION – CIGARETTE TAX

- 1 This act would expand the definitions and licensure requirements for cigarette
- 2 manufacturers, importers, subjobbers and dealers regarding the cigarette tax.
- 3 This act would take effect upon passage.

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LC00922
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