

AN ACT

ENTITLED, An Act to revise the discount provided to tobacco distributors purchasing tobacco stamps and to revise and repeal certain provisions regarding the cigarette tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 10-50-18 be amended to read as follows:

10-50-18. The secretary of revenue and regulation shall secure stamps, of the design and denomination as the secretary prescribes, suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by this chapter. The secretary shall sell the stamps to licensed distributors at a discount of two percent of their face value and to no other person.

Section 2. That § 10-50-4 be amended to read as follows:

10-50-4. The payment of the tax imposed by § 10-50-3 shall be evidenced by the affixing of stamps to the packages containing the cigarettes as provided by this chapter. However, for cigarettes offered by manufacturers for gratis distribution as samples, the stamps are not required to be affixed to sample packages if the manufacturer of the cigarette reports and pays the tax directly to the state tax authority.

Section 3. That § 10-50-6 be amended to read as follows:

10-50-6. Any cigarette on which a tax has been paid, the payment being evidenced by the affixing of the stamp, is not subject to a further tax under this chapter. However, any person, who possesses two thousand or more cigarettes that do not bear a tax stamp indicating that the South Dakota cigarette tax has been paid, shall pay the tax imposed pursuant to § 10-50-3 plus a penalty equal to ten percent of the total tax due.

Section 4. That § 10-50-22 be repealed.

Section 5. That § 10-50-23 be repealed.

Section 6. That § 10-50-24 be repealed.

Section 7. That § 10-50-24.1 be repealed.

Section 8. That § 10-50-25 be amended to read as follows:

10-50-25. If the secretary of revenue and regulation finds that the collection of the tax imposed by this chapter would be facilitated thereby, the secretary may authorize any person, resident or located outside this state, engaged in the business of selling and shipping cigarettes into this state and purchasing at least seventy-five percent of the cigarettes from the manufacturers thereof, and who is a resident of any state authorizing by law the licensing of nonresidents, including residents of this state, to distribute cigarettes therein, upon complying with the requirements of the secretary of revenue and regulation, to affix or cause to be affixed the stamps required by this chapter on behalf of the purchasers of the cigarettes, who would otherwise be taxable therefor. The secretary of revenue and regulation may sell the stamps to such person as hereinbefore provided.

Section 9. That § 10-50-30 be amended to read as follows:

10-50-30. Each distributor shall affix or cause to be affixed, in the manner as the secretary of revenue and regulation may specify in rules promulgated pursuant to chapter 1-26, to each individual package of cigarettes, to cartons containing more than one individual package of three, four, or five cigarettes sold or distributed by such distributor, stamps of the proper denomination, as required by this chapter. The stamps shall be affixed by a distributor before the cigarettes are transferred out of the distributor's premises, or in lieu thereof the amount of the tax due shall be entered on the invoice and stamps sufficient in denominations and amount shall accompany the invoice on every delivery of cigarettes.

Section 10. That § 10-50-31 be amended to read as follows:

10-50-31. Each dealer upon opening any shipping package containing any unstamped taxable articles for purposes of sale or delivery to consumers, shall immediately affix the tax stamps required by this chapter.

Section 11. That § 10-50-32 be amended to read as follows:

10-50-32. No person, other than a person licensed pursuant to § 10-50-9, may sell, offer for sale, display for sale, or possess with intent to sell, advertise for sale, ship or cause to be shipped, or possess with intent to deliver to another person, any cigarettes which do not bear stamps evidencing the payment of the tax imposed by this chapter.

A violation of this section is a Class 2 misdemeanor. Any subsequent violation is a Class 6 felony.

Section 12. That § 10-50-35 be amended to read as follows:

10-50-35. Any cigarettes found at any place in this state without stamps affixed thereto as required by this chapter unless the cigarettes are in the possession of a licensed distributor or wholesaler in the original unopened shipping package or unless they are in a course of transit from without this state and consigned to a licensed distributor or a licensed wholesaler, are declared to be contraband goods and may be seized by the secretary, the secretary's agents, or employees, or by any law enforcement of this state if directed by the secretary to do so, without a warrant.

Section 13. That § 10-50-80 be amended to read as follows:

10-50-80. No later than twenty days after the end of each calendar quarter, and more frequently if so directed by the secretary, each distributor and wholesaler shall submit information concerning each nonparticipating manufacturer as the secretary requires to facilitate compliance with §§ 10-50-72 to 10-50-92, inclusive, including, a list by brand family of the total number of cigarettes or, in the case of roll-your-own, the equivalent stick count, for which the distributor or wholesaler affixed cigarette tax stamps to a cigarette package, or otherwise paid the cigarette tax due during the previous calendar quarter. The distributor or wholesaler shall maintain and make available to the secretary all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the secretary for a period of six years. The secretary

may, in addition to any other provision of law, impose and collect a monetary penalty in an amount not to exceed five hundred dollars per day, for the failure of a distributor or wholesaler to timely or accurately comply with this section. Any monetary penalty collected pursuant to this section shall be deposited in the state general fund.

Section 14. That § 10-50-82 be amended to read as follows:

10-50-82. No distributor or wholesaler or other person may:

- (1) Affix a South Dakota cigarette tax stamp to a package or other container of cigarettes, or pay South Dakota cigarette tax on cigarettes of a tobacco product manufacturer or brand family not included in the directory; or
- (2) Sell or distribute, or acquire, hold, own, possess, transport, import, or cause to be imported, cigarettes of a tobacco product manufacturer or brand family not included in the directory that the distributor, wholesaler, or other person knows or should know are intended for distribution or sale in this state.

The secretary may, in addition to any other provision of law, impose and collect a monetary penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars for each violation of this section by a distributor or wholesaler. Any monetary penalty collected pursuant to this section shall be deposited in the state general fund.

Section 15. That § 10-50B-6 be amended to read as follows:

10-50B-6. For the purposes of §§ 10-50B-1 to 10-50B-10, inclusive, the term, units sold, means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs bearing the excise tax stamp of the state, or on roll-your-own tobacco. The secretary of revenue and regulation shall promulgate, pursuant to chapter 1-26, such rules as are necessary to obtain information from any

licensee, licensed under the authority of the Department of Revenue and Regulation, to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year. The Department of Revenue and Regulation may provide information obtained pursuant to this section as is necessary for a tobacco product manufacturer to compute its escrow payment under § 10-50B-7.

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I certify that the attached Act
originated in the

SENATE as Bill No. 42

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 42
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State