



Peter A. Cooper

Final Analysis
Legislative Service Commission

Sub. S.B. 98

123rd General Assembly
(As Passed by the General Assembly)

Sens. Nein, Gardner, Latta, White, Blessing, Drake, Mumper, DiDonato, McLin, Wachtmann, Spada, Herington, Armbruster

Reps. Mottley, Corbin, Jolivette, Flannery, Britton, Amstutz, D. Miller, Terwilleger, Brading, Coughlin, Cates, Barnes, Buehrer, O'Brien, Vesper, Maier, Boyd, Verich, Harris, Healy, Calvert, Bateman, Haines, Jones

Effective date: *

ACT SUMMARY

- Prohibits state cigarette tax stamps from being affixed to cigarette packages that are originally manufactured, packaged, or otherwise destined for export outside the United States.
- Declares an emergency.

CONTENT AND OPERATION

Overview of state and federal cigarette taxes

Ohio levies an excise tax on sales of cigarettes at the rate of 12 mills on each cigarette (24¢ per package of 20 cigarettes). The tax is paid by the purchase from the Tax Commissioner of tax indicia in the form of stamps or meter impressions (stamps, for the purpose of this analysis). The stamps are affixed to each cigarette package and are prima facie evidence that the tax has been paid. Tax stamps generally are affixed by the wholesale dealer and canceled in a particular manner (R.C. §§ 5743.02 and 5743.03, not in the act).

The federal government also levies a tax on tobacco products, including cigarettes, at the rate of \$19.50 per thousand for cigarettes weighing no more than

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

three pounds per thousand, or \$40.95 per thousand for cigarettes weighing more than three pounds per thousand (26 U.S.C.A. 5701). A cigarette manufacturer or importer is liable for the tax, but may transfer cigarettes, without payment of the tax, to the bonded premises of another manufacturer or export warehouse proprietor for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States (26 U.S.C.A. 5703 and 5704). Where the cigarettes are being shipped in this manner, federal regulations require that every package have a label affixed to it with the words "Tax-exempt. For use outside U.S." or "U.S. Tax-exempt. For use outside U.S." except where a different stamp, sticker, or notice required by a foreign country or possession of the United States that identifies the country or possession is imprinted or affixed (27 C.F.R. 290.185).

Prohibitions against affixing state tax stamps to certain packages

(secs. 5743.11, 5743.111, and 5743.21)

Continuing state law provides that no person may possess packages of cigarettes when the wholesale value exceeds \$60, or sell cigarettes, if state tax stamps are not affixed to the packages.

The act establishes additional prohibitions on the sale or possession of, and the affixing of state tax stamps to, cigarettes intended for export and therefore exempt from federal taxation. These prohibitions are aimed at preventing the smuggling of cigarettes into the state or the defacing of federal tax-exempt labels where the cigarettes were intended for foreign markets. The act prohibits a person from affixing a state cigarette tax stamp to any package that:

(1) Bears any label or notice prescribed by the United States to identify cigarettes exempt from federal taxation under federal law because the cigarettes are being removed from the factory or export warehouse for exportation, including any tax-exempt notice or label described in the federal regulation discussed above;

(2) Is not labeled in conformity with the Federal Cigarette Labeling and Advertising Act, which requires the Surgeon General's warning of the health hazards of cigarette smoking on cigarette packages, or any other federal requirement for the placement of labels, warnings, or other information applicable to packages of cigarettes intended for domestic consumption;

(3) Has been altered by anyone other than the manufacturer or a person authorized by the manufacturer, including by the placement of a sticker to cover information on or add information to the package;

(4) Has been imported or brought into the United States after January 1, 2000, in violation of the federal law that regulates how cigarettes that were previously exported from the United States may be imported or brought back into the United States, or regulations adopted under that law.

Seizure

Whenever the Tax Commissioner discovers any packages to which stamps have been affixed in violation of the act's prohibitions, the Commissioner may seize the packages, which become forfeited to the state, and order their destruction. Their seizure and destruction does not exempt any person from prosecution or the fine or imprisonment provided for violating the act's prohibitions.

License revocation

(secs. 5743.17 and 5743.18)

The Tax Commissioner is empowered to revoke the license to sell cigarettes held by anyone who violates the prohibitions. Courts of common pleas also may revoke licenses held by anyone who is convicted of violating the prohibitions.

Penalties

(sec. 5743.99)

Whoever violates the act's prohibitions is guilty of a misdemeanor of the first degree. If the offender has been previously convicted of an offense under that law, the violation is a felony of the fifth degree.

Effective date

(Section 3)

The act takes effect immediately pursuant to an emergency clause. The reason given for the emergency is that Ohio's legitimate and taxpaying cigarette wholesalers and retailers are being threatened by unfair competition from gray-market dealers, and Ohio's tax collections and payments under the tobacco industry settlement are being threatened with losses to the gray market.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|------------|----------|---------------|
| Introduced | 03-09-99 | p. 178 |



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|---------------------------|----------|-----|---------|
| Reported, S. Ways & Means | 04-14-99 | p. | 282 |
| Passed Senate (32-0) | 04-14-99 | pp. | 287-288 |
| Reported, H. Ways & Means | 05-06-99 | p. | 617 |
| Passed Senate (93-3) | 05-13-99 | pp. | 659-661 |

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