

SECOND REGULAR SESSION

HOUSE BILL NO. 1478

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STILL (Sponsor), NEWMAN, OXFORD, PACE, McNEIL,
McCREERY, SCHUPP, CARLSON AND KELLY (24) (Co-sponsors).

5121L.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 149.011, 149.015, and 149.021, RSMo, and to enact in lieu thereof four new sections relating to cigarette and tobacco taxes, with a referendum clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 149.011, 149.015, and 149.021, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 149.011, 149.015, 149.016, and
3 149.021, to read as follows:

149.011. As used in this chapter, unless the context requires otherwise, the following
2 terms mean:

3 (1) "Cigar", any roll for smoking, except cigarettes, made chiefly of tobacco or any
4 substitute therefor;

5 (2) "Cigarette", [an item manufactured] **any roll** of tobacco [or any substitute therefor],
6 **however** wrapped [in paper or any substitute therefor], weighing not to exceed [three] **four**
7 pounds per one thousand cigarettes [and which is commonly classified, labeled or advertised as
8 a cigarette];

9 (3) "Common carrier", any person, association, company, or corporation engaged in the
10 business of operating, for public use, an agency for the transportation of persons or property
11 within the state;

12 (4) "Director", the director of Missouri department of revenue;

13 (5) "First sale within the state", the first sale of a tobacco product by a manufacturer,
14 wholesaler or other person to a person who intends to sell such tobacco products at retail or to
15 a person at retail within the state of Missouri;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 (6) "Manufacturer", any person engaged in the manufacture or production of cigarettes.
17 **Notwithstanding any other provision of law to the contrary, any person that operates or**
18 **maintains a machine for commercial purposes that enables any person to process a**
19 **substance that is made or derived from tobacco into a roll or tube shall be deemed to be**
20 **a manufacturer of cigarettes, and the resulting product shall be deemed to be a cigarette,**
21 **for purposes of this chapter and chapter 196;**

22 (7) "Manufacturer's invoice price", the original net invoice price for which a
23 manufacturer sells a tobacco product to a distributor, wholesaler or first seller in the state as
24 shown by the manufacturer's original invoice;

25 (8) "Meter machine", a type of device manufactured for the use of printing or imprinting
26 an inked impression indicating that the cigarette tax has been paid on an individual package of
27 cigarettes;

28 (9) "Package of cigarettes", a container of any type composition in which is normally
29 contained twenty individual cigarettes, except as in special instances when the number may be
30 more or less than twenty;

31 (10) "Person", any individual, corporation, firm, partnership, incorporated or
32 unincorporated association, or any other legal or commercial entity;

33 (11) "Retailer", any person who sells to a consumer or to any person for any purpose
34 other than resale;

35 (12) **"Roll-your-own tobacco", any loose tobacco sold for roll-your-own cigarettes**
36 **or cigars or otherwise intended or expected to be smoked;**

37 (13) "Sale" in this instance is defined to be and declared to include sales, barter,
38 exchanges and every other manner, method and form of transferring the ownership of personal
39 property from one person to another. "Sale" also means the possession of cigarettes or tobacco
40 products by any person other than a manufacturer, wholesaler or retailer and shall be prima facie
41 evidence of possession for consumption;

42 [(13)] (14) "Smokeless tobacco", chewing tobacco, including, but not limited to, twist,
43 moist plug, loose leaf and firm plug, [and] all types of snuff, including, but not limited to, moist
44 and dry, **and any other product containing tobacco intended or expected to be consumed**
45 **without being combusted;**

46 [(14)] (15) "Stamped cigarettes", an individual package, containing twenty individual
47 cigarettes, more or less, on which appears or is affixed or imprinted thereon a Missouri state
48 cigarette tax stamp or Missouri state meter machine impression;

49 [(15)] (16) "Tax stamp", an item manufactured of a paper product or substitute thereof
50 on which is printed, imprinted, or engraved lettering, numerals or symbols indicating that the
51 cigarette tax has been paid on each individual package of cigarettes;

52 [(16)] (17) "Tobacco product", cigarettes, cigarette papers, clove cigarettes, cigars,
53 smokeless tobacco, smoking tobacco, or other form of tobacco products or products made with
54 tobacco substitute containing nicotine;

55 [(17)] (18) "Unstamped cigarettes", an individual package containing cigarettes on which
56 does not appear a Missouri state cigarette tax stamp or Missouri state meter machine impression;

57 [(18)] (19) "Wholesaler", any person, firm or corporation organized and existing, or
58 doing business, primarily to sell cigarettes or tobacco products to, and render service to, retailers
59 in the territory the person, firm or corporation chooses to serve; that purchases cigarettes or
60 tobacco products directly from the manufacturer; that carries at all times at his or its principal
61 place of business a representative stock of cigarettes or tobacco products for sale; and that comes
62 into the possession of cigarettes or tobacco products for the purpose of selling them to retailers
63 or to persons outside or within the state who might resell or retail the cigarettes or tobacco
64 products to consumers. This shall include any manufacturer, jobber, broker, agent or other
65 person, whether or not enumerated in this chapter, who so sells or so distributes cigarettes or
66 tobacco products.

149.015. 1. **Except as provided in subsection 9 of this section**, a tax shall be levied
2 upon the sale of cigarettes at an amount equal to eight and one-half mills per cigarette, until such
3 time as the general assembly appropriates an amount equal to twenty-five percent of the net
4 federal reimbursement allowance to the health initiatives fund, then the tax shall be six and
5 one-half mills per cigarette beginning July first of the fiscal year immediately after such
6 appropriation. As used in this section, "net federal reimbursement allowance" shall mean that
7 amount of the federal reimbursement allowance in excess of the amount of state matching funds
8 necessary for the state to make payments required by subsection 1 of section 208.471 or, if the
9 payments exceed the amount so required, the actual payments made for the purposes specified
10 in subsection 1 of section 208.471.

11 2. The tax shall be evidenced by stamps which shall be furnished by and purchased from
12 the director or by an impression of the tax by the use of a metering machine when authorized by
13 the director as provided in this chapter, and the stamps or impression shall be securely affixed
14 to one end of each package in which cigarettes are contained. All cigarettes must be stamped
15 before being sold in this state.

16 3. Cigarette tax stamps shall be purchased only from the director. All stamps shall be
17 purchased by the director in proper denominations, shall contain such appropriate wording as the
18 director may prescribe, and shall be of such design, character, color combinations, color changes,
19 sizes and material as the director may, by rules and regulations, determine to afford the greatest
20 security to the state. It shall be the duty of the director to manufacture or contract for revenue
21 stamps required by this chapter; provided that if the stamps are contracted for, the manufacturer

22 thereof shall be within the jurisdiction of the criminal and civil courts of this state, unless the
23 stamps cannot be obtained in this state at a fair price or of acceptable quality. If stamps are
24 manufactured outside of the state, the director shall take any precautions which he deems
25 necessary to safeguard the state against forgery and misdelivery of any stamps. The director may
26 require of the manufacturer from whom stamps are purchased a bond in an amount to be
27 determined by him commensurate with the monetary value of the stamps, containing such
28 conditions as he may deem necessary in order to protect the state against loss.

29 4. It shall be the intent of this chapter that the impact of the tax levied hereunder be
30 absorbed by the consumer or user and when the tax is paid by any other person, the payment shall
31 be considered as an advance payment and shall thereafter be added to the price of the cigarettes
32 and recovered from the ultimate consumer or user with the person first selling the cigarettes
33 acting as an agent of the state for the payment and collection of the tax to the state, except that
34 in furtherance of the intent of this chapter no refund of any tax collected and remitted by a
35 retailer upon gross receipts from a sale of cigarettes subject to tax pursuant to this chapter shall
36 be claimed pursuant to chapter 144 for any amount illegally or erroneously overcharged or
37 overcollected as a result of imposition of sales tax by the retailer upon amounts representing the
38 tax imposed pursuant to this chapter and any such tax shall either be refunded to the person who
39 paid such tax or paid to the director. The director may recoup from any retailer any tax illegally
40 or erroneously overcharged or overcollected unless such tax has been refunded to the person who
41 paid such tax.

42 5. In making sales of cigarettes in the state, a wholesaler shall keep a record of the
43 amount of tax on his gross sales. The tax shall be evidenced by appropriate stamps attached to
44 each package of cigarettes sold. Notwithstanding any other law to the contrary, no tax stamp
45 need be attached to a package of cigarettes transported in the state between wholesalers or
46 distributors unless and until such package is sold to a retailer or consumer.

47 6. The tax on any cigarettes contained in packages of four, ten, twenty or similar
48 quantities to be used solely for distribution as samples shall be computed on a per cigarette basis
49 at the rate set forth in this section, and payment of the tax shall be remitted to the director at such
50 time and in such manner as he may prescribe.

51 7. The revenue generated by the additional two mills tax imposed effective August 13,
52 1982, less any three percent reduction allowed pursuant to the provisions of section 149.021,
53 shall be placed in a separate fund entitled "The Fair Share Fund". Such moneys in the fair share
54 fund shall be transferred monthly to the state school moneys fund and distributed to the school
55 districts in this state as provided in section 163.031.

56 8. The revenue generated by the additional two mills tax imposed effective October 1,
57 1993, less any three percent reduction allowed pursuant to the provisions of section 149.021,

58 shall be deposited in the health initiatives fund created in section 191.831. When the general
59 assembly appropriates an amount equal to twenty-five percent of the net federal reimbursement
60 allowance to the health initiatives fund, this subsection shall expire. The additional two mills
61 tax levied pursuant to this section shall not apply to an amount of stamped cigarettes in the
62 possession of licensed wholesalers on October 1, 1993, up to thirty-five percent of the total
63 cigarette sales made by such licensed wholesaler during the six months immediately preceding
64 October 1, 1993.

65 **9. In addition to the tax levied on the sale of cigarettes in subsection 1 of this**
66 **section, beginning January 1, 2013, a tax shall be levied upon the sale of cigarettes in the**
67 **amount of thirty-six mills per cigarette. The revenue generated by the additional tax**
68 **imposed under this subsection, less any reduction allowed under section 149.021, shall be**
69 **deposited in the state general revenue fund and appropriated solely for public education**
70 **purposes. The revenues derived from the tax imposed under this subsection shall**
71 **constitute new and additional funding for public education and shall not be used to replace**
72 **existing funding as of July 1, 2012, for the same or similar funding for public education**
73 **purposes. None of the revenues derived from the tax imposed under this subsection shall**
74 **be expended, paid, or granted to or on behalf of existing or proposed activities, programs,**
75 **or initiatives that involve abortion services, human cloning, or prohibited human research**
76 **as defined in section 196.1127.**

149.016. Beginning January 1, 2013, in addition to any other tax imposed on the
2 **sale of roll-your-own tobacco and tobacco products other than cigarettes, a tax is hereby**
3 **imposed on the sale of roll-your-own tobacco and tobacco products other than cigarettes.**
4 **The revenue generated by the additional tax imposed under this section shall be deposited**
5 **in the state general revenue fund and appropriated solely for public education purposes.**
6 **The revenues derived from the tax imposed under this section shall constitute new and**
7 **additional funding for public education and shall not be used to replace existing funding**
8 **as of July 1, 2012, for the same or similar funding for public education purposes. None of**
9 **the revenues derived from the tax imposed under this section shall be expended, paid, or**
10 **granted to or on behalf of existing or proposed activities, programs, or initiatives that**
11 **involve abortion services, human cloning, or prohibited human research as defined in**
12 **section 196.1127. The tax imposed under this section shall be collected in the same manner**
13 **and at the same time as other taxes imposed by law upon such products. The tax imposed**
14 **under this section shall be in the following amounts:**

15 **(1) Upon the sale of roll-your-own tobacco, twenty-five percent of the**
16 **manufacturer's invoice price before discounts and deals on roll-your-own tobacco; and**

17 **(2) Upon the sale of tobacco products other than cigarettes, fifteen percent of the**
18 **manufacturer's invoice price before discounts and deals on all tobacco products other than**
19 **cigarettes.**

149.021. 1. For the purpose of allowing compensation for the costs necessarily incurred
2 in affixing the proper tax stamps to each package of cigarettes before making a sale of the
3 cigarettes, each wholesaler purchasing stamps from the director as required by law may purchase
4 the stamps from the director at a reduction of [three percent of the face value of each lot of
5 stamps] **one-half of one cent per stamp** so purchased, provided that all required reports have
6 been made. The discount provided in this section shall be the only discount allowed to
7 purchasers from the director. If a purchaser refuses to comply with the laws of the state of
8 Missouri, the director shall require the full face value for stamps purchased until such time as
9 the person has complied with the provisions of the law.

10 2. The director may permit the use of meter machines in lieu of stamps, for the impress
11 of the tax stamp, and where used a [three percent] **one-half of one cent** reduction [on the total
12 tax due] **per stamp** shall be allowed. The director shall prescribe all rules and regulations
13 governing the use of meter machines and may require a bond in a suitable amount to guarantee
14 payment of the tax.

Section B. This act is hereby submitted to the qualified voters of this state for approval
2 or rejection at an election which is hereby ordered and which shall be held and conducted on the
3 Tuesday immediately following the first Monday in November, 2012, or at a special election to
4 be called by the governor for that purpose, pursuant to the laws and constitutional provisions of
5 this state applicable to general elections and the submission of referendum measures by initiative
6 petition, and it shall become effective when approved by a majority of the votes cast thereon at
7 such election and not otherwise.

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