

HOUSE BILL No. 2643

By Committee on Taxation

2-3

9 AN ACT concerning taxation upon cigarettes and tobacco products; re-
10 lating to rates; little cigars; amending K.S.A. 79-3371 and 79-3378 and
11 K.S.A. 2009 Supp. 79-3301, 79-3310, 79-3310c, 79-3311 and 79-3312
12 and repealing the existing sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2009 Supp. 79-3301 is hereby amended to read as
16 follows: 79-3301. As used in this act:

17 (a) "Carrier" means one who transports cigarettes from a manufac-
18 turer to a wholesale dealer or from one wholesale dealer to another.

19 (b) "Carton" means the container used by the manufacturer of cig-
20 arettes in which no more than 10 packages of cigarettes are placed prior
21 to shipment from such manufacturer.

22 (c) "*Cigar*" means any roll of tobacco wrapped in leaf tobacco or in
23 any substance containing tobacco other than any roll of tobacco which is
24 a cigarette as defined in this section.

25 (d) "Cigarette" means any roll for smoking, made wholly or in part
26 of tobacco, irrespective of size or shape, and irrespective of tobacco being
27 flavored, adulterated or mixed with any other ingredient ~~if the wrapper~~
28 ~~is in greater part made of any material except tobacco wrapped in paper~~
29 ~~or any substance not containing tobacco or any roll of tobacco wrapped~~
30 ~~in any substance containing tobacco that because of appearance, the type~~
31 ~~of tobacco used in the filler, or packaging and labeling, is likely to be~~
32 ~~offered to, or purchased by consumers as a cigarette as described in this~~
33 ~~subsection. Cigarettes include little cigars.~~

34 ~~(e)~~ (e) "Consumer" means the person purchasing or receiving ciga-
35 rettes or tobacco products for final use.

36 ~~(f)~~ (f) "Dealer" means any person who engages in the sale or man-
37 ufacture of cigarettes in the state of Kansas, and who is required to be
38 licensed under the provisions of this act.

39 ~~(g)~~ (g) "Dealer establishment" means any location or premises, other
40 than vending machine locations, at or from which cigarettes are sold, and
41 where records are kept.

42 ~~(h)~~ (h) "Director" means the director of taxation.

43 ~~(i)~~ (i) "Distributor" means: (1) Any person engaged in the business

1 of selling tobacco products in this state who brings, or causes to be
 2 brought, into this state from without the state any tobacco products for
 3 sale; (2) any person who makes, manufactures, fabricates or stores tobacco
 4 products in this state for sale in this state; or (3) any person engaged in
 5 the business of selling tobacco products without this state who ships or
 6 transports tobacco products to any person in the business of selling to-
 7 bacco products in this state.

8 ~~(i)~~ (j) “Division” means the division of taxation.

9 ~~(j)~~ (k) “License” means, in addition to the privilege of a licensee to
 10 sell cigarettes or tobacco products in the state of Kansas, the written
 11 evidence of such authority or privilege to so operate as evidenced by any
 12 license issued by the director of taxation.

13 ~~(k)~~ (l) “Licensee” means any person holding a current license issued
 14 pursuant to this act.

15 ~~(l)~~ (m) *“Little cigar” means any roll of tobacco wrapped in leaf to-
 16 bacco or any substance containing tobacco and as to which 1,000 units
 17 weigh not more than three pounds.*

18 (n) “Manufacturer’s salesperson” means a person employed by a cig-
 19 arette manufacturer who sells cigarettes, manufactured by such employer
 20 and procured from wholesale dealers.

21 ~~(m)~~ (o) “Meter imprints” means tax indicia applied by means of ink
 22 printing machines.

23 ~~(n)~~ (p) (1) “Package” means a container in which no more than 25
 24 individual cigarettes are wrapped and sealed by the manufacturer of cig-
 25 arettes prior to shipment to a wholesale dealer.

26 (2) For the purposes of subsections (u), (v) and (w) of K.S.A. 79-
 27 3321, and amendments thereto, “package” ~~shall have the meaning as-
 28 cribed thereto~~ *means the same as provided in 15 U.S.C. §1332(4).*

29 ~~(o)~~ (q) “Person” means any individual, partnership, society, associa-
 30 tion, joint-stock company, corporation, estate, receiver, trustee, assignee,
 31 referee or any other person acting in a fiduciary or representative capacity
 32 whether appointed by a court or otherwise and any combination of
 33 individuals.

34 ~~(p)~~ (r) “Received” means the coming to rest of cigarettes for sale by
 35 any dealer in the state of Kansas.

36 ~~(q)~~ (s) “Retail dealer” means a person, other than a vending machine
 37 operator, in possession of cigarettes for the purpose of sale to a consumer.

38 ~~(r)~~ (t) “Sale” means any transfer of title or possession or both,
 39 exchange, barter, distribution or gift of cigarettes or tobacco products,
 40 with or without consideration.

41 ~~(s)~~ (u) “Sample” means cigarettes or tobacco products distributed to
 42 members of the general public at no cost for purposes of promoting the
 43 product.

- 1 ~~(t)~~ (v) “Stamps” means tax indicia applied either by means of water
2 applied gummed paper or heat process.
- 3 ~~(u)~~ (w) “Tax indicia” means visible evidence of tax payment in the
4 form of stamps or meter imprints.
- 5 ~~(v)~~ (x) “Tobacco products” means cigars, cheroots, stogies, periques;
6 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;
7 snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other
8 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings
9 of tobacco, *cigarette wrappers made of tobacco* and other kinds and forms
10 of tobacco, prepared in such manner as to be suitable for chewing or
11 smoking in a pipe or otherwise, or both for chewing and smoking. To-
12 bacco products does not include cigarettes *or little cigars*.
- 13 ~~(w)~~ (y) “Vending machine” means any coin operated machine, con-
14 trivance or device, by means of which merchandise may be sold.
- 15 ~~(x)~~ (z) “Vending machine distributor” means any person who sells
16 cigarette vending machines to a vending machine operator operating
17 vending machines in the state of Kansas.
- 18 ~~(y)~~ (aa) “Vending machine operator” means any person who places a
19 vending machine, owned, leased or operated by such person, at locations
20 where cigarettes are sold from the machine. The owner or lessee of the
21 premises upon which a vending machine is placed shall not be considered
22 the operator of the machine, nor shall the owner or lessee, or any em-
23 ployee or agent of the owner or lessee be considered an authorized agent
24 of the vending machine operator, if the owner or lessee does not own or
25 lease the machine and the owner’s or lessee’s sole remuneration from the
26 machine is a flat rental fee or commission based upon the number or
27 value of cigarettes sold from the machine, or a combination of both.
- 28 ~~(z)~~ (bb) “Wholesale dealer” means any person who sells cigarettes to
29 other wholesale dealers, retail dealers, vending machine operators and
30 manufacturer’s salespersons for the purpose of resale in the state of
31 Kansas.
- 32 ~~(aa)~~ (cc) “Wholesale sales price” means the original net invoice price
33 for which a manufacturer sells a tobacco product to a distributor, as shown
34 by the manufacturer’s original invoice.
- 35 ~~(bb)~~ (dd) “Importer” ~~shall have the same meaning ascribed thereto~~
36 ~~means the same as provided in 26 U.S.C. §5702(t)(k).~~
- 37 ~~(cc)~~ (ee) “Manufacturer” ~~shall have the same meaning ascribed~~
38 ~~thereto means the same as provided in 26 U.S.C. §5702(d).~~
- 39 Sec. 2. K.S.A. 2009 Supp. 79-3310 is hereby amended to read as
40 follows: 79-3310. There is imposed a tax upon all cigarettes sold, distrib-
41 uted or given away within the state of Kansas. ~~On and after July 1, 2002,~~
42 ~~and before January 1, 2003, the rate of such tax shall be \$.70 on each 20~~
43 ~~cigarettes or fractional part thereof or \$.875 on each 25 cigarettes, as the~~

1 ~~case requires.~~ On and after ~~January 1, 2003~~ *July 1, 2010*, the rate of such
2 tax shall be ~~\$.79~~ *\$1.34* on each 20 cigarettes or fractional part thereof or
3 ~~\$.99~~ *\$1.675* on each 25 cigarettes, as the case requires. Such tax shall be
4 collected and paid to the director as provided in this act. Such tax shall
5 be paid only once and shall be paid by the wholesale dealer first receiving
6 the cigarettes as herein provided.

7 The taxes imposed by this act are hereby levied upon all sales of ciga-
8 rattes made to any department, institution or agency of the state of Kan-
9 sas, and to the political subdivisions thereof and their departments, insti-
10 tutions and agencies.

11 Sec. 3. K.S.A. 2009 Supp. 79-3310c is hereby amended to read as
12 follows: 79-3310c. ~~(1)~~ On or before July 30, ~~2002~~ *2010*, each wholesale
13 dealer, retail dealer and vending machine operator shall file a report with
14 the director in such form as the director may prescribe showing cigarettes,
15 cigarette stamps and meter imprints on hand at 12:01 a.m. on July 1, ~~2002~~
16 *2010*. A tax of ~~\$.46~~ *\$.55* on each 20 cigarettes or fractional part thereof
17 or ~~\$.575~~ *\$.6875* on each 25 cigarettes, as the case requires and ~~\$.46 or~~
18 ~~\$.575~~ *\$.55 or \$.6875*, as the case requires upon all tax stamps and all
19 meter imprints purchased from the director and not affixed to cigarettes
20 prior to July 1, ~~2002~~ *2010*, is hereby imposed and shall be due and payable
21 in equal installments on or before July 30, ~~2002~~ *2010*, on or before Sep-
22 tember 30, ~~2002~~ *2010*, and on or before December 30, ~~2002~~ *2010*. The
23 tax imposed upon such cigarettes, tax stamps and meter imprints shall be
24 imposed only once under this act. The director shall remit all moneys
25 collected pursuant to this section to the state treasurer who shall credit
26 the entire amount thereof to the state general fund.

27 ~~(2) On or before January 30, 2003, each wholesale dealer, retail~~
28 ~~dealer and vending machine operator shall file a report with the director~~
29 ~~in such form as the director may prescribe showing cigarettes, cigarette~~
30 ~~stamps and meter imprints on hand at 12:01 a.m. on January 1, 2003. A~~
31 ~~tax of \$.09 on each 20 cigarettes or fractional part thereof or \$.115 on~~
32 ~~each 25 cigarettes, as the case requires and \$.09 or \$.115, as the case~~
33 ~~requires upon all tax stamps and all meter imprints purchased from the~~
34 ~~director and not affixed to cigarettes prior to January 1, 2003, is hereby~~
35 ~~imposed and shall be due and payable in equal installments on or before~~
36 ~~January 30, 2003, on or before March 30, 2003, and on or before June~~
37 ~~30, 2003. The tax imposed upon such cigarettes, tax stamps and meter~~
38 ~~imprints shall be imposed only once under this act. The director shall~~
39 ~~remit all moneys collected pursuant to this section to the state treasurer~~
40 ~~who shall credit the entire amount thereof to the state general fund.~~

41 Sec. 4. K.S.A. 2009 Supp. 79-3311 is hereby amended to read as
42 follows: 79-3311. The director shall design and designate indicia of tax
43 payment to be affixed to each package of cigarettes as provided by this

1 act. The director shall sell water applied stamps only to licensed wholesale
2 dealers in the amounts of 1,000 or multiples thereof. Stamps applied by
3 the heat process shall be sold only in amounts of 30,000 or multiples
4 thereof, except that such stamps which are suitable for packages contain-
5 ing 25 cigarettes each shall be sold in amounts prescribed by the director.
6 Meter imprints shall be sold only in amounts of 10,000 or multiples
7 thereof. Water applied stamps in amounts of 10,000 or multiples thereof
8 and stamps applied by the heat process and meter imprints shall be sup-
9 plied to wholesale dealers at a discount of ~~90%~~ .53% on and after July
10 1, ~~2002~~ 2010, and before January 1, 2003, and ~~.80%~~ thereafter from the
11 face value thereof, and shall be deducted at the time of purchase or from
12 the remittance therefor as hereinafter provided. Any wholesale cigarette
13 dealer who shall file with the director a bond, of acceptable form, payable
14 to the state of Kansas with a corporate surety authorized to do business
15 in Kansas, shall be permitted to purchase stamps, and remit therefor to
16 the director within 30 days after each such purchase, up to a maximum
17 outstanding at any one time of 85% of the amount of the bond. Failure
18 on the part of any wholesale dealer to remit as herein specified shall be
19 cause for forfeiture of such dealer's bond. All revenue received from the
20 sale of such stamps or meter imprints shall be remitted to the state trea-
21 surer in accordance with the provisions of K.S.A. 75-4215, and amend-
22 ments thereto. Upon receipt of each such remittance, the state treasurer
23 shall deposit the entire amount in the state treasury. The state treasurer
24 shall first credit such amount as the director shall order to the cigarette
25 tax refund fund and shall credit the remaining balance to the state general
26 fund. A refund fund designated the cigarette tax refund fund not to ex-
27 ceed \$10,000 at any time shall be set apart and maintained by the director
28 from taxes collected under this act and held by the state treasurer for
29 prompt payment of all refunds authorized by this act. Such cigarette tax
30 refund fund shall be in such amount as the director shall determine is
31 necessary to meet current refunding requirements under this act.

32 The wholesale cigarette dealer shall affix to each package of cigarettes
33 stamps or tax meter imprints required by this act prior to the sale of
34 cigarettes to any person, by such dealer or such dealer's agent or agents,
35 within the state of Kansas. The director is empowered to authorize whole-
36 sale dealers to affix revenue tax meter imprints upon original packages of
37 cigarettes and is charged with the duty of regulating the use of tax meters
38 to secure payment of the proper taxes. No wholesale dealer shall affix
39 revenue tax meter imprints to original packages of cigarettes without first
40 having obtained permission from the director to employ this method of
41 affixation. If the director approves the wholesale dealer's application for
42 permission to affix revenue tax meter imprints to original packages of
43 cigarettes, the director shall require such dealer to file a suitable bond

1 payable to the state of Kansas executed by a corporate surety authorized
2 to do business in Kansas. The director may, to assure the proper collection
3 of taxes imposed by the act, revoke or suspend the privilege of imprinting
4 tax meter imprints upon original packages of cigarettes. All meters shall
5 be under the direct control of the director, and all transfer assignments
6 or anything pertaining thereto must first be authorized by the director.
7 All inks used in the stamping of cigarettes must be of a special type
8 devised for use in connection with the machine employed and approved
9 by the director. All repairs to the meter are strictly prohibited except by
10 a duly authorized representative of the director. Requests for service shall
11 be directed to the director. Meter machine ink imprints on all packages
12 shall be clear and legible. If a wholesale dealer continuously issues illeg-
13 ible cigarette tax meter imprints, it shall be considered sufficient cause
14 for revocation of such dealer's permit to use a cigarette tax meter.

15 A licensed wholesale dealer may, for the purpose of sale in another
16 state, transport cigarettes not bearing Kansas indicia of tax payment
17 through the state of Kansas provided such cigarettes are contained in
18 sealed and original cartons.

19 Sec. 5. K.S.A. 2009 Supp. 79-3312 is hereby amended to read as
20 follows: 79-3312. The director shall redeem any unused stamps or meter
21 imprints that any wholesale dealer presents for redemption within six
22 months after the purchase thereof, at the face value less ~~.90%~~ .53% on
23 and after July 1, ~~2002~~ 2010, and before January 1, 2003, and ~~.80% there-~~
24 ~~after thereof~~ if such stamps or meter imprints have been purchased from
25 the director. The director shall prepare a voucher showing the net amount
26 of such refund due, and the director of accounts and reports shall draw
27 a warrant on the state treasurer for the same. Wholesale dealers shall be
28 entitled to a refund of the tax paid on cigarettes which have become unfit
29 for sale upon proof thereof less ~~.90%~~ .53% on and after July 1, ~~2002,~~ and
30 before January 1, 2003, and ~~.80% thereafter~~ 2010, of such tax.

31 Sec. 6. K.S.A. 79-3371 is hereby amended to read as follows: 79-
32 3371. A tax is hereby imposed upon the privilege of selling or dealing in
33 tobacco products in this state by any person engaged in business as a
34 distributor thereof, at the rate of ~~ten percent (10%)~~ 40% of the wholesale
35 sales price of such tobacco products. Such tax shall be imposed at the
36 time the distributor: (a) Brings or causes to be brought into this state
37 from without the state tobacco products for sale; (b) makes, manufac-
38 tures, or fabricates tobacco products in this state for sale in this state; or
39 (c) ships or transports tobacco products to retailers in this state to be sold
40 by those retailers.

41 New Sec. 7. On or before July 31, 2010, each distributor and retail
42 business selling tobacco products having a place of business in this state
43 shall file a report with the director in such form as the director may

1 prescribe, showing the tobacco products on hand at 12:01 a.m. on July 1,
2 2010. For distributors, a tax at a rate equal to 30% of the wholesale sales
3 price of such tobacco products, and for a retail business selling tobacco
4 products, a tax at a rate of 30% of the retail invoice price to the consumer,
5 is hereby imposed upon such tobacco products and shall be due and
6 payable on or before July 31, 2010. The tax upon such tobacco products
7 shall be imposed only once under this act. The director shall remit all
8 moneys collected pursuant to this section to the state treasurer who shall
9 credit the entire amount thereof to the state general fund.

10 Sec. 8. K.S.A. 79-3378 is hereby amended to read as follows: 79-
11 3378. On or before the ~~twentieth~~ 20th day of each calendar month every
12 distributor with a place of business in this state shall file a return with
13 the director showing the quantity and wholesale sales price of each to-
14 bacco product (1) brought, or caused to be brought, into this state for
15 sale; and (2) made, manufactured, or fabricated in this state for sale in
16 this state during the preceding calendar month. Every licensed distributor
17 outside this state shall in like manner file a return showing the quantity
18 and wholesale sales price of each tobacco product shipped or transported
19 to retailers in this state to be sold by those retailers, during the preceding
20 calendar month. Returns shall be made upon forms furnished and pre-
21 scribed by the director. Each return shall be accompanied by a remittance
22 for the full tax liability shown therein, less ~~four percent (4%)~~ 1% of such
23 liability as compensation to reimburse the distributor for ~~his or her~~ ex-
24 penses incurred in the administration of this act. As soon as practicable
25 after any return is filed, the director shall examine the return. If the
26 director finds that, in ~~his or her~~ the director's judgment, the return is
27 incorrect and any amount of tax is due from the distributor and unpaid,
28 ~~he or she~~ the director shall notify the distributor of the deficiency. If a
29 deficiency disclosed by the director's examination cannot be allocated by
30 ~~him~~ the director to a particular month or months, ~~he or she~~ the director
31 may nevertheless notify the distributor that a deficiency exists and state
32 the amount of tax due. Such notice shall be given to the distributor by
33 registered or certified mail.

34 Sec. 9. K.S.A. 79-3371 and 79-3378 and K.S.A. 2009 Supp. 79-3301,
35 79-3310, 79-3310c, 79-3311 and 79-3312 are hereby repealed.

36 Sec. 10. This act shall take effect and be in force from and after its
37 publication in the statute book.