

ALABAMA 2004 SESSION LAW SERVICE
2004 REGULAR SESSION

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Act 2004-545
H.B. No. 716
REVENUE AND TAXATION--TOBACCO TAX--RATE INCREASE

By: Representative Knight

Enrolled, An Act, To increase the rate of tax on all cigarettes and other tobacco products sold in Alabama; to provide that the increased tax shall be exclusive and in lieu of future local taxes on cigarettes and other tobacco products; to require local cigarette taxes to be collected through the use of stamps; to provide for the distribution of revenue; to provide for severability; and to provide for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-25-2 and 40-25-23 , Code of Alabama 1975, are hereby amended to read as follows:

<< AL ST § 40-25-2 >>

"§ 40-25-2.

"(a) In addition to all other taxes of every kind now imposed by law, every person, firm, corporation, club or association, within the State of Alabama, who sells or stores or receives for the purpose of distribution to any person, firm, corporation, club or association within the State of Alabama, cigars, cheroots, stogies, cigarettes, smoking tobacco, chewing tobacco, snuff, or any substitute therefor, either or all, shall pay to the State of Alabama for state purposes only a license or privilege tax which shall be measured by and graduated in accordance with the volume of sales of such person, firm, corporation, club or association in Alabama. There is hereby levied license or privilege taxes on articles containing tobacco enumerated in this article in the following amounts:

(1) LITTLE CIGARS.--Upon cigars of all descriptions made of tobacco, or any substitute therefor, and weighing not more than three pounds per 1,000, ~~\$.02~~ **\$.04** for each ten cigars, or fractional part thereof.

(2) CHEROOTS, STOGIES, CIGARS, ETC.--Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for three and one-third cents each or less, ~~\$1.50~~ **\$3** per 1,000.

(3) CIGARS.--Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than three and one-third cents each and not more than \$.05 each, ~~\$.3~~ **\$6** per 1,000.

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(4) CIGARS.--Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.05 each and not exceeding \$.08 each, ~~\$4.50~~ \$9 per 1,000.

(5) CIGARS.--Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.08 each and not exceeding \$.10 each, ~~\$7.50~~ \$15 per 1,000.

(6) CIGARS.--Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.10 each and not exceeding \$.20 each, ~~\$15~~ \$30 per 1,000.

(7) CIGARS.--Upon cigars of all descriptions made of tobacco, or any substitute therefor, retailing for more than \$.20 each, ~~\$20.25~~ \$40.50 per 1,000.

(8) CIGARETTES.--Upon all cigarettes made of tobacco, or any substitute therefor, ~~8.25~~ 21.25 mills on each such cigarette.

(9) SMOKING TOBACCO.--Upon all smoking tobacco, including granulated, plug cut, crimp cut, ready rubbed and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette, upon each package: weighing not more than one and one-eighth ounces, tax ~~\$.02~~ \$.04; over one and one-eighth ounces, not exceeding two ounces, tax ~~\$.05~~ \$.10; over two ounces, not exceeding three ounces, tax ~~\$.08~~ \$.16; over three ounces, not exceeding four ounces, tax ~~\$.11~~ \$.21; ~~\$.03~~ \$.06 additional tax for each ounce or fractional part thereof over four ounces.

(10) CHEWING TOBACCO.--Upon all chewing tobacco prepared in such manner as to be suitable for chewing only and not suitable for smoking as described and taxed in subdivision (9) of this subsection: ~~three-fourths cent~~ \$.015 per ounce or fractional part thereof.

(11) SNUFF.--Upon each can or package of snuff weighing not more than five-eighths ounces, ~~one-half one~~ cent tax; over five-eighths ounces and not exceeding one and five-eighths ounces, ~~\$.01~~ \$.02 tax; over one and five-eighths ounces and not exceeding two and one-half ounces, ~~\$.02~~ \$.04 tax; over two and one-half ounces and not exceeding five ounces (cans, packages, gullets), ~~\$.03~~ \$.06 tax; over three ounces and not exceeding five ounces (glasses, tumblers, bottles), ~~three and one-half~~ seven cents tax; over five ounces and not exceeding six ounces, ~~\$.04~~ \$.08 tax; weighing over six ounces, an additional ~~\$.06~~ \$.12 for each ounce or fractional part thereof.

(b) Whenever in this article reference is made to any manufactured tobacco products, manufactured or imported to sell at a certain price, as the basis for computing the tax, it is intended to mean the ordinary, customary or usual price paid by the consumer for such tobacco products taxable under this article.

(c) Whenever in this article reference is made to any manufactured tobacco products on which the tax is based on weight, the weight as shown by the manufacturer or the federal internal revenue stamp shall apply.

(d) When the retail or selling price is referred to in this article as the basis for computing the amount of stamps required on any article, it is intended to mean the retail or selling price of the articles before adding the amount of the tax.

(e) When any articles or commodities subject to tax in this article are given as prizes on punch boards, shooting galleries, premiums, etc., the tax shall be based on the ordinary retail selling price of such articles.

(f) The tax herein levied shall be paid to the state through the use of stamps as herein provided. However, every wholesaler, distributor, jobber, or retail dealer shall add the amount of the tax levied herein to the price of the tobacco or tobacco products sold, it being the purpose and intent of this provision that the tax levied is in fact a levy on the ultimate consumer or user with the wholesaler, distributor,

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jobber, or retail dealer acting merely as an agent of the state for the collection and payment of the tax to the state. Therefore, notwithstanding any exemptions from taxes which any such seller may now or hereafter enjoy under the Constitution or laws of this or any other state, or of the United States, he shall collect the tax imposed hereunder from the purchaser or consumer, and the amount of the tax shall constitute a debt from the purchaser or consumer to the seller until paid. It shall be unlawful for any person, firm, corporation, association, or copartnership to fail or refuse to add to the sales price and collect from the purchaser the amount of the tax to be added to the sales price and collected from the purchaser hereunder. Stamps in denominations to the amount of the tax or in denominations specified pursuant to subsection (g) of this section shall be affixed to the box or other container from or in which tobacco products taxed by this section are normally sold at retail. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam; and in case of cigars, cheroots, chewing tobacco and like manufactured tobacco products, where sales are made from the original container, the stamps shall be affixed to the box or container in such a way that the stamps shall be torn in two or mutilated when such containers or boxes are opened for the sale of the tobacco products. In the case of cigarettes, smoking tobacco, snuff and like products sold at retail in packages, the required amount of stamps to cover the tax shall be affixed to each individual package or container. All taxable tobaccos herein enumerated, when offered for sale, either at wholesale or retail, without having stamps affixed in the manner set out by this article, shall be subject to confiscation, in the manner provided for contraband goods as set out in this article.

(g) The Commissioner of Revenue shall prepare and issue stamps in denominations for the amount of the tax imposed by this article provided that if the commissioner determines that it is not economical for the state to have a stamp prepared and issued for one or more particular types of packages of tobacco products, then he may by regulation prescribe the use of a stamp in a denomination other than for the amount of the tax imposed with the difference between the amount of tax actually imposed and the amount of tax denominated by the stamp paid with the use of a monthly report; or he may require a monthly report without use of a stamp to report the amount of taxes due.

(h) The increases levied by this act shall be exclusive and shall be in lieu of any other or additional local taxes and/or license fees, county or municipal, imposed on the sale or use of cigarettes and/or other tobacco products. Notwithstanding the foregoing, an act of the Legislature or an ordinance or resolution by a taxing authority passed or enacted on or before the date of the passage of this act imposing a local tax and/or license fee shall remain operative, but no additional local tax and/or license fee may thereafter be levied on the sale of cigarettes and/or other tobacco products.

(i) Local taxes and/or license fees, county or municipal, imposed on the sale or use of cigarettes shall be paid to said local government through the use of stamps affixed to the product as provided herein for the state tax. Provided, however, this requirement shall not be interpreted to require the Department of Revenue to prepare all stamps or to collect all local taxes. Local governments may contract with another entity to collect their local cigarette tax but all local taxes must be collected as provided herein."

<< AL ST § 40-25-23 >>

"§ 40-25-23.

"All revenues collected under the provisions of this article, except as otherwise provided, shall be paid to the Department of Revenue by check or draft made payable to the Treasurer of Alabama, and shall be distributed in the following manner:~~(1)~~

(a) All of the revenue derived from the tax levied upon cigarettes by Sections 40-25-2 and 40-25-41 shall be deposited in the State Treasury and 38.82% of such revenue shall be divided as follows:

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a. Six and six one-hundredths percent to the credit of the State Public Welfare Trust Fund, which is hereby appropriated for general welfare purposes. In this section, "general welfare purposes" means:

1. The administration of public assistance as set out in Sections 38-2-5 and 38-4-1;

2. Services, including supplementation and supplementary services under the federal Social Security Act, to or on behalf of persons to whom such public assistance may be given under Section 38-4-1;

3. Services to and on behalf of dependent, neglected, or delinquent children; and

4. Investigative and referral services to and on behalf of needy persons.

b. Nine and nine one-hundredths percent shall be set apart and used for the following purposes only and in the following order:

1. So much thereof as may be necessary for such purpose is hereby appropriated and shall be used by the State Treasurer to pay at their respective maturities the principal and interest that will mature during the then current fiscal year on all bonds at the time outstanding that may have been issued by the State Industrial Development Authority under the provisions of the following acts:

(i) Acts 1967, No. 231;

(ii) Acts 1971, No. 1420;

(iii) Acts 1973, No. 1039;

(iv) Acts 1975, No. 1217;

(v) Acts 1978, 2nd Ex. Sess., No. 99;

(vi) Acts 1981, No. 81-843;

(vii) Acts 1983, No. 83-925; and

(viii) Acts 1987, No. 87-550.

2. The balance thereafter remaining during each fiscal year shall be paid into a special fund in the State Treasury to be designated the "General and Mental Health Fund," and is hereby appropriated and shall be distributed as follows:

(i) Thirty-six percent of the said balance shall be expended by the State Health Officer, with the approval of the state Board of Health, for salaries, other expenses and equipment purchases, incident to general health work;

(ii) Fifty-eight percent of the said balance shall be paid to the Department of Mental Health and Mental Retardation created in Chapter 50 of Subtitle 2 of Title 22, to be expended by the said department for such purposes as it may designate for the provision of mental health services; and

(iii) Six percent of said balance shall be paid to the Alabama Mental Health Board to be expended by said board for such purposes as it may designate for the provision of services to the mentally retarded.

c. Twelve and twelve one-hundredths percent shall be set apart and used for the following purposes only and in the following order:

1. So much thereof as may be necessary for such purpose is hereby appropriated to the purpose of acquiring and constructing mental health facilities in the state, and to that end shall be used by the State Treasurer to pay, at their respective

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maturities, the principal and interest that will mature during the then current fiscal year on whichever of the following may be issued:

(i) Any bonds of the state that may be issued for acquisition and construction of mental health facilities under Amendment 266 of the Constitution of Alabama; or

(ii) Any bonds that may be issued by the Alabama Mental Health Finance Authority under the provisions of Acts 1988, Act No. 88-475.

2. The balance thereafter remaining during each fiscal year shall be paid into a special fund in the State Treasury, designated the "General and Mental Health Fund," and is hereby appropriated and shall be distributed as follows:

(i) Thirty percent of said balance shall be expended by the State Health Officer, with the approval of the state Board of Health, for salaries, other expenses, and equipment purchases incident to general health work; and

(ii) Seventy percent of the said balance shall be paid to the Department of Mental Health and Mental Retardation created in Chapter 50 of Subtitle 2 of Title 22, and shall be used by the said department for mental health purposes in the state.

d. Six and six one-hundredths percent shall be set apart and used for the following purposes only and in the following order:

1. So much thereof as may be necessary for such purposes is hereby appropriated and shall be used by the State Treasurer to pay, at their respective maturities, the principal and interest that will mature during the then current fiscal year on all bonds that may be issued by the State Parks Development Authority under the provisions of Acts 1967, No. 272, which provided for the creation of said authority and also provided for the submission of a constitutional amendment to authorize the issuance of general obligation bonds by said authority.

2. The balance thereafter remaining during each fiscal year shall be deposited into a special fund in the State Treasury to be designated the "State Parks Fund" and is hereby appropriated and shall be distributed as follows: Said fund may be expended by the State Director of Conservation at his discretion and with the approval of the Governor for salaries, other expenses, land acquisitions, equipment purchases, capital additions or improvements or other lawful expenses relating to the state division of parks, monuments and historical sites.

e. Sixty-six and sixty-seven one-hundredths percent to the credit of the General Fund.

(b) The remaining 61.18% of the revenue derived from the tax levied on cigarettes by Sections 40-25-2 and 40-25-41 shall be deposited into the State Treasury and allocated as follows:

(1) Up to \$2 million received annually shall be allocated to the various counties of the state levying a cigarette tax to offset the administrative expenses of obtaining local stamps to affix to cigarettes sold in their jurisdiction for the purpose of collecting their local cigarette tax and to provide a discount to wholesalers and jobbers for affixing such stamps. These funds shall be distributed by the Comptroller pro rata based on the actual administrative expenses reported to the Comptroller by the counties at the conclusion of each quarter of the fiscal year. The Comptroller shall insure that such funds are distributed as soon as possible following the receipt of such reports. Failure of any county to submit such a report shall not prohibit the Comptroller from distributing funds to the remaining counties; and

(2) Remaining revenues to the General Fund to be used for Medicaid Services.

~~(2)~~ (c) All of the revenue derived from the tax levied by Sections 40-25-2 and 40-25-41 upon tobacco products other than cigarettes shall be deposited in the State

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Treasury to the credit of the State General Fund."

Section 2. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 3. All laws or parts of laws that conflict with this act are hereby repealed.

Section 4. This act shall become effective immediately upon its passage and approval by the Governor or upon its otherwise becoming law.

Section 5. All parties who are legally authorized to place stamps on the products herein named shall have 45 days to dispose of the stamped products they have on hand on the effective date of this act.

Approved May 18, 2004.

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