

11-O-107
ORDINANCE

Sponsored by

THE HONORABLE TONI PRECKWINKLE, PRESIDENT, JERRY BUTLER, JOHN P. DALEY,
JESUS G. GARCIA AND ROBERT B. STEELE, COUNTY COMMISSIONERS

TOBACCO TAX AMENDMENT

BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 74 Taxation, Article XI Tobacco Tax, Sections 74-431 to 74-433 and 74-435 is hereby amended as follows:

Sec. 74-431. Definitions.

For the purpose of this article, whenever any of the following words, terms or definitions are used herein, they shall have the meaning ascribed to them in this section.

Altered or mutilated tax stamp means any tax stamp on which the identity information is illegible or incomplete.

Chewing tobacco means any leaf tobacco that is not intended to be smoked.

Cigar means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco which is a cigarette as defined in this article).

Cigarette means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient, or not, and the wrapper of which is made of paper or any other substance or material except tobacco.

Concealment means cigarettes, other tobacco products, or cigarette tax stamps, in violation of this article, deliberately hidden to prevent or evade discovery and offered for sale by or in the possession of a wholesale or retail tobacco dealer.

Conspicuous means easily or clearly visible.

Counterfeit cigarettes means any cigarette or pack of cigarettes bearing a false, forged, artificial or imitation manufacturing label.

County means the County of Cook.

Department means the Department of Revenue within the Bureau of Finance of the County of Cook.

Director means the Director of the Department of Revenue.

Improperly stamped pack means, any packs of cigarettes on which is affixed an altered/mutilated; used or reused; or counterfeit tax stamp.

Large cigar means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

Little cigar means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco and not weighing more than three pound per thousand.

Loose cigarettes means cigarettes that are not contained within a sealed container, pack, or package as provided by the manufacturer or as a result of any wholesale or retail tobacco dealer or person breaking or otherwise opening any cigarette package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the minimum package size of 20 cigarettes or any quantity of cigarettes that is smaller than the smallest package distributed by the manufacturer for individual consumer use.

Loose little cigars mean little cigars that are not contained within a sealed container, pack or package as provided by the manufacturer.

Manufacturer means any person, other than a Retail Cigarette Manufacturer, who makes or fabricates cigarettes and/or tobacco products and sells them.

Other Tobacco products includes, but is not limited to, smokeless tobacco, smoking tobacco, large cigars and little cigars, but does not include cigarettes.

Package means the original packet, box, tin or container whatsoever used to contain and to convey cigarettes tobacco products to the consumer.

Person means any individual, corporation, Limited Liability Corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity.

Pipe tobacco includes any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.

Premises means, but is not limited to, buildings, vehicles or any place where cigarette inventory is possessed, stored or sold.

Purchaser means consumer or end-user.

Retail cigarette manufacturer means any retail tobacco dealer who makes, fabricates, or produces cigarettes or provides to consumers tobacco and other material and equipment for the production of cigarettes in Cook County.

Retail tobacco dealer means any person who engages in the business of selling cigarettes or other tobacco products in the County of Cook to a purchaser for use or consumption and not for resale in any form.

Roll-your-own tobacco includes any tobacco which, because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes or cigars or for use as wrappers of cigars or cigarettes,

Sale, resale, selling means any transfer of ownership or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for a valuable consideration.

Smokeless tobacco includes any snuff, snus, chewing tobacco, or other tobacco products not intended to be smoked.

Smoking tobacco includes 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.

Snuff means any finely cut, ground or powered tobacco that is not intended to be smoked.

Stamp means paper or other material with an imprint or decalcomania device thereon, of such size, design, color and denominations as may be prescribed and procured by the Department which, when affixed to a package of cigarettes, shall evidence payment of the tax thereon, as provided by this article.

Tobacco products includes, but is not limited to, any cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff flour; Cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweeping of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both chewing and smoking; but does not include cigarettes or tobacco purchased for the manufacture of cigarettes by cigarette wholesale tobacco dealers and manufacturers as defined in this article.

Unit means any division of quantity that may be used as a standard to measure the quantity sold based on length, width, weight such as pounds, ounces and/or grams or volume or some other similar unit of measure, including but not limited to per item.

Unstamped pack means any pack of cigarettes on which a Cook County tax stamp is not affixed.

Use means any exercise of a right or power, actual or constructive, and shall include but is not limited to the receipt, storage, or any keeping or retention for any length of time, but shall not include possession for sale by a retail or wholesale tobacco dealer as defined in this article.

Used or reused tax stamp means, any tax stamp previously affixed to a tobacco product, removed and subsequently affixed to any tobacco product purchased, offered for sale or sold by any person, wholesale or retail tobacco dealer; or any removed tax stamp purchased, offered for sale, sold by, or in the possession of a wholesale or retail tobacco dealer.

Wholesale tobacco dealer means any person who engages in the business of selling or supplying cigarettes and/or tobacco products, who brings into the County cigarettes, to any person for resale in or outside the County of Cook. For the purposes of this article, wholesale tobacco dealers also include cigarette distributors who are licensed with the State of Illinois (35 ILCS 143/10-20).

Sec. 74-432. Registration of wholesale, retail tobacco dealers and retail cigarette manufacturer.

Wholesale tobacco dealers, retail tobacco dealers and retail cigarette manufacturers as defined in this article, shall register with the Department in accordance with policies or procedures prescribed by the Department.

Sec. 74-433. Tax imposed; cigarettes, other tobacco products; collection; remittance.

(a) *Cigarette Tax rate.* A tax at the rate of 100 mils or \$0.10 per cigarette is hereby imposed upon all cigarettes possessed for sale and upon the use of all cigarettes within the County of Cook, the ultimate incidence of and liability for payment of said tax to be borne by the consumer of said cigarettes. The tax imposed hereby at the rate of 100 mils or \$0.10 per cigarette shall become in force and effect on March 1, 2006. The tax herein levied shall be in addition to any and all other taxes.

(b) *Cigarette Tax stamp purchases.* The tax imposed in this section shall be paid by purchase of tax stamps from the Department, except as otherwise provided in Subsections 74-446(a) and (b) of this article. The Department shall only sell Cook County cigarette tax stamps to cigarette distributors who are licensed with the State of Illinois. It shall be the duty of every wholesale tobacco dealer, before delivering or causing to be delivered any cigarettes to a retail tobacco dealer in the County of Cook to purchase from the Department a tax stamp for each package of cigarettes and to cancel said stamps prior to the delivery of such cigarettes to any retail tobacco dealer in the County of Cook. Said stamps shall be affixed and cancelled in the manner prescribed by rules and regulations of the Department.

(c) *Retail cigarette manufacturer rate.* A tax at the rate of \$0.10 per cigarette is hereby imposed upon each cigarette produced by a retail cigarette manufacturer.

(d) *Other tobacco product tax rate.*

(1) A tax at the following rates is hereby imposed upon the following products through December 31, 2012:

- (a) Smoking tobacco - \$0.30 per ounce or fraction thereof
- (b) Smokeless tobacco - \$0.30 per ounce or fraction thereof
- (c) Little Cigars - \$0.05 per unit or cigar
- (d) Large Cigars - \$0.25 per unit or cigar

(2) A tax at the following rates is hereby imposed upon the following products effective January 1, 2013:

- (a) Smoking tobacco - \$0.60 per ounce or fraction thereof
- (b) Smokeless tobacco - \$0.60 per ounce or fraction thereof
- (c) Little Cigars - \$0.05 per unit or cigar
- (d) Large Cigars - \$0.30 per unit or cigar

(e) *Wholesale Tobacco Dealer Tax collection.* Any wholesale tobacco dealer who shall pay the tax levied by this article to the Department shall collect the tax from any retail tobacco dealer to whom the sale of said cigarettes, or other tobacco products is made, and any retail tobacco dealer shall, in turn, collect the tax from the purchaser of said cigarettes, smoking tobacco, smokeless tobacco, little cigars and large cigars.

(f) *Retail cigarette manufacturer Tax collection.* Any retail cigarette manufacturer who shall pay the tax levied by this article to the Department shall collect the tax from the purchaser.

(g) *Other Tobacco Products Tax collection.* It shall be the duty of every of wholesale tobacco dealer and retail cigarette manufacturer to remit tax due for Other Tobacco Product sales along with forms prescribed by the Department, on or before the 20th day of the month following the month for which the tax is due.

(h) *Tax included in sales price.* It shall be deemed a violation of this article for a retail tobacco dealer or retail cigarette manufacturer to fail to include the tax imposed in this article in the sale price of cigarettes and other tobacco products to otherwise absorb such tax. The tax levied in this article shall be in addition to any and all other taxes.

(i) *Tax debt owed to County.* The tax required in this article to be collected by any wholesale tobacco dealer, or retail tobacco dealer, or retail cigarette manufacturer pursuant to this article shall constitute a debt owed by such wholesale or retail tobacco dealer to the County. The tax shall be paid to the person required to collect it as trustee for and on account of the County of Cook.

Sec. 74-435. Sales, possession, use or hindrance violations and penalties.

(a) It shall be a violation of this article to engage in the sale, possession, or use of any cigarettes and/or other tobacco products subject to any tax provided by this article upon which said tax has not been paid or the stamps affixed and cancelled as herein required, including, as described in this article:

- (1) Counterfeit cigarettes or counterfeit other tobacco products.
- (2) Counterfeit tax stamps.
- (3) Improperly stamped packs.
- (4) Unstamped packs.

(b) It shall be a violation of this article for any wholesale tobacco dealer, or retail tobacco dealer, or retail cigarette manufacturer to engage in any of the following:

- (1) Utilization of used or reused tax stamps by possessing or offering for sale or resale packs of cigarettes affixed with a used or reused tax stamp.
- (2) Concealment, as described in this article.
- (3) Sell or distribute loose cigarettes or little cigars.
- (4) Sell cigarettes to any person, other than to another registered Cook County wholesale tobacco dealer, unless each package bears an un-mutilated Cook County tax stamp affixed, or where the selling wholesale tobacco dealer, or its agent, delivers the unstamped cigarettes to a location outside Cook County.
- (5) Hinder or prevent an authorized Department representative from performing an inspection or audit.

(c) Prima facie presumption. The sale, resale or possession by a wholesale or retail tobacco dealer of altered/mutilated, counterfeit, used or reused tax stamps; or packs of counterfeit, improperly stamped, unstamped cigarettes or loose cigarettes shall give rise to the prima facie presumption that the wholesale or retail tobacco dealer is in violation of the provisions of this article.

(d) Cigarette pack, tax stamp, loose cigarettes and little cigars, other tobacco products and hindrance violation penalties.

Violation Type	Penalties Amount
Concealment	
1st Offense	\$2,000.00
2nd and each subsequent offense, an additional	4,000.00
Counterfeit packs of cigarettes	
40 or less	2,000.00
41 or more, per pack	50.00
2nd and each subsequent offense, an additional	4,000.00
Counterfeit tax stamps	
40 or less	2,000.00
41 or more, per stamp	50.00
2nd and each subsequent offense, an additional	4,000.00
Improperly stamped packs	
40 or less	2,000.00
41 or more, per pack	50.00
2nd and each subsequent offense, an additional	2000.00
Loose cigarettes and little cigars	
40 or less	1,000.00
40 or more, per cigarette	25.00
2nd and each subsequent offense, an additional	2,000.00
Other tobacco products	
1st offense	1,000.00
2nd and each subsequent offense, an additional	2,000.00
Sales to unregistered wholesalers	
1st offense	2,000.00
2nd and each subsequent offense, an additional	4,000.00
Unstamped packs	
40 packs or less	1,000.00
41 packs or more, per pack	25.00
2nd and each subsequent offense, an additional	2,000.00
Utilization of used or reused tax stamps	
40 or less packs or stamps	2,000.00
41 or more packs or stamps, per pack or stamp	50.00
2nd and each subsequent offense, an additional	4,000.00
Hinder inspection or audit	
1st Offense	1,000.00
2nd and each subsequent offense, an additional	2,000.00

Effective Date: This Ordinance Amendment shall be effective on the 30th day following passage.

Approved and adopted this 15th day of November 2011.

TONI PRECKWINKLE, President
Cook County Board of Commissioners

Attest: DAVID ORR, County Clerk