

Compliance with Master Settlement Agreement; Tax Rate on Electronic Cigarettes; Sub. for HB 2230

Sub. for HB 2230 makes a number of amendments to the Cigarette and Tobacco Products Act relating to definitions, licenses and permits, bonds, suspension or revocation of licenses, tax stamps, redemption of stamps, records required of dealers, penalties, license fees, and administrative fines designed to keep Kansas in compliance with the Master Settlement Agreement (MSA).

Additional provisions of the bill delay the effective date and reduce the rate of the tax on electronic cigarettes.

MSA Provisions

The bill makes individuals who purchase, possess, use, or consume more than 400 cigarettes liable for the tax imposed if the cigarettes do not have the required tax stamp.

The bill clarifies what would be considered a first, second, third, or subsequent conviction for the purposes of sentencing. The fine for a first conviction of trafficking in counterfeit or illegal cigarettes and tobacco products is at least \$1,000, but no more than \$2,500. Subsequent convictions result in fines of up to \$100,000 and possible jail time after the third conviction.

The bill defines when certain cigarettes and tobacco products are considered contraband.

Counterfeit or illegal cigarettes and tobacco products and property used in the trafficking is subject to seizure and sale. The bill outlines the procedure and process the Kansas Department of Revenue (KDOR) follows to effectuate the sale and disbursement of any funds.

Any packages of cigarettes bearing *indicia* of tax payment pursuant to compacts signed between the Governor and the Prairie Band Potawatomi Nation, the Iowa Tribe of Kansas and Nebraska, the Kickapoo Tribe in Kansas, and the Sac and Fox Nation of Missouri in Kansas and Nebraska, each approved by the Legislature, are not contraband.

It is unlawful to possess, transport, import, distribute, wholesale, or manufacture more than 1,000 cigarettes, cigarettes without Kansas stamps being affixed, or cigarettes or tobacco products otherwise in violation of the MSA. Transportation of cigarettes not bearing tax stamps to a retailer is also unlawful.

The bill requires tobacco distributors to file their reports electronically on forms and in a manner prescribed by KDOR.

All moneys received from license fees, fines, and forfeiture proceedings shall be used exclusively for assisting in funding diligent enforcement as required by the MSA.

An additional provision requires wholesale dealers to be in good standing with the Director of Taxation (at KDOR) in order to receive a discount on stamps purchased. KDOR may suspend, deny, or non-renew license applications under certain circumstances.

The bill clarifies that its provisions apply to the sale of tobacco products over the Internet and telephone and through mail order transactions. The bill revises outdated language related to vending machines, allowing KDOR to divulge information related to vending machines to contracting entities.

The bill requires any retailer selling cigarettes to Kansas consumers without a tax stamp to file an annual statement for each consumer with KDOR. The statement shall include the name and address of the consumer, the date of the purchase, and the total number of packs of cigarettes purchased by the consumer.

Electronic Cigarette Provisions

The bill delays the effective date and reduces the rate of the tax on electronic cigarettes. Under previous law, a tax at the rate of \$0.20 per milliliter of consumable material in electronic cigarettes was imposed as of January 1, 2017. The bill delays the effective date of the tax to July 1, 2017, and reduces the rate to \$0.05 per milliliter.

The bill defines “consumable material” to mean any liquid solution or other material that is depleted as an electronic cigarette is used.