

ILLINOIS REGISTER

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Cigarette Tax Act
- 2) Code Citation: 86 Ill. Adm. Code 440
- 3) Section Number: 440.30 Proposed Action: Amendment
- 4) Statutory Authority: P.A. 82-593; P.A. 95-462; 35 ILCS 130/1
- 5) A Complete Description of the Subjects and Issues Involved: The proposed amendments to 86 Ill. Adm. Code 440.30 add language to the rules implementing the Cigarette Tax Act to incorporate two statutory exclusions to the definition of "retailer" contained in the Cigarette Tax Act and to incorporate one statutory exclusion to the definition of "distributor" contained in the Act. Two of the exclusions were added by P.A. 82-593 effective September 24, 1981; one of them excludes from the definition of "retailer" a person who transfers to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility ownership of cigarettes made, manufactured, or fabricated as part of a correctional industries program; the second one excludes from the definition of "distributor" a person who makes, manufactures or fabricates cigarettes for sale to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility. The third exclusion was added by P.A. 95-462, effective August 27, 2007, and excludes from the definition of "retailer" a person who transfers cigarettes to a not-for-profit research institution that conducts tests concerning the health effects of tobacco products and who does not offer the cigarettes for resale.
- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this rulemaking replace any emergency rulemaking currently in effect: No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other proposed rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this Notice to:

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Richard S. Wolters
Associate Counsel
Illinois Department of Revenue
Legal Services Office
101 West Jefferson
Springfield, Illinois 62794

(217) 782-2844

13) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: Retailers who transfer cigarettes will be affected by the amendments.
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: January 2008

The full text of the Proposed Amendment begins on the next page:

Section 440.30 Tax – Who Liable For

- a) All retailers of cigarettes as defined in Section 1 of the Act are liable for the tax therein imposed. Distributors of cigarettes are required to prepay the tax and to collect it as a separate item from retailers.
- b) The Act defines "retailer" as follows:
 - 1) *"Retailer" means any person who engages in the making of transfers of the ownership of, or title to, cigarettes to a purchaser for use or consumption and not for resale in any form, for a valuable consideration.*
 - 2) *"Retailer" shall be construed to include any person who engages in the making of transfers of the ownership of, or title to, cigarettes to a purchaser, for use or consumption by any other person to whom such purchaser may transfer the cigarettes without a valuable consideration.*
 - 3) "Retailer" does not include a person:

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- A) Who transfers to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility ownership of cigarettes made, manufactured, or fabricated as part of a correctional industries program; or
- B) beginning August 27, 2007, who transfers cigarettes to a not-for-profit research institution that conducts tests concerning the health effects of tobacco products and who does not offer the cigarettes for resale.
- c) The Act defines "distributor" as meaning any and each of the following:
- 1) Any person engaged in the business of selling cigarettes in this State who brings or causes to be brought into this State from without this State any original packages of cigarettes, on which original packages there is no authorized evidence underneath a sealed transparent wrapper showing that the tax liability imposed by this Act has been paid or assumed by the out-of-State seller of such cigarettes, for sale or other disposition in the course of such business.
 - 2) Any person who makes, manufactures or fabricates cigarettes in this State for sale in this State, except a person who makes, manufactures or fabricates cigarettes as a part of a correctional industries program for sale to residents incarcerated in penal institutions or resident patients of a State-operated mental health facility.
 - 3) Any person who makes, manufactures or fabricates cigarettes outside this State, which cigarettes are placed in original packages contained in sealed transparent wrappers, for delivery or shipment into this State, and who elects to qualify and is accepted by the Department as a distributor under Section 4b of the Act.

(Source: Amended at 32 Ill. Reg. _____, effective _____)