

SENATE BILL No. 90

By Committee on Assessment and Taxation

1-16

9 AN ACT concerning taxation; relating to cigarettes and tobacco products;
10 meter imprints; remittance of tax stamps by electronic funds transfer;
11 amending K.S.A. 2006 Supp. 79-3301, 79-3311 and 79-3312 and re-
12 pealing the existing sections.
13

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

15 Section 1. K.S.A. 2006 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) "Cigarette" means any roll for smoking, made wholly or in part
23 of tobacco, irrespective of size or shape, and irrespective of tobacco being
24 flavored, adulterated or mixed with any other ingredient if the wrapper
25 is in greater part made of any material except tobacco.

26 (d) "Consumer" means the person purchasing or receiving cigarettes
27 or tobacco products for final use.

28 (e) "Dealer" means any person who engages in the sale or manufac-
29 ture of cigarettes in the state of Kansas, and who is required to be licensed
30 under the provisions of this act.

31 (f) "Dealer establishment" means any location or premises, other
32 than vending machine locations, at or from which cigarettes are sold, and
33 where records are kept.

34 (g) "Director" means the director of taxation.

35 (h) "Distributor" means: (1) Any person engaged in the business of
36 selling tobacco products in this state who brings, or causes to be brought,
37 into this state from without the state any tobacco products for sale; (2)
38 any person who makes, manufactures, fabricates or stores tobacco prod-
39 ucts in this state for sale in this state; or (3) any person engaged in the
40 business of selling tobacco products without this state who ships or trans-
41 ports tobacco products to any person in the business of selling tobacco
42 products in this state.

43 (i) "Division" means the division of taxation.

- 1 (j) "License" means, in addition to the privilege of a licensee to sell
2 cigarettes or tobacco products in the state of Kansas, the written evidence
3 of such authority or privilege to so operate as evidenced by any license
4 issued by the director of taxation.
- 5 (k) "Licensee" means any person holding a current license issued
6 pursuant to this act.
- 7 (l) "Manufacturer's salesperson" means a person employed by a cig-
8 arette manufacturer who sells cigarettes, manufactured by such employer
9 and procured from wholesale dealers.
- 10 ~~(m) "Meter imprints" means tax indicia applied by means of ink print-~~
11 ~~ing machines.~~
- 12 ~~(n) (1) (m)~~ "Package" means a container in which no more than 25
13 individual cigarettes are wrapped and sealed by the manufacturer of cig-
14 arettes prior to shipment to a wholesale dealer.
- 15 (2) For the purposes of subsections (u), (v) and (w) of K.S.A. 79-
16 3321, and amendments thereto, "package" shall have the meaning as-
17 cribed thereto in 15 U.S.C. §1332(4).
- 18 ~~(n)~~ (n) "Person" means any individual, partnership, society, associa-
19 tion, joint-stock company, corporation, estate, receiver, trustee, assignee,
20 referee or any other person acting in a fiduciary or representative capacity
21 whether appointed by a court or otherwise and any combination of
22 individuals.
- 23 ~~(o)~~ (o) "Received" means the coming to rest of cigarettes for sale by
24 any dealer in the state of Kansas.
- 25 ~~(p)~~ (p) "Retail dealer" means a person, other than a vending machine
26 operator, in possession of cigarettes for the purpose of sale to a consumer.
- 27 ~~(q)~~ (q) "Sale" means any transfer of title or possession or both,
28 exchange, barter, distribution or gift of cigarettes or tobacco products,
29 with or without consideration.
- 30 ~~(r)~~ (r) "Sample" means cigarettes or tobacco products distributed to
31 members of the general public at no cost for purposes of promoting the
32 product.
- 33 ~~(s)~~ (s) "Stamps" means tax indicia applied either by means of water
34 applied gummed paper or a heat process.
- 35 ~~(t)~~ (t) "Tax indicia" means visible evidence of tax payment in the form
36 of stamps or meter imprints.
- 37 ~~(u)~~ (u) "Tobacco products" means cigars, cheroots, stogies, periques;
38 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco;
39 snuff, snuff flour; cavendish; plug and twist tobacco; fine cut and other
40 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings
41 of tobacco, and other kinds and forms of tobacco, prepared in such man-
42 ner as to be suitable for chewing or smoking in a pipe or otherwise, or
43 both for chewing and smoking. Tobacco products does not include

1 cigarettes.

2 ~~(w)~~ (v) “Vending machine” means any coin operated machine, con-
3 trivance or device, by means of which merchandise may be sold.

4 ~~(x)~~ (w) “Vending machine distributor” means any person who sells
5 cigarette vending machines to a vending machine operator operating
6 vending machines in the state of Kansas.

7 ~~(y)~~ (x) “Vending machine operator” means any person who places a
8 vending machine, owned, leased or operated by such person, at locations
9 where cigarettes are sold from the machine. The owner or lessee of the
10 premises upon which a vending machine is placed shall not be considered
11 the operator of the machine, nor shall the owner or lessee, or any em-
12 ployee or agent of the owner or lessee be considered an authorized agent
13 of the vending machine operator, if the owner or lessee does not own or
14 lease the machine and the owner’s or lessee’s sole remuneration from the
15 machine is a flat rental fee or commission based upon the number or
16 value of cigarettes sold from the machine, or a combination of both.

17 ~~(z)~~ (y) “Wholesale dealer” means any person who sells cigarettes to
18 other wholesale dealers, retail dealers, vending machine operators and
19 manufacturer’s salespersons for the purpose of resale in the state of
20 Kansas.

21 ~~(aa)~~ (z) “Wholesale sales price” means the original net invoice price
22 for which a manufacturer sells a tobacco product to a distributor, as shown
23 by the manufacturer’s original invoice.

24 ~~(bb)~~ (aa) “Importer” shall have the same meaning ascribed thereto
25 in 26 U.S.C. §5702(l).

26 ~~(cc)~~ (bb) “Manufacturer” shall have the same meaning ascribed
27 thereto in 26 U.S.C. §5702(d).

28 Sec. 2. K.S.A. 2006 Supp. 79-3311 is hereby amended to read as
29 follows: 79-3311. (a) The director shall design and designate indicia of
30 tax payment to be affixed to each package of cigarettes as provided by
31 this act. The director shall sell ~~water applied stamps only to licensed~~
32 ~~wholesale dealers in the amounts of 1,000 or multiples thereof.~~ stamps
33 applied by the heat process ~~shall be sold~~ only in amounts of 30,000 or
34 multiples thereof, except that such stamps which are suitable for packages
35 containing 25 cigarettes each shall be sold in amounts prescribed by the
36 director. ~~Meter imprints shall be sold only in amounts of 10,000 or mul-~~
37 ~~tiples thereof. Water applied stamps in amounts of 10,000 or multiples~~
38 ~~thereof and~~ Stamps applied by the heat process ~~and meter imprints~~ shall
39 be supplied to wholesale dealers at a discount of ~~.90% on and after July~~
40 ~~1, 2002, and before January 1, 2003, and .80% thereafter~~ from the face
41 value thereof, and shall be deducted at the time of purchase or from the
42 remittance therefor as hereinafter provided. Any wholesale cigarette
43 dealer who shall file with the director a bond, of acceptable form, payable

1 to the state of Kansas with a corporate surety authorized to do business
2 in Kansas, shall be permitted to purchase stamps, ~~and remit therefor with~~
3 ~~payment therefor required to be made to the director by electronic funds~~
4 ~~transfer~~ within 30 days after each such purchase, up to a maximum out-
5 standing at any one time of 85% of the amount of the bond. Failure on
6 the part of any wholesale dealer to remit as herein specified shall be cause
7 for forfeiture of such dealer's bond. All revenue received from the sale
8 of such stamps ~~or meter imprints~~ shall be remitted to the state treasurer
9 in accordance with the provisions of K.S.A. 75-4215, and amendments
10 thereto. Upon receipt of each such remittance, the state treasurer shall
11 deposit the entire amount in the state treasury. The state treasurer shall
12 first credit such amount as the director shall order to the cigarette tax
13 refund fund and shall credit the remaining balance to the state general
14 fund. A refund fund designated the cigarette tax refund fund not to ex-
15 ceed \$10,000 at any time shall be set apart and maintained by the director
16 from taxes collected under this act and held by the state treasurer for
17 prompt payment of all refunds authorized by this act. Such cigarette tax
18 refund fund shall be in such amount as the director shall determine is
19 necessary to meet current refunding requirements under this act.

20 (b) The wholesale cigarette dealer shall affix to each package of cig-
21 arettes stamps ~~or tax meter imprints~~ required by this act prior to the sale
22 of cigarettes to any person, by such dealer or such dealer's agent or agents,
23 within the state of Kansas. ~~The director is empowered to authorize whole-~~
24 ~~sale dealers to affix revenue tax meter imprints upon original packages of~~
25 ~~cigarettes and is charged with the duty of regulating the use of tax meters~~
26 ~~to secure payment of the proper taxes. No wholesale dealer shall affix~~
27 ~~revenue tax meter imprints to original packages of cigarettes without first~~
28 ~~having obtained permission from the director to employ this method of~~
29 ~~affixation. If the director approves the wholesale dealer's application for~~
30 ~~permission to affix revenue tax meter imprints to original packages of~~
31 ~~cigarettes, the director shall require such dealer to file a suitable bond~~
32 ~~payable to the state of Kansas executed by a corporate surety authorized~~
33 ~~to do business in Kansas. The director may, to assure the proper collection~~
34 ~~of taxes imposed by the act, revoke or suspend the privilege of imprinting~~
35 ~~tax meter imprints upon original packages of cigarettes. All meters shall~~
36 ~~be under the direct control of the director, and all transfer assignments~~
37 ~~or anything pertaining thereto must first be authorized by the director.~~
38 ~~All inks used in the stamping of cigarettes must be of a special type~~
39 ~~devised for use in connection with the machine employed and approved~~
40 ~~by the director. All repairs to the meter are strictly prohibited except by~~
41 ~~a duly authorized representative of the director. Requests for service shall~~
42 ~~be directed to the director. Meter machine ink imprints on all packages~~
43 ~~shall be clear and legible. If a wholesale dealer continuously issues illeg-~~

1 ~~ible cigarette tax meter imprints, it shall be considered sufficient cause~~
2 ~~for revocation of such dealer's permit to use a cigarette tax meter.~~

3 (c) A licensed wholesale dealer may, for the purpose of sale in another
4 state, transport cigarettes not bearing Kansas indicia of tax payment
5 through the state of Kansas provided such cigarettes are contained in
6 sealed and original cartons.

7 Sec. 3. K.S.A. 2006 Supp. 79-3312 is hereby amended to read as
8 follows: 79-3312. The director shall redeem any unused stamps ~~or meter~~
9 ~~imprints~~ that any wholesale dealer presents for redemption within six
10 months after the purchase thereof, at the face value less ~~.90% on and~~
11 ~~after July 1, 2002, and before January 1, 2003, and .80% thereafter~~ thereof
12 if such stamps ~~or meter imprints~~ have been purchased from the director.
13 The director shall prepare a voucher showing the net amount of such
14 refund due, and the director of accounts and reports shall draw a warrant
15 on the state treasurer for the same. Wholesale dealers shall be entitled
16 to a refund of the tax paid on cigarettes which have become unfit for sale
17 upon proof thereof less ~~.90% on and after July 1, 2002, and before January~~
18 ~~1, 2003, and .80% thereafter~~ of such tax.

19 Sec. 4. K.S.A. 2006 Supp. 79-3301, 79-3311 and 79-3312 are hereby
20 repealed.

21 Sec. 5. This act shall take effect and be in force from and after its
22 publication in the statute book.