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REFERENCE TITLE: **cigarette sales; licensing; luxury tax**

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
First Regular Session  
2005

## **HB 2717**

Introduced by  
Representatives Bradley: Meza

### **AN ACT**

AMENDING SECTIONS 42-1124, 42-1125, 42-1127, 42-3001, 42-3004, 42-3006, 42-3007, 42-3010, 42-3053 AND 42-3201, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-3201.01; AMENDING SECTION 42-3202, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-3202.01; AMENDING SECTIONS 42-3203 AND 42-3204, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-3205; AMENDING SECTIONS 42-3206, 42-3207, 42-3209, 42-3210 AND 42-3211, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 42-3212 AND 42-3213; AMENDING SECTIONS 42-3221, 42-3222, 42-3226, 42-3303, 42-3304 AND 42-3305, ARIZONA REVISED STATUTES; RELATING TO SALES OF CIGARETTES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 42-1124, Arizona Revised Statutes, is amended to  
3 read:

4 42-1124. Failure to affix stamps or pay or account for tax;  
5 forfeiture of commodity; sale of forfeited  
6 commodity; effect of seizure and sale

7 A. If the department or its authorized agents or representatives  
8 discover any luxury subject to tax under chapter 3 of this title to which  
9 official stamps have not been affixed as required or on which the tax has not  
10 been paid or accounted for, the department or its agent or representative may  
11 seize and take possession of the luxury, and it is deemed forfeited to this  
12 state. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, the department  
13 shall within a reasonable time thereafter, pursuant to a notice posted on the  
14 premises or by publication in a newspaper of general circulation in the  
15 county where the sale is to take place, not fewer than five days before the  
16 date of sale, offer for sale and sell the forfeited luxuries. The department  
17 shall pay the proceeds of the sale into the state general fund. The sale  
18 shall take place in the county which is most convenient and economical. The  
19 department need not offer any property for sale if, in its opinion, the  
20 probable cost of sale exceeds the value of the property.

21 B. The seizure and sale do not relieve any person from the penalties  
22 provided for violating this title.

23 C. The department of revenue may enter into an interagency agreement  
24 with the department of transportation for the purpose of carrying out tobacco  
25 enforcement under chapter 3 of this title at ports of entry.

26 D. ALL CIGARETTES THAT ARE SEIZED FOR VIOLATIONS UNDER THIS TITLE  
27 SHALL BE FORFEITED TO THIS STATE AND DESTROYED. IF A CIGARETTE DISTRIBUTOR  
28 OR CIGARETTE RETAILER INTENTIONALLY DEFRAUDS THIS STATE BY FAILING TO KEEP OR  
29 MAKE ANY RECORD, RETURN, REPORT OR INVENTORY PERTAINING TO CIGARETTES, BY  
30 REFUSING TO PAY ANY LUXURY TAX FOR CIGARETTES UNDER CHAPTER 3 OF THIS TITLE  
31 OR BY ATTEMPTING TO EVADE OR DEFEAT ANY REQUIREMENT OF THIS TITLE, THE  
32 CIGARETTE DISTRIBUTOR OR CIGARETTE RETAILER SHALL FORFEIT TO THIS STATE ALL  
33 FIXTURES, EQUIPMENT AND ALL OTHER MATERIALS AND PERSONAL PROPERTY THAT ARE  
34 LOCATED ON THE PREMISES OF THE CIGARETTE DISTRIBUTOR OR CIGARETTE RETAILER.

35 Sec. 2. Section 42-1125, Arizona Revised Statutes, is amended to read:

36 42-1125. Civil penalties; definition

37 A. If a taxpayer fails to make and file a return for a tax  
38 administered pursuant to this article on or before the due date of the return  
39 or the due date as extended by the department, then, unless it is shown that  
40 the failure is due to reasonable cause and not due to wilful neglect, four  
41 and one-half per cent of the tax required to be shown on such return shall be  
42 added to the tax for each month or fraction of a month elapsing between the  
43 due date of the return and the date on which it is filed. The total penalty  
44 shall not exceed twenty-five per cent of the tax found to be remaining due.  
45 The penalty so added to the tax is due and payable on notice and demand from  
46 the department. For the purpose of computing the penalty imposed under this

1 subsection, the amount required to be shown as tax on a return shall be  
2 reduced by the amount of any part of the tax which is paid on or before the  
3 beginning of such month and by the amount of any credit against the tax which  
4 may be claimed on the return. If the amount required to be shown as tax on a  
5 return is less than the amount shown as tax on such return the penalty  
6 described in this subsection shall be applied by substituting such lower  
7 amount.

8 B. If a taxpayer fails or refuses to file a return on notice and  
9 demand by the department, the taxpayer shall pay a penalty of twenty-five per  
10 cent of the tax, which is due and payable on notice and demand by the  
11 department, in addition to any penalty prescribed by subsection A of this  
12 section, unless it is shown that the failure is due to reasonable cause and  
13 not due to wilful neglect. This penalty is payable on notice and demand from  
14 the department.

15 C. If a taxpayer fails or refuses to furnish any information requested  
16 in writing by the department, the department may add a penalty of twenty-five  
17 per cent of the amount of any deficiency tax assessed by the department  
18 concerning the assessment of which the information was required, unless it is  
19 shown that the failure is due to reasonable cause and not due to wilful  
20 neglect.

21 D. If a person fails to pay the amount shown as tax on any return  
22 within the time prescribed, a penalty of one-half of one per cent, not to  
23 exceed a total of ten per cent, shall be added to the amount shown as tax for  
24 each month or fraction of a month during which the failure continues, unless  
25 it is shown that the failure is due to reasonable cause and not due to wilful  
26 neglect. If the department determines that the person's failure to pay was  
27 due to reasonable cause and not due to wilful neglect and that a payment  
28 agreement pursuant to section 42-2057 is appropriate, the department shall  
29 not impose the penalty unless the taxpayer fails to comply with the payment  
30 agreement. If the taxpayer is also subject to a penalty under subsection A  
31 of this section for the same tax period, the total penalties under subsection  
32 A of this section and this subsection shall not exceed twenty-five per cent.  
33 For the purpose of computing the penalty imposed under this subsection:

34 1. The amount shown as tax on a return shall be reduced by the amount  
35 of any part of the tax that is paid on or before the beginning of that month  
36 and by the amount of any credit against the tax that may be claimed on the  
37 return.

38 2. If the amount shown as tax on a return is greater than the amount  
39 required to be shown as tax on that return, the penalty shall be applied by  
40 substituting the lower amount.

41 E. If a person fails to pay any amount required to be shown on any  
42 return that is not so shown within twenty-one calendar days after the date of  
43 notice and demand, a penalty of one-half of one per cent, not to exceed a  
44 total of ten per cent, shall be added to the amount of tax for each month or  
45 fraction of a month during which the failure continues, unless it is shown  
46 that the failure is due to reasonable cause and not due to wilful neglect.

1 If the taxpayer is also subject to penalty under subsection A of this section  
2 for the same tax period, the total penalties under subsection A of this  
3 section and this subsection shall not exceed twenty-five per cent. For the  
4 purpose of computing the penalty imposed under this subsection, any amount  
5 required to be shown on any return shall be reduced by the amount of any part  
6 of the tax that is paid on or before the beginning of that month and by the  
7 amount of any credit against the tax that may be claimed on the return.

8 F. In the case of a deficiency, for which a determination is made of  
9 an additional amount due, which is due to negligence but without intent to  
10 defraud, the person shall pay a penalty of ten per cent of the amount of the  
11 deficiency.

12 G. If part of a deficiency is due to fraud with intent to evade tax,  
13 fifty per cent of the total amount of the tax, in addition to the deficiency,  
14 interest and other penalties provided in this section, shall be assessed,  
15 collected and paid as if it were a deficiency.

16 H. If the amount, whether determined by the department or the  
17 taxpayer, required to be withheld by the employer pursuant to title 43,  
18 chapter 4 is not paid to the department on or before the date prescribed for  
19 its remittance, the department may add a penalty of twenty-five per cent of  
20 the amount required to be withheld and paid, unless it is shown that the  
21 failure is due to reasonable cause and not due to wilful neglect.

22 I. A person who, with or without intent to evade any requirement of  
23 this article or any lawful administrative rule of the department of revenue  
24 under this article, fails to file a return or to supply information required  
25 under this article or who, with or without such intent, makes, prepares,  
26 renders, signs or verifies a false or fraudulent return or statement or  
27 supplies false or fraudulent information shall pay a penalty of not more than  
28 one thousand dollars. This penalty shall be recovered by the department of  
29 law in the name of this state by an action in any court of competent  
30 jurisdiction.

31 J. If the taxpayer files what purports to be a return of any tax  
32 administered pursuant to this article but which is frivolous or which is made  
33 with the intent to delay or impede the administration of the tax laws, that  
34 person shall pay a penalty of five hundred dollars.

35 K. If a taxpayer who is required to file or provide an information  
36 return under this title or title 43 fails to file the return at the  
37 prescribed time or files a return which fails to show the information  
38 required, that taxpayer shall pay a penalty of five hundred dollars unless it  
39 is shown that the failure is due to reasonable cause and not due to wilful  
40 neglect.

41 L. If it appears to the superior court that proceedings before it have  
42 been instituted or maintained by a taxpayer primarily for delay or that the  
43 taxpayer's position is frivolous or groundless, the court may award damages  
44 in an amount not to exceed one thousand dollars to this state. Damages so  
45 awarded shall be collected as a part of the tax.

1 M. A person who is required under section 43-413 to furnish a  
2 statement to an employee and who wilfully furnishes a false or fraudulent  
3 statement, or who wilfully fails to furnish a statement required by section  
4 43-413, is for each such failure subject to a penalty of fifty dollars.

5 N. A person who is required to collect, truthfully account for and pay  
6 a tax administered pursuant to this article and who wilfully fails to collect  
7 the tax or truthfully account for and pay the tax, or wilfully attempts in  
8 any manner to evade or defeat the tax or its payment, is, in addition to  
9 other penalties provided by law, liable for a penalty equal to the total  
10 amount of the tax evaded, not collected or not accounted for and paid. No  
11 other penalty under this section relating to failure to pay tax may be  
12 imposed for any offense to which this subsection applies.

13 O. Unless due to reasonable cause and not to wilful neglect:

14 1. A person who fails to provide his taxpayer identification number in  
15 any return, statement or other document as required by section 42-1105,  
16 subsection A shall pay a penalty of five dollars for each such failure.

17 2. A person, when filing any return, statement or other document for  
18 compensation on behalf of a taxpayer, who fails to include that person's own  
19 taxpayer identification number and the taxpayer's identification number shall  
20 pay a penalty of fifty dollars for each such failure.

21 3. A person, when filing any return, statement or other document  
22 without compensation on behalf of a taxpayer, who fails to include that  
23 person's own taxpayer identification number and the taxpayer's identification  
24 number is not subject to a penalty.

25 No other penalty under this section may be imposed if the only violation is  
26 failure to provide taxpayer identification numbers.

27 P. If a taxpayer fails to pay the full amount of estimated tax  
28 required by title 43, chapter 5, article 6, a penalty is assessed equal to  
29 the amount of interest that would otherwise accrue under section 42-1123 on  
30 the amount not paid for the period of nonpayment, not exceeding ten per cent  
31 of the amount not paid. The penalty prescribed by this subsection is in lieu  
32 of any other penalty otherwise prescribed by this section and in lieu of  
33 interest prescribed by section 42-1123.

34 Q. The department of law ~~may~~, with the consent of the department of  
35 revenue, ~~MAY~~ compromise any penalty for which it may bring an action under  
36 this section.

37 R. Penalties shall not be assessed under subsection D of this section  
38 on additional amounts of tax paid by a taxpayer at the time the taxpayer  
39 voluntarily files an amended return. This subsection does not apply if:

40 1. The taxpayer is under audit by the department.

41 2. The amended return was filed on demand or request by the  
42 department.

43 3. The total additional tax paid and due for the tax period represents  
44 a substantial understatement of tax liability. For the purposes of this  
45 paragraph, there is a substantial understatement of tax for any tax period if  
46 the amount of the understatement for the tax period exceeds the greater of

1 ten per cent of the actual tax liability for the tax period or two thousand  
2 dollars.

3 S. IN ADDITION TO OTHER PENALTIES PROVIDED BY LAW, A PERSON WHO FAILS  
4 TO COMPLY WITH ANY REQUIREMENT UNDER CHAPTER 3, ARTICLE 5 OF THIS TITLE  
5 RELATING TO CIGARETTES SHALL PAY A PENALTY OF ONE THOUSAND DOLLARS OR FIVE  
6 TIMES THE RETAIL VALUE OF THE CIGARETTES INVOLVED, WHICHEVER IS GREATER. A  
7 PERSON WHO FAILS TO PAY ANY LUXURY TAX THAT RELATES TO CIGARETTES IMPOSED BY  
8 THIS CHAPTER 3 OF THIS TITLE SHALL PAY A PENALTY THAT IS EQUAL TO FIVE TIMES  
9 THE AMOUNT OF THE UNPAID TAX.

10 T. A CIGARETTE MANUFACTURER, CIGARETTE IMPORTER, CIGARETTE DISTRIBUTOR  
11 OR CIGARETTE RETAILER WHO SELLS OR POSSESSES CIGARETTES WITH FALSE  
12 MANUFACTURING LABELS OR CIGARETTES WITH COUNTERFEIT TAX STAMPS SHALL PAY THE  
13 FOLLOWING PENALTIES:

14 1. FOR A FIRST VIOLATION INVOLVING ONE CARTON OF CIGARETTES, ONE  
15 THOUSAND DOLLARS.

16 2. FOR A SUBSEQUENT VIOLATION INVOLVING ONE CARTON OF CIGARETTES, FIVE  
17 THOUSAND DOLLARS.

18 3. FOR A FIRST VIOLATION INVOLVING TWO OR MORE CARTONS OF CIGARETTES,  
19 TWO THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE CIGARETTES,  
20 WHICHEVER IS GREATER.

21 4. FOR A SUBSEQUENT VIOLATION INVOLVING TWO OR MORE CARTONS OF  
22 CIGARETTES, FIFTY THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE  
23 CIGARETTES, WHICHEVER IS GREATER.

24 U. THE CIVIL PENALTIES IN THIS SECTION ARE IN ADDITION TO ANY CIVIL  
25 PENALTY UNDER CHAPTER 3, ARTICLE 5 OF THIS TITLE.

26 ~~S.~~ V. For the purposes of this section, and only as applied to the  
27 taxes imposed by chapter 5, articles 1 through 6 and chapter 6, articles 1, 2  
28 and 3 of this title, "reasonable cause" means a reasonable basis for the  
29 taxpayer to believe that the tax did not apply to the business activity or  
30 the storage, use or consumption of the taxpayer's tangible personal property  
31 in this state.

32 Sec. 3. Section 42-1127, Arizona Revised Statutes, is amended to read:

33 42-1127. Criminal violations; classifications; place of trial;  
34 definition

35 A. It is a class 4 felony to:

36 1. Corruptly or by force or threats of force or injury:

37 (a) Attempt to intimidate, impede or injure an employee of the  
38 department acting in an official capacity.

1 (b) Obstruct, impede or attempt to obstruct or impede the  
2 administration of this title or title 43.

3 2. Attempt by means of bribery, misrepresentation, intimidation or  
4 force or threats of force to obstruct, delay or prevent the communication of  
5 information or testimony relating to a violation of this title or title 43 to  
6 an employee or officer of the department, or knowingly injure another  
7 personally or injure the person's property on account of the person giving,  
8 personally or by any other person, any such information or testimony to an  
9 employee of the department.

10 3. Make, forge, alter or counterfeit with the intent to defraud a  
11 stamp or meter impression prepared or prescribed by the department under  
12 chapter 3 of this title, or to knowingly utter, publish, pass or tender as  
13 true a false, altered, forged or counterfeited stamp or meter impression, or  
14 to use a stamp provided for and required by chapter 3 of this title which has  
15 already once been used, with the intent to evade the tax imposed by chapter 3  
16 of this title.

17 4. Tamper with, or cause to be tampered with, any metering machine  
18 authorized to be used under chapter 3 of this title.

19 B. It is a class 5 felony to:

20 1. Knowingly fail to pay any tax administered pursuant to this article  
21 due or believed due by the taxpayer with intent to evade the tax.

22 2. Knowingly prepare, present or aid, procure or advise in preparing  
23 or presenting any return, affidavit, claim or other document which is  
24 fraudulent or is false as to any material matter, whether or not the falsity  
25 or fraud is with the knowledge or consent of the taxpayer authorized or  
26 required to present the return, affidavit, claim or document.

27 3. Simulate or falsely or fraudulently execute or sign any license or  
28 other required document, or cause the license or document to be falsely or  
29 fraudulently executed or advise or aid in such execution, with the intent to  
30 conceal or cover up a material fact relating to a tax administered pursuant  
31 to this article.

32 4. Knowingly fail to file a return or supply required information, or  
33 falsify or conceal a material fact, document or record, make a false,  
34 fictitious or fraudulent statement or representation or make or use a false  
35 writing or document knowing it to contain a false, fictitious or fraudulent  
36 statement or entry, with intent that the department rely on the false,  
37 fictitious or fraudulent statement or entry in determining tax liability  
38 under this article.

39 C. A CIGARETTE distributor as defined in section 42-3001 who ~~is~~

40 ~~is~~ violates section 42-3202, paragraph 2 or section 42-3204 is guilty  
41 of a class 1 misdemeanor. If the CIGARETTE distributor is convicted of a  
42 second violation of section 42-3202, paragraph 2 or section 42-3204, the  
43 department shall revoke the CIGARETTE distributor's license issued pursuant  
44 to section 42-3201.

45 ~~is~~ D. A DISTRIBUTOR AS DEFINED IN SECTION 42-3001 WHO violates any  
46 provision of section 42-3201, section 42-3202, paragraph 1 or section 42-3203

1 is guilty of a class 1 misdemeanor. If the distributor is A LICENSEE UNDER  
2 SECTION 42-3201 AND IS convicted of a second violation of section 42-3203,  
3 the department may revoke the distributor's license.

4 ~~D-~~ E. It is a class ~~5-~~ 3 felony FOR ANY PERSON TO:

5 1. ~~For an unlicensed distributor, as defined in section 42-3001, to:~~

6 ~~(a)~~ EXCEPT AS PROVIDED IN SECTION 42-3205, transport, in an unstamped  
7 or unlawfully stamped condition, for the purpose of sale ten thousand or more  
8 cigarettes that were subject to the tax imposed by chapter 3, article 2, 6 or  
9 7 of this title.

10 ~~(b)~~ 2. Wilfully sell or offer for sale, in an unstamped or unlawfully  
11 stamped condition, ten thousand or more cigarettes that were subject to the  
12 tax imposed by chapter 3, article 2, 6 or 7 of this title.

13 ~~2-~~ 3. ~~For any person to~~ Wilfully sell or offer for sale off an Indian  
14 reservation ten thousand or more cigarettes that are stamped for  
15 on-reservation sales.

16 ~~E-~~ F. For the purposes of subsection ~~D-~~ E of this section, the  
17 possession or transportation in this state at any time by any person, ~~other~~  
18 ~~than a licensed distributor, as defined in section 42-3001,~~ of ten thousand  
19 or more cigarettes in an unstamped or unlawfully stamped condition is  
20 presumptive evidence that the cigarettes:

21 1. Are possessed or transported for the purpose of sale.

22 2. Are subject to the taxes imposed by chapter 3, article 2, 6 or 7 of  
23 this title.

24 ~~F-~~ G. A person who knowingly sells a luxury OTHER THAN CIGARETTES on  
25 which the tax has not been paid or accounted for as required by chapter 3 of  
26 this title is guilty of a class 1 misdemeanor.

27 ~~G-~~ H. A retailer who possesses any package, bottle or other container  
28 containing a luxury which does not bear the stamps required to be affixed by  
29 chapter 3 of this title is guilty of a class 1 misdemeanor.

30 ~~H-~~ I. A person is guilty of a class 3 misdemeanor who:

31 1. Is engaged in the business of selling a luxury, either at wholesale  
32 or retail, and who knowingly refuses or fails to produce on demand by the  
33 department invoices of all luxuries the person purchased or received within  
34 two years immediately before the demand, unless the person shows by  
35 satisfactory proof that the person is unable to do so for reasons beyond the  
36 person's control.

37 2. Makes a false entry on an invoice, package or container of  
38 luxuries, or who with intent to avoid the taxes imposed by chapter 3 of this  
39 title presents a false entry for inspection of the department.

40 3. Knowingly prevents or hinders the department from making a full  
41 inspection of any place where a luxury is sold or stored, or knowingly  
42 prevents or hinders the inspection of invoices, books, records or papers  
43 required to be kept.

44 4. Violates any provision of this article or an administrative rule  
45 adopted by the department for which no other penalty is prescribed.

1           ~~I~~ J. The place of trial for the offenses enumerated in this section  
2 is in the county of residence or principal place of business of the defendant  
3 or defendants. If the defendant has no residence or principal place of  
4 business in this state, the trial shall be held in Maricopa county.

5           K. A PERSON WHO DEFRAUDS THIS STATE BY INTENTIONALLY VIOLATING ANY  
6 REQUIREMENT UNDER CHAPTER 3 OF THIS TITLE IS GUILTY OF A CLASS 4 FELONY.

7           L. A PERSON WHO KNOWINGLY VIOLATES ANY REQUIREMENT UNDER CHAPTER 3 OF  
8 THIS TITLE IS GUILTY OF A CLASS 6 FELONY.

9           M. A PERSON WHO KNOWINGLY SELLS OR OFFERS TO SELL OFF AN INDIAN  
10 RESERVATION LESS THAN TEN THOUSAND CIGARETTES THAT ARE STAMPED FOR  
11 ON-RESERVATION SALES IS GUILTY OF A CLASS 5 FELONY.

12           N. IT IS A CLASS 5 FELONY FOR A CIGARETTE MANUFACTURER, CIGARETTE  
13 IMPORTER, CIGARETTE DISTRIBUTOR OR CIGARETTE RETAILER TO SELL OR POSSESS  
14 CIGARETTES WITH FALSE MANUFACTURING LABELS OR CIGARETTES WITH COUNTERFEIT TAX  
15 STAMPS.

16           ~~J~~ O. ~~I~~ FOR THE PURPOSES OF this section, "luxury" means any  
17 article, object or device on which a tax is imposed under chapter 3 of this  
18 title.

19           Sec. 4. Section 42-3001, Arizona Revised Statutes, is amended to read:  
20 42-3001. Definitions

21           In this chapter, unless the context otherwise requires:

22           1. "Affix" and "affixed" includes imprinting tax meter stamps on  
23 packages and individual containers as authorized by the department.

24           2. "Cider" means vinous liquor that is made from the normal alcoholic  
25 fermentation of the juice of sound, ripe apples, including flavored,  
26 sparkling and carbonated cider and cider made from condensed apple must, and  
27 that contains more than one-half of one per cent of alcohol by volume but not  
28 more than seven per cent of alcohol by volume.

29           3. "Cigar" means any roll of tobacco or any substitute for tobacco  
30 wrapped with tobacco.

31           4. "Cigarette" means any roll of tobacco or any substitute for tobacco  
32 wrapped in paper or any substance other than tobacco.

33           5. "CIGARETTE DISTRIBUTOR" MEANS ANY PERSON, WHETHER LOCATED IN OR  
34 OUTSIDE OF THIS STATE, WHO SELLS OR DISTRIBUTES CIGARETTES IN OR INTO THIS  
35 STATE AND WHO IS LICENSED UNDER SECTION 42-3201. CIGARETTE DISTRIBUTOR DOES  
36 NOT INCLUDE A RETAILER OR ANY PERSON WHO HOLDS A PERMIT AS A CIGARETTE  
37 MANUFACTURER, EXPORT WAREHOUSE PROPRIETOR OR IMPORTER UNDER 26 UNITED STATES  
38 CODE SECTION 5712 IF THE PERSON SELLS OR DISTRIBUTES CIGARETTES IN THIS STATE  
39 ONLY TO LICENSED CIGARETTE DISTRIBUTORS OR TO ANOTHER PERSON WHO HOLDS A  
40 PERMIT UNDER 26 UNITED STATES CODE SECTION 5712 AS AN EXPORT WAREHOUSE  
41 PROPRIETOR OR MANUFACTURER.

42           6. "CIGARETTE IMPORTER" MEANS ANY PERSON WHO DIRECTLY OR INDIRECTLY  
43 IMPORTS INTO THE UNITED STATES A FINISHED CIGARETTE FOR SALE OR DISTRIBUTION  
44 AND WHO IS LICENSED UNDER SECTION 42-3201.

1           7. "CIGARETTE MANUFACTURER" MEANS ANY PERSON WHO MANUFACTURES,  
2 FABRICATES, ASSEMBLES, PROCESSES OR LABELS A FINISHED CIGARETTE AND WHO IS  
3 LICENSED UNDER SECTION 42-3201.

4           8. "CIGARETTE RETAILER" MEANS ANY PERSON, WHETHER LOCATED IN OR  
5 OUTSIDE OF THIS STATE, WHO SELLS OR DISTRIBUTES CIGARETTES TO A CONSUMER IN  
6 THIS STATE AND WHO IS LICENSED UNDER SECTION 42-3201.

7           ~~5-~~ 9. "Distributor" means any person who manufactures, produces,  
8 ships, transports or imports into this state or in any manner acquires or  
9 possesses for the purpose of making the first sale of the following:

10           (a) Cigarettes without stamps affixed as required by this article.

11           (b) Cigars or other tobacco products upon which the taxes have not  
12 been paid as required by this chapter.

13           ~~6-~~ 10. "Domestic farm winery" means a domestic farm winery licensed  
14 pursuant to title 4, chapter 2, article 1.

15           ~~7-~~ 11. "Domestic microbrewery" means a domestic microbrewery licensed  
16 pursuant to title 4, chapter 2, article 1.

17           ~~8-~~ 12. "First sale" means the first sale or distribution in  
18 intrastate commerce or the first use or consumption of cigarettes, cigars or  
19 other tobacco products.

20           ~~9-~~ 13. "Luxury" means any article, object or device upon which a tax  
21 is imposed under ~~the provisions of~~ this chapter.

22           ~~10-~~ 14. "Malt liquor" means any liquid that contains more than  
23 one-half of one per cent alcohol by volume and that is made by the process of  
24 fermentation and not distillation of hops or grains, but not including:

25           (a) Liquids made by the process of distillation of such substances.

26           (b) Medicines that are unsuitable for beverage purposes.

27           ~~11-~~ 15. "Person" means any individual, firm, partnership, joint  
28 venture, association, corporation, municipal corporation, estate, trust,  
29 club, society or other group or combination acting as a unit, and the plural  
30 as well as the singular number.

31           ~~12-~~ 16. "Retailer" means any person who comes into possession of  
32 spirituous, vinous or malt liquor subject to the taxes imposed by this  
33 chapter for the purpose of selling it for consumption and not for resale.

34           ~~13-~~ 17. "Spirituous liquor" means any liquid that contains more than  
35 one-half of one per cent alcohol by volume, that is produced by distillation  
36 of any fermented substance and that is used or prepared for use as a  
37 beverage. Spirituous liquor does not include medicines that are unsuitable  
38 for beverage purposes.

39           ~~14-~~ 18. "Vinous liquor" means any liquid that contains more than  
40 one-half of one per cent alcohol by volume and that is made by the process of  
41 fermentation of grapes, berries, fruits, vegetables or other substances but  
42 does not include:

43           (a) Liquids in which hops or grains are used in the process of  
44 fermentation.

45           (b) Liquids made by the process of distillation of hops or grains.

46           (c) Medicines that are unsuitable for beverage purposes.

1       ~~15.~~ 19. "Wholesaler" means a person who sells any spirituous, vinous  
2 or malt liquor taxed under this chapter to retail dealers or for the purposes  
3 of resale only.

4       Sec. 5. Section 42-3004, Arizona Revised Statutes, is amended to read:

5       42-3004. Rules

6       The department may:

7       1. Adopt rules, not in conflict with this chapter, necessary for the  
8 enforcement of this chapter, including rules relating to refunds of taxes  
9 paid under this chapter.

10       2. Adopt different detailed rules applicable to diverse methods and  
11 conditions of sale or use of the luxuries upon which a tax is imposed by this  
12 chapter.

13       3. Prescribe in each luxury classification:

14       (a) Upon whom, as between the distributor, the wholesaler and the  
15 retailer or between the owner, lessor or other person in possession of any  
16 luxury, **EXCEPT FOR CIGARETTES**, the primary duty of affixing official stamps  
17 or official labels rests.

18       (b) The manner in which the stamps or labels shall be affixed.

19       Sec. 6. Section 42-3006, Arizona Revised Statutes, is amended to read:

20       42-3006. Revenue stamps

21       A. The department shall prepare and have on hand official adhesive  
22 stamps of the various types according to the classifications set forth in  
23 section 42-3052 of luxuries upon which a tax is imposed by this chapter.

24       B. The stamps shall be of a character so that they cannot be removed  
25 when once attached to an article without destroying them.

26       C. The stamps shall be printed in the form and manner prescribed by  
27 the director.

28       **D. CIGARETTE STAMPS SHALL ALSO MEET THE REQUIREMENTS OF ARTICLE 5 OF**  
29 **THIS CHAPTER.**

30       Sec. 7. Section 42-3007, Arizona Revised Statutes, is amended to read:

31       42-3007. Manner of affixing stamps; definition

32       A. Every stamp required under this chapter shall be securely affixed  
33 to some visible part of the package or container to which it will firmly  
34 adhere during possession by the consumer, except as otherwise provided.  
35 **CIGARETTE STAMPS SHALL ALSO MEET THE REQUIREMENTS OF ARTICLE 5 OF THIS**  
36 **CHAPTER.**

37       B. For **THE** purposes of this section, "consumer" means a person who  
38 comes into possession of any luxuries subject to the tax imposed by this  
39 chapter for the purpose of using, giving away or disposing of the luxuries in  
40 any manner other than by sale, barter or exchange.



1 APPLICANT'S MEMBERS. IF THE APPLICANT IS A CORPORATION, THE APPLICATION  
2 SHALL LIST THE NAME AND ADDRESS OF THE APPLICANT'S OFFICERS AND ANY PERSON  
3 WHO DIRECTLY OR INDIRECTLY OWNS AN AGGREGATE AMOUNT OF TEN PER CENT OR MORE  
4 OF THE OWNERSHIP INTEREST IN THE CORPORATION. EACH APPLICATION SHALL INCLUDE  
5 A FEE OF TWENTY-FIVE DOLLARS. IF A LICENSEE CHANGES ITS BUSINESS LOCATION,  
6 THE LICENSEE UNDER THIS SUBSECTION SHALL NOTIFY THE DEPARTMENT WITHIN THIRTY  
7 DAYS AFTER A CHANGE IN LOCATION.

8 ~~B-~~ C. The department shall issue a license authorizing the applicant  
9 to acquire or possess tobacco, cigarettes and cigars in this state upon the  
10 condition that the applicant complies with this chapter and the rules of the  
11 department. The license:

12 1. Shall be nontransferable.

13 2. Shall be valid for one year unless earlier revoked by the  
14 department.

15 3. Shall, for an applicant selling or offering for sale tobacco,  
16 cigarettes and cigars, be displayed in the applicant's place of business.

17 ~~C-~~ D. A person who is convicted of an offense described in section  
18 42-1127, subsection ~~D-~~ E is permanently ineligible to hold a license issued  
19 under this section.

20 E. THE DEPARTMENT SHALL NOT ISSUE OR RENEW A LICENSE TO AN APPLICANT  
21 AND SHALL REVOKE A LICENSE ISSUED UNDER SUBSECTION B OF THIS SECTION IF ANY  
22 OF THE FOLLOWING APPLY:

23 1. THE APPLICANT OR ANY PERSON DIRECTLY OR INDIRECTLY OWNS MORE THAN  
24 TEN PER CENT OF THE OWNERSHIP INTEREST IN THE APPLICANT'S BUSINESS.

25 2. THE APPLICANT OWES FIVE HUNDRED DOLLARS OR MORE IN DELINQUENT  
26 CIGARETTE TAXES.

27 3. THE DEPARTMENT HAS REVOKED ANY LICENSE HELD BY THE APPLICANT WITHIN  
28 THE PREVIOUS TWO YEARS.

29 4. THE APPLICANT HAS BEEN CONVICTED OF A CRIME THAT RELATES TO STOLEN  
30 OR COUNTERFEIT CIGARETTES.

31 5. THE APPLICANT IS A CIGARETTE MANUFACTURER OR CIGARETTE IMPORTER  
32 THAT IS NOT IN FULL COMPLIANCE WITH SECTIONS 44-7101 AND 44-7111.

33 6. THE APPLICANT HAS IMPORTED CIGARETTES INTO THE UNITED STATES FOR  
34 SALE OR DISTRIBUTION IN VIOLATION OF 19 UNITED STATES CODE SECTION 1681a.

35 7. THE APPLICANT HAS IMPORTED CIGARETTES INTO THE UNITED STATES FOR  
36 SALE OR DISTRIBUTION WITHOUT FULLY COMPLYING WITH THE FEDERAL CIGARETTE  
37 LABELING AND ADVERTISING ACT (P.L. 89-92; 79 STAT. 282; 15 UNITED STATES CODE  
38 SECTION 1331).

39 F. IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL PENALTY, THE DEPARTMENT  
40 MAY SUSPEND OR REVOKE A LICENSE ISSUED UNDER SUBSECTION B OF THIS SECTION IF  
41 THE PERSON VIOLATES ANY REQUIREMENT UNDER THIS TITLE. A SUSPENSION OR  
42 REVOCATION UNDER THIS SUBSECTION SHALL COMPLY WITH SECTION 41-1092.11,  
43 SUBSECTION B.

44 G. THE DEPARTMENT SHALL PUBLISH ON ITS WEB SITE THE NAMES OF EACH  
45 PERSON WHO IS ISSUED A LICENSE UNDER SUBSECTION B OF THIS SECTION. THE  
46 DEPARTMENT SHALL UPDATE THE PUBLISHED NAMES AT LEAST ONCE PER MONTH.



1 C. THE DEPARTMENT MAY AUTHORIZE THE USE OF A METERING MACHINE. IF THE  
2 DEPARTMENT AUTHORIZES THE USE OF A METERING MACHINE, THE DEPARTMENT SHALL  
3 ASSIGN A UNIQUE METER IMPRESSION NUMBER TO EACH CIGARETTE DISTRIBUTOR AND  
4 ENSURE THAT THE IMPRESSION IS LEGIBLE AT THE POINT OF SALE. THE DEPARTMENT  
5 SHALL KEEP RECORDS THAT INDICATE THE ASSIGNED METER IMPRESSION NUMBER FOR  
6 EACH CIGARETTE DISTRIBUTOR.

7 Sec. 14. Section 42-3203, Arizona Revised Statutes, is amended to  
8 read:

9 42-3203. Stamped packages required for cigarettes; exception

10 A. All cigarettes on which a tax is imposed by this chapter shall be  
11 placed in packages or containers and on each package or container shall be  
12 affixed an official stamp described in section 42-3006, ~~pursuant to OR~~  
13 ~~42-3202.01. AN AFFIXED STAMP SHALL BE EVIDENCE THAT THE TAXES LEVIED BY~~  
14 ~~sections 42-3052, and 42-3251 AND 42-3251.01 ARE PAID.~~

15 ~~B. All cigarettes on which a tax is imposed by this chapter and which~~  
16 ~~are sold or delivered by any distributor shall have affixed the luxury stamps~~  
17 ~~described in section 42-3006.~~

18 B. A LICENSED CIGARETTE DISTRIBUTOR SHALL APPLY A STAMP TO EACH  
19 PACKAGE OF CIGARETTES THAT IS SOLD OR DISTRIBUTED IN THIS STATE AND THAT IS  
20 SUBJECT TO TAX UNDER THIS CHAPTER, INCLUDING CIGARETTES THAT ARE SUBJECT TO  
21 TAX UNDER SECTION 42-3302. A LICENSED CIGARETTE DISTRIBUTOR SHALL APPLY A  
22 TAX-EXEMPT STAMP TO CIGARETTE PACKAGES THAT ARE NOT SUBJECT TO TAX UNDER  
23 SECTION 42-3304, SUBSECTION A, PARAGRAPH 2.

24 C. CIGARETTES THAT ARE EXEMPT FROM TAX UNDER 26 UNITED STATES CODE  
25 SECTION 5701 AND THAT ARE DISTRIBUTED ACCORDING TO FEDERAL REGULATIONS ARE  
26 NOT SUBJECT TO TAX AND DO NOT REQUIRE A STAMP UNDER THIS CHAPTER.

27 Sec. 15. Section 42-3204, Arizona Revised Statutes, is amended to  
28 read:

29 42-3204. Affixing stamps and paying tax on cigarettes from out  
30 of state

31 A. Every LICENSED CIGARETTE distributor ~~who purchases or acquires~~  
32 ~~cigarettes on which a tax is imposed by this chapter from any person not~~  
33 ~~doing business in this state, and on which stamps evidencing the payment of~~  
34 ~~the tax have not been affixed, shall~~ LOCATED IN THIS STATE, within  
35 forty-eight hours after receiving ~~the~~ cigarettes, SHALL cause stamps in the  
36 amount of the tax imposed by this chapter to be affixed on all ~~such~~ PACKAGES  
37 OF cigarettes ~~in the distributor's possession.~~ THAT ARE SUBJECT TO TAX UNDER  
38 THIS CHAPTER AND SHALL CAUSE TAX-EXEMPT STAMPS TO BE AFFIXED ON ALL PACKAGES  
39 OF CIGARETTES THAT ARE NOT SUBJECT TO TAX UNDER SECTION 42-3304. LICENSED  
40 CIGARETTE DISTRIBUTORS THAT ARE LOCATED OUTSIDE OF THIS STATE SHALL APPLY  
41 STAMPS TO ALL APPLICABLE CIGARETTE PACKAGES BEFORE SENDING THE PACKAGES INTO  
42 THIS STATE.

43 B. CIGARETTE DISTRIBUTORS MAY APPLY STAMPS ONLY TO CIGARETTE PACKAGES  
44 THAT THE CIGARETTE DISTRIBUTORS HAVE DIRECTLY RECEIVED FROM A LICENSED  
45 CIGARETTE MANUFACTURER OR CIGARETTE IMPORTER.

1 C. CIGARETTE DISTRIBUTORS MAY SET ASIDE, WITHOUT APPLICATION OF  
2 STAMPS, A PORTION OF THE DISTRIBUTOR'S STOCK THAT IS IDENTIFIED FOR SALE OR  
3 DISTRIBUTION OUTSIDE OF THIS STATE IF THE UNSTAMPED CIGARETTES ARE STORED  
4 SEPARATELY FROM STAMPED CIGARETTE PACKAGES. UNSTAMPED CIGARETTE PACKAGES  
5 SHALL NOT BE TRANSFERRED BY A DISTRIBUTOR TO ANOTHER FACILITY THAT IS  
6 OPERATED BY THE DISTRIBUTOR IN THIS STATE OR TO ANOTHER PERSON IN THIS STATE.

7 D. ANY PERSON WHO CONDUCTS BUSINESS AS A CIGARETTE DISTRIBUTOR AND A  
8 CIGARETTE RETAILER SHALL MAINTAIN SEPARATE AREAS FOR STAMPED AND UNSTAMPED  
9 PRODUCTS.

10 Sec. 16. Title 42, chapter 3, article 5, Arizona Revised Statutes, is  
11 amended by adding section 42-3205, to read:

12 42-3205. Unstamped cigarettes

13 A. A PERSON SHALL NOT POSSESS AN UNSTAMPED CIGARETTE PACKAGE UNLESS  
14 THE PERSON IS SHIPPING OR TRANSPORTING UNSTAMPED CIGARETTES PURSUANT TO  
15 SUBSECTION B OF THIS SECTION, IS A LICENSED CIGARETTE MANUFACTURER OR  
16 LICENSED CIGARETTE IMPORTER OR IS A LICENSED CIGARETTE DISTRIBUTOR THAT  
17 RECEIVES UNSTAMPED CIGARETTE PACKAGES DIRECTLY FROM A LICENSED CIGARETTE  
18 MANUFACTURER OR CIGARETTE IMPORTER AND POSSESSES THE CIGARETTES PURSUANT TO  
19 SECTION 42-3204, SUBSECTION C.

20 B. EXCEPT FOR A LICENSED CIGARETTE MANUFACTURER, CIGARETTE IMPORTER OR  
21 CIGARETTE DISTRIBUTOR, A PERSON WHO SHIPS UNSTAMPED CIGARETTE PACKAGES IN OR  
22 INTO THIS STATE SHALL FIRST FILE WITH THE DEPARTMENT A NOTICE OF SHIPMENT.  
23 THIS SUBSECTION DOES NOT APPLY TO ANY COMMON OR CONTRACT CARRIER THAT IS  
24 TRANSPORTING CIGARETTES THROUGH THIS STATE TO ANOTHER LOCATION UNDER A PROPER  
25 BILL OF LADING OR FREIGHT BILL THAT STATES THE QUANTITY, SOURCE AND  
26 DESTINATION OF THE CIGARETTES.

27 C. A PERSON WHO TRANSPORTS UNSTAMPED CIGARETTE PACKAGES IN OR INTO  
28 THIS STATE SHALL CARRY IN THE VEHICLE USED TO CONVEY THE SHIPMENT INVOICES OR  
29 EQUIVALENT DOCUMENTATION OF THE SHIPMENT FOR ALL CIGARETTES IN THE SHIPMENT.  
30 THE INVOICES OR DOCUMENTATION SHALL INDICATE THE NAME AND ADDRESS OF THE  
31 CONSIGNOR OR SELLER, THE NAME AND ADDRESS OF THE CONSIGNEE OR PURCHASER AND  
32 THE QUANTITY OF EACH BRAND OF CIGARETTES THAT IS TRANSPORTED.

33 Sec. 17. Section 42-3206, Arizona Revised Statutes, is amended to  
34 read:

35 42-3206. Cigarette stamp discount purchases

36 The official stamps to be affixed to packages of cigarettes shall be  
37 obtainable from the department by each licensed CIGARETTE distributor by  
38 purchase at the following discount rates:

39 1. Ninety-six per cent of the face value for the first thirty-six  
40 thousand dollars worth of stamps purchased by the distributor in any month.

41 2. Ninety-seven per cent of the face value for the second thirty-six  
42 thousand dollars worth of stamps purchased by the distributor in any month.

43 3. Ninety-eight per cent of the face value on all stamps in excess of  
44 seventy-two thousand dollars purchased by the distributor in any month,  
45 except that if a distributor purchases more than one hundred sixty-five  
46 thousand dollars worth of stamps in one month, the department shall offset

1 against the discount under this paragraph, or the distributor shall refund to  
2 the department, the difference between the face value and the discounted  
3 value of the first seventy-two thousand dollars worth of stamps under  
4 paragraphs 1 and 2.

5 Sec. 18. Section 42-3207, Arizona Revised Statutes, is amended to  
6 read:

7 42-3207. Secured cigarette stamp purchases on credit;  
8 cancellation of credit privileges; collection action

9 A. Subject to subsections B and C, a licensed CIGARETTE distributor  
10 who furnishes a bond of a surety company qualified to do business in this  
11 state, in an amount equal to two times the amount of the distributor's  
12 current monthly stamp purchases and conditioned upon the payment within the  
13 time prescribed, may make payment for the official stamp on or before the  
14 twentieth day of the month next following the purchase of an official stamp.  
15 All other CIGARETTE distributors shall pay for each stamp at the time of  
16 purchase.

17 B. Upon a finding that the amount of stamp purchases, or meter machine  
18 usage, exceeds seventy-five per cent of the amount of the bond the department  
19 may cancel the credit privileges provided to qualified CIGARETTE distributors  
20 pursuant to subsection A.

21 C. If the indebtedness of a CIGARETTE distributor whose credit  
22 privileges have been canceled pursuant to this section remains unpaid for  
23 thirty days after cancellation the director shall request the attorney  
24 general to take suitable action on behalf of the department to collect either  
25 on the indebtedness or the surety bond.

26 Sec. 19. Section 42-3209, Arizona Revised Statutes, is amended to  
27 read:

28 42-3209. Redemption of unused tobacco product stamps and meter  
29 registration

30 A. The department shall redeem unused stamps that a distributor OR  
31 CIGARETTE DISTRIBUTOR presents for redemption and shall pay for them from  
32 monies collected under this chapter.

33 B. Under rules adopted by the department, the department shall redeem  
34 the unused amount of tax for which any meter is registered and shall pay for  
35 it from monies collected under this chapter.

1           Sec. 20. Section 42-3210, Arizona Revised Statutes, is amended to  
2 read:

3           42-3210. Unlawful use of stamps; classification; definition

4           A. A person may not affix a tax stamp to a package of cigarettes if  
5 the package:

6           1. Differs from the requirements of the federal cigarette labeling and  
7 advertising act (P.L. 89-92; 79 Stat. 282; 15 United States Code section  
8 1331) relating to label warnings or other information on packages of  
9 cigarettes for sale in the United States.

10           2. Is labeled "for export only", "U.S. tax exempt", "for use outside  
11 U.S." or with similar words that indicate the manufacturer did not intend for  
12 the product to be sold in the United States.

13           3. Has been altered by adding or deleting the wording, labels or  
14 warnings described in paragraph 1 or 2 **OF THIS SUBSECTION**.

15           4. Is placed in a carton, or any other package containing several  
16 individually stamped packages, that has been altered by adding or deleting  
17 the wording, labels or warnings described in paragraph 1 or 2 **OF THIS**  
18 **SUBSECTION**.

19           5. Has been imported into the United States on or after January 1,  
20 2000 in violation of 26 United States Code section 5754 or is the subject of  
21 a violation of 19 United States Code sections 1681 through 1681b, ~~inclusive,~~  
22 or 15 United States Code section 1335a.

23           6. Violates federal trademark or copyright laws.

24           B. The director ~~may~~:

25           1. **MAY** revoke any license issued to a **CIGARETTE** distributor who sells  
26 or offers for sale cigarette packages that are stamped in violation of  
27 subsection A ~~of this section~~.

28           2. **SHALL** seize and destroy, ~~or sell to the manufacturer,~~ packages of  
29 cigarettes that are stamped in violation of subsection A.

30           C. A person who sells or offers for sale cigarette packages that are  
31 stamped in violation of subsection A is guilty of a class 2 misdemeanor.

32           D. Any person who sells, distributes, ~~or manufactures~~ cigarettes and  
33 sustains direct economic or commercial injury as a result of a violation of  
34 this section may bring an action in good faith for appropriate injunctive  
35 relief.

36           E. This section does not apply to cigarettes allowed to be imported or  
37 brought into the United States for personal use, or to cigarettes sold or  
38 intended to be sold as duty free merchandise by a duty free sales enterprise  
39 pursuant to 19 United States Code section 1555(b). This subsection does not  
40 apply to cigarettes that are brought back into the customs territory for  
41 resale within the customs territory.

42           F. A violation of this section is also a violation of title 44,  
43 chapter 10, article 7.

44           G. For **THE** purposes of this section, "package" means any kind of pack,  
45 carton or container in which cigarettes are sold, offered for sale or  
46 otherwise distributed or intended for distribution to consumers.

1           Sec. 21. Section 42-3211, Arizona Revised Statutes, is amended to  
2 read:

3           42-3211. Cigarette distributors; filing requirements

4           A. On or before the twentieth day of each month, each cigarette  
5 distributor AND CIGARETTE RETAILER shall file a return in a form prescribed  
6 by the department FOR EACH PLACE OF BUSINESS. ~~for all cigarettes that are~~  
7 ~~imported into the United States during the preceding month on which the~~  
8 ~~distributor affixed the luxury stamp pursuant to section 42-3203.~~ The return  
9 shall contain ALL OF THE FOLLOWING:

- 10           ~~1. A schedule that lists each brand and brand style of cigarettes.~~  
11           ~~2. The quantity of each brand style of cigarettes.~~  
12           ~~3. Each cigarette supplier.~~  
13           ~~4. Each person, if any, to whom the cigarettes have been conveyed for~~  
14 ~~resale.~~

15           1. THE QUANTITIES OF EACH BRAND OF CIGARETTES IN POSSESSION AT THE  
16 BEGINNING AND END OF THE REPORTING PERIOD.

17           2. THE QUANTITIES OF EACH BRAND OF CIGARETTES RECEIVED DURING THE  
18 REPORTING PERIOD AND THE NAME AND ADDRESS OF EACH PERSON FROM WHOM EACH  
19 PRODUCT WAS RECEIVED.

20           3. THE QUANTITIES OF EACH BRAND OF CIGARETTES DISTRIBUTED OR SHIPPED  
21 INTO THIS STATE OR BETWEEN LOCATIONS IN THIS STATE DURING THE REPORTING  
22 PERIOD, EXCEPT FOR SALES DIRECTLY TO CONSUMERS, AND THE NAME AND ADDRESS OF  
23 EACH PERSON TO WHOM EACH PRODUCT WAS DISTRIBUTED OR SHIPPED.

24           4. THE QUANTITIES OF EACH BRAND OF CIGARETTES DISTRIBUTED OR SHIPPED  
25 TO ANY DESTINATION WHEREVER LOCATED, INCLUDING THE QUANTITIES REPORTED UNDER  
26 PARAGRAPH 3 OF THIS SUBSECTION DURING THE REPORTING PERIOD, EXCEPT FOR SALES  
27 DIRECTLY TO CONSUMERS, AND THE NAME AND ADDRESS OF EACH PERSON TO WHOM EACH  
28 PRODUCT WAS DISTRIBUTED OR SHIPPED.

29           5. THE QUANTITIES OF EACH BRAND OF CIGARETTES SOLD TO CONSUMERS THAT  
30 ARE ITEMIZED TO SHOW SALES TO CONSUMERS IN THIS STATE AND SALE TO CONSUMERS  
31 OUTSIDE OF THIS STATE.

32           ~~5-~~ 6. Copies of the customs certificates with respect to such  
33 cigarettes required to be submitted by 19 United States Code section  
34 1681a(c).

35           B. CIGARETTE MANUFACTURERS AND CIGARETTE IMPORTERS THAT SHIP  
36 CIGARETTES INTO OR IN THIS STATE SHALL FILE A MONTHLY REPORT WITH THE  
37 DEPARTMENT. THE REPORT SHALL CONTAIN THE INFORMATION REGARDING CIGARETTES  
38 DESCRIBED UNDER SUBSECTION A, PARAGRAPH 3 OF THIS SECTION.

39           C. CIGARETTE DISTRIBUTOR REPORTS THAT ARE SUBMITTED UNDER SUBSECTION A  
40 OF THIS SECTION SHALL BE ITEMIZED TO DISCLOSE THE QUANTITY OF REPORTED  
41 CIGARETTES BEARING TAX STAMPS OF THIS STATE, TAX-EXEMPT STAMPS OF THIS STATE,  
42 STAMPS OF ANOTHER STATE AND UNSTAMPED CIGARETTES. THE DISTRIBUTOR REPORTS  
43 SHALL ALSO INCLUDE, IF APPLICABLE, THE FOLLOWING:

44           1. THE QUANTITY OF ARIZONA TAX AND TAX-EXEMPT STAMPS THAT WERE NOT  
45 AFFIXED TO CIGARETTES.

1           2. THE QUANTITY OF ARIZONA TAX AND TAX-EXEMPT STAMPS THAT THE  
2 DISTRIBUTOR POSSESSED AT THE BEGINNING AND END OF THE REPORTING PERIOD.

3           3. THE QUANTITY OF EACH TYPE OF ARIZONA STAMP RECEIVED DURING THE  
4 REPORTING PERIOD.

5           4. THE QUANTITY OF EACH TYPE OF ARIZONA STAMP APPLIED DURING THE  
6 REPORTING PERIOD.

7           D. THE DEPARTMENT MAY ADOPT RULES REQUIRING ADDITIONAL INFORMATION IN  
8 THE MONTHLY REPORTS AS NECESSARY FOR THE PURPOSES OF ENFORCING THIS ARTICLE.

9           E. A CIGARETTE RETAILER SHALL REPORT TO THE DEPARTMENT EACH SALE OR  
10 DISTRIBUTION OF MORE THAN ONE THOUSAND CIGARETTES TO ANY PERSON IN ANY SINGLE  
11 TRANSACTION. THE REPORT SHALL INCLUDE ALL OF THE FOLLOWING:

12           1. THE NAME, ADDRESS, STREET ADDRESS OF THE DESTINATION, VEHICLE  
13 LICENSE NUMBER, DRIVER LICENSE NUMBER AND SIGNATURE OF THE PERSON RECEIVING  
14 THE CIGARETTES AND THE NAME OF THE PURCHASER.

15           2. A DECLARATION OF THE SPECIFIC PURPOSE OF THE RECEIPT OF CIGARETTES  
16 THAT INDICATES WHETHER THE CIGARETTES ARE FOR PERSONAL USE, RESALE OR  
17 DELIVERY TO ANOTHER PERSON.

18           3. A DECLARATION OF THE NAME AND ADDRESS OF THE RECIPIENT'S PRINCIPAL  
19 IF THE RECIPIENT IS ACTING AS AGENT.

20           F. A CIGARETTE RETAILER SHALL NOT KNOWINGLY SELL MORE THAN ONE  
21 THOUSAND CIGARETTES TO ANY PERSON IN ANY SERIES OF TRANSACTIONS IN ANY TWO  
22 DAY PERIOD WITHOUT FILING A REPORT AS REQUIRED BY SUBSECTION E, PARAGRAPH 1  
23 OF THIS SECTION.

24           G. PUBLIC ACCESS TO REPORTS SUBMITTED BY LICENSEES SHALL BE ALLOWED  
25 PURSUANT TO TITLE 39, CHAPTER 1, ARTICLE 2, EXCEPT THAT INFORMATION ABOUT  
26 QUANTITIES OF CIGARETTES BY BRAND SHALL NOT BE RELEASED TO ANYONE EXCEPT  
27 INDIVIDUALS WHO ARE AUTHORIZED UNDER SECTION 42-3212, SUBSECTION D.

28           Sec. 22. Title 42, chapter 3, article 5, Arizona Revised Statutes, is  
29 amended by adding sections 42-3212 and 42-3213, to read:

30           42-3212. Records

31           A. EXCEPT FOR RETAIL TRANSACTIONS WITH CONSUMERS, EACH CIGARETTE  
32 MANUFACTURER, CIGARETTE IMPORTER, CIGARETTE DISTRIBUTOR AND CIGARETTE  
33 RETAILER SHALL MAINTAIN COPIES OF INVOICES OR EQUIVALENT DOCUMENTATION FOR  
34 EACH FACILITY AND FOR EACH TRANSACTION THAT INVOLVES THE SALE, PURCHASE,  
35 TRANSFER, CONSIGNMENT OR RECEIPT OF CIGARETTES. THE INVOICES OR  
36 DOCUMENTATION SHALL INDICATE THE NAME AND ADDRESS OF THE OTHER PARTY AND THE  
37 QUANTITY BY BRAND STYLE OF THE CIGARETTES INVOLVED IN THE TRANSACTION.

38           B. RECORDS REQUIRED UNDER THIS SECTION SHALL BE PRESERVED ON THE  
39 PREMISES DESCRIBED IN THE RELEVANT LICENSE IN A MANNER AS TO ENSURE  
40 PERMANENCY AND ACCESSIBILITY FOR INSPECTION AT REASONABLE HOURS BY AUTHORIZED  
41 PERSONNEL OF THE DEPARTMENT. WITH THE DEPARTMENT'S PERMISSION, PERSONS WITH  
42 MULTIPLE PLACES OF BUSINESS MAY RETAIN CENTRALIZED RECORDS, BUT SHALL  
43 TRANSMIT DUPLICATES OF THE INVOICES OR THE EQUIVALENT DOCUMENTATION TO EACH  
44 PLACE OF BUSINESS WITHIN TWENTY-FOUR HOURS AFTER A REQUEST BY THE DEPARTMENT.

45           C. THE RECORDS REQUIRED BY THIS SECTION SHALL BE RETAINED FOR A PERIOD  
46 OF FIVE YEARS AFTER THE DATE OF THE TRANSACTION.

1 D. ON REQUEST, THE DEPARTMENT AND THE UNITED STATES SECRETARY OF THE  
2 TREASURY OR SECRETARY'S DESIGNEE SHALL HAVE ACCESS TO RECORDS REQUIRED UNDER  
3 THIS SECTION AND REPORTS REQUIRED UNDER SECTION 42-3211. THE DEPARTMENT AT  
4 ITS SOLE DISCRETION MAY SHARE THE RECORDS AND REPORTS REQUIRED BY THIS  
5 CHAPTER WITH OTHER LAW ENFORCEMENT OFFICIALS OF THE FEDERAL GOVERNMENT OR  
6 OTHER STATES.

7 42-3213. Inspections; facilities; vehicles

8 A. DURING NORMAL BUSINESS HOURS AND WITHOUT A WARRANT, THE DEPARTMENT  
9 OR THE DEPARTMENT'S AUTHORIZED AGENT MAY ENTER AND INSPECT THE FACILITIES AND  
10 RECORDS OF ANY CIGARETTE MANUFACTURER, CIGARETTE IMPORTER, CIGARETTE  
11 DISTRIBUTOR OR CIGARETTE RETAILER. DURING NONBUSINESS HOURS AND WITH A  
12 WARRANT, THE DEPARTMENT MAY ENTER AND INSPECT THE FACILITIES AND RECORDS OF  
13 ANY CIGARETTE MANUFACTURER, CIGARETTE IMPORTER, CIGARETTE DISTRIBUTOR OR  
14 CIGARETTE RETAILER.

15 B. IF THE DEPARTMENT OR THE DEPARTMENT'S AUTHORIZED AGENT OR ANY  
16 POLICE OFFICER OF THIS STATE HAS KNOWLEDGE OR REASONABLE GROUNDS TO BELIEVE  
17 THAT ANY VEHICLE IS TRANSPORTING CIGARETTES IN VIOLATION OF THIS CHAPTER, THE  
18 DEPARTMENT, AUTHORIZED AGENT OR POLICE OFFICER MAY STOP THE VEHICLE AND  
19 INSPECT THE VEHICLE FOR CONTRABAND CIGARETTES.

20 Sec. 23. Section 42-3221, Arizona Revised Statutes, is amended to  
21 read:

22 42-3221. Definitions

23 In this article, unless the context otherwise requires:

24 1. "Adult" means an individual who is at least the legal minimum  
25 purchase age.

26 2. "Consumer" means a person who is not a licensed distributor,  
27 CIGARETTE DISTRIBUTOR OR CIGARETTE RETAILER pursuant to section 42-3201  
28 selling or offering tobacco products for sale ~~or a retailer of tobacco~~  
29 ~~products who is not a licensed distributor pursuant to section 42-3201.~~  
30 Consumer does not include ~~a~~ AN INDIAN tribe, an enterprise owned by a tribe,  
31 a tribal member or an entity owned by a tribal member that purchases tobacco  
32 products in connection with a delivery sale for resale on the tribe's or  
33 tribal member's reservation to the ultimate user of the tobacco products.

34 3. "Delivery sale" means any sale of tobacco products to a consumer in  
35 this state in which either:

36 (a) The consumer submits the order for the sale by means of telephonic  
37 or other voice transmission, mail, a delivery service or the internet or  
38 other on-line service.

39 (b) The tobacco products are delivered by use of mail or a delivery  
40 service.

41 4. "Delivery service" means any person that is engaged in the  
42 commercial delivery of letters, packages or other containers.

43 5. "Legal minimum purchase age" means the minimum age at which an  
44 individual may legally purchase tobacco products in this state.

45 6. "Mail" or "mailing" means the shipment of tobacco products through  
46 the United States postal service.

1           7. "Retailer" means any person who is not a licensed distributor that  
2 comes into possession of tobacco products subject to tax under this chapter  
3 for the purposes of selling the tobacco products to consumers.

4           8. "Shipping container" means a container in which tobacco products  
5 are shipped in connection with a delivery sale.

6           9. "Shipping document" means a bill of lading, airbill, United States  
7 postal service form or any other document used to evidence the undertaking by  
8 a delivery service to deliver letters, packages or other containers.

9           10. "Tobacco products" means all luxuries included in section 42-3052,  
10 paragraph 5, all luxuries included in section 42-3052, paragraph 6 and all  
11 luxuries included in section 42-3052, paragraph 7. Tobacco products does not  
12 include pipe tobacco or cigars.

13           Sec. 24. Section 42-3222, Arizona Revised Statutes, is amended to  
14 read:

15           42-3222. Delivery sales

16           A. A sale of tobacco products that constitutes a delivery sale  
17 pursuant to section 42-3221 is a delivery sale regardless of whether the  
18 person accepting the order for the delivery sale is located in or outside  
19 this state.

20           B. A sale of tobacco products is not a sale to a consumer for the  
21 purposes of this article if ~~the person is licensed as a distributor by the~~  
22 ~~department or if~~ the sale is to ~~a~~ AN INDIAN tribe, an enterprise owned by a  
23 tribe, a tribal member or an entity owned by a tribal member that purchases  
24 the tobacco products for resale on the tribe's or tribal member's reservation  
25 to the ultimate user of the tobacco products. If a person is a distributor,  
26 CIGARETTE DISTRIBUTOR OR CIGARETTE RETAILER, as defined in section 42-3001,  
27 the person shall obtain a distributor's, CIGARETTE DISTRIBUTOR'S OR CIGARETTE  
28 RETAILER'S license from the department before submitting an order for a  
29 delivery sale.

30           C. A person shall not make a delivery sale of tobacco products to any  
31 individual who is not an adult.

32           D. Each person accepting an order for a delivery sale shall comply  
33 with each of the following:

34           1. The age verification requirements set forth in section 42-3223.

35           2. The disclosure requirements set forth in section 42-3224.

36           3. The shipping requirements set forth in section 42-3225.

37           4. The registration and reporting requirements set forth in section  
38 42-3226.

39           5. The tax collection requirements set forth in section 42-3227.

40           6. THE ESCROW PAYMENT REQUIREMENTS SET FORTH IN TITLE 44, CHAPTER 27.

41           ~~6-~~ 7. The licensing and tax stamp requirements set forth in ~~title 42,~~  
42 ~~chapter 3,~~ article 5 OF THIS CHAPTER that apply to sales of tobacco products  
43 that occur entirely in this state.

44           ~~7-~~ 8. All laws of this state generally applicable to sales of tobacco  
45 products that occur entirely in this state imposing excise taxes and  
46 transaction privilege taxes.



1           Sec. 27. Section 42-3304, Arizona Revised Statutes, is amended to  
2 read:

3           42-3304. Exemptions

4           A. The tax levied by this article does not apply to cigarettes,  
5 cigars, smoking tobacco, plug tobacco, snuff and other forms of tobacco:

6           1. For which the taxes imposed by article 6 of this chapter have been  
7 paid.

8           2. That are sold by an Indian tribe, or by a federally licensed Indian  
9 trader, on an Indian reservation to Indians who are enrolled members of the  
10 Indian tribe for whose benefit the Indian reservation was established.

11           3. THAT ARE EXEMPT FROM TAX UNDER 26 UNITED STATES CODE SECTION 5701  
12 AND THAT ARE DISTRIBUTED ACCORDING TO FEDERAL REGULATIONS.

13           B. The department shall adopt rules prescribing the procedures for  
14 claiming and verifying sales that are exempt under this section.

15           Sec. 28. Section 42-3305, Arizona Revised Statutes, is amended to  
16 read:

17           42-3305. Enforcement; penalty for failure to precollect and  
18 remit tax; violation; classification

19           A. If the distributor OR CIGARETTE DISTRIBUTOR fails to precollect or  
20 remit the tax imposed by this article when due, the distributor OR CIGARETTE  
21 DISTRIBUTOR is subject to a civil penalty equal to FIVE TIMES the amount of  
22 taxes that should have been precollected or remitted but was not.

23           B. A distributor, A CIGARETTE DISTRIBUTOR or any person who ships,  
24 transports, sells or distributes cigarettes, cigars, smoking tobacco, plug  
25 tobacco, snuff and other forms of tobacco on which the tax required by this  
26 article has not been paid is guilty of a class 3 misdemeanor.

27           Sec. 29. Requirements for enactment; two-thirds vote

28           Pursuant to article IX, section 22, Constitution of Arizona, this act  
29 is effective only on the affirmative vote of at least two-thirds of the  
30 members of each house of the legislature and is effective immediately on the  
31 signature of the governor or, if the governor vetoes this act, on the  
32 subsequent affirmative vote of at least three-fourths of the members of each  
33 house of the legislature.