

State of Arizona  
Senate  
Fifty-second Legislature  
First Regular Session  
2015

# SENATE BILL 1240

## AN ACT

AMENDING SECTIONS 13-3711, 36-798.06, 41-2170.05, 42-1102, 42-1124, 42-1125, 42-1127, 42-2003, 42-3001 AND 42-3006, ARIZONA REVISED STATUTES; REPEALING SECTION 42-3007, ARIZONA REVISED STATUTES; AMENDING SECTIONS 42-3008 AND 42-3010, ARIZONA REVISED STATUTES; AMENDING TITLE 42, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLES 10, 11 AND 12; PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING SECTIONS 42-3253, 42-3303, 42-3303.01 AND 42-3306, ARIZONA REVISED STATUTES; AMENDING SECTION 42-3401, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 42, CHAPTER 3, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-3402; AMENDING SECTIONS 42-3403, 42-3404 AND 42-3405, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 42, CHAPTER 3, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-3406; AMENDING SECTIONS 42-3451, 42-3452 AND 42-3453, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 42, CHAPTER 3, ARTICLE 11, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-3454; AMENDING SECTIONS 42-3455, 42-3456, 42-3457, 42-3458, 42-3459, 42-3460, 42-3461, 42-3462 AND 42-3501, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 42, CHAPTER 3, ARTICLE 12, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 42-3502 AND 42-3503; RELATING TO TOBACCO TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3711, Arizona Revised Statutes, is amended to  
3 read:

4 13-3711. Unlawful commercial use of cigarette machines; civil  
5 penalties; forfeiture; classification

6 A. It is unlawful to possess, use or make available for use for  
7 commercial purposes a tobacco product rolling vending machine. A tobacco  
8 product rolling vending machine located in a nonresidential premises is  
9 presumed to be possessed, used or available for use for commercial purposes  
10 unless the machine is for sale. This subsection does not apply to:

11 1. A tobacco product rolling vending machine that is to be used  
12 exclusively for the owner's personal consumption or use if the machine is not  
13 located on a retail or other business premises.

14 2. Tobacco product manufacturers who have obtained a current federal  
15 manufacturer of tobacco products permit issued by the federal alcohol and  
16 tobacco tax and trade bureau to operate as a tobacco product manufacturer.

17 B. The department of revenue is authorized to seize the machine and  
18 all related tubes, papers, tobacco products and materials, which shall be  
19 forfeited to this state following the process prescribed in section 42-1124.  
20 All forfeited tobacco products shall also be destroyed pursuant to section  
21 42-1124 and deemed contraband under section ~~42-3201, subsection K~~ 42-3402.

22 C. A person who knowingly violates this section is guilty of a class 3  
23 misdemeanor and is also subject to the following:

24 1. The revocation or termination of a license issued pursuant to  
25 section ~~42-3201~~ 42-3401.

26 2. A civil penalty not to exceed fifty thousand dollars for each  
27 violation.

28 3. An injunction to restrain a threatened or actual violation of this  
29 section.

30 4. Recovery by this state for the costs of enforcing this section or  
31 of any action or proceeding pertaining to a violation of this section,  
32 including the costs of investigation and reasonable attorney fees in the  
33 trial and appellate courts. Payments shall be deposited into the state  
34 general fund.

35 Sec. 2. Section 36-798.06, Arizona Revised Statutes, is amended to  
36 read:

37 36-798.06. Delivery sales prohibited; common carriers; civil  
38 penalty; forfeiture; unlawful practice;  
39 exceptions; violation; classification; definitions

40 A. A person shall not do either of the following:

41 1. Cause a tobacco product to be ordered or purchased by anyone other  
42 than a licensed person or a retailer who orders or purchases from a licensed  
43 person, including by ordering or purchasing a tobacco product.

44 2. Knowingly provide substantial assistance to a person who violates  
45 this section.

- 1           B. A common carrier shall not knowingly transport a tobacco product  
2 for a person who is in violation of this section.
- 3           C. Each order or purchase of a tobacco product in violation of  
4 subsection A, paragraph 1 of this section constitutes a separate violation  
5 under this section.
- 6           D. In addition to any other penalty, a person who violates this  
7 section is subject to all of the following:
- 8           1. A civil penalty in an amount not to exceed five thousand dollars  
9 for each violation.
- 10          2. An injunction to restrain a threatened or actual violation of this  
11 section.
- 12          3. Recovery by this state for:
- 13           (a) The costs of any investigation related to a violation of this  
14 section.
- 15           (b) The cost of expert witness fees in any action related to a  
16 violation of this section.
- 17           (c) The cost of the action related to a violation of this section.
- 18           (d) Reasonable attorney fees.
- 19          4. All state tobacco taxes due under title 42, chapter 3 and all  
20 transaction privilege or use taxes due under title 42, chapter 5, including  
21 any penalties and interest.
- 22          E. All tobacco products that are seized for a violation of this  
23 section shall be forfeited to the state and destroyed pursuant to section  
24 42-1124.
- 25          F. A violation of this section is an unlawful practice under section  
26 44-1522 and is in addition to all other causes of action, remedies and  
27 penalties that are available to this state. The attorney general may  
28 investigate and take appropriate action pursuant to title 44, chapter 10,  
29 article 7.
- 30          G. This section does not apply to either of the following:
- 31           1. The shipment of a tobacco product to a foreign trade zone that is  
32 established under 19 United States Code section 81 and title 44, chapter 18  
33 and that is located in this state if the tobacco product is from outside of  
34 this country, was ordered by a distributor in another state and is not  
35 distributed in this state.
- 36           2. A government employee who is acting in the course of the employee's  
37 official duties.
- 38          H. A person who violates this section is guilty of a class 6 felony.
- 39          I. For the purposes of this section:
- 40           1. "Licensed person" means a person who is required to be licensed  
41 under section ~~42-320~~ 42-3401.
- 42           2. "Order or purchase" means any of the following:
- 43           (a) By mail or delivery service.
- 44           (b) Through the internet or a computer network.

1 (c) By telephone.

2 (d) Through any other electronic method.

3 3. "Person" means an individual, partnership, firm, association,  
4 corporation, limited liability company or partnership, joint venture or other  
5 entity.

6 4. "Retailer" has the same meaning prescribed in section 42-5001.

7 5. "Tobacco product" means all luxuries included in section 42-3052,  
8 paragraphs 5, 6 and 7. Tobacco product does not include pipe tobacco or  
9 cigars.

10 Sec. 3. Section 41-2170.05, Arizona Revised Statutes, is amended to  
11 read:

12 41-2170.05. Implementation; rule making; inspection of  
13 cigarettes; definitions

14 A. The state fire marshal shall implement this article pursuant to the  
15 implementation and substance of the New York fire safety standards for  
16 cigarettes in section 156-c of the New York executive law and part 429 of  
17 title 19 of the New York Code of Rules and Regulations.

18 B. The state fire marshal may adopt rules to enforce this article.

19 C. As authorized pursuant to section 42-3151, the department of  
20 revenue in the regular course of conducting inspections of **cigarette**  
21 distributors and retailers may inspect cigarettes to determine if the  
22 cigarettes are marked as required by section 41-2170.03. If the cigarettes  
23 are not marked as required, the department of revenue shall notify the state  
24 fire marshal.

25 D. An agent of the department of revenue who is also a law enforcement  
26 agent or investigator may conduct inspections pursuant to section 41-2170.04,  
27 subsection G.

28 E. This section applies beginning August 1, 2009.

29 F. For the purpose of this section, "cigarette", "**cigarette**  
30 distributor" and "retailer" have the same meanings prescribed in section  
31 42-3001.

32 Sec. 4. Section 42-1102, Arizona Revised Statutes, is amended to read:

33 42-1102. Taxpayer bonds; definition

34 A. If the department deems it necessary to protect the revenues to be  
35 collected under this title and title 43, it may require a person liable for  
36 the tax to file a bond to secure the payment of the tax, penalty or interest  
37 which may become due from that person. The bond shall be:

38 1. Issued by a surety company authorized to transact business in this  
39 state and approved by the director of insurance of this state as to solvency  
40 and responsibility or composed of securities or cash that are deposited with,  
41 and kept in the custody of, the department.

42 2. Except as otherwise provided in this section, in the amount which  
43 the department prescribes by administrative rule to secure the payment of any  
44 tax, penalty or interest which may become due from the person.

1 B. For the purposes of licenses to sell tobacco products issued under  
2 section ~~42-3201~~ 42-3401, the amount of the bond required under this section  
3 is the greater of five hundred dollars or four times the average monthly tax  
4 liability. For the purposes of determining the bond amount, the average  
5 monthly tax liability is equal to the average monthly tax due from the  
6 applicant for the preceding six consecutive months. If an applicant does not  
7 have a six-month payment history, the bond amount is a minimum of five  
8 hundred dollars. If an applicant provides a surety bond and the bond lapses,  
9 the applicant shall deposit with the department cash or other security in an  
10 amount equal to the lapsed surety bond within five business days after the  
11 applicant's receipt of written notification by the department. The bond  
12 amount may be increased or decreased as necessary based on any reason listed  
13 in subsection D of this section or a change in the applicant's previous  
14 filing period, filing compliance record or payment history. If the bond  
15 amount is increased above the amount computed under this subsection, the  
16 applicant may request a hearing pursuant to subsection C of this section to  
17 show why the order increasing the bond amount is in error.

18 C. If the department determines that a person is to file such a bond  
19 it shall notify him to that effect, specifying the amount of the bond  
20 required. The person shall file the bond within five days after the giving  
21 of notice unless within that time he requests in writing a hearing before the  
22 department at which time the department shall determine the necessity,  
23 propriety and amount of the bond. The determination is final unless within  
24 fifteen days after the giving of notice of the determination the person  
25 appeals the determination to the state board of tax appeals. The board shall  
26 decide on the appeal within fifteen days of its receipt. The bond, at any  
27 time without notice, may be applied to any tax, penalties or interest due,  
28 and for that purpose the securities may be sold at public or private sale  
29 without notice to the depositor.

30 D. For purposes of this section a bond may be required if:

31 1. After investigation of financial status, the department determines  
32 that an applicant for a new license would be unable to timely remit amounts  
33 due.

34 2. An applicant for a new license held a license for a prior business,  
35 and the remittance record for the prior business falls within one of the  
36 conditions in paragraph 5.

37 3. The department experienced collection problems while the applicant  
38 was engaged in business under a prior license.

39 4. The applicant is substantially similar to a person who would have  
40 been required to post a bond under paragraph 5 of this subsection or the  
41 person had a previous license that was revoked. An applicant is  
42 substantially similar if it is owned or controlled by persons who owned or  
43 controlled a previous licensee.

44 5. An existing licensee has had two or more delinquencies in remitting  
45 tax during the preceding twenty-four months if filing on a quarterly or less

1 frequent basis or four or more delinquencies during the preceding twenty-four  
2 months if filing on a monthly or more frequent basis.

3 E. If a licensee who is required to post a bond or security maintains  
4 a good filing and payment record for a period of two years, the licensee may  
5 request that the department waive the continued bond or security requirement.

6 F. In this section "person" includes a firm, partnership, joint  
7 venture, association, corporation, sole proprietorship or any other business  
8 or governmental entity subject to a tax administered by this article but does  
9 not include an individual subject to individual income tax.

10 Sec. 5. Section 42-1124, Arizona Revised Statutes, is amended to read:

11 42-1124. Failure to affix stamps or pay or account for tax;  
12 forfeiture of commodity; sale of forfeited  
13 commodity; effect of seizure and sale; request for  
14 administrative hearing; definitions

15 A. If the department or its authorized agents or representatives  
16 discover any luxury subject to tax under chapter 3 of this title to which  
17 official stamps have not been affixed as required or on which the tax has not  
18 been paid or accounted for, the department or its agent or representative may  
19 seize and take possession of the luxury, and it is deemed forfeited to this  
20 state. Except as provided in subsection D or E of this section, the  
21 department, ~~shall~~ within a reasonable time thereafter, pursuant to a notice  
22 posted on the premises or by publication in a newspaper of general  
23 circulation in the county where the sale is to take place, not fewer than  
24 five days before the date of sale, **SHALL** offer for sale and sell the  
25 forfeited luxuries. The department shall pay the proceeds of the sale into  
26 the state general fund. The sale shall take place in the county which is  
27 most convenient and economical. The department need not offer any property  
28 for sale if, in its opinion, the probable cost of sale exceeds the value of  
29 the property.

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

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

35 D. All cigarettes that are seized for violations under this title  
36 shall be forfeited to this state. All cigarettes that are forfeited to this  
37 state pursuant to section 13-3711, 36-798.06 or ~~42-3210~~ 42-3461 or section  
38 44-7111, section 6(b) shall be destroyed. If a ~~cigarette~~ distributor  
39 defrauds this state by knowingly and intentionally failing to keep or make  
40 any record, return, report or inventory pertaining to cigarettes, by refusing  
41 to pay any luxury tax for cigarettes subject to tax under chapter 3 of this  
42 title or by attempting to evade or defeat any requirement of this title, the  
43 ~~cigarette~~ distributor shall forfeit to this state all fixtures, equipment and  
44 all other materials and personal property that are located on the premises of  
45 the ~~cigarette~~ distributor. Alternatively, at the request of the department,

1 the ~~cigarette~~ distributor may be enjoined by an action commenced by the  
2 attorney general or a county attorney in the name of the state from engaging  
3 or continuing in any business for which a tax is imposed by this chapter  
4 until the tax has been paid and until such person has complied with this  
5 title.

6 E. The department may sell or otherwise dispose of any cigarettes  
7 forfeited to this state on such conditions as it deems most advantageous and  
8 just under the circumstances, unless such cigarettes are forfeited pursuant  
9 to section 13-3711, 36-798.06 or ~~42-3210~~ 42-3461 or section 44-7111, section  
10 6(b). The department shall deposit the proceeds of any sales made pursuant  
11 to this subsection in the state general fund.

12 F. The department shall give notice of the seizure and forfeiture of  
13 cigarettes described in this section by personal service or by certified mail  
14 to all persons known by the department to have any right, title or interest  
15 in the property. Notice shall include a description of the cigarettes  
16 seized, the reason for the seizure and the time and place of the seizure.  
17 The following apply to the notice under this subsection:

18 1. Except as provided in paragraph 2 of this subsection, the  
19 department shall post and maintain an ~~on-line~~ ONLINE notice of seizure and  
20 forfeiture on its ~~web-site~~ WEBSITE for a period of at least six months,  
21 beginning no later than ten business days after the date of the personal  
22 service of the notice to a person or the date of the mailing of the notice.  
23 The ~~on-line~~ ONLINE notice shall display the date on which the department  
24 posts the notice to the ~~web-site~~ WEBSITE, which shall serve as the date of  
25 publication of the notice.

26 2. An ~~on-line~~ ONLINE notice is not required if the amount of  
27 cigarettes seized is less than sixty-one cartons of two hundred cigarettes  
28 each.

29 G. Any person whose legal rights, duties or privileges are determined  
30 by the notice of seizure and forfeiture may file a request for an  
31 administrative hearing with the department on a form prescribed by the  
32 department. The request for an administrative hearing shall contain a  
33 statement of the petitioner's interest in the cigarettes and an explanation  
34 of why the release or recovery of the cigarettes is warranted on the ground  
35 that the cigarettes were erroneously or illegally seized.

36 H. The seizure and forfeiture of cigarettes or other tobacco products  
37 by the department is an appealable agency action as defined in section  
38 41-1092 and is governed by title 41, chapter 6, article 10 and section  
39 42-1251, except that:

40 1. A request for an administrative hearing that is filed under  
41 subsection G of this section is deemed to be timely filed if the request is  
42 filed with the department within ten days after the date of personal service  
43 on the petitioner or the date of mailing the notice to the petitioner. Any  
44 person not served personally or by mail shall file the request within ten  
45 days after the date of publication of the notice. The failure of a person to

1 file a timely request constitutes a bar to that person's right to any  
2 interest in the cigarettes or other tobacco products, except insofar as the  
3 rights of that person may be established in an action filed by the department  
4 under this chapter.

5 2. If a request for an administrative hearing is not filed with the  
6 department at the expiration of ten days after the notice has been personally  
7 served, mailed or published, the department's determination is final. If a  
8 timely request for an administrative hearing has been filed with the  
9 department, the department shall request a hearing by the office of  
10 administrative hearings and the department shall suspend action until the  
11 final order of the department has been issued. An order that is issued by  
12 the office of administrative hearings shall be the final order of the  
13 department thirty days after the petitioner receives the decision unless a  
14 decision by the director is issued pursuant to section 42-1251. If the  
15 director issues a decision, that decision is the final order of the  
16 department.

17 I. For the purposes of this section, "cigarette" and "~~cigarette~~  
18 distributor" have the same meanings prescribed in section 42-3001.

19 Sec. 6. Section 42-1125, Arizona Revised Statutes, is amended to read:

20 42-1125. Civil penalties; definition

21 A. If a taxpayer fails to make and file a return for a tax  
22 administered pursuant to this article on or before the due date of the return  
23 or the due date as extended by the department, unless it is shown that the  
24 failure is due to reasonable cause and not due to wilful neglect, four and  
25 one-half ~~per-cent~~ PERCENT of the tax required to be shown on such return  
26 shall be added to the tax for each month or fraction of a month elapsing  
27 between the due date of the return and the date on which it is filed. The  
28 total penalty shall not exceed twenty-five ~~per-cent~~ PERCENT of the tax found  
29 to be remaining due. The penalty so added to the tax is due and payable on  
30 notice and demand from the department. For the purpose of computing the  
31 penalty imposed under this subsection, the amount required to be shown as tax  
32 on a return shall be reduced by the amount of any part of the tax which is  
33 paid on or before the beginning of such month and by the amount of any credit  
34 against the tax which may be claimed on the return. If the amount required  
35 to be shown as tax on a return is less than the amount shown as tax on such  
36 return, the penalty described in this subsection shall be applied by  
37 substituting such lower amount.

38 B. If a taxpayer fails or refuses to file a return on notice and  
39 demand by the department, the taxpayer shall pay a penalty of twenty-five ~~per~~  
40 ~~cent~~ PERCENT of the tax, which is due and payable on notice and demand by the  
41 department, in addition to any penalty prescribed by subsection A of this  
42 section, unless it is shown that the failure is due to reasonable cause and  
43 not due to wilful neglect. This penalty is payable on notice and demand from  
44 the department.

1 C. If a taxpayer fails or refuses to furnish any information requested  
2 in writing by the department, the department may add a penalty of twenty-five  
3 ~~per-cent~~ PERCENT of the amount of any deficiency tax assessed by the  
4 department concerning the assessment of which the information was required,  
5 unless it is shown that the failure is due to reasonable cause and not due to  
6 wilful neglect.

7 D. If a person fails to pay the amount shown as tax on any return  
8 within the time prescribed, a penalty of one-half of one ~~per-cent~~ PERCENT,  
9 not to exceed a total of ten ~~per-cent~~ PERCENT, shall be added to the amount  
10 shown as tax for each month or fraction of a month during which the failure  
11 continues, unless it is shown that the failure is due to reasonable cause and  
12 not due to wilful neglect. If the department determines that the person's  
13 failure to pay was due to reasonable cause and not due to wilful neglect and  
14 that a payment agreement pursuant to section 42-2057 is appropriate, the  
15 department shall not impose the penalty unless the taxpayer fails to comply  
16 with the payment agreement. If the taxpayer is also subject to a penalty  
17 under subsection A of this section for the same tax period, the total  
18 penalties under subsection A of this section and this subsection shall not  
19 exceed twenty-five ~~per-cent~~ PERCENT. For the purpose of computing the  
20 penalty imposed under this subsection:

21 1. The amount shown as tax on a return shall be reduced by the amount  
22 of any part of the tax that is paid on or before the beginning of that month  
23 and by the amount of any credit against the tax that may be claimed on the  
24 return.

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

28 E. If a person fails to pay any amount required to be shown on any  
29 return that is not so shown within twenty-one calendar days after the date of  
30 notice and demand, a penalty of one-half of one ~~per-cent~~ PERCENT, not to  
31 exceed a total of ten ~~per-cent~~ PERCENT, shall be added to the amount of tax  
32 for each month or fraction of a month during which the failure continues,  
33 unless it is shown that the failure is due to reasonable cause and not due to  
34 wilful neglect. If the taxpayer is also subject to penalty under subsection  
35 A of this section for the same tax period, the total penalties under  
36 subsection A of this section and this subsection shall not exceed twenty-five  
37 ~~per-cent~~ PERCENT. For the purpose of computing the penalty imposed under  
38 this subsection, any amount required to be shown on any return shall be  
39 reduced by the amount of any part of the tax that is paid on or before the  
40 beginning of that month and by the amount of any credit against the tax that  
41 may be claimed on the return.

42 F. In the case of a deficiency, for which a determination is made of  
43 an additional amount due, which is due to negligence but without intent to  
44 defraud, the person shall pay a penalty of ten ~~per-cent~~ PERCENT of the amount  
45 of the deficiency.

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

5 H. If the amount, whether determined by the department or the  
6 taxpayer, required to be withheld by the employer pursuant to title 43,  
7 chapter 4 is not paid to the department on or before the date prescribed for  
8 its remittance, the department may add a penalty of twenty-five ~~per cent~~  
9 PERCENT of the amount required to be withheld and paid, unless it is shown  
10 that the failure is due to reasonable cause and not due to wilful neglect.

11 I. A person who, with or without intent to evade any requirement of  
12 this article or any lawful administrative rule of the department of revenue  
13 under this article, fails to file a return or to supply information required  
14 under this article or who, with or without such intent, makes, prepares,  
15 renders, signs or verifies a false or fraudulent return or statement or  
16 supplies false or fraudulent information shall pay a penalty of not more than  
17 one thousand dollars. This penalty shall be recovered by the department of  
18 law in the name of this state by an action in any court of competent  
19 jurisdiction.

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

24 K. If any person who is required to file or provide an information  
25 return under this title or title 43 or who is required to file or provide a  
26 return or report under chapter 3 of this title fails to file the return or  
27 report at the prescribed time or in the manner required, or files a return or  
28 report that fails to show the information required, that person shall pay a  
29 penalty of one hundred dollars for each month or fraction of a month during  
30 which the failure continues unless it is shown that the failure is due to  
31 reasonable cause and not due to wilful neglect. The total penalties for each  
32 return or report under this subsection shall not exceed five hundred dollars.

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

38 M. A person who is required under section 43-413 to furnish a  
39 statement to an employee and who wilfully furnishes a false or fraudulent  
40 statement, or who wilfully fails to furnish a statement required by section  
41 43-413, is for each such failure subject to a penalty of fifty dollars.

42 N. A person who is required to collect or truthfully account for and  
43 pay a tax administered pursuant to this article, including any luxury  
44 privilege tax, and who wilfully fails to collect the tax or truthfully  
45 account for and pay the tax, or wilfully attempts in any manner to evade or

1 defeat the tax or its payment, is, in addition to other penalties provided by  
2 law, liable for a penalty equal to the total amount of the tax evaded, not  
3 collected or not accounted for and paid. Except as provided in subsections  
4 U, V and W of this section, no other penalty under this section relating to  
5 failure to pay tax may be imposed for any offense to which this subsection  
6 applies.

7 0. For reporting periods beginning from and after February 28, 2011,  
8 if a taxpayer who is required under section 42-1129 to make payment by  
9 electronic funds transfer fails to do so, that taxpayer shall pay a penalty  
10 of five ~~per-cent~~ PERCENT of the amount of the payment not made by electronic  
11 funds transfer unless it is shown that the failure is due to reasonable cause  
12 and not due to wilful neglect. For the reporting periods beginning on July  
13 1, 2015, the penalty in this subsection applies to any taxpayer who is  
14 required under section 42-3053 to make payment by electronic funds transfer  
15 and fails to do so unless it is shown that the failure is due to reasonable  
16 cause and not due to wilful neglect.

17 P. Unless due to reasonable cause and not to wilful neglect:

18 1. A person who fails to provide that person's taxpayer identification  
19 number in any return, statement or other document as required by section  
20 42-1105, subsection A shall pay a penalty of five dollars for each such  
21 failure.

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

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

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

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

39 R. Beginning January 1, 2015, if a taxpayer continues in business  
40 without timely renewing a municipal privilege tax license as prescribed in  
41 section 42-5005, subsection D, a civil penalty of up to twenty-five dollars  
42 shall be added to the renewal fee for each jurisdiction.

43 S. The department of law, with the consent of the department of  
44 revenue, may compromise any penalty for which it may bring an action under  
45 this section.

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

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

5 2. The amended return was filed on demand or request by the  
6 department.

7 3. The total additional tax paid and due for the tax period represents  
8 a substantial understatement of tax liability. For the purposes of this  
9 paragraph, there is a substantial understatement of tax for any tax period if  
10 the amount of the understatement for the tax period exceeds the greater of  
11 ten ~~per-cent~~ PERCENT of the actual tax liability for the tax period or two  
12 thousand dollars.

13 U. In addition to other penalties provided by law, a person who  
14 knowingly and intentionally does not comply with any requirement under  
15 chapter 3, ~~article 5~~ of this title relating to cigarettes shall pay a penalty  
16 of one thousand dollars. A person who knowingly and intentionally does not  
17 pay any luxury tax that relates to cigarettes imposed by chapter 3 of this  
18 title shall pay a penalty that is equal to ten ~~per-cent~~ PERCENT of the amount  
19 of the unpaid tax.

20 V. A ~~cigarette~~ manufacturer, ~~cigarette~~ importer or ~~cigarette~~  
21 distributor, as defined in section 42-3001, who knowingly and intentionally  
22 sells or possesses cigarettes with false manufacturing labels or cigarettes  
23 with counterfeit tax stamps, or who obtains cigarettes through the use of a  
24 counterfeit license, shall pay the following penalties:

25 1. For a first violation involving two thousand or more cigarettes,  
26 one thousand dollars.

27 2. For a subsequent violation involving two thousand or more  
28 cigarettes, five thousand dollars.

29 W. The civil penalties in this section are in addition to any civil  
30 penalty under chapter 3, article ~~5- 10, 11 OR 12~~ of this title.

31 X. For the purposes of this section, and only as applied to the taxes  
32 imposed by chapter 5, articles 1 through 6 and chapter 6, articles 1, 2 and 3  
33 of this title, "reasonable cause" means a reasonable basis for the taxpayer  
34 to believe that the tax did not apply to the business activity or the  
35 storage, use or consumption of the taxpayer's tangible personal property in  
36 this state.

37 Sec. 7. Section 42-1127, Arizona Revised Statutes, is amended to read:

38 ~~42-1127.~~ Criminal violations; classifications; place of trial;  
39 definition

40 A. It is a class 4 felony to:

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

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

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

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

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

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

17           B. It is a class 5 felony to:

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

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

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

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

37           C. A ~~cigarette~~ distributor as defined in section 42-3001 who violates  
38 section ~~42-3202~~ 42-3452, subsection A, paragraph 2 is guilty of a class 1  
39 misdemeanor. If the ~~cigarette~~ distributor is convicted of a second violation  
40 of section ~~42-3202~~ 42-3452, subsection A, paragraph 2, the department may  
41 revoke the ~~cigarette~~ distributor's license issued pursuant to section ~~42-3201~~  
42 42-3401.

43           D. A distributor as defined in section 42-3001 who violates any  
44 provision of section ~~42-3201~~ 42-3401, section ~~42-3202~~ 42-3452, subsection A,  
45 paragraph 1 or section ~~42-3203~~ 42-3456 is guilty of a class 1 misdemeanor.

1 If the distributor is a licensee under section ~~42-3201~~ 42-3401 and is  
2 convicted of a second violation of section ~~42-3203~~ 42-3456, the department  
3 may revoke the distributor's license.

4 E. It is a class 3 felony for any person to:

5 1. Except as provided in section ~~42-3205~~ 42-3457, transport, in an  
6 unstamped or unlawfully stamped condition, for the purpose of sale ten  
7 thousand or more cigarettes that were subject to the tax imposed by chapter  
8 3, article 2, 6, ~~or~~ 7 OR 9 of this title.

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

12 3. Wilfully sell or offer for sale off an Indian reservation ten  
13 thousand or more cigarettes that are stamped for on-reservation sales.

14 F. For the purposes of subsection E of this section, the possession or  
15 transportation in this state at any time by any person, other than a licensed  
16 distributor, as defined in section 42-3001, of ten thousand or more  
17 cigarettes in an unstamped or unlawfully stamped condition, other than in  
18 interstate shipment consistent with ~~the~~ federal contraband cigarette  
19 trafficking ~~act of 1978 LAWS (P.L. 95-575; 92 stat. 2463;~~ 18 United States  
20 Code chapter 114), is 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  
23 OR 9 of this title.

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

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

5 K. A person who defrauds this state by violating any requirement under  
6 chapter 3 of this title, with criminal intent to evade any such requirement,  
7 is guilty of a class 4 felony and shall pay a penalty of three times the  
8 retail value of the cigarettes involved.

9 L. A person who knowingly violates any requirement under chapter 3 of  
10 this title, with the criminal intent to evade any such requirement, is guilty  
11 of a class 6 felony.

12 M. A person who knowingly sells or offers to sell off an Indian  
13 reservation more than two thousand but less than ten thousand cigarettes that  
14 are stamped for on-reservation sales, with the criminal intent to evade the  
15 tax imposed by chapter 3 of this title, is guilty of a class 5 felony.

16 N. Any distributor, as defined in section 42-3001, who sells or  
17 possesses more than two thousand cigarettes with false manufacturing labels  
18 or cigarettes with counterfeit tax stamps, with the criminal intent to evade  
19 any requirement under chapter 3 of this title, is guilty of a class 5 felony  
20 and shall pay a penalty of:

21 1. For a first violation involving two thousand or more cigarettes,  
22 two thousand dollars or three times the retail value of the cigarettes,  
23 whichever is greater.

24 2. For a subsequent violation involving two thousand or more  
25 cigarettes, fifty thousand dollars or three times the retail value of the  
26 cigarettes, whichever is greater.

27 0. For the purposes of this section, "luxury" means any article,  
28 object or device on which a tax is imposed under chapter 3 of this title.

29 Sec. 8. Section 42-2003, Arizona Revised Statutes, is amended to read:  
30 42-2003. Authorized disclosure of confidential information

31 A. Confidential information relating to:

32 1. A taxpayer may be disclosed to the taxpayer, its successor in  
33 interest or a designee of the taxpayer who is authorized in writing by the  
34 taxpayer. A principal corporate officer of a parent corporation may execute  
35 a written authorization for a controlled subsidiary.

36 2. A corporate taxpayer may be disclosed to any principal officer, any  
37 person designated by a principal officer or any person designated in a  
38 resolution by the corporate board of directors or other similar governing  
39 body.

40 3. A partnership may be disclosed to any partner of the partnership.  
41 This exception does not include disclosure of confidential information of a  
42 particular partner unless otherwise authorized.

43 4. An estate may be disclosed to the personal representative of the  
44 estate and to any heir, next of kin or beneficiary under the will of the  
45 decedent if the department finds that the heir, next of kin or beneficiary

1 has a material interest which will be affected by the confidential  
2 information.

3 5. A trust may be disclosed to the trustee or trustees, jointly or  
4 separately, and to the grantor or any beneficiary of the trust if the  
5 department finds that the grantor or beneficiary has a material interest that  
6 will be affected by the confidential information.

7 6. Any taxpayer may be disclosed if the taxpayer has waived any rights  
8 to confidentiality either in writing or on the record in any administrative  
9 or judicial proceeding.

10 7. The name and taxpayer identification numbers of persons issued  
11 direct payment permits may be publicly disclosed.

12 B. Confidential information may be disclosed to:

13 1. Any employee of the department whose official duties involve tax  
14 administration.

15 2. The office of the attorney general solely for its use in  
16 preparation for, or in an investigation that may result in, any proceeding  
17 involving tax administration before the department or any other agency or  
18 board of this state, or before any grand jury or any state or federal court.

19 3. The department of liquor licenses and control for its use in  
20 determining whether a spirituous liquor licensee has paid all transaction  
21 privilege taxes and affiliated excise taxes incurred as a result of the sale  
22 of spirituous liquor, as defined in section 4-101, at the licensed  
23 establishment and imposed on the licensed establishments by this state and  
24 its political subdivisions.

25 4. Other state tax officials whose official duties require the  
26 disclosure for proper tax administration purposes if the information is  
27 sought in connection with an investigation or any other proceeding conducted  
28 by the official. Any disclosure is limited to information of a taxpayer who  
29 is being investigated or who is a party to a proceeding conducted by the  
30 official.

31 5. The following agencies, officials and organizations, if they grant  
32 substantially similar privileges to the department for the type of  
33 information being sought, pursuant to statute and a written agreement between  
34 the department and the foreign country, agency, state, Indian tribe or  
35 organization:

36 (a) The United States internal revenue service, alcohol and tobacco  
37 tax and trade bureau of the United States treasury, United States bureau of  
38 alcohol, tobacco, firearms and explosives of the United States department of  
39 justice, United States drug enforcement agency and federal bureau of  
40 investigation.

41 (b) A state tax official of another state.

42 (c) An organization of states, federation of tax administrators or  
43 multistate tax commission that operates an information exchange for tax  
44 administration purposes.

1 (d) An agency, official or organization of a foreign country with  
2 responsibilities that are comparable to those listed in subdivision (a), (b)  
3 or (c) of this paragraph.

4 (e) An agency, official or organization of an Indian tribal government  
5 with responsibilities comparable to the responsibilities of the agencies,  
6 officials or organizations identified in subdivision (a), (b) or (c) of this  
7 paragraph.

8 6. The auditor general, in connection with any audit of the department  
9 subject to the restrictions in section 42-2002, subsection D.

10 7. Any person to the extent necessary for effective tax administration  
11 in connection with:

12 (a) The processing, storage, transmission, destruction and  
13 reproduction of the information.

14 (b) The programming, maintenance, repair, testing and procurement of  
15 equipment for purposes of tax administration.

16 (c) The collection of the taxpayer's civil liability.

17 8. The office of administrative hearings relating to taxes  
18 administered by the department pursuant to section 42-1101, but the  
19 department shall not disclose any confidential information:

20 (a) Regarding income tax or withholding tax.

21 (b) On any tax issue relating to information associated with the  
22 reporting of income tax or withholding tax.

23 9. The United States treasury inspector general for tax administration  
24 for the purpose of reporting a violation of internal revenue code section  
25 7213A (26 United States Code section 7213A), unauthorized inspection of  
26 returns or return information.

27 10. The financial management service of the United States treasury  
28 department for use in the treasury offset program.

29 11. The United States treasury department or its authorized agent for  
30 use in the state income tax levy program and in the electronic federal tax  
31 payment system.

32 12. The Arizona commerce authority for its use in:

33 (a) Qualifying renewable energy operations for the tax incentives  
34 under sections 42-12006, 43-1083.01 and 43-1164.01.

35 (b) Qualifying businesses with a qualified facility for income tax  
36 credits under sections 43-1083.03 and 43-1164.04.

37 (c) Fulfilling its annual reporting responsibility pursuant to section  
38 41-1511, subsections U and V and section 41-1512, subsections U and V.

39 (d) Certifying computer data centers for tax relief under section  
40 41-1519.

41 13. A prosecutor for purposes of section 32-1164, subsection C.

42 14. The state fire marshal for use in determining compliance with and  
43 enforcing title 41, chapter 16, article 3.1.

44 15. The department of transportation for its use in administering  
45 taxes, surcharges and penalties prescribed by title 28.

1           16. The Arizona health care cost containment system administration for  
2 its use in administering nursing facility provider assessments.

3           C. Confidential information may be disclosed in any state or federal  
4 judicial or administrative proceeding pertaining to tax administration  
5 pursuant to the following conditions:

6           1. One or more of the following circumstances must apply:

7           (a) The taxpayer is a party to the proceeding.

8           (b) The proceeding arose out of, or in connection with, determining  
9 the taxpayer's civil or criminal liability, or the collection of the  
10 taxpayer's civil liability, with respect to any tax imposed under this title  
11 or title 43.

12           (c) The treatment of an item reflected on the taxpayer's return is  
13 directly related to the resolution of an issue in the proceeding.

14           (d) Return information directly relates to a transactional  
15 relationship between a person who is a party to the proceeding and the  
16 taxpayer and directly affects the resolution of an issue in the proceeding.

17           2. Confidential information may not be disclosed under this subsection  
18 if the disclosure is prohibited by section 42-2002, subsection C or D.

19           D. Identity information may be disclosed for purposes of notifying  
20 persons entitled to tax refunds if the department is unable to locate the  
21 persons after reasonable effort.

22           E. The department, on the request of any person, shall provide the  
23 names and addresses of bingo licensees as defined in section 5-401, verify  
24 whether or not a person has a privilege license and number, a tobacco product  
25 distributor's license and number or a withholding license and number or  
26 disclose the information to be posted on the department's website or  
27 otherwise publicly accessible pursuant to section 42-1124, subsection F and  
28 section ~~42-3201, subsection A~~ 42-3401.

29           F. A department employee, in connection with the official duties  
30 relating to any audit, collection activity or civil or criminal  
31 investigation, may disclose return information to the extent that disclosure  
32 is necessary to obtain information that is not otherwise reasonably  
33 available. These official duties include the correct determination of and  
34 liability for tax, the amount to be collected or the enforcement of other  
35 state tax revenue laws.

36           G. If an organization is exempt from this state's income tax as  
37 provided in section 43-1201 for any taxable year, the name and address of the  
38 organization and the application filed by the organization on which the  
39 department made its determination for exemption together with any papers  
40 submitted in support of the application and any letter or document issued by  
41 the department concerning the application are open to public inspection.

42           H. Confidential information relating to transaction privilege tax, use  
43 tax, severance tax, jet fuel excise and use tax and any other tax collected  
44 by the department on behalf of any jurisdiction may be disclosed to any  
45 county, city or town tax official if the information relates to a taxpayer

1 who is or may be taxable by a county, city or town or who may be subject to  
2 audit by the department pursuant to section 42-6002. Any taxpayer  
3 information released by the department to the county, city or town:

4 1. May only be used for internal purposes, including audits.

5 2. May not be disclosed to the public in any manner that does not  
6 comply with confidentiality standards established by the department. The  
7 county, city or town shall agree in writing with the department that any  
8 release of confidential information that violates the confidentiality  
9 standards adopted by the department will result in the immediate suspension  
10 of any rights of the county, city or town to receive taxpayer information  
11 under this subsection.

12 I. The department may disclose statistical information gathered from  
13 confidential information if it does not disclose confidential information  
14 attributable to any one taxpayer. The department may disclose statistical  
15 information gathered from confidential information, even if it discloses  
16 confidential information attributable to a taxpayer, to:

17 1. The state treasurer in order to comply with the requirements of  
18 section 42-5029, subsection A, paragraph 3.

19 2. The joint legislative income tax credit review committee and the  
20 joint legislative budget committee staff in order to comply with the  
21 requirements of section 43-221.

22 J. The department may disclose the aggregate amounts of any tax  
23 credit, tax deduction or tax exemption enacted after January 1, 1994.  
24 Information subject to disclosure under this subsection shall not be  
25 disclosed if a taxpayer demonstrates to the department that such information  
26 would give an unfair advantage to competitors.

27 K. Except as provided in section 42-2002, subsection C, confidential  
28 information, described in section 42-2001, paragraph 1, subdivision (a), item  
29 (ii), may be disclosed to law enforcement agencies for law enforcement  
30 purposes.

31 L. The department may provide transaction privilege tax license  
32 information to property tax officials in a county for the purpose of  
33 identification and verification of the tax status of commercial property.

34 M. The department may provide transaction privilege tax, luxury tax,  
35 use tax, property tax and severance tax information to the ombudsman-citizens  
36 aide pursuant to title 41, chapter 8, article 5.

37 N. Except as provided in section 42-2002, subsection D, a court may  
38 order the department to disclose confidential information pertaining to a  
39 party to an action. An order shall be made only upon a showing of good cause  
40 and that the party seeking the information has made demand upon the taxpayer  
41 for the information.

42 O. This section does not prohibit the disclosure by the department of  
43 any information or documents submitted to the department by a bingo licensee.  
44 Before disclosing the information the department shall obtain the name and  
45 address of the person requesting the information.

1 P. If the department is required or permitted to disclose confidential  
2 information, it may charge the person or agency requesting the information  
3 for the reasonable cost of its services.

4 Q. Except as provided in section 42-2002, subsection D, the department  
5 of revenue shall release confidential information as requested by the  
6 department of economic security pursuant to section 42-1122 or 46-291.  
7 Information disclosed under this subsection is limited to the same type of  
8 information that the United States internal revenue service is authorized to  
9 disclose under section 6103(1)(6) of the internal revenue code.

10 R. Except as provided in section 42-2002, subsection D, the department  
11 of revenue shall release confidential information as requested by the courts  
12 and clerks of the court pursuant to section 42-1122.

13 S. To comply with the requirements of section 42-5031, the department  
14 may disclose to the state treasurer, to the county stadium district board of  
15 directors and to any city or town tax official that is part of the county  
16 stadium district confidential information attributable to a taxpayer's  
17 business activity conducted in the county stadium district.

18 T. The department shall release to the attorney general confidential  
19 information as requested by the attorney general for purposes of determining  
20 compliance with or enforcing any of the following:

21 1. Any public health control law relating to tobacco sales as provided  
22 under title 36, chapter 6, article 14.

23 2. Any law relating to reduced cigarette ignition propensity standards  
24 as provided under title 41, chapter 16, article 3.1.

25 3. Sections 44-7101 and 44-7111, the master settlement agreement  
26 referred to in those sections and all agreements regarding disputes under the  
27 master settlement agreement.

28 U. For proceedings before the department, the office of administrative  
29 hearings, the board of tax appeals or any state or federal court involving  
30 penalties that were assessed against a return preparer, an electronic return  
31 preparer or a payroll service company pursuant to section 42-1103.02,  
32 42-1125.01 or 43-419, confidential information may be disclosed only before  
33 the judge or administrative law judge adjudicating the proceeding, the  
34 parties to the proceeding and the parties' representatives in the proceeding  
35 prior to its introduction into evidence in the proceeding. The confidential  
36 information may be introduced as evidence in the proceeding only if the  
37 taxpayer's name, the names of any dependents listed on the return, all social  
38 security numbers, the taxpayer's address, the taxpayer's signature and any  
39 attachments containing any of the foregoing information are redacted and if  
40 either:

41 1. The treatment of an item reflected on such return is or may be  
42 related to the resolution of an issue in the proceeding.

43 2. Such return or return information relates or may relate to a  
44 transactional relationship between a person who is a party to the proceeding

1 and the taxpayer which directly affects the resolution of an issue in the  
2 proceeding.

3 3. The method of payment of the taxpayer's withholding tax liability  
4 or the method of filing the taxpayer's withholding tax return is an issue for  
5 the period.

6 V. The department and attorney general may share the information  
7 specified in subsection T of this section with any of the following:

8 1. Federal, state or local agencies for the purposes of enforcement of  
9 corresponding laws of other states.

10 2. A court, arbitrator, data clearinghouse or similar entity for the  
11 purpose of assessing compliance with or making calculations required by the  
12 master settlement agreement or agreements regarding disputes under the master  
13 settlement agreement, and with counsel for the parties or expert witnesses in  
14 any such proceeding, if the information otherwise remains confidential.

15 W. The department may provide the name and address of qualifying  
16 hospitals and qualifying health care organizations, as defined in section  
17 42-5001, to a business classified and reporting transaction privilege tax  
18 under the utilities classification.

19 X. The department may disclose to an official of any city, town or  
20 county in a current agreement or considering a prospective agreement with the  
21 department as described in section 42-5032.02, subsection F any information  
22 relating to amounts subject to distribution required by section 42-5032.02.  
23 Information disclosed by the department under this subsection:

24 1. May only be used by the city, town or county for internal purposes.

25 2. May not be disclosed to the public in any manner that does not  
26 comply with confidentiality standards established by the department. The  
27 city, town or county must agree with the department in writing that any  
28 release of confidential information that violates the confidentiality  
29 standards will result in the immediate suspension of any rights of the city,  
30 town or county to receive information under this subsection.

31 Sec. 9. Section 42-3001, Arizona Revised Statutes, is amended to read:

32 42-3001. Definitions

33 In this chapter, unless the context otherwise requires:

34 1. "Affix" and "affixed" include imprinting tax meter stamps on  
35 packages and individual containers as authorized by the department.

36 2. "Brand family" has the same meaning prescribed in section 44-7111.

37 3. "Cider" means vinous liquor that is made from the normal alcoholic  
38 fermentation of the juice of sound, ripe apples, pears or other pome fruit,  
39 including flavored, sparkling and carbonated cider and cider made from  
40 condensed apple, pear or other pome fruit must, and that contains more than  
41 one-half of one ~~per-cent~~ PERCENT of alcohol by volume but not more than seven  
42 ~~per-cent~~ PERCENT of alcohol by volume.

43 4. "Cigar" means any roll of tobacco wrapped in leaf tobacco or in any  
44 substance containing tobacco other than any roll of tobacco that is a  
45 cigarette, as defined in paragraph 5, subdivision (b) of this section.

1           5. "Cigarette" means either of the following:

2           (a) Any roll of tobacco wrapped in paper or any substance not  
3 containing tobacco.

4           (b) Any roll of tobacco wrapped in any substance containing tobacco  
5 that, because of its appearance, the type of tobacco used in the filler or  
6 its packaging and labeling, is likely to be offered to or purchased by a  
7 consumer as a cigarette described in subdivision (a) of this paragraph. This  
8 subdivision shall be interpreted consistently with the classification  
9 guidelines established by the federal alcohol and tobacco tax and trade  
10 bureau.

11           ~~6. "Cigarette distributor" means a distributor of cigarettes without~~  
12 ~~stamps affixed as required by this article who is required to be licensed~~  
13 ~~under section 42-3201. Cigarette distributor does not include a retailer or~~  
14 ~~any person who holds a permit as a cigarette manufacturer, export warehouse~~  
15 ~~proprietor or importer under 26 United States Code section 5712 if the person~~  
16 ~~sells or distributes cigarettes in this state only to licensed cigarette~~  
17 ~~distributors or to another person who holds a permit under 26 United States~~  
18 ~~Code section 5712 as an export warehouse proprietor or manufacturer.~~

19           ~~7. "Cigarette importer" means a distributor who directly or indirectly~~  
20 ~~imports into the United States a finished cigarette for sale or distribution~~  
21 ~~and who is required to be licensed under section 42-3201.~~

22           ~~8. "Cigarette manufacturer" means a distributor who manufactures,~~  
23 ~~fabricates, assembles, processes or labels a finished cigarette, including a~~  
24 ~~distributor who uses or makes available for use a tobacco product rolling~~  
25 ~~vending machine in the manufacture, fabrication, assembly or processing of~~  
26 ~~tobacco products.~~

27           ~~9.~~ 6. "Consumer" means a person in this state ~~who~~ THAT comes into  
28 possession of any luxury subject to the tax imposed by this chapter and ~~who~~  
29 THAT, on coming into possession of the luxury, is not a distributor intending  
30 to sell or distribute the luxury, retailer or wholesaler.

31           ~~10.~~ 7. "Craft distiller" means a distiller in the United States or in  
32 a territory or possession of the United States that holds a license pursuant  
33 to section 4-205.10.

34           ~~11.~~ 8. "Distributor" means any person ~~who~~ THAT manufactures, produces,  
35 ships, transports or imports into this state or in any manner acquires or  
36 possesses for the purpose of making the first sale of the following:

37           (a) Cigarettes without Arizona tax stamps affixed as required by this  
38 article.

39           (b) **ROLL-YOUR-OWN TOBACCO OR** other tobacco products on which the taxes  
40 have not been paid as required by this chapter.

41           ~~12.~~ 9. "Farm winery" has the same meaning prescribed in section 4-101.

42           ~~13.~~ 10. "First sale" means the initial sale or distribution in  
43 intrastate commerce or the initial use or consumption of cigarettes,  
44 **ROLL-YOUR-OWN TOBACCO** or other tobacco products.

1       ~~14.~~ 11. "Luxury" means any article, object or device on which a tax is  
2 imposed under this chapter.  
3       ~~15.~~ 12. "Malt liquor" means any liquid that contains more than  
4 one-half of one ~~per-cent~~ PERCENT alcohol by volume and that is made by the  
5 process of fermentation and not distillation of hops or grains, but not  
6 including:  
7       (a) Liquids made by the process of distillation of such substances.  
8       (b) Medicines that are unsuitable for beverage purposes.  
9       ~~16.~~ 13. "Master settlement agreement" has the same meaning prescribed  
10 in section 44-7101.  
11       ~~17.~~ 14. "Microbrewery" has the same meaning prescribed in section  
12 4-101.  
13       ~~18.~~ 15. "Nonparticipating manufacturer" has the same meaning  
14 prescribed in section 44-7111.  
15       16. "OTHER TOBACCO PRODUCTS" MEANS TOBACCO PRODUCTS OTHER THAN  
16 CIGARETTES AND ROLL-YOUR-OWN TOBACCO.  
17       ~~19.~~ 17. "Participating manufacturer" has the same meaning prescribed  
18 in section 44-7111.  
19       ~~20.~~ 18. "Person" means any individual, firm, partnership, joint  
20 venture, association, corporation, municipal corporation, estate, trust,  
21 club, society or other group or combination acting as a unit, and the plural  
22 as well as the singular number.  
23       ~~21.~~ 19. "Place of business" means a place where an order is received  
24 or where tobacco products are sold, distributed or transferred.  
25       ~~22.~~ 20. "Retailer" means any person that comes into possession of any  
26 luxury subject to the taxes imposed by this chapter for the purpose of  
27 selling it for consumption and not for resale.  
28       21. "ROLL-YOUR-OWN TOBACCO" MEANS ANY TOBACCO THAT, BECAUSE OF ITS  
29 APPEARANCE, TYPE, PACKAGING OR LABELING, IS SUITABLE FOR USE AND LIKELY TO BE  
30 OFFERED TO OR PURCHASED BY CONSUMERS AS TOBACCO FOR MAKING CIGARETTES. THIS  
31 PARAGRAPH SHALL BE INTERPRETED CONSISTENTLY WITH THE TERM AS USED IN SECTION  
32 44-7101. THIS PARAGRAPH SHALL BE INTERPRETED CONSISTENTLY WITH THE  
33 CLASSIFICATION GUIDELINES ESTABLISHED BY THE FEDERAL ALCOHOL AND TOBACCO TAX  
34 AND TRADE BUREAU.  
35       ~~23.~~ 22. "Spirituous liquor" means any liquid that contains more than  
36 one-half of one ~~per-cent~~ PERCENT alcohol by volume, that is produced by  
37 distillation of any fermented substance and that is used or prepared for use  
38 as a beverage. Spirituous liquor does not include medicines that are  
39 unsuitable for beverage purposes.  
40       ~~24.~~ 23. "Tobacco product manufacturer" has the same meaning prescribed  
41 in section 44-7101.  
42       ~~25.~~ 24. "Tobacco products" means all luxuries included in section  
43 42-3052, paragraphs 5 through 9.  
44       ~~26.~~ 25. "Vehicle" means a device in, on or by which a person or  
45 property is or may be transported or drawn on the roads of this state

1 regardless of the means by which it is propelled or whether it runs on a  
2 track.

3 ~~27.~~ 26. "Vinous liquor" means any liquid that contains more than  
4 one-half of one ~~per cent~~ PERCENT alcohol by volume and that is made by the  
5 process of fermentation of grapes, berries, fruits, vegetables or other  
6 substances but does not include:

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

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

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

11 ~~28.~~ 27. "Wholesaler" means a person that sells any spirituous, vinous  
12 or malt liquor taxed under this chapter to retail dealers or for the purposes  
13 of resale only.

14 Sec. 10. Section 42-3006, Arizona Revised Statutes, is amended to  
15 read:

16 42-3006. Tax stamps; general requirements

17 A. The department shall prepare and have on hand official adhesive  
18 stamps ~~of the various types~~ according to the classifications ~~set forth~~ in  
19 section 42-3052 of luxuries upon which a tax is imposed by this chapter AND  
20 FOR WHICH THE DEPARTMENT EITHER COLLECTS PAYMENT OR PREPAYMENT OF THE TAX  
21 THROUGH THE PURCHASE OF SUCH STAMPS OR REQUIRES THE AFFIXATION OF STAMPS TO  
22 INDICATE THE TAX-EXEMPT NATURE OF THE LUXURIES.

23 B. The stamps shall HAVE BOTH OF THE FOLLOWING CHARACTERISTICS:

24 1. Be of a character so that they cannot be removed when once attached  
25 to an article without destroying them.

26 ~~C. The stamps shall~~ 2. Be printed in the form and manner prescribed by  
27 the director.

28 C. ANY TAX STAMP REQUIRED UNDER THIS CHAPTER MUST BE SECURELY AFFIXED  
29 TO SOME VISIBLE PART OF THE PACKAGE OR CONTAINER AND MUST REMAIN FIRMLY  
30 ADHERED TO THE PACKAGE OR CONTAINER DURING POSSESSION BY THE CONSUMER, EXCEPT  
31 AS OTHERWISE PROVIDED.

32 ~~D. The department shall prescribe by rule or procedure the method and  
33 manner in which stamps are to be affixed to cigarettes and may provide for  
34 the cancellation of stamps.~~

35 ~~E.~~ D. Cigarette stamps shall also meet the requirements of article  
36 ~~5- 11~~ of this chapter.

37 Sec. 11. Repeal

38 Section 42-3007, Arizona Revised Statutes, is repealed.

39 Sec. 12. Section 42-3008, Arizona Revised Statutes, is amended to  
40 read:

41 42-3008. Refunds; definitions

42 A. Except as provided in subsection C of this section, the tax imposed  
43 by this chapter ~~upon~~ ON any luxury shall be refunded when the amount of the  
44 tax has been paid and when ~~either~~ ONE OF THE FOLLOWING APPLIES:



1           Sec. 14. Title 42, chapter 3, Arizona Revised Statutes, is amended by  
2 adding articles 10, 11 and 12, to read:

3           ARTICLE 10. DISTRIBUTORS AND RETAILERS OF TOBACCO PRODUCTS

4           ARTICLE 11. CIGARETTES AND ROLL-YOUR-OWN TOBACCO

5           ARTICLE 12. TOBACCO PRODUCTS OTHER THAN CIGARETTES

6           Sec. 15. Transfer and renumber

7           A. Sections 42-3201, 42-3201.02, 42-3202.02 and 42-3212, Arizona  
8 Revised Statutes, are transferred and renumbered from title 42, chapter 3,  
9 article 5, Arizona Revised Statutes, for placement in title 42, chapter 3,  
10 article 10 as sections 42-3401, 42-3403, 42-3404 and 42-3405, respectively.

11           B. Sections 42-3201.01, 42-3202, 42-3202.01, 42-3202.03, 42-3203,  
12 42-3205, 42-3206, 42-3207, 42-3209, 42-3210 and 42-3211, Arizona Revised  
13 Statutes, are transferred and renumbered from title 42, chapter 3, article 5,  
14 Arizona Revised Statutes, for placement in title 42, chapter 3, article 11 as  
15 sections 42-3451, 42-3452, 42-3453, 42-3455, 42-3456, 42-3457, 42-3458,  
16 42-3459, 42-3460, 42-3461 and 42-3462, respectively.

17           C. Section 42-3208, Arizona Revised Statutes, is transferred and  
18 renumbered from title 42, chapter 3, article 5, Arizona Revised Statutes, for  
19 placement in title 42, chapter 3, article 12 as section 42-3501.

20           Sec. 16. Heading repeal

21           The article heading of title 42, chapter 3, article 5, Arizona Revised  
22 Statutes, is repealed.

23           Sec. 17. Section 42-3253, Arizona Revised Statutes, is amended to  
24 read:

25           42-3253. Administration

26           Unless otherwise provided, the administration of this article is vested  
27 in and shall be exercised by the department according to chapters 1 and 2 of  
28 this title and articles 1 ~~through 5~~, 2, 3 AND 4 of this chapter, ~~and~~ this  
29 article **AND ARTICLES 10, 11 AND 12 OF THIS CHAPTER.**

30           Sec. 18. Section 42-3303, Arizona Revised Statutes, is amended to  
31 read:

32           42-3303. Tax on the consumer: precollection and remission by  
33 distributor

34           A. The taxes levied pursuant to this article are conclusively presumed  
35 to be direct taxes on the consumer but shall be precollected and remitted to  
36 the department by the distributor for purposes of convenience and facility  
37 only. The taxes that the distributor precollects and pays to the department:

38           1. Are considered to be an advance payment.

39           2. Shall be added to the price of the cigarettes, cigars, smoking  
40 tobacco, plug tobacco, snuff and other forms of tobacco.

41           3. Shall be recovered from the consumer.

42           B. For the purpose of the precollection and remittance of the tax  
43 imposed by this article, the ~~cigarette~~ distributor shall purchase and affix  
44 revenue stamps pursuant to article ~~5- 11~~ of this chapter.



1 applicant shall list the name and address of each of the applicant's members.  
2 If the applicant is a corporation, the application shall list the name and  
3 address of the applicant's officers and any person who directly or indirectly  
4 owns an aggregate amount of ten ~~per-cent~~ PERCENT or more of the ownership  
5 interest in the corporation. 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. If the licensee is making a change in its  
8 business location by adding or replacing one or more additional places of  
9 business that are not currently listed on its application, the licensee must  
10 remit a fee of twenty-five dollars for each additional place of business.

11 B. For the purposes of subsection A of this section, an applicant with  
12 a controlling interest in more than one business engaged in activities as a  
13 distributor shall apply for a single license encompassing all such businesses  
14 and list each place of business in its application. For the purposes of this  
15 subsection, "controlling interest" means direct or indirect ownership of at  
16 least eighty ~~per-cent~~ PERCENT of the voting shares of a corporation or of the  
17 interests in a company, business or person other than a corporation.

18 C. The department shall issue a license authorizing the applicant to  
19 acquire or possess tobacco products in this state upon the condition that the  
20 applicant complies with this chapter and the rules of the department. The  
21 license:

22 1. Shall be nontransferable. A licensee may not transfer its license  
23 to a new owner when selling its business, and any court-appointed trustee,  
24 receiver or other person shall obtain a license in its own name in cases of  
25 liquidation, insolvency or bankruptcy if the business remains in operation as  
26 a distributor of tobacco products. A licensee shall apply for a new license  
27 if it changes its legal entity status or otherwise changes the legal  
28 structure of its business.

29 2. Shall be valid for one year unless earlier revoked by the  
30 department.

31 3. Shall be displayed in a conspicuous place at the ~~applicant's~~  
32 LICENSEE'S place of business. If the ~~applicant~~ LICENSEE operates from more  
33 than one place of business, the ~~applicant~~ LICENSEE must display a copy of its  
34 license in a conspicuous place at each location.

35 ~~D. A person may not hold, store or transport unstamped cigarettes or~~  
36 ~~other untaxed tobacco products for sale or distribution in this state in any~~  
37 ~~vehicle pursuant to section 36-798.06. This subsection does not apply to~~  
38 ~~either of the following:~~

39 ~~1. A vehicle that is owned, operated or contracted by a person who~~  
40 ~~holds a valid license issued under this section and is transporting unstamped~~  
41 ~~cigarettes or other untaxed tobacco products from one to another of the~~  
42 ~~licensee's places of business listed on its application.~~

43 ~~2. A vehicle that is transporting unstamped cigarettes or other~~  
44 ~~untaxed tobacco products to a licensed distributor as part of a lawful sale~~

1 ~~or in interstate commerce to a person lawfully operating as a manufacturer,~~  
2 ~~distributor or retailer of cigarettes or other tobacco products.~~

3 ~~E.~~ D. As a condition of licensure under this section, an applicant  
4 agrees to the following conditions:

5 1. A person may not hold or store any tobacco products, whether within  
6 or outside of this state, for sale or distribution in this state by or on  
7 behalf of a distributor at any place other than a location that has been  
8 disclosed to the department pursuant to subsection A of this section. This  
9 paragraph does not include a person holding or storing tobacco products by or  
10 on behalf of the distributor when the tobacco products are in transit to a  
11 distributor or retailer as part of a lawful sale.

12 2. All tobacco products held or stored, whether within or outside of  
13 this state, for sale or distribution in this state by or on behalf of a  
14 distributor shall be accessible to the department during normal business  
15 hours without a judicial warrant or prior written consent of the distributor,  
16 excluding residential locations.

17 ~~F. An individual must be licensed as a cigarette distributor if the~~  
18 ~~individual acquires or possesses unstamped cigarettes in this state for sale,~~  
19 ~~barter or exchange or for any other purpose besides or in addition to that~~  
20 ~~individual's own use or consumption.~~

21 ~~G.~~ E. A person who is convicted of an offense described in section  
22 42-1127, subsection E is permanently ineligible to hold a license issued  
23 under this section.

24 ~~H.~~ F. The department may not issue or renew a license to an applicant  
25 and may revoke a license issued under subsection ~~B- C~~ of this section if any  
26 of the following applies:

27 1. The applicant owes one thousand dollars or more in delinquent  
28 cigarette taxes that are not under protest or subject to a payment agreement.

29 2. The department has revoked any license held by the applicant within  
30 the previous two years.

31 3. The applicant has been convicted of a crime that relates to stolen  
32 or counterfeit cigarettes.

33 4. The applicant has imported cigarettes into the United States for  
34 sale or distribution in violation of 19 United States Code section 1681a.

35 5. 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 6. The applicant is in violation of section 13-3711 or 36-798.06,  
40 subsection A.

41 7. Pursuant to section 44-7111, section 6(a), the applicant is in  
42 violation of section 44-7111, section 3(c).

43 8. The applicant's civil rights have been suspended under section  
44 13-904. An applicant whose civil rights have been suspended will be

1 ineligible to hold a license for a period of five years following the  
2 restoration of the applicant's civil rights.

3 ~~F.~~ G. In addition to any other civil or criminal penalty and except  
4 as otherwise provided in this section, the department may suspend or revoke a  
5 license issued under subsection ~~B- C~~ of this section if the person violates  
6 any requirement under this title more than two times within a three-year  
7 period.

8 ~~J.~~ H. The department shall publish on its website the names of each  
9 person who is issued a license under subsection ~~B- C~~ of this section. The  
10 department shall update the published names at least once each month.

11 ~~K. Tobacco products that are ordered, purchased or transported in  
12 violation of section 13-3711, 36-798.06 or 42-3210 or section 44-7111,  
13 section 3(c) or any other statute for which the tobacco products are subject  
14 to seizure and destruction are deemed contraband for which taxes that are  
15 imposed under this chapter cannot be reported and remitted.~~

16 ~~L.~~ I. A person may not apply for or hold a distributor's license if  
17 that person does not engage in the activities described in subsection A of  
18 this section. In addition to any other applicable penalty, the department  
19 may:

20 1. Revoke the license of any licensee that fails to file a return or  
21 report required under this chapter for twelve consecutive months.

22 2. Cancel the license of any licensee that fails to incur any tax  
23 liability under this chapter for twelve consecutive months.

24 ~~M.~~ J. Any suspension, revocation or denial of a license issued under  
25 this section must comply with section 41-1092.11, subsection B.

26 ~~N.~~ K. Notwithstanding any other law, for THE purposes of subsection  
27 ~~G- F~~, paragraphs 1 and 2 of this section, section 42-1127, subsection C and  
28 section ~~42-3210~~ 42-3461, subsection B, if a distributor has listed in its  
29 application more than one place of business, any suspension, revocation or  
30 nonrenewal of a distributor's license shall apply only with effect to remove  
31 the place of business at which the activity occurred that resulted in the  
32 violation from the distributor's license. If such a removal occurs, the  
33 distributor shall be subject to restrictions that the department prescribes  
34 by rule.

35 Sec. 22. Title 42, chapter 3, article 10, Arizona Revised Statutes, is  
36 amended by adding section 42-3402, to read:

37 42-3402. Contraband tobacco products

38 NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, TOBACCO PRODUCTS THAT  
39 ARE ORDERED, PURCHASED OR TRANSPORTED IN VIOLATION OF SECTION 13-3711,  
40 36-798.06 OR 42-3461 OR SECTION 44-7111, SECTION 3, SUBPARAGRAPH (c) OR ANY  
41 OTHER STATUTE UNDER WHICH THE TOBACCO PRODUCTS ARE SUBJECT TO SEIZURE AND  
42 DESTRUCTION ARE CONSIDERED TO BE CONTRABAND FOR WHICH TAXES THAT ARE IMPOSED  
43 UNDER THIS CHAPTER MAY NOT BE REPORTED AND REMITTED.



1 The taxes are not imposed with respect to the use or consumption of the  
2 tobacco products by the institution, veteran patients or domiciliaries.

3 7. Tobacco products that are sold by a manufacturer to a distributor  
4 licensed under section ~~42-3201~~ 42-3401.

5 8. Tobacco products that are manufactured outside the United States  
6 and that are sold by an importer to a distributor licensed under section  
7 ~~42-3201~~ 42-3401.

8 B. Subsection A, paragraphs 1 and 2 of this section do not apply after  
9 the first day of the first calendar month beginning more than sixty days  
10 after existing federal law is amended to permit state taxation of cigarettes  
11 sold by or through federal military installations.

12 C. Sales of tobacco products by a licensed distributor to an  
13 instrumentality of the United States government must be supported by a  
14 separate sales invoice and a properly completed federal exemption  
15 certificate. Each sales invoice must be numbered, be dated and show the name  
16 of the seller, the name of the purchaser and the destination.

17 D. This section does not affect the imposition of transaction  
18 privilege and use taxes pursuant to chapter 5 of this title to any  
19 transactions described in subsection A of this section if the transaction is  
20 otherwise subject to transaction privilege tax or use tax.

21 E. The exemptions and exclusions provided in subsection A of this  
22 section do not affect the taxability under this chapter of tobacco products  
23 that are sold, given or transferred to a person in this state subsequent to  
24 the transactions described in subsection A of this section.

25 Sec. 25. Section 42-3405, Arizona Revised Statutes, as transferred and  
26 renumbered, is amended to read:

27 ~~42-3405.~~ Tobacco manufacturers, importers, distributors and  
28 retailers; recordkeeping and invoicing requirements;  
29 retention period

30 A. Except for retail transactions with consumers, each manufacturer,  
31 importer and distributor of tobacco products shall maintain copies of  
32 invoices or equivalent documentation for each facility and for each  
33 transaction that involves the sale, purchase, transfer, consignment or  
34 receipt of tobacco products within this state. The invoices or **EQUIVALENT**  
35 **documentation FOR EACH TRANSACTION SHALL BE IN THE FORM AND MANNER PRESCRIBED**  
36 **BY THE DEPARTMENT AND** shall indicate the name and address of the other party  
37 and the quantity by brand style of the tobacco products involved in the  
38 transaction.

39 B. A distributor of tobacco products shall issue an invoice or  
40 equivalent documentation for each transaction that involves the sale,  
41 purchase or consignment of tobacco products to a retailer. The invoice or  
42 equivalent documentation must include the license number of the distributor,  
43 which the retailer may use to ascertain whether the license is current and  
44 valid.

1 C. Any retailer of tobacco products shall retain all invoices or  
2 equivalent documentation received under subsection B of this section.

3 D. Records required under this section shall be preserved on the  
4 premises described in the relevant license in a manner as to ensure  
5 accessibility for inspection at reasonable hours by authorized personnel of  
6 the department. With the department's permission, persons with multiple  
7 places of business may retain centralized records, but shall transmit  
8 duplicates of the invoices or the equivalent documentation to each place of  
9 business within three business days after a request by the department.

10 E. The records required by this section shall be retained for a period  
11 of four years after the date of the transaction.

12 F. On request, the department and the United States secretary of the  
13 treasury or secretary's designee shall have access to records required under  
14 this section and reports required under section ~~42-3211~~ 42-3462. The  
15 department at its sole discretion may share the records and reports required  
16 by this chapter with other law enforcement officials of federal and state  
17 governments under conditions that assume the confidentiality of taxpayer  
18 information contained in the records and reports.

19 Sec. 26. Title 42, chapter 3, article 10, Arizona Revised Statutes, is  
20 amended by adding section 42-3406, to read:

21 42-3406. Refunds and rebates of tobacco taxes; supporting  
22 documentation; distributor's burden of proof

23 A. EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION B OF THIS SECTION OR  
24 BY THE DEPARTMENT FOR A REFUND OR REDEMPTION ISSUED UNDER SECTION 42-3008 OR  
25 42-3460, A DISTRIBUTOR REQUESTING ANY REFUND OR REBATE OF TAXES PAID ON  
26 TOBACCO PRODUCTS PURSUANT TO ARTICLE 2, 6, 7 OR 9 OF THIS CHAPTER SHALL  
27 ESTABLISH ENTITLEMENT TO THE REFUND OR REBATE BY OBTAINING A REPORT EXECUTED  
28 BY THE RETAILER THAT PURCHASED THE TOBACCO PRODUCTS ON WHICH THE DISTRIBUTOR  
29 PAID TAXES, INDICATING THE NAME AND ADDRESS OF THE RETAILER AND THE  
30 QUANTITIES OF TOBACCO PRODUCTS SOLD, SEPARATELY IDENTIFIED BY THE TAX  
31 CATEGORY OF TOBACCO PRODUCT AND THE NECESSARY FACTS TO ESTABLISH THE  
32 APPROPRIATE AMOUNT OF REFUND OR REBATE. THE REPORT IS SUBJECT TO THE  
33 FOLLOWING CONDITIONS:

34 1. THE REPORT SHALL BE PROVIDED IN THE FORM AND MANNER PRESCRIBED BY  
35 THE DEPARTMENT. UNDER SUCH RULES AS IT MAY PRESCRIBE, THE DEPARTMENT MAY  
36 IDENTIFY TRANSACTIONS FOR WHICH A DISTRIBUTOR MAY NOT RELY SOLELY ON THE  
37 INFORMATION IN THE RETAILER'S REPORT BUT MUST INSTEAD OBTAIN ADDITIONAL  
38 INFORMATION AS REQUIRED BY THE RULES IN ORDER TO BE ENTITLED TO THE REFUND OR  
39 REBATE.

40 2. THE BURDEN OF PROOF FOR THE REFUND OR REBATE IS ON THE DISTRIBUTOR,  
41 BUT IF THE DISTRIBUTOR COMPLIES IN ALL OTHER RESPECTS WITH THIS SECTION, THE  
42 DEPARTMENT MAY REQUIRE THE RETAILER THAT CAUSED THE EXECUTION OF THE REPORT  
43 TO ESTABLISH THE ACCURACY AND COMPLETENESS OF THE INFORMATION REQUIRED TO BE  
44 CONTAINED IN THE REPORT THAT WOULD ENTITLE THE DISTRIBUTOR TO THE REFUND OR  
45 REBATE. IF THE RETAILER CANNOT ESTABLISH THE ACCURACY AND COMPLETENESS OF

1 THE INFORMATION, THE RETAILER IS LIABLE IN AN AMOUNT EQUAL TO ANY TAX,  
2 PENALTY AND INTEREST THAT THE DISTRIBUTOR WOULD HAVE BEEN LIABLE FOR UNDER  
3 THIS CHAPTER IF THE DISTRIBUTOR HAD NOT OTHERWISE COMPLIED WITH THIS SECTION.  
4 PAYMENT OF THE AMOUNT UNDER THIS SECTION BY THE RETAILER EXEMPTS THE  
5 DISTRIBUTOR FROM LIABILITY FOR THE UNDERLYING TAX, PENALTY AND INTEREST. ALL  
6 AMOUNTS PAID BY A RETAILER UNDER THIS PARAGRAPH SHALL BE TREATED AS TAX  
7 REVENUES COLLECTED FROM THE DISTRIBUTOR IN ORDER TO DESIGNATE THE  
8 DISTRIBUTION BASE FOR THE PURPOSES OF THIS CHAPTER.

9 B. IN ITS DISCRETION AND IN CIRCUMSTANCES WHERE A RETAILER IS  
10 UNCOOPERATIVE OR NO LONGER IN BUSINESS, THE DEPARTMENT MAY ACCEPT PROOF OTHER  
11 THAN A REPORT DESCRIBED IN SUBSECTION A OF THIS SECTION IF THE DISTRIBUTOR  
12 SHOWS, TO THE SATISFACTION OF THE DEPARTMENT, THAT IT EXERCISED ORDINARY  
13 BUSINESS CARE AND PRUDENCE BUT WAS UNABLE TO FURNISH A REPORT EXECUTED BY THE  
14 RETAILER. ACCEPTABLE FORMS OF PROOF PRESENTED BY THE DISTRIBUTOR PURSUANT TO  
15 THIS SUBSECTION MUST CONSIST OF BOOKS, RECORDS OR PAPERS MAINTAINED BY THE  
16 DISTRIBUTOR OR RETAILER IN THE REGULAR COURSE OF BUSINESS.

17 Sec. 27. Section 42-3451, Arizona Revised Statutes, as transferred and  
18 renumbered, is amended to read:

19 42-3451. Acquisition and possession of cigarettes and  
20 roll-your-own tobacco; definitions

21 A. A ~~cigarette~~ manufacturer or ~~cigarette~~ importer may sell or  
22 distribute cigarettes OR ROLL-YOUR-OWN TOBACCO to a person who is located or  
23 doing business in this state, including Indian reservations located in this  
24 state, only if the person is ~~a licensed cigarette~~ AN importer or ~~cigarette~~  
25 LICENSED distributor or the ~~cigarette~~ manufacturer sells or distributes  
26 cigarettes OR ROLL-YOUR-OWN TOBACCO on which a tax has been paid pursuant to  
27 section ~~42-3202~~ 42-3452.

28 B. ~~A cigarette~~ AN importer may obtain cigarettes only from a ~~licensed~~  
29 ~~cigarette~~ manufacturer or ~~licensed cigarette~~ importer.

30 C. A ~~cigarette~~ distributor may sell or distribute cigarettes to a  
31 person located or doing business in this state, including an Indian  
32 reservation in this state, only if the ~~cigarette~~ distributor is a licensed  
33 ~~cigarette~~ distributor.

34 D. A ~~cigarette~~ distributor shall obtain cigarettes only from a  
35 ~~licensed cigarette~~ manufacturer, ~~cigarette~~ importer or ~~cigarette~~ LICENSED  
36 distributor.

37 E. FOR THE PURPOSES OF THIS SECTION:

38 1. "IMPORTER" MEANS A PERSON WHO HAS RECEIVED APPROVAL FROM THE  
39 FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO DIRECTLY OR INDIRECTLY  
40 IMPORT FINISHED TOBACCO PRODUCTS INTO THE UNITED STATES FOR SALE OR  
41 DISTRIBUTION, PURSUANT TO 26 UNITED STATES CODE SECTION 5712 AND 27 CODE OF  
42 FEDERAL REGULATIONS PART 41.

43 2. "MANUFACTURER" MEANS A PERSON WHO HAS RECEIVED APPROVAL FROM THE  
44 FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO MANUFACTURE, FABRICATE,

1 ASSEMBLE, PROCESS OR LABEL FINISHED TOBACCO PRODUCTS, PURSUANT TO 26 UNITED  
2 STATES CODE SECTION 5712 AND 27 CODE OF FEDERAL REGULATIONS PART 40.

3 Sec. 28. Section 42-3452, Arizona Revised Statutes, as transferred and  
4 renumbered, is amended to read:

5 42-3452. Payment of tax required to sell, distribute or  
6 transfer cigarettes

7 A. Except as provided in subsection B of this section, a person may  
8 not:

9 1. Sell or offer for sale any cigarettes upon which a tax is imposed  
10 by this ~~article~~ CHAPTER to any person within this state unless at the time of  
11 the sale, distribution or transfer the tax has been paid on the cigarettes as  
12 evidenced by an Arizona tax stamp or any other official indicia. The  
13 department shall consider tobacco taxes paid at the time of the sale,  
14 distribution or transfer of tobacco products other than cigarettes if a  
15 licensed distributor reports and remits the taxes on the products in  
16 accordance with the manner, method and time prescribed by section ~~42-3208~~  
17 42-3501. Sworn returns that are prepared and remitted by a licensed  
18 distributor under section ~~42-3208~~ 42-3501 constitute official indicia that  
19 tobacco taxes have been paid on the tobacco products.

20 2. Sell cigarettes that have Arizona tax stamps affixed unless the tax  
21 evidenced by the stamps is actually paid. The department shall not refund  
22 any amount of that tax on the grounds that the stamps are not required to be  
23 affixed to the cigarettes.

24 B. A distributor licensed pursuant to section ~~42-3201~~ 42-3401 may not  
25 sell, distribute or transfer tobacco products for which the distributor is  
26 licensed to another such licensed distributor without paying the tax at the  
27 time of the sale, distribution or transfer.

28 Sec. 29. Section 42-3453, Arizona Revised Statutes, as transferred and  
29 renumbered, is amended to read:

30 42-3453. Presumption of tax on unstamped cigarettes

31 Except as otherwise provided in section 42-1127, subsection F and  
32 section ~~42-3202~~ 42-3452, subsection B, for the purpose of proper  
33 administration and to prevent evasion of the taxes imposed by this chapter,  
34 until the contrary is established, it is presumed that cigarettes that are  
35 sold, distributed, used or consumed by a person in this state, but not placed  
36 in packages or containers on which official tax stamps are affixed, are  
37 intended for first sale by the person and are subject to the taxes imposed by  
38 this chapter.

39 Sec. 30. Title 42, chapter 3, article 11, Arizona Revised Statutes, as  
40 added by this act, is amended by adding section 42-3454, to read:

41 42-3454. Transport of unstamped cigarettes and untaxed  
42 roll-your-own tobacco prohibited; exceptions

43 A. A PERSON MAY NOT HOLD, STORE OR TRANSPORT UNSTAMPED CIGARETTES OR  
44 UNTAXED ROLL-YOUR-OWN TOBACCO FOR SALE OR DISTRIBUTION IN THIS STATE IN ANY  
45 VEHICLE PURSUANT TO SECTION 36-798.06.

1 B. THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

2 1. A VEHICLE THAT IS OWNED, OPERATED OR CONTRACTED BY A PERSON WHO  
3 HOLDS A VALID LICENSE ISSUED UNDER SECTION 42-3401 AND IS TRANSPORTING  
4 UNSTAMPED CIGARETTES OR UNTAXED ROLL-YOUR-OWN TOBACCO FROM ONE TO ANOTHER OF  
5 THE LICENSEE'S PLACES OF BUSINESS LISTED ON ITS APPLICATION.

6 2. A VEHICLE THAT IS TRANSPORTING UNSTAMPED CIGARETTES OR UNTAXED  
7 ROLL-YOUR-OWN TOBACCO TO A LICENSED DISTRIBUTOR AS PART OF A LAWFUL SALE OR  
8 IN INTERSTATE COMMERCE TO A PERSON LAWFULLY OPERATING AS A MANUFACTURER,  
9 DISTRIBUTOR OR RETAILER OF CIGARETTES OR ROLL-YOUR-OWN TOBACCO.

10 Sec. 31. Section 42-3455, Arizona Revised Statutes, as transferred and  
11 renumbered, is amended to read:

12 42-3455. Cigarette tax stamps; description and characteristics;  
13 use by licensed distributors; affixation standards;  
14 metering

15 A. THE DEPARTMENT SHALL PRESCRIBE BY RULE OR PROCEDURE THE METHOD AND  
16 MANNER IN WHICH TAX STAMPS ARE TO BE AFFIXED TO CIGARETTES AND MAY PROVIDE  
17 FOR THE CANCELLATION OF STAMPS. IN ADDITION TO ANY SPECIFICATIONS PROVIDED  
18 UNDER THIS ARTICLE, THE STAMPS SHALL ALSO MEET THE REQUIREMENTS PROVIDED IN  
19 SECTION 42-3006.

20 ~~A-~~ B. Each roll or sheet of stamps for cigarettes that are required  
21 under this chapter shall have a separate serial number that is legible at the  
22 point of sale to the ~~cigarette~~ distributor. The department shall use the  
23 serial number to keep records of each ~~cigarette~~ distributor who purchases  
24 each roll or sheet of stamps. The department shall not sell stamps that have  
25 the same serial number to more than one ~~cigarette~~ distributor. The  
26 department may sell a partial roll or sheet of stamps to a ~~cigarette~~  
27 distributor and shall retain the remainder of the roll or sheet to  
28 subsequently sell to the same ~~cigarette~~ distributor or shall destroy the  
29 remainder of the roll or sheet.

30 ~~B-~~ C. Only licensed ~~cigarette~~ distributors may purchase, obtain or  
31 affix cigarette stamps. ~~Cigarette~~ Distributors shall not sell or provide  
32 stamps to any other ~~cigarette~~ distributor or person. When affixing cigarette  
33 stamps to cigarettes, ~~cigarette~~ distributors shall ensure that the affixation  
34 method that is used maintains the legibility of the serial numbers on the  
35 stamps.

36 ~~C-~~ D. If, during compliance inspections of a distributor or retailer,  
37 the department discovers cigarette packages that appear not to be stamped in  
38 accordance with subsection ~~B-~~ C of this section and if the distributor or  
39 retailer has substantially complied with the other provisions of this  
40 chapter, the following shall be considered a properly stamped cigarette  
41 package:

42 1. A questioned individual cigarette package that does not have an  
43 affixed cigarette stamp containing a fully legible serial number but the  
44 legible digits of the serial number of the cigarette stamp on the questioned  
45 individual cigarette package match the corresponding digits of the serial

1 numbers from other properly stamped cigarette packages that are packaged or  
2 shelved together with the questioned individual cigarette package.

3 2. A questioned individual cigarette package that is part of an  
4 originally unopened pallet, master carton or carton that contains other  
5 properly stamped cigarettes when the pallet, master carton or carton is  
6 subsequently opened during a compliance inspection by the department.

7 3. A questioned individual cigarette package if the distributor or  
8 retailer can demonstrate through books, records or other indicia to the  
9 satisfaction of the department that the questioned individual cigarette  
10 package was purchased as part of the same pallet, master carton or carton  
11 that contained properly stamped cigarette packages.

12 ~~D.~~ E. The department may authorize the use of a metering machine. If  
13 the department authorizes the use of a metering machine, the department shall  
14 assign a unique meter impression number to each ~~cigarette~~ distributor and  
15 ensure that the impression is legible at the point of sale. The department  
16 shall keep records that indicate the assigned meter impression number for  
17 each ~~cigarette~~ distributor.

18 Sec. 32. Section 42-3456, Arizona Revised Statutes, as transferred and  
19 renumbered, is amended to read:

20 ~~42-3456.~~ Tax stamps as indicia of taxes paid; exception;  
21 definitions

22 A. Except as otherwise provided in this chapter, all cigarettes on  
23 which a tax is imposed by this chapter shall be placed in packages or  
24 containers, and on each package or container shall be affixed an official  
25 stamp described in section ~~42-3006 or 42-3202.03~~ 42-3455. An affixed stamp  
26 shall be evidence that the taxes levied by sections 42-3052, 42-3251 and  
27 42-3251.01 are paid.

28 B. ~~Cigarette~~ Distributors are liable for affixing official stamps or  
29 otherwise applying tax indicia to cigarettes that are subject to a tax  
30 imposed by this chapter. A licensed ~~cigarette~~ distributor shall apply a  
31 stamp to each package of cigarettes that is sold or distributed in this state  
32 and that is subject to tax under this chapter, including cigarettes that are  
33 subject to tax under section 42-3302. A licensed ~~cigarette~~ distributor shall  
34 apply a tax exempt stamp to cigarette packages that are not subject to tax  
35 under section 42-3304, subsection A, paragraph 2.

36 C. Cigarettes that are sold, distributed or transferred by a  
37 distributor licensed pursuant to section ~~42-3201~~ 42-3401 to sell cigarettes  
38 are required to have affixed the luxury stamps described in section ~~42-3006~~  
39 42-3455 at the time the cigarettes are sold, distributed or transferred to  
40 another licensed distributor.

41 D. Notwithstanding subsection C of this section, a licensed  
42 distributor can submit a written request in the form and manner prescribed by  
43 the department in rule or procedure to sell, distribute or transfer unstamped  
44 cigarettes to another licensed distributor. Once an accurate and complete  
45 request is submitted to the department, the department will approve or deny

1 the request as prescribed in rule or procedure within ten days of receipt of  
2 the request.

3 E. Cigarettes that are exempt from tax under 26 United States Code  
4 section 5701 and that are distributed according to federal regulations are  
5 not subject to tax and do not require a stamp under this chapter.

6 F. A retailer shall not offer for sale cigarettes in quantities that  
7 are not packaged as such for sale by the ~~cigarette~~ manufacturer.

8 G. ~~Cigarette~~ Distributors may apply stamps only to cigarette packages  
9 that the ~~cigarette~~ distributors have directly received from a licensed  
10 ~~cigarette~~ distributor, ~~licensed-cigarette~~ manufacturer or ~~licensed-cigarette~~  
11 importer.

12 H. FOR THE PURPOSES OF THIS SECTION:

13 1. "IMPORTER" MEANS A PERSON WHO HAS RECEIVED APPROVAL FROM THE  
14 FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO DIRECTLY OR INDIRECTLY  
15 IMPORT FINISHED TOBACCO PRODUCTS INTO THE UNITED STATES FOR SALE OR  
16 DISTRIBUTION, PURSUANT TO 26 UNITED STATES CODE SECTION 5712 AND 27 CODE OF  
17 FEDERAL REGULATIONS PART 41.

18 2. "MANUFACTURER" MEANS A PERSON WHO HAS RECEIVED APPROVAL FROM THE  
19 FEDERAL ALCOHOL AND TOBACCO TAX AND TRADE BUREAU TO MANUFACTURE, FABRICATE,  
20 ASSEMBLE, PROCESS OR LABEL FINISHED TOBACCO PRODUCTS, PURSUANT TO 26 UNITED  
21 STATES CODE SECTION 5712 AND 27 CODE OF FEDERAL REGULATIONS PART 40.

22 Sec. 33. Section 42-3457, Arizona Revised Statutes, as transferred and  
23 renumbered, is amended to read:

24 42-3457. Unstamped cigarettes

25 A. A person shall not possess an unstamped cigarette package unless  
26 the person is shipping or transporting unstamped cigarettes pursuant to  
27 subsection B of this section, is a licensed ~~cigarette~~ manufacturer or  
28 ~~licensed-cigarette~~ importer or is a licensed ~~cigarette~~ distributor who  
29 receives unstamped cigarette packages directly from a licensed ~~cigarette~~  
30 manufacturer or ~~cigarette~~ importer.

31 B. Except for a licensed ~~cigarette~~ manufacturer, ~~cigarette~~ importer or  
32 ~~cigarette~~ distributor and if lawful under section 36-798.06, a person who  
33 ships unstamped cigarette packages in or into this state shall first file  
34 with the department a notice of shipment. This subsection does not apply to  
35 any common or contract carrier that is transporting cigarettes through this  
36 state to another location under a proper bill of lading or freight bill that  
37 states the quantity, source and destination of the cigarettes.

38 C. If lawful under section 36-798.06, a person who transports  
39 unstamped cigarette packages in or into this state shall carry in the vehicle  
40 used to convey the shipment invoices or equivalent documentation of the  
41 shipment for all cigarettes in the shipment. The invoices or documentation  
42 shall indicate the name and address of the consignor or seller, the name and  
43 address of the consignee or purchaser and the quantity of each brand of  
44 cigarettes that is transported.

1           Sec. 34. Section 42-3458, Arizona Revised Statutes, as transferred and  
2 renumbered, is amended to read:

3           42-3458. Discount purchases of tax stamps; refund and rebate  
4                                   amounts

5           A. The official stamps to be affixed to packages of cigarettes shall  
6 be obtainable from the department by each licensed ~~cigarette~~ distributor by  
7 purchase:

8           1. On or before September 30, 2014, at the following discount rates:

9           (a) Ninety-six ~~per-cent~~ PERCENT of the face value for the first  
10 thirty-six thousand dollars worth of stamps purchased by the distributor in  
11 any month.

12           (b) Ninety-seven ~~per-cent~~ PERCENT of the face value for the second  
13 thirty-six thousand dollars worth of stamps purchased by the distributor in  
14 any month.

15           (c) Ninety-eight ~~per-cent~~ PERCENT of the face value on all stamps in  
16 excess of seventy-two thousand dollars purchased by the distributor in any  
17 month, except that if a distributor purchases more than one hundred  
18 sixty-five thousand dollars worth of stamps in one month, the department  
19 shall offset against the discount under this subdivision, or the distributor  
20 shall refund to the department, the difference between the face value and the  
21 discounted value of the first seventy-two thousand dollars worth of stamps  
22 under subdivisions (a) and (b) of this paragraph.

23           2. After September 30, 2014, at the rate of ninety-six ~~per-cent~~  
24 PERCENT of the face value of the stamps.

25           B. Any refund of or rebates on tax stamps requested by a licensed  
26 distributor must be issued in an amount of the total face value of the stamps  
27 minus four ~~per-cent~~ PERCENT of the total face value of the stamps.

28           Sec. 35. Section 42-3459, Arizona Revised Statutes, as transferred and  
29 renumbered, is amended to read:

30           42-3459. Secured cigarette stamp purchases on credit;  
31                                   cancellation of credit privileges; collection  
32                                   action; bonding requirement; waiver

33           A. Subject to subsections B and C OF THIS SECTION, and except as  
34 provided in subsection D of this section, a licensed ~~cigarette~~ distributor  
35 who furnishes a bond of a surety company qualified to do business in this  
36 state, in an amount equal to two times the amount of the distributor's  
37 current monthly stamp purchases and conditioned upon the payment within the  
38 time prescribed, may make payment for the official stamp on or before the  
39 twentieth day of the month next following the purchase of an official stamp.  
40 All other ~~cigarette~~ distributors shall pay for each stamp at the time of  
41 purchase.

42           B. Upon a finding that the amount of stamp purchases, or meter machine  
43 usage, exceeds seventy-five ~~per-cent~~ PERCENT of the amount of the bond, the  
44 department may cancel the credit privileges provided to qualified ~~cigarette~~  
45 distributors pursuant to subsection A OF THIS SECTION.

1 C. If the indebtedness of a ~~cigarette~~ distributor whose credit  
2 privileges have been canceled pursuant to this section remains unpaid for  
3 thirty days after cancellation, the director shall request the attorney  
4 general to take suitable action on behalf of the department to collect either  
5 on the indebtedness or the surety bond.

6 D. The ~~cigarette~~ distributor may request that the department waive the  
7 bonding requirement in subsection A of this section if the distributor  
8 maintains a timely, accurate and complete filing and payment record for a  
9 period of two years and otherwise complies with all requirements of a  
10 licensed distributor pursuant to ~~title 42, chapter 3~~ THIS CHAPTER and title  
11 44, chapter 27. The waiver of the bonding requirement applies only to the  
12 distributor's purchases of tax stamps with which the distributor prepays the  
13 Indian reservation tobacco tax, pursuant to section 42-3303.

14 Sec. 36. Section 42-3460, Arizona Revised Statutes, as transferred and  
15 renumbered, is amended to read:

16 ~~42-3460.~~ Redemption of unused or spoiled tax stamps and meter  
17 registration; definitions

18 A. The department shall redeem unused or spoiled Arizona tax stamps  
19 that a ~~cigarette~~ distributor presents for redemption if those stamps are  
20 unaffixed and purchased within two years of the date of the request for  
21 redemption and shall pay for them from monies collected under this chapter.

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

25 C. Nothing in this section shall be construed to provide for  
26 redemption in the case of loss or theft of tax stamps.

27 D. For the purposes of this section:

- 28 1. "Redeem" means repurchase or replace Arizona tax stamps.
- 29 2. "Spoiled" means mutilated or illegible.

30 Sec. 37. Section 42-3461, Arizona Revised Statutes, as transferred and  
31 renumbered, is amended to read:

32 ~~42-3461.~~ Unlawful use of stamps; classification; definition

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

35 1. Differs from the requirements of the federal cigarette labeling and  
36 advertising act (P.L. 89-92; 79 Stat. 282; 15 United States Code section  
37 1331) relating to label warnings or other information on packages of  
38 cigarettes for sale in the United States.

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

42 3. Has been altered by adding or deleting the wording, labels or  
43 warnings described in paragraph 1 or 2 of this subsection.

1           4. Is placed in a carton, or any other package containing several  
2 individually stamped packages, that has been altered by adding or deleting  
3 the wording, labels or warnings described in paragraph 1 or 2 of this  
4 subsection.

5           5. Has been imported into the United States on or after January 1,  
6 2000 in violation of 26 United States Code section 5754 or is the subject of  
7 a violation of 19 United States Code sections 1681 through 1681b or 15 United  
8 States Code section 1335a.

9           6. Violates federal trademark or copyright laws.

10          B. The director:

11           1. May revoke any license issued to a ~~cigarette~~ distributor who sells  
12 or offers for sale cigarette packages that are stamped in violation of  
13 subsection A **OF THIS SECTION**.

14           2. Shall seize and destroy packages of cigarettes that are stamped in  
15 violation of subsection A **OF THIS SECTION**.

16          C. A person who sells or offers for sale cigarette packages that are  
17 stamped in violation of subsection A **OF THIS SECTION** is guilty of a class 2  
18 misdemeanor.

19          D. Any person who sells, distributes or manufactures cigarettes and  
20 sustains direct economic or commercial injury as a result of a violation of  
21 this section may bring an action in good faith for appropriate injunctive  
22 relief.

23          E. This section does not apply to cigarettes allowed to be imported or  
24 brought into the United States for personal use, or to cigarettes sold or  
25 intended to be sold as duty free merchandise by a duty free sales enterprise  
26 pursuant to 19 United States Code section 1555(b). This subsection does not  
27 apply to cigarettes that are brought back into the customs territory for  
28 resale within the customs territory.

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

31          G. For the purposes of this section, "package" means any kind of pack,  
32 carton or container in which cigarettes are sold, offered for sale or  
33 otherwise distributed or intended for distribution to consumers.

34          Sec. 38. Section 42-3462, Arizona Revised Statutes, as transferred and  
35 renumbered, is amended to read:

36           42-3462. Cigarette and roll-your-own tobacco distributors;  
37                                   filing requirements; definitions

38          A. Each ~~cigarette~~ distributor shall file a return in a form prescribed  
39 by the department for each place of business on or before the twentieth day  
40 of the month next succeeding the month for which the return is filed. The  
41 return shall contain all of the following:

42           1. The brand names and quantities of each brand of cigarettes **AND**  
43 **ROLL-YOUR-OWN TOBACCO** in possession at the beginning and end of the reporting  
44 period.

1           2. The brand names and quantities of each brand of cigarettes AND  
2 ROLL-YOUR-OWN TOBACCO received during the reporting period and the name and  
3 address of each person from whom each product was received.

4           3. The brand names and quantities of each brand of cigarettes AND  
5 ROLL-YOUR-OWN TOBACCO distributed or shipped into this state or between  
6 locations in this state during the reporting period, except for sales  
7 directly to consumers, and the name and address of each person to whom each  
8 product was distributed or shipped, WITH REFERENCE TO THE DATES OF  
9 DISTRIBUTION OR SHIPMENT AND CORRESPONDING INVOICE NUMBERS FROM THE INVOICES  
10 DOCUMENTING THE DISTRIBUTION OR SHIPMENTS.

11           4. The brand names and quantities of each brand of cigarettes AND  
12 ROLL-YOUR-OWN TOBACCO distributed or shipped to any destination wherever  
13 located, including the quantities reported under paragraph 3 of this  
14 subsection during the reporting period, except for sales directly to  
15 consumers, and the name and address of each person to whom each product was  
16 distributed or shipped, WITH REFERENCE TO THE DATES OF DISTRIBUTION OR  
17 SHIPMENT AND CORRESPONDING INVOICE NUMBERS FROM THE INVOICES DOCUMENTING THE  
18 DISTRIBUTION OR SHIPMENTS.

19           5. The brand names and quantities of each brand of cigarettes AND  
20 ROLL-YOUR-OWN TOBACCO sold to consumers that are itemized to show sales to  
21 consumers in this state and sale to consumers outside of this state.

22           6. Copies of the customs certificates with respect to such cigarettes  
23 AND ROLL-YOUR-OWN TOBACCO required to be submitted by 19 United States Code  
24 section 1681a(c).

25           7. The name and address of each nonparticipating manufacturer of each  
26 brand of cigarettes AND ROLL-YOUR-OWN TOBACCO identified by the distributor  
27 in the return.

28           8. The number of individual cigarettes AND OUNCES OF ROLL-YOUR-OWN  
29 TOBACCO of each brand of each nonparticipating manufacturer sold in this  
30 state by the distributor during the preceding month, separately stating each  
31 of the following:

32           (a) The number of cigarette packages sold and the number of individual  
33 cigarettes in each package.

34           (b) The number of roll-your-own tobacco containers sold and the number  
35 of ~~individual cigarettes~~ OUNCES OF ROLL-YOUR-OWN TOBACCO in each container.

36           9. The amount of luxury taxes paid or to be paid on the cigarettes and  
37 roll-your-own tobacco prescribed in paragraph 8 of this subsection,  
38 separately stating each of the following:

39           (a) The amount of luxury taxes paid by purchasing and affixing tax  
40 stamps to cigarette packages.

41           (b) The amount of luxury taxes to be paid for roll-your-own tobacco  
42 containers.

43           (c) Any other amount of excise taxes to be paid on the cigarettes.

1           10. The number of individual cigarettes **AND OUNCES OF ROLL-YOUR-OWN**  
2 **TOBACCO** of each brand of each nonparticipating manufacturer received by the  
3 distributor, separately stating each of the following:

4           (a) The number of cigarette packages received and the number of  
5 individual cigarettes in each package.

6           (b) The number of roll-your-own tobacco containers received and the  
7 number of ~~individual cigarettes~~ **AND OUNCES OF ROLL-YOUR-OWN TOBACCO** in each  
8 container.

9           11. The number of individual cigarettes **AND OUNCES OF ROLL-YOUR-OWN**  
10 **TOBACCO** of each brand of each nonparticipating manufacturer that the  
11 distributor exported from this state without payment of Arizona luxury taxes,  
12 separately stating each of the following:

13           (a) The number of cigarette packages exported and the number of  
14 individual cigarettes in each package.

15           (b) The number of roll-your-own tobacco containers exported and the  
16 number of ~~individual cigarettes~~ **OUNCES OF ROLL-YOUR-OWN TOBACCO** in each  
17 container.

18           12. The number of individual cigarettes **AND OUNCES OF ROLL-YOUR-OWN**  
19 **TOBACCO** of each brand of each nonparticipating manufacturer for which the  
20 distributor obtained a refund under section 42-3008, separately stating each  
21 of the following:

22           (a) The number of cigarette packages for which the distributor  
23 obtained a refund and the number of individual cigarettes in each package.

24           (b) The number of roll-your-own tobacco containers for which the  
25 distributor obtained a refund and the number of ~~individual cigarettes~~ **OUNCES**  
26 **OF ROLL-YOUR-OWN TOBACCO** in each container.

27           13. The invoice, ~~number and a copy of each invoice relating to each of~~  
28 **IN THE FORM AND MANNER PRESCRIBED BY THE DEPARTMENT, FOR** the following  
29 transactions:

30           (a) The distributor's purchase or acquisition of any nonparticipating  
31 manufacturer's cigarettes received or sold by the tobacco distributor in this  
32 state.

33           (b) The distributor's export, if any, of any nonparticipating  
34 manufacturer's cigarettes from this state.

35           B. ~~Cigarette~~ Manufacturers and ~~cigarette~~ importers who ship cigarettes  
36 **AND ROLL-YOUR-OWN TOBACCO** into or in this state shall file a monthly report  
37 with, **AND IN THE FORM AND MANNER PRESCRIBED BY,** the department. The report  
38 shall contain the information regarding cigarettes described under subsection  
39 A, paragraph 3 of this section.

40           C. ~~Cigarette~~ Distributor reports that are submitted under subsection A  
41 of this section shall be itemized to disclose the quantity of reported  
42 cigarettes bearing tax stamps of this state, tax exempt stamps of this state,  
43 stamps of another state and unstamped cigarettes. The distributor reports  
44 shall also include, if applicable, the following:

1           1. The quantity of Arizona tax and tax exempt stamps that were not  
2 affixed to cigarettes.

3           2. The quantity of Arizona tax and tax exempt stamps that the  
4 distributor possessed at the beginning and end of the reporting period.

5           3. The quantity of each type of Arizona stamp received during the  
6 reporting period.

7           4. The quantity of each type of Arizona stamp applied during the  
8 reporting period.

9           D. The department may adopt rules requiring additional information in  
10 the monthly reports as necessary for the purposes of enforcing this article.

11           E. For the purposes of this section, ~~"cigarette" has the same meaning~~  
12 ~~prescribed in section 44-7101, section 2(d) except if differing reporting~~  
13 ~~requirements are specified for roll-your-own tobacco. "IMPORTER" AND~~  
14 ~~"MANUFACTURER" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 42-3451.~~

15           Sec. 39. Section 42-3501, Arizona Revised Statutes, as transferred and  
16 renumbered, is amended to read:

17           42-3501. Return and payment by distributors of tobacco products  
18 other than cigarettes

19           A. Except for tobacco products described in ~~subsection F of this~~  
20 section 42-3402, every distributor of ~~cigars or~~ tobacco products other than  
21 cigarettes shall pay the tax imposed by this chapter on all those products  
22 received within the state and shall add the amount of the tax to the sales  
23 price.

24           B. The distributor shall pay the tax to the department monthly on or  
25 before the twentieth day of the month next succeeding the month in which the  
26 tax accrues.

27           C. On or before that date the distributor shall prepare a sworn return  
28 for the month in which the tax accrues in the form prescribed by the  
29 department, showing:

30           1. The amount of ~~cigars or~~ tobacco products other than cigarettes  
31 received in this state during the month in which the tax accrues.

32           2. The amount of tax for the period covered by the return.

33           3. Any other information the department deems necessary for the proper  
34 administration of this chapter, including information required for  
35 roll-your-own tobacco provided under section ~~42-3211~~ 42-3462.

36           D. The distributor shall deliver the return, together with a  
37 remittance of the amount of the tax due, to the department.

38           E. A taxpayer who fails to pay the tax within ten days of the date on  
39 which the payment becomes due is subject to and shall pay a penalty  
40 determined under section 42-1125 plus interest at the rate determined  
41 pursuant to section 42-1123 from the time the tax was due and payable until  
42 paid.

43           ~~F. Tobacco products that are ordered, purchased or transported in~~  
44 ~~violation of section 13-3711, 36-798.06 or 42-3210 or section 44-7111,~~  
45 ~~section 3(c) or any other statute for which the tobacco products are subject~~

1 ~~to seizure and destruction are deemed contraband for which taxes that are~~  
2 ~~imposed under this chapter cannot be reported and remitted.~~

3 ~~G. Except as otherwise provided by the department for a refund or~~  
4 ~~redemption issued under section 42-3008 or 42-3209, a distributor requesting~~  
5 ~~any refund or rebate of taxes paid on tobacco products pursuant to this~~  
6 ~~section or under article 7 of this chapter must establish entitlement to the~~  
7 ~~refund or rebate by obtaining a report executed by the retailer that~~  
8 ~~purchased the tobacco products on which the distributor paid taxes indicating~~  
9 ~~the name and address of the retailer and the quantities of tobacco products~~  
10 ~~sold, separately identified by the tax category of tobacco product and the~~  
11 ~~necessary facts to establish the appropriate amount of refund or rebate. The~~  
12 ~~report is subject to the following conditions:~~

13 ~~1. The report must be provided in the form and manner prescribed by~~  
14 ~~the department. Under such rules as it may prescribe, the department may~~  
15 ~~identify transactions for which a distributor may not rely solely on the~~  
16 ~~information in the retailer's report but must instead obtain additional~~  
17 ~~information as required by the rules in order to be entitled to the refund or~~  
18 ~~rebate.~~

19 ~~2. The burden of proof for the refund or rebate is on the distributor,~~  
20 ~~but if the distributor complies in all other respects with this subsection,~~  
21 ~~the department may require the retailer that caused the execution of the~~  
22 ~~report to establish the accuracy and completeness of the information required~~  
23 ~~to be contained in the report that would entitle the distributor to the~~  
24 ~~refund or rebate. If the retailer cannot establish the accuracy and~~  
25 ~~completeness of the information, the retailer is liable in an amount equal to~~  
26 ~~any tax, penalty and interest that the distributor would have been liable for~~  
27 ~~under this chapter if the distributor had not otherwise complied with this~~  
28 ~~subsection. Payment of the amount under this subsection by the retailer~~  
29 ~~exempts the distributor from liability for the underlying tax, penalty and~~  
30 ~~interest. All amounts paid by a retailer under this paragraph shall be~~  
31 ~~treated as tax revenues collected from the distributor in order to designate~~  
32 ~~the distribution base for purposes of this chapter.~~

33 Sec. 40. Title 42, chapter 3, article 12, Arizona Revised Statutes, is  
34 amended by adding sections 42-3502 and 42-3503, to read:

35 42-3502. Transport of untaxed other tobacco products  
36 prohibited; exceptions; definition

37 A. A PERSON MAY NOT HOLD, STORE OR TRANSPORT UNTAXED OTHER TOBACCO  
38 PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE IN ANY VEHICLE PURSUANT TO  
39 SECTION 36-798.06.

40 B. THIS SECTION DOES NOT APPLY TO EITHER OF THE FOLLOWING:

41 1. A VEHICLE THAT IS OWNED, OPERATED OR CONTRACTED BY A PERSON WHO  
42 HOLDS A VALID LICENSE ISSUED UNDER SECTION 42-3401 AND IS TRANSPORTING  
43 UNTAXED OTHER TOBACCO PRODUCTS FROM ONE TO ANOTHER OF THE LICENSEE'S PLACES  
44 OF BUSINESS LISTED ON ITS APPLICATION.

