

**HOUSE BILL NO. 503 am S**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE HOUSE FINANCE COMMITTEE**

**Amended: 5/11/04**  
**Introduced: 2/16/04**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to taxes on cigarettes and tobacco products, to tax stamps on  
2 cigarettes, to forfeiture of cigarettes and of property used in the manufacture,  
3 transportation, facilitation of transportation, possession, offering for sale, or sale of  
4 unstamped cigarettes, to unfair cigarette sales, and to licenses and licensees under the  
5 Cigarette Tax Act; the tobacco product Master Settlement Agreement; and providing  
6 for an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 \* **Section 1.** AS 43.50.030(d) is amended to read:

9 (d) For each license issued to a direct-buying retailer, and for each renewal,  
10 the fee is \$50 [\$25].

11 \* **Sec. 2.** AS 43.50.035 is repealed and reenacted to read:

12 **Sec. 43.50.035. Wholesaler-distributor license.** (a) A person outside of this  
13 state who sells or distributes cigarettes into this state and is not required to be licensed

1 under AS 43.50.010 may apply for a wholesaler-distributor license.

2 (b) A person outside of this state who sells or distributes cigarettes into this  
3 state, who is not required to be licensed under AS 43.50.010, and who wishes to  
4 purchase stamps under this chapter shall be licensed as a wholesaler-distributor.

5 (c) The department shall adopt reasonable regulations necessary for the  
6 collection of cigarette taxes on cigarette sales or distributions made by a wholesaler-  
7 distributor licensee into this state and standards for

8 (1) application and issuance of the license; and

9 (2) refusal to issue the license.

10 \* **Sec. 3.** AS 43.50.090(a) is amended to read:

11 (a) There is levied an excise tax of 38 mills on each cigarette imported or  
12 acquired in the state. The tax shall be paid through the use of stamps as provided in  
13 AS 43.50.500 - 43.50.700. **A person who imports or acquires cigarettes in the**  
14 **state upon which a stamp required by this chapter has not been affixed in**  
15 **accordance with AS 43.50.500 - 43.50.700, who fails to apply to purchase stamps**  
16 **as required by AS 43.50.540(a), and who fails to pay the tax through the use of**  
17 **stamps is not relieved** [THE FAILURE TO PAY THE TAX THROUGH THE USE  
18 OF STAMPS DOES NOT RELIEVE A PERSON] of the obligation to pay taxes due  
19 under this chapter. The person shall still pay the tax, and the tax is due on or before  
20 the end of the month following the month in which cigarettes were manufactured,  
21 imported, acquired, or sold in this state. Cigarettes upon which the excise is imposed  
22 are not again subject to the excise when acquired by another person.

23 \* **Sec. 4.** AS 43.50.170(1) is amended to read:

24 (1) "buyer" means a person who imports or acquires cigarettes for the  
25 person's own consumption from any source other than a manufacturer, distributor,  
26 direct-buying retailer, [OR] retailer, **or wholesaler-distributor**;

27 \* **Sec. 5.** AS 43.50.170(3) is amended to read:

28 (3) "direct-buying retailer" means a person who is engaged in the sale  
29 of cigarettes at retail in this state, and who brings **cigarettes** or causes **cigarettes** to be  
30 brought [CIGARETTES] into the state **that are not purchased from a wholesaler-**  
31 **distributor**;

1 \* **Sec. 6.** AS 43.50.170(4) is amended to read:

2 (4) "distributor" means a person who brings cigarettes **that are not**  
 3 **purchased from a wholesaler-distributor**, or has cigarettes **that are not purchased**  
 4 **from a wholesaler-distributor** brought into the state, and who sells or distributes at  
 5 least 75 **percent** [PER CENT] of the cigarettes to others for resale in the state;

6 \* **Sec. 7.** AS 43.50.170(12) is amended to read:

7 (12) "wholesaler-distributor" means a person outside this state who  
 8 sells or distributes cigarettes into this state, [AND] who is not required to be licensed  
 9 under AS 43.50.010, **and who is licensed under AS 43.50.035.**

10 \* **Sec. 8.** AS 43.50.190(a) is amended to read:

11 (a) There is levied an excise tax of **62** [12] mills on each cigarette imported or  
 12 acquired in this state.

13 \* **Sec. 9.** AS 43.50.300 is amended to read:

14 **Sec. 43.50.300. Excise tax levied.** An excise tax is levied on tobacco  
 15 products in the state at the rate of **100** [75] percent of the wholesale price of the  
 16 tobacco products. The tax is levied when a person

17 (1) brings, or causes to be brought, a tobacco product into the state  
 18 from outside the state for sale;

19 (2) makes, manufactures, or fabricates a tobacco product in the state  
 20 for sale in the state; [OR]

21 (3) ships or transports a tobacco product to a retailer in the state for  
 22 sale by the retailer **or to an individual for personal consumption; or**

23 **(4) brings, or causes to be brought, a tobacco product into the state**  
 24 **from outside the state for personal consumption.**

25 \* **Sec. 10.** AS 43.50.320(a) is repealed and reenacted to read:

26 (a) Except as provided in (g) of this section, a person engaging in an activity  
 27 described in AS 43.50.300(1) - (3) must be licensed by the department as a distributor,  
 28 and a person engaging in an activity described in AS 43.50.300(4) must be licensed as  
 29 a buyer.

30 \* **Sec. 11.** AS 43.50.320(b) is amended to read:

31 (b) The department, upon application and payment of a fee of \$50, shall issue

1 a license for one year to a person who applies for a **distributor** license [UNDER (a)  
 2 OF THIS SECTION]. **The department, upon application and payment of a fee of**  
 3 **\$25, shall issue a license for one year to a person who applies for a buyer license.**

4 \* **Sec. 12.** AS 43.50.320(d) is amended to read:

5 (d) A **distributor** license issued under this section must include the name and  
 6 address of the licensee, the type of business to be conducted, and the year for which  
 7 the license is issued.

8 \* **Sec. 13.** AS 43.50.320(e) is amended to read:

9 (e) The department may renew a **distributor** license issued under this section  
 10 for a fee of \$50. **The department may renew a buyer license issued under this**  
 11 **section for a fee of \$25.**

12 \* **Sec. 14.** AS 43.50.330(a) is amended to read:

13 (a) On or before the last day of each calendar month, a licensee shall file a  
 14 return with the department. The return must state the number or amount of tobacco  
 15 products sold **or imported for personal consumption** by the licensee during the  
 16 preceding calendar month, the selling price **or purchase price** of the tobacco  
 17 products, and the amount of tax imposed on the tobacco products.

18 \* **Sec. 15.** AS 43.50.390(2) is amended to read:

19 (2) "licensee" means a distributor **or buyer** who is

20 (A) licensed under AS 43.50.320; or

21 (B) exempted by AS 43.50.320(g) from licensing under  
 22 AS 43.50.320;

23 \* **Sec. 16.** AS 43.50.390 is amended by adding a new paragraph to read:

24 (6) "buyer" means a person who imports tobacco products for the  
 25 person's own consumption from any source other than a licensee.

26 \* **Sec. 17.** AS 43.50.540(f) is amended to read:

27 (f) Title to the stamps passes immediately to the licensee at the time the  
 28 stamps are obtained in person or, if the stamps are shipped or transported, at the time  
 29 the stamps are placed in the United States mail or received by the common or private  
 30 carrier. The licensee bears all costs associated with shipping or transporting the  
 31 stamps. **The department may replace stamps lost or damaged in transit if the**

1 licensee provides proof acceptable to the department verifying that the loss or  
 2 damage occurred while the stamps were in the possession of the shipping  
 3 company and the shipping company substantiates the loss or damage. Damaged  
 4 stamps must be returned to the department before the department may replace  
 5 them [AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN  
 6 TRANSIT].

7 \* **Sec. 18.** AS 43.50.550(b) is amended to read:

8 (b) A licensee who submits an application for the purchase of stamps on a  
 9 deferred-payment basis shall, as a condition of approval of the application, post a  
 10 bond acceptable to the department in an amount equal to

11 (1) 200 percent of the maximum dollar amount of allowed monthly  
 12 purchases under this section; or

13 (2) 100 percent of the maximum dollar amount of allowed monthly  
 14 purchases under this section if the licensee

15 (A) holds a license issued under AS 43.50.010 for a physical  
 16 location in this state; and

17 (B) has been in full compliance with the provisions of this  
 18 title and regulations adopted under this title during the preceding 60  
 19 months [AS A CONDITION OF APPROVAL OF THE APPLICATION].

20 \* **Sec. 19.** AS 43.50.580(b) is amended to read:

21 (b) A licensee may possess unstamped cigarettes in this state if

22 (1) the licensee posts a surety bond in an amount satisfactory to the  
 23 department to ensure performance of its duties under this chapter; and

24 (2) unstamped cigarettes are necessary for the conduct of the licensee's  
 25 business in making sales or distributions

26 (A) to an instrumentality of the federal government or an  
 27 Indian tribal organization authorized by law to possess cigarettes not taxed  
 28 under this chapter; or

29 (B) to customers outside the state and the licensee provides  
 30 proof acceptable to the department that the licensee is properly licensed in  
 31 the jurisdictions outside the state where the sales or distributions are

1                    made.

2            \* **Sec. 20.** AS 43.50.590(a) is amended to read:

3                    (a) The department shall adopt procedures for a refund or credit to a licensee  
4                    in the amount of the denominated value, less the discount given under AS 43.50.540,  
5                    for

6                                    (1) unused or damaged stamps; [OR]

7                                    (2) stamps affixed to cigarette packages that have become unfit for use  
8                    or sale, are destroyed, or are returned to the manufacturer for credit or replacement if  
9                    the licensee provides proof acceptable to the department that the cigarettes have not  
10                    been and will not be consumed in this state; or

11                                    (3) stamps affixed to cigarette packages that are sold or  
12                                    distributed outside the state if the licensee provides proof acceptable to the  
13                                    department that the cigarettes have not been and will not be consumed in this  
14                                    state and the licensee is properly licensed in the jurisdictions outside the state  
15                                    where the sales or distributions are made.

16            \* **Sec. 21.** AS 43.50 is amended by adding a new section to read:

17                                    **Sec. 43.50.625. Forfeiture of other property.** (a) Upon a showing of  
18                    probable cause that a person has committed the crime of misconduct involving  
19                    unstamped cigarettes or stamps in the first degree under AS 43.50.640, the following  
20                    are subject to forfeiture:

21                                    (1) material and equipment used in the manufacture, sale, offering for  
22                    sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 -  
23                    43.50.640 or 43.50.660 - 43.50.700;

24                                    (2) aircraft, vehicles, or vessels used to transport or facilitate the  
25                    transportation of cigarettes manufactured, sold, offered for sale, or possessed for sale  
26                    in this state in violation of AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700;

27                                    (3) money, securities, negotiable instruments, or other things of value  
28                    used in financial transactions derived from activity prohibited under AS 43.50.500 -  
29                    43.50.640 or 43.50.660 - 43.50.700.

30                    (b) Property subject to forfeiture under this section may be actually or  
31                    constructively seized under an order issued by the superior court upon a showing of

1 probable cause that the property is subject to forfeiture under this section.  
 2 Constructive seizure is effected upon posting a signed notice of seizure on the item to  
 3 be forfeited, stating the violation and the date and place of seizure. Seizure without a  
 4 court order may be made if

5 (1) the seizure is incident to a valid arrest or search;

6 (2) the property subject to seizure is the subject of a prior judgment in  
 7 favor of the state; or

8 (3) there is probable cause to believe that the property is subject to  
 9 forfeiture under (a) of this section; property seized under this paragraph may be held  
 10 for not more than 48 hours unless an order of forfeiture is issued by the court before  
 11 the end of that time period.

12 (c) Within 30 days after a seizure under this section, the Department of Public  
 13 Safety shall make reasonable efforts to ascertain the identity and whereabouts of any  
 14 person holding an interest, or an assignee of a person holding an interest, in the  
 15 property seized, including a right to possession, or a lien, mortgage, or conditional  
 16 sales contract. The Department of Public Safety shall notify the person ascertained to  
 17 have an interest in the seized property of the impending forfeiture, and, before  
 18 forfeiture, the Department of Public Safety shall publish, once a week for four  
 19 consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of  
 20 general circulation in the judicial district in which the seizure was made, or if a  
 21 newspaper is not published in that judicial district, in a newspaper published in the  
 22 state and distributed in that judicial district.

23 (d) Property subject to forfeiture under (a) of this section may be forfeited

24 (1) upon conviction of a person for a violation of AS 43.50.640; or

25 (2) upon judgment by the superior court in a proceeding in rem that the  
 26 property was used in a manner subjecting it to forfeiture under (a) of this section.

27 (e) The owner of property subject to forfeiture under (a) of this section is  
 28 entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an  
 29 action under (d) of this section, the owner shows that the owner

30 (1) was not a party to the violation;

31 (2) did not have actual knowledge or reasonable cause to believe that

1 the property was used or was to be used in violation of the law; and

2 (3) did not have actual knowledge or reasonable cause to believe that  
3 the person committing the violation had, within the last 10 years,

4 (A) a criminal record for violating this chapter; or

5 (B) committed other violations of this chapter.

6 (f) The court may allow the owner of property that is subject to forfeiture  
7 under (a) of this section to redeem the property by paying an amount determined by  
8 the court to be the fair market value of the property.

9 (g) A person other than the owner holding, or the assignee of, a lien,  
10 mortgage, or conditional sales contract on, or the right to possession of property  
11 subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in  
12 the nature of remission of the forfeiture if, in an action under (d) of this section, the  
13 person shows that the person

14 (1) was not a party to the violation subjecting the property to  
15 forfeiture;

16 (2) did not have actual knowledge or reasonable cause to believe that  
17 the property was used or was to be used in violation of the law; and

18 (3) did not have actual knowledge or reasonable cause to believe that  
19 the person committing the violation had, within the last 10 years,

20 (A) a criminal record for violating this chapter; or

21 (B) committed other violations of this chapter.

22 (h) It is not a defense in an in rem forfeiture proceeding brought under (d)(2)  
23 of this section that a criminal proceeding is pending or has resulted in conviction or  
24 acquittal of a person charged with violating AS 43.50.640.

25 (i) Property forfeited under this section shall be placed in the custody of the  
26 commissioner of public safety for disposition according to an order entered by the  
27 court. The court shall order destroyed any property forfeited under this section that is  
28 harmful to the public and may order any property forfeited under this section that was  
29 seized in a municipality to be transferred to the municipality in which the property was  
30 seized or to another municipality affected by the crime for which the property was  
31 forfeited. The state shall notify all municipalities affected by the crime of the

1 forfeiture proceeding. Other property shall be ordered sold and the proceeds used for  
 2 payment of expenses of the proceedings for forfeiture and sale, including expenses of  
 3 seizure, custody, and court costs. The remainder of the proceeds shall be deposited in  
 4 the general fund.

5 (j) The title to a vehicle or vessel forfeited to the state under this section may  
 6 be transferred by the state to a municipality or the local governing body of a village  
 7 for official use by the municipality or village, on condition that the vehicle or vessel  
 8 not be available for use by the defendant.

9 \* **Sec. 22.** AS 43.50.640(a) is amended to read:

10 (a) A person commits the crime of misconduct involving unstamped cigarettes  
 11 or stamps in the first degree if the person

12 (1) with reckless disregard that the cigarettes are unstamped

13 (A) sells or distributes 5,000 [1,000] or more unstamped  
 14 cigarettes in a single transaction;

15 (B) owns or possesses 5,000 [1,000] or more unstamped  
 16 cigarettes with the intent to sell; or

17 (C) acquires, holds, transports, imports, or possesses 10,000 or  
 18 more unstamped cigarettes; or

19 (2) with reckless disregard that the stamp was previously affixed to  
 20 another cigarette package[;]

21 (A) affixes a previously used stamp to a cigarette package; or

22 (B) possesses, sells, or distributes a previously used stamp.

23 \* **Sec. 23.** AS 43.50.650(a) is amended to read:

24 (a) A person commits the crime of misconduct involving unstamped cigarettes  
 25 or stamps in the second degree if the person

26 (1) with reckless disregard that the cigarettes are unstamped

27 (A) sells or distributes at least one but fewer than 5,000 [1,000]  
 28 unstamped cigarettes in a single transaction;

29 (B) owns or possesses at least one but fewer than 5,000  
 30 [1,000] unstamped cigarettes, with intent to sell; or

31 (C) acquires, holds, transports, imports, or possesses at least

1 one but fewer than 10,000 unstamped cigarettes; or

2 (2) is not licensed under this chapter or otherwise authorized by the  
3 department to possess stamps and possesses a stamp that is not affixed to a cigarette  
4 package.

5 \* **Sec. 24.** AS 43.50.710 is amended by adding a new subsection to read:

6 (e) Nothing in this section prohibits a manufacturer from offering promotions  
7 to a wholesaler or a retailer provided the wholesale promotion is the same for all  
8 participating wholesalers and the retail promotion is the same for all participating  
9 retailers.

10 \* **Sec. 25.** AS 43.50.720 is amended to read:

11 **Sec. 43.50.720. Sale at less than cost; with gift or concession.** In all  
12 advertisements, offers for sale, or sales involving two or more items when at least one  
13 of the items is cigarettes at a combined price, and in all advertisements, offers for sale,  
14 or sales involving the giving of any gift, concession, or coupon of any kind in  
15 conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling  
16 price may not be below the actual cost to the wholesaler or the actual cost to the  
17 retailer, respectively, of the total of all articles, products, commodities, gifts, and  
18 concessions included in the transactions, except that, if any articles, products,  
19 commodities, gifts, or concessions are not cigarettes, the **actual** [BASIC] cost shall be  
20 determined as provided under AS 43.50.800.

21 \* **Sec. 26.** AS 43.50.760(b) is amended to read:

22 (b) The presumptive **actual** [WHOLESALE AND PRESUMPTIVE RETAIL]  
23 cost of cigarettes as determined by the department **under AS 43.50.800** [FROM THE  
24 MANUFACTURER'S PRICE LIST] is considered competent evidence in a court  
25 action or proceeding as tending to prove actual cost to the wholesaler or retailer  
26 complained against. A party against whom the presumptive **actual** [WHOLESALE  
27 OR PRESUMPTIVE RETAIL] cost as determined by the department is introduced in  
28 evidence has the right to offer evidence tending to prove any inaccuracy of the  
29 presumptive **actual** [WHOLESALE OR PRESUMPTIVE RETAIL] cost or any  
30 statement of facts that would impair its probative value.

31 \* **Sec. 27.** AS 43.50.770 is amended to read:

1                   **Sec. 43.50.770. Determination of cost of cigarettes purchased outside of**  
 2 **ordinary channels of trade.** In establishing the actual [BASIC] cost of cigarettes to  
 3 a wholesaler or retailer, the invoice cost [OR THE ACTUAL COST] of cigarettes  
 4 purchased at a forced, bankrupt, or closeout sale, or other sale outside the ordinary  
 5 channels of trade may not be used.

6 \* **Sec. 28.** AS 43.50.790(a) is amended to read:

7                   (a) The department

8                                 (1) shall administer AS 43.50.710 - 43.50.849;

9                                 (2) may adopt regulations relating to the administration and  
 10 enforcement of AS 43.50.710 - 43.50.849;

11                                (3) may determine the actual [BASIC] cost of cigarettes to a  
 12 wholesaler or retailer as provided in AS 43.50.800 [FROM INFORMATION  
 13 OBTAINED FROM A MANUFACTURER];

14                                (4) may, after reasonable notice and hearing, revoke or suspend a  
 15 license issued under AS 43.50.010 or 43.50.035 to a person who refuses or neglects to  
 16 comply with a provision of AS 43.50.710 - 43.50.849.

17 \* **Sec. 29.** AS 43.50.800 is repealed and reenacted to read:

18                   **Sec. 43.50.800. Presumptions applicable to determination of cost.** (a) The  
 19 presumptive actual cost of cigarettes to a wholesaler is, for purposes of AS 43.50.710 -  
 20 43.50.849, the presumptive wholesale cost as calculated by the department plus an  
 21 amount equal to four and one-half percent of the presumptive wholesale cost to  
 22 account for business costs. For purposes of this section, the presumptive wholesale  
 23 cost is the manufacturer's list price, less trade discounts, plus the full face value of all  
 24 cigarette taxes.

25                   (b) The presumptive actual cost of cigarettes to a retailer is, for purposes of  
 26 AS 43.50.710 - 43.50.849, the presumptive actual cost of cigarettes to the wholesaler  
 27 as calculated by the department under (a) of this section, plus an amount equal to six  
 28 percent of the presumptive actual cost of cigarettes to the wholesaler to account for  
 29 business costs.

30                   (c) A wholesaler or retailer that wishes to advertise, offer to sell, or sell  
 31 cigarettes at less than the presumptive actual cost to the wholesaler or retailer as

1 calculated under (a) or (b) of this section must first obtain approval from the  
 2 department. The department may grant approval only if the wholesaler or retailer  
 3 provides proof satisfactory to the department that the wholesaler or retailer's actual  
 4 cost is lower than presumed. Approval for cigarette sales at less than the presumptive  
 5 actual cost as determined under (a) or (b) of this section may not be granted for a  
 6 period longer than one year. In reviewing proof of actual wholesale or retail cost, the  
 7 department may consider the costs reflected on the actual invoice, but may not  
 8 consider cash discounts. In reviewing proof of actual costs, the department may  
 9 consider the standards and methods of accounting regularly employed, and must  
 10 include labor costs, rent, depreciation, selling costs, maintenance of equipment,  
 11 delivery costs, all types of licenses, taxes, insurance, advertising, preopening  
 12 expenses, provision for impaired assets and closing costs, interest expenses, and  
 13 provision for merger and restructuring expenses. The department shall adopt  
 14 regulations under which the wholesaler's and retailer's actual costs are determined for  
 15 purposes of AS 43.50.710 - 43.50.849.

16 \* **Sec. 30.** AS 45.53.020(b) is amended to read:

17 (b) A tobacco product manufacturer that places money into escrow under  
 18 (a)(2) of this section is entitled to receive the interest or other appreciation on such  
 19 money as earned. Such money itself shall be released from escrow only under the  
 20 following circumstances:

21 (1) to pay a judgment or settlement on a released claim brought against  
 22 such tobacco product manufacturer by this state or a releasing party located or residing  
 23 in this state; the funds shall be released from escrow under this paragraph in the order  
 24 in which they were placed into escrow and only to the extent and at the time necessary  
 25 to make payments required under the judgment or settlement;

26 (2) to the extent that the tobacco product manufacturer establishes that  
 27 the amount that it was required to place into escrow **on account of units sold in the**  
 28 **state** in a particular year was greater than the **Master Settlement Agreement**  
 29 **payments, as determined under sec. IX(i) of the Master Settlement Agreement,**  
 30 **including, after final determination of all adjustments, payments that the**  
 31 **manufacturer would have been required to make on account of those units had it**

1 **been a participating manufacturer** [STATE'S ALLOCABLE SHARE OF THE  
 2 TOTAL PAYMENTS THAT THE MANUFACTURER WOULD HAVE BEEN  
 3 REQUIRED TO MAKE IN THAT YEAR UNDER THE MASTER SETTLEMENT  
 4 AGREEMENT HAD IT BEEN A PARTICIPATING MANUFACTURER, AS SUCH  
 5 PAYMENTS ARE DETERMINED UNDER SEC. IX(i)(2) OF THE MASTER  
 6 SETTLEMENT AGREEMENT AND BEFORE ANY OF THE ADJUSTMENTS OR  
 7 OFFSETS DESCRIBED IN SEC. IX(i)(3) OF THAT AGREEMENT OTHER THAN  
 8 THE INFLATION ADJUSTMENT], the excess shall be released from escrow and  
 9 revert back to that tobacco product manufacturer; or

10 (3) to the extent not released from escrow under (1) or (2) of this  
 11 **subsection** [SUBSECTIONS], funds placed into escrow shall be released from escrow  
 12 and revert back to the tobacco product manufacturer 25 years after the date on which  
 13 they were placed into escrow.

14 \* **Sec. 31.** AS 45.53.020(b) is repealed and reenacted to read:

15 (b) A tobacco product manufacturer that places money into escrow under  
 16 (a)(2) of this section is entitled to receive the interest or other appreciation on such  
 17 money as earned. Such money itself shall be released from escrow only under the  
 18 following circumstances:

19 (1) to pay a judgment or settlement on a released claim brought against  
 20 such tobacco product manufacturer by this state or a releasing party located or residing  
 21 in this state; the funds shall be released from escrow under this paragraph in the order  
 22 in which they were placed into escrow and only to the extent and at the time necessary  
 23 to make payments required under the judgment or settlement;

24 (2) to the extent not released from escrow under (1) of this subsection,  
 25 funds placed into escrow shall be released from escrow and revert back to the tobacco  
 26 product manufacturer 25 years after the date on which they were placed into escrow.

27 \* **Sec. 32.** AS 45.53.020(b) is repealed and reenacted to read:

28 (b) A tobacco product manufacturer that places money into escrow under  
 29 (a)(2) of this section is entitled to receive the interest or other appreciation on such  
 30 money as earned. Such money itself shall be released from escrow only under the  
 31 following circumstances:

1 (1) to pay a judgment or settlement on a released claim brought against  
 2 such tobacco product manufacturer by this state or a releasing party located or residing  
 3 in this state; the funds shall be released from escrow under this paragraph in the order  
 4 in which they were placed into escrow and only to the extent and at the time necessary  
 5 to make payments required under the judgment or settlement;

6 (2) to the extent that the tobacco product manufacturer establishes that  
 7 the amount that it was required to place into escrow in a particular year was greater  
 8 than the state's allocable share of the total payments that the manufacturer would have  
 9 been required to make in that year under the master settlement agreement had it been a  
 10 participating manufacturer, as such payments are determined under sec. IX(i)(2) of the  
 11 master settlement agreement and before any of the adjustments or offsets described in  
 12 sec. IX(i)(3) of that agreement other than the inflation adjustment, the excess shall be  
 13 released from escrow and revert back to that tobacco product manufacturer; or

14 (3) to the extent not released from escrow under (1) or (2) of this  
 15 subsection, funds placed into escrow shall be released from escrow and revert back to  
 16 the tobacco product manufacturer 25 years after the date on which they were placed  
 17 into escrow.

18 \* **Sec. 33.** The uncodified law of the State of Alaska enacted in sec. 4, ch. 48, SLA 1997, is  
 19 repealed and reenacted to read:

20 Sec. 4. AS 43.50.190(a) is repealed and reenacted to read:

21 (a) There is levied an excise tax of 97.5 mills on each cigarette imported or acquired  
 22 in this state.

23 \* **Sec. 34.** AS 43.50.740(b), 43.50.849(1), 43.50.849(6), and 43.50.849(7) are repealed.

24 \* **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to  
 25 read:

26 **CONDITIONAL EFFECT.** (a) Section 31 of this Act takes effect only if  
 27 AS 45.53.020(b)(2), as amended in sec. 30 of this Act, is held by a court of competent  
 28 jurisdiction to be unconstitutional.

29 (b) Section 32 of this Act takes effect only if AS 45.53.020(b)(2), as amended in sec.  
 30 30 and in sec. 31 of this Act, are held by a court of competent jurisdiction to be  
 31 unconstitutional.

1     \* **Sec. 36.** The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3           TRANSITION: FLOOR STOCK TAX FOR CERTAIN CIGARETTES IN THE  
4 STATE ON THE EFFECTIVE DATE OF THIS SECTION. (a) Notwithstanding any other  
5 provision to the contrary, a floor stock tax is imposed at 12:01 a.m. on the effective date of  
6 this section upon every person in control or possession of cigarettes for sale or distribution in  
7 the state that were taxed at the rate in effect before the effective date of this section. The floor  
8 stock tax is the difference between the tax computed on each cigarette as provided in  
9 AS 43.50.190, as amended by sec. 8 of this Act, on the effective date of this section and the  
10 tax actually paid on each cigarette as required by AS 43.50.190 as it read on the day before  
11 the effective date of this section. The person subject to the floor stock tax under this section  
12 must provide proof that the tax required by AS 43.50.190, as it read on the day before the  
13 effective date of this section, on each cigarette was previously paid or the tax actually paid on  
14 each cigarette is considered to be zero.

15           (b) A person subject to the floor stock tax under this section shall file a report on a  
16 form prescribed by the Department of Revenue and pay the tax to the Department of Revenue  
17 in six sequential monthly installments. The first installment shall be paid not later than the  
18 last day of the month in which this section takes effect. The penalty, interest, and taxpayer  
19 remedy provisions of AS 43.05 apply to the floor stock tax under this section.

20     \* **Sec. 37.** If sec. 31 of this Act takes effect under sec. 35(a) of this Act, it takes effect on  
21 the day after the date of a final order or decision by a court of competent jurisdiction holding  
22 AS 45.53.020(b)(2), as amended in sec. 30 of this Act, to be unconstitutional.

23     \* **Sec. 38.** If sec. 32 of this Act takes effect under sec. 35(b) of this Act, it takes effect on  
24 the day after the date of a final order or decision by a court of competent jurisdiction holding  
25 AS 45.53.020(b)(2), as amended in sec. 31 of this Act, to be unconstitutional.

26     \* **Sec. 39.** Except as provided in secs. 37 and 38 of this Act, this Act takes effect July 1,  
27 2004.