

SENATE BILL NO. 133

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/19/16

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring the electronic submission of a tax return or report with the**
2 **Department of Revenue; relating to the taxes on cigarettes and tobacco products; taxing**
3 **electronic smoking devices; and providing for an effective date."**

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

5 * **Section 1.** AS 43.05.220 is amended to add a new subsection to read:

6 (f) A penalty of \$25 or one percent of the total tax before any payment,
7 whichever is greater, shall be assessed against a taxpayer that fails to electronically
8 submit a return or report under AS 43.05.222, unless the taxpayer has received an
9 exemption under AS 43.05.222 or can show reasonable cause.

10 * **Sec. 2.** AS 43.05 is amended by adding a new section to read:

11 **Sec. 43.05.222. Electronic submission of return or report.** (a) A taxpayer
12 required to submit a return or report for a tax levied under AS 43 or any other tax
13 administered by the department shall submit the return or report electronically in a
14 format prescribed by the department. Unless the taxpayer has received an exemption

under (b) of this section or can show reasonable cause, a return or report not submitted electronically is subject to a civil penalty under AS 43.05.220.

(b) A taxpayer may request an exemption from the requirement that a return or report be submitted electronically. The taxpayer or taxpayer's representative shall contact the department and request the exemption before the return or report is due and shall submit evidence that the taxpayer does not have the capability to submit the return or report electronically. An exemption granted under this subsection is valid for two years after the first tax filing due date after the exemption is granted; after the two year period, the taxpayer may apply for another exemption.

* **Sec. 3.** AS 43.50.150(c) is amended to read:

(c) The department may enter into an agreement with a municipality that imposes a tax on cigarettes, electronic smoking devices, or other tobacco products for the purpose of jointly auditing a person liable for a tax under AS 43.50.010 - 43.50.390 and the municipal tax on cigarettes, electronic smoking devices, or other tobacco products.

* **Sec. 4.** AS 43.50.170 is amended by adding a new section to read:

(13) "electronic smoking device" has the meaning given in AS 43.50.390.

* **Sec. 5.** AS 43.50.190(a) is amended to read:

(a) There is levied an excise tax on each cigarette imported or acquired in this state of 112 [,

(1) AFTER DECEMBER 31, 2004, BUT BEFORE JULY 1, 2006, 42 MILLS;

(2) AFTER JUNE 30, 2006, BUT BEFORE JULY 1, 2007, 52 MILLS;

(3) AFTER JUNE 30, 2007, 62] mills.

* **Sec. 6.** AS 43.50.300 is amended to read:

Sec. 43.50.300. Excise tax levied. An excise tax is levied on tobacco products and electronic smoking devices in the state at the rate of 100 [75] percent of the wholesale price of the tobacco products or electronic smoking devices. The tax is levied when a person who first

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

(2) makes, manufactures, or fabricates a tobacco product or electronic smoking device in the state for sale in the state [; OR

(3) SHIPS OR TRANSPORTS A TOBACCO PRODUCT TO A RETAILER IN THE STATE FOR SALE BY THE RETAILER].

* **Sec. 7.** AS 43.50.310(b) is amended to read:

(b) The tax does not apply to a tobacco product or electronic smoking device if the United States Constitution or other federal laws prohibit the levying of the tax on the product or device by the state.

* **Sec. 8.** AS 43.50.320(a) is amended to read:

(a) Except as provided in (g) of this section, a person must be licensed by the department if the person engages in business as a distributor for a tobacco product or electronic smoking device that is subject to the tax.

* **Sec. 9.** AS 43.50.330(a) is amended to read:

(a) On or before the last day of each calendar month, a licensee shall file a return with the department. The return must be submitted electronically to the department in a format prescribed by the department. The return must state the number or amount of tobacco products or electronic smoking devices sold by the licensee during the preceding calendar month, the selling price of the tobacco products or electronic smoking devices, and the amount of tax imposed on the tobacco products or electronic smoking devices.

* **Sec. 10.** AS 43.50.335 is amended to read:

Sec. AS 43.50.335. Tax credits and refunds. The department shall adopt procedures for a refund or credit to a licensee of the tax paid for tobacco products or electronic smoking devices that have become unfit for sale, are destroyed, or are returned to the manufacturer for credit or replacement if the licensee provides proof acceptable to the department that the tobacco products or electronic smoking devices have not been and will not be consumed in this state.

* **Sec. 11.** AS 43.50.340 is amended to read:

Sec. 43.50.340. Records. A licensee shall keep a complete and accurate record

of all tobacco products **or electronic smoking devices** of the licensee subject to the tax, including purchase prices, sales prices, the names and addresses of the sellers and the purchasers, the dates of delivery, the quantities of tobacco products **or electronic smoking devices**, and the trade names and brands. Statements and records required by this section must be in the form prescribed by the department, preserved for three years, and available for inspection upon demand by the department.

* **Sec. 12.** AS 43.50.390(4) is amended to read:

(4) "tobacco product"

(A) means

(i) [(A)] a cigar;

(ii) [(B)] a cheroot;

(iii) [(C)] a stogie;

(iv) [(D)] a perique;

(v) [(E)] snuff and snuff flour;

(vi) [(F)] smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or cigarette;

(vii) [(G)] chewing tobacco, including cavendish, twist, plug, scrap, and tobacco suitable for chewing; or

(viii) [(H)] an article or product made of tobacco or a tobacco substitute, but not including a cigarette as defined in AS 43.50.170;

(B) does not include a product that has been approved by the United States Food and Drug Administration for sale as a smoking cessation product, tobacco dependence product, or modified risk tobacco product;

* **Sec. 13.** AS 43.50.390(5) is amended to read:

(5) "wholesale price" means, **for a tobacco product or electronic smoking device**

(A) **acquired from a manufacturer,** the **gross invoice** [ESTABLISHED] price, **including all federal excise taxes, at** [FOR] which

1 the [A] manufacturer sells a tobacco product or electronic smoking device to
 2 an unaffiliated [A] distributor after a deduction of a trade discount or other
 3 reduction received by the distributor [FOR QUANTITY OR CASH IF THE
 4 MANUFACTURER'S ESTABLISHED PRICE IS ADEQUATELY
 5 SUPPORTED BY BONA FIDE ARM'S LENGTH SALES AS
 6 DETERMINED BY THE DEPARTMENT]; or

7 (B) not acquired from a manufacturer, the gross invoice
 8 price, including all federal excise taxes, after a deduction of a trade
 9 discount or other reduction [AS DETERMINED BY THE DEPARTMENT,
 10 FOR WHICH TOBACCO PRODUCTS OF COMPARABLE RETAIL PRICE
 11 ARE SOLD TO DISTRIBUTORS IN THE ORDINARY COURSE OF
 12 TRADE IF THE MANUFACTURER'S ESTABLISHED PRICE DOES NOT
 13 MEET THE STANDARDS OF (A) OF THIS PARAGRAPH].

14 * **Sec. 14.** AS 43.50.390 is amended by adding a new paragraph to read:

15 (6) "electronic smoking device"

16 (A) means

17 (i) an electronic cigarette, electronic cigar, electronic
 18 cigarillo, electronic pipe, or other similar device that is used to
 19 aerosolize and deliver nicotine or other substances to the person
 20 inhaling from the device; and

21 (ii) a component, solution, vapor product, or other
 22 related product of an electronic cigarette, electronic cigar, electronic
 23 cigarillo, electronic pipe, or other similar device;

24 (B) does not include a

25 (i) battery or battery charger that is sold separately;

26 (ii) drug, device, or combination product approved for
 27 sale by the United State Food and Drug Administration, as those terms
 28 are defined in 21 U.S.C. 301-392 (Food, Drug, and Cosmetic Act); or

29 (iii) product that has been approved by the United
 30 States Food and Drug Administration for sale as a smoking cessation
 31 product, tobacco dependence product, or modified risk tobacco product.

1 *** Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 APPLICABILITY. (a) AS 43.50.190(a), as amended by sec. 5 of this Act, and
4 AS 43.50.300, as amended by sec. 6 of this Act, apply to tobacco products sold on or after the
5 effective date of this Act.

6 (b) AS 43.50.330, as amended by sec. 9 of this Act, applies to the first monthly return
7 submitted after the first full month after the effective date of this Act.

8 *** Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 TRANSITIONAL PROVISION: REGULATIONS. The Department of Revenue may
11 adopt regulations necessary to implement the changes made by this Act. The regulations take
12 effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
13 law implemented by the regulation.

14 *** Sec. 17.** Section 16 of this Act takes effect immediately under AS 01.10.070(c).

15 *** Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2016.