

(c) a third member, who shall be a disinterested party, selected by the other two members. The Appeals Board shall review the proceedings as disclosed by the record, and may affirm, deny, reverse, amend, or modify the action of the Board of Dental Examiners. The decision of the Appeals Board shall be the final administrative action on the case, but this shall not be construed to deny any appropriate proceeding in a court of competent jurisdiction subsequent to such hearing and appeal.

**Section 7. Injunction.** When it appears to the Board that any person is violating any of the provisions of this Act, the Board may in its own name cause suit to be brought in a court of competent jurisdiction to enjoin any person from doing any acts or thing constituting such violation.

**Section 8. Violation of Act.** Any person who violates any provision of this Act and no specific remedy is provided herein, is guilty of a misdemeanor punishable by a fine of not more than \$500.00, or impris-

onment for not more than six months, or both such fine and imprisonment.

## Article V

### GENERAL PROVISIONS

**Section 1. Construction of Act.** The provisions of this Act are not intended to be retroactive and no license shall be suspended or revoked for any violation of this Act, nor any penalties, fines or injunctions applied, when such violations occurred prior to the effective date of this Act, or any rule or regulation promulgated in pursuance of this Act.

**Section 2. Repealer.** Article 3 of Chapter 3 of Title 35, Alaska Compiled Laws Annotated, 1949, as amended (being Sections 35-3-41 through 35-3-55, ACLA 1949, as amended) is hereby repealed.

**Section 3. Effective Date.** This Act shall take effect and be in force from and after its passage and approval, or upon its becoming law without such approval, and it is so enacted.

Approved March 28, 1955

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## CHAPTER 187

### AN ACT

**Levying an excise tax on the sale, consumption and use of cigarettes; defining certain terms; providing for the licensing of certain persons**

handling cigarettes; providing for the disposition of revenue; establishing certain penalties for violations; and repealing Chapter 42, SLA 1949, as amended.

(H. B. 72)

**Be it Enacted by the Legislature of the Territory of Alaska:**

Section 1. **Short Title.** This Act shall be known and may be cited as the "Cigarette Tax Act".

Section 2. **Definitions.** The following words, terms, and phrases, when used in this Act, shall, for the purpose of this Act, have the meanings respectively ascribed to them in this section.

(a) "Cigarette" means and includes any roll for smoking made wholly or in part of tobacco, irrespective of the size or shape and irrespective of the tobacco being flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material, except tobacco.

(b) "Person" means and includes any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, or any political subdivision of this state, or combination acting as a unit in the plural or singular number.

(c) "Manufacturer" means any person who, by industrial art or

otherwise, makes, fashions, or produces cigarettes for sale to distributors or other persons as defined in this Act.

(d) "Distributor" means any person, wherever resident or located, who brings cigarettes or causes cigarettes to be brought into this Territory, and who sells or distributes at least 75 per cent of all such cigarettes to others for the purpose of resale within the Territory.

(e) "Direct-buying retailer" means any person, wherever resident or located, who is engaged in the sale of cigarettes at retail in this Territory, and who brings or causes such cigarettes to be brought into the Territory.

(f) "Buyer" means and includes any person who imports or acquires cigarettes for his own consumption from any source other than a manufacturer, distributor, direct-buying retailer, or retailer.

(g) "Licensee" means any person licensed under this Act.

(h) "Place of business" means and includes any place where cigarettes are sold, or where cigarettes are brought or kept for the purpose of sale or consumption, including, so far as applicable, any vessel, vehicle, airplane, or train.

(i) "Retailer" means any person in this Territory who is engaged in the business of selling cigarettes at retail.

(j) "Sale" or "Sales" means sales, barter, exchanges, and every other manner, method or form of transferring the ownership of personal property from one person to another.

(k) "Commissioner" means the Tax Commissioner of the Territory of Alaska.

(l) "Territory" means the Territory of Alaska.

**Section 3. License.** No person shall sell, purchase, possess or acquire cigarettes as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer, without first having obtained the appropriate license for that purpose as prescribed by this Act. The Commissioner, upon proper application and payment of the applicable fee herein provided, shall issue a license to each manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer. The Commissioner shall make such reasonable rules and regulations as he may deem necessary respecting the application for and the issuance of such licenses. The Commissioner may refrain from the issuance of any license under this Act where he has reasonable cause to believe that the applicant has willfully withheld information requested of him for the purpose of determining the eligibility of the applicant to receive

a license, or where he has reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith. Any license authorized or required by this Act shall be in addition to any other license which may be required by law.

**Section 4. Separate Licenses.**

Where a person operates more than one place of business, whether temporary or established, the person must obtain a separate license for each such place of business: Provided, that a person operating one or more cigarette vending machines shall be deemed to have only one place of business for licensing purposes. Any person licensed only as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer, shall not operate in any other capacity except that for which he is licensed unless the appropriate license or licenses therefor are first secured. Each license shall be exhibited at the place of business for which it is issued and in such manner as may be prescribed by the Commissioner.

**Section 5. License Fees.** For each license issued to a manufacturer, and for each renewal therefor, there shall be paid to the Commissioner a fee of \$5.

For each license issued to a distributor, and for each renewal therefor, there shall be paid to the Commissioner a fee of \$50.

For each license issued to a vending machine operator, and for each

renewal therefor, there shall be paid to the Commissioner a fee of \$25.

For each license issued to a direct-buying retailer, and for each renewal therefor, there shall be paid to the Commissioner a fee of \$25.

For each license issued to a buyer, and for each renewal therefor, there shall be paid to the Commissioner a fee of \$25.

No license shall be issued to any person except upon the payment of the fee therefor, any statute or exemption to the contrary notwithstanding.

**Section 6. Expiration of Licenses.** Each license issued under Section 3 shall expire on the 30th day of June, next succeeding the date of issue, unless sooner revoked by the Commissioner, as provided in Section 10, or unless the business with respect to which such license was issued shall change ownership or the licensee shall remove his business from the premises covered by the license. In any of such cases the licensee shall immediately return it to the Commissioner. If the licensee removes his business to another location within the Territory, the license with respect to the former place of business shall, upon the payment of a fee of 50c, be reissued for the new location for the balance of the unexpired term. The licensee, on application to the Commissioner accompanied by the applicable fee prescribed in Section 6, may, before the expira-

tion date of the license then held by him, renew his license for a further period of one year from the expiration date of his license.

**Section 7. Transfer of Licenses.** No license shall be assignable or transferable, except as otherwise herein provided, but in the case of the death, bankruptcy, receivership, or incompetency of the licensee, or if for any reason the business of the licensee shall devolve upon another by operation of law, the Commissioner may, at his discretion, extend said license for a limited time to the executor, administrator, trustee, receiver, or other person upon whom the business has devolved.

**Section 8. Refunds.** No refund of the license fee shall be paid to any person upon the surrender or revocation of any license except for a license fee paid or collected in error. In the event a license is lost, destroyed, or defaced, a duplicate license may be obtained upon payment of a fee of 50c.

**Section 9. Revocation of Licenses.** The Commissioner may suspend or revoke any or all licenses of any licensee who violates any of the provisions of this Act, or any rule or regulation of the Commissioner made pursuant thereto, or of a licensee who has ceased to act in the capacity for which the license was issued. No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold, during the period of such suspension or revocation, on the premises occupied by him or

upon other premises controlled by him or others or in any other manner or form whatever. No disciplinary proceeding or action shall be barred or abated by the expiration, transfer, surrender, renewal or extension of any license issued under the provisions of this Act. Any licensee whose license has been suspended or revoked hereunder may petition the Commissioner, within twenty days after such suspension or revocation, for a hearing thereon and for re-issuance of the license. The Commissioner shall promptly grant such hearing, fix the time and place thereof, and notify the petitioner thereof in writing. If no such petition is filed within the period allowed, the suspension or revocation shall become final for such period as may have been fixed by the Commissioner.

**Section 10. Returns.** Every licensee shall, on or before the 15th day of each calendar month, file with the Commissioner, on a form prescribed by the Commissioner, a return, under the penalties of perjury, for each place of business maintained. The return shall state the number of cigarettes manufactured, imported, or acquired, from any source whatever by such licensee during the preceding calendar month, and such return shall contain or be accompanied by such other information as the Commissioner may require. If a licensee ceases to import or acquire cigarettes, he shall forthwith file with the Commissioner such a return for the period ending with such

cessation.

**Section 11. Tax Imposed.** There is hereby levied an excise tax of 2½ mills on each cigarette imported or acquired in this Territory. Each licensee shall, at the time of filing the return required by Section 11 of this Act, pay to the Commissioner this excise for each cigarette imported or acquired during the calendar month covered by the return; deducting therefrom one per centum of the total tax due, which he shall retain to cover his expense of accounting and filing returns in connection therewith; Provided, that cigarettes with respect to which the excise under this Act has once been imposed shall not be again subject to this excise when subsequently acquired by another person. It is the intent and purpose of this section to provide for the collection of this excise from the person who first acquires the cigarettes in this Territory.

**Section 12. Civil Penalties.** If upon the examination of a return filed under the provisions of this Act, or from other information obtained by the Commissioner, it appears that a tax or penalty has been paid less than that properly due, the Commissioner shall assess against the licensee filing the return such additional amount found to be due and may add thereto interest at the rate of 6 per cent per annum from the respective due dates of such additional amount until paid. The Commissioner shall notify said licensee by mail of the additional amount, and the same shall become due and shall be paid within 10

days from the date of the notice, or within such further time as the Commissioner may provide. If it appears that the amount paid exceeds that properly due, the excess so paid may be credited against a subsequent tax or shall be refunded if requested by the taxpayer. If any part of the deficiency is due to a fraudulent intent to evade the payment of the tax imposed by this Act, there shall be added as a penalty 50% of such deficiency, and in such a case, the whole of the tax unpaid, together with the penalty, shall become due and shall be paid as provided above. Any person or licensee in control or in possession of any cigarettes contrary to any provisions of this Act, or who offers to sell or dispose of any cigarettes to others for the purpose of resale without being licensed to do so under this Act, shall be deemed to have possession of such cigarettes as a consumer and shall be personally liable for the tax imposed by this Act, plus a penalty of 100%. If any person fails or refuses to file a return or pay the tax required to be paid under this Act, the Commissioner shall proceed to determine the tax due from such information as the Commissioner can obtain and shall assess the tax so determined against such a person and shall notify him by mail of the amount thereof. Such tax shall become due and payable, together with a penalty of 25% of the amount assessed, 20 days from the date of the issuance of the notice.

Section 13. **Hearings.** Any person

having been issued a notice of additional taxes, delinquent taxes, interest or penalties, assessed by the Commissioner, may, within 20 days after the issuance of the original notice of the amount thereof, petition the Commissioner in writing for a hearing thereon and a correction of the amount of the assessment. The petition shall set forth the reasons why the hearing should be granted and the amount of the tax, interest or penalties, if any, which the petitioner believes to be due. The Commissioner shall promptly grant such hearing, fix the time and place thereof, and notify the petitioner thereof by mail. If no such petition is filed within the 20-day period, the assessment covered by the notice shall become final. Any licensee aggrieved by the decision of the Commissioner and who has paid, under protest, the amount of taxes, interest, and penalties found due by the Commissioner may bring an action, in the District Court in the Judicial Division in which the licensee is carrying on the business for which the tax is imposed, to recover the amount of the tax alleged to have been unlawfully imposed upon him. Such action shall be commenced within 90 days after payment of such tax, interest and penalties so imposed.

Section 14. **Lien.** The specific tax herein imposed, in addition to the interest and penalties provided in this Act and costs that may accrue, shall be a lien in favor of the Territory against all property and rights of property, both real and

personal, then owned or afterwards acquired by any person or persons, firm, association or corporation, liable therefor, to secure the payment of such tax, interest, penalties and costs, which lien shall attach to the property from and after the date that any report upon which the specific tax is computed is required by this Act to be filed. In the event that the proceeds of the property levied upon and sold under the provisions of this Act shall be insufficient to pay in full the lien established by this Act together with other tax liens, the net proceeds recovered shall be applied pro rata to the satisfaction of all such tax liens.

**Section 15. Records.** Every licensee under this Act shall keep a complete and accurate record of all cigarettes manufactured, purchased, or otherwise acquired. Such records, except in the case of a manufacturer, shall include a written statement containing the name and address of both the seller and the purchaser, the date of delivery, the quantity of cigarettes, the trade name and brand thereof and the price paid for each brand of cigarettes purchased. Such other records shall be kept by the licensee as the Commissioner may reasonably prescribe. All statements and other records required by this section shall be in such form as the Commissioner shall prescribe, shall be preserved for a period of 3 years, and shall be offered for inspection at any time upon oral or written demand by the Commissioner or his authorized agent. No licensee un-

der this Act shall issue or accept any written statement which falsely indicates the name of the customer, the type of merchandise, the price, the discounts, or the terms of sale. There shall not be inserted in any invoice given or accepted by any licensee any statement which makes the invoice a false record, wholly or in part, of the transaction represented therein, nor shall there be withheld from any invoice given or accepted by any licensee any statements which properly should be included therein, so that in the absence of such statements the invoice does not truly reflect the transaction involved. Every invoice for the sale of cigarettes given or accepted by a licensee under this Act shall state therein whether the tax imposed by this Act has been paid.

**Section 16. Disposition of Proceeds.** The proceeds derived from the payment of taxes, fees and penalties, provided for under this Act, and the license fees received by the Commissioner, shall be paid into a Territorial fund entitled: "School Fund", and shall be used for the exclusive purpose of rehabilitation, construction and repair of Alaska's school facilities, and may be used for costs of insurance on buildings comprising such facilities during the periods of such rehabilitation, construction and repair and for the life of any such building.

**Section 17. Rules and Regulations.** The Commissioner shall administer the provisions of this Act, and it is hereby made the duty of the

Commissioner to collect, supervise, and enforce the collection of all taxes and penalties that may be due under the provisions of this Act. The Commissioner shall also have the power and authority to make and publish rules and regulations, not inconsistent with this Act, in conformity with the laws of this Territory, necessary and advisable for its detailed administration, to enforce the provisions thereof, and to collect the taxes, fees and penalties herein imposed.

**Section 18. Criminal Penalties.**

(a) Any person who shall file, or cause to be filed, with the Commissioner any false or fraudulent report or statement, or shall aid or abet another in so filing any false or fraudulent report or statement, with the intent to defraud the Territory or evade the payment of any tax, penalty, or interest, or any part thereof, which shall be due pursuant to the provisions of this Act, and any person who shall knowingly swear to or affirm any false or fraudulent statement with intent to evade the payment of any tax imposed by this Act, or who, being under oath, shall testify falsely at

any hearing held pursuant to the provisions of this Act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1000, or imprisoned not more than one year, or both, at the discretion of the court.

(b) Any person who violates any of the provisions of this Act, otherwise than hereinabove specified, shall be guilty of a misdemeanor and be liable to a fine of not more than \$250 for each separate offense.

**Section 19. Severability.** The provisions of this Act shall be severable and if for any reason any sentence, clause, or section hereof shall be determined to be unlawful, the same shall not be held to effect any other section, or sections, or provisions herewith.

**Section 20. Repeals.** Chapter 42, Session Laws of Alaska 1949, as amended by Chapter 81, Session Laws of Alaska 1951, Chapter 112, Session Laws of Alaska 1951, and Chapter 34, Session Laws of Alaska 1953, are hereby repealed.

**Section 21.** This Act shall be in effect on and after July 1, 1955.

Approved March 28, 1955

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## CHAPTER 188

### AN ACT

Relating to the Territorial income tax; amending Section 5 of Chapter 115, SLA 1949, as repealed and re-enacted by Chapter 132, SLA 1951,