

## CHAPTER 98

**AN ACT** permitting implementation of encrypted counterfeit-resistant revenue stamps for cigarettes sold in the State, amending and supplementing P.L.1948, c.65.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

1. Section 401 of P.L.1948, c.65 (C.54:40A-11) is amended to read as follows:

C.54:40A-11 Director to provide revenue stamps.

401. a. Director to provide revenue stamps. The taxes imposed and levied by this act shall be paid through the use of stamps, except as provided in section 205 of P.L.1948, c.65 (C.54:40A-7) in the case of a licensed consumer.

b. The director shall secure stamps of such designs and denominations as the director shall prescribe, suitable to be affixed to packages, and provide for the sale thereof to licensed distributors.

c. (1) The director may implement a program requiring the affixation of counterfeit resistant tax stamps pursuant to this subsection beginning not later than the first day of the twelfth month next following the director's notice of the implementation of the program to all licensed distributors and other licensees under section 202 of P.L.1948, c.65 (C.54:40A-4). On and after the date of implementation of the program, no metering of evidence of tax payment in lieu of stamps, as otherwise allowed pursuant to section 407 of P.L.1948, c.65 (C.54:40A-17), shall be authorized; provided, however, that in the event that full implementation of the provisions of this act, including but not limited to the procurement of equipment or machinery, if any, necessary to ensure the integrity of the encrypted tax stamp program and the continuity of cigarette tax collections by the State, is not achieved on or before the first day of the twelfth month next following the director's notice of implementation, the director shall notify the Legislature and provide a full and complete report explaining the reason or reasons for the delay, and metering of evidence of tax payment in lieu of stamps, as otherwise permitted pursuant to section 407 of P.L.1948, c.65 (C.54:40A-17) shall continue to be authorized for an additional period not to exceed six months, as determined by the director.

(2) Stamps shall be counterfeit-resistant and encrypted to identify, at a minimum (a) the name and address of the distributor affixing the stamp; (b) the date the stamp was affixed to the cigarette package; and (c) the denominated value of the stamp. The stamp shall be readable and traceable from the point of stamp production to the point of sale and shall be readable by a scanner or similar device that may be utilized by the director or licensed cigarette distributor, wholesalers and retailers.

(3) The stamp shall be produced in a secure manner and shall incorporate such encryption, security, and counterfeit-resistant features as the director may prescribe.

(4) Distributors or other parties approved by the director shall acquire either by lease, lease-to-own or purchase, equipment or machinery, including equipment to affix stamps and equipment to read or scan information from stamps, that is approved by the director and necessary to carry out the requirements set forth in this section.

(5) The encrypted data collected from stamps shall be provided by distributors and retained by the State in a secure data collection, management and decision support system.

d. Only licensed distributors shall affix and cancel stamps and no distributor shall affix or cancel any stamp except at the tax rate in effect on the date of such affixing or cancellation; except that on the effective date of a tax rate increase imposed under this act, licensed distributors and wholesale dealers shall take a physical inventory of cigarettes on

hand at the close of business prior to the date of the tax increase imposed under this act and must pay any additional tax for all cigarettes bearing stamps at the rate in effect prior to the tax increase. The director shall prescribe the method of collecting the additional tax. The director shall not authorize any person to sell revenue stamps except the director's duly constituted agents and assistants.

e. On sales of revenue stamps the director shall allow, as compensation for the services and expenses of the distributor in affixing and handling of such stamps, a discount of 1.80% of the face amount of any sale of 1,000 stamps or more; provided, that the distributor has complied with all the provisions of this act; and, provided, further, however, that the director shall be empowered to adjust such discount to provide equivalent compensation with respect to the face value of each 1,000 stamps or more. No discount shall be allowed on any sale of less than 1,000 stamps and stamps shall not be sold in blocks of less than 100 stamps.

2. Section 407 of P.L.1948, c.65 (C.54:40A-17) is amended to read as follows:

C.54:40A-17 Use of stamp metering machine.

407. The director, if the director shall determine that it is practicable in any case to permit licensed distributors to impress on or attach to each package of cigarettes, evidence of tax payment, by means of a metering machine, in lieu of stamps, may, except as provided by paragraph (1) of subsection c. of section 401 of P.L.1948, c.65 (C.54:40A-11), authorize any licensed distributor to use any metering machine approved by the director, such machine to be sealed by the director before being used and used in accordance with rules and regulations prescribed by the director. Any licensed distributor authorized by the director to affix evidence of tax payment to packages of cigarettes by means of a metering machine shall either make a prepayment, allowing for the discount, if any, provided for herein and subject also to the same conditions as in the case of the sale of stamps, covering the amount of the tax for which the meter is set; or if prepayment is not made, subject to the same conditions as in the case of the consignment of stamps.

3. On or before the 240th day following the effective date of P.L.2008, c.98, the Director of the Division of Taxation in the Department of the Treasury shall prepare and transmit to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature, a report concerning evasion of the "Cigarette Tax Act," P.L.1948, c.65 (C.54:40A-1 et seq.).

The report shall detail, in such a manner as to facilitate an evaluation of the effectiveness of current provisions of the "Cigarette Tax Act" and any changes thereto, the methods of tax evasion and an estimate of their revenue impact, including: "cross-border shopping" issues such as direct, Internet, and mail-order cigarette purchases by consumers; cigarette smuggling; sales by unlicensed parties; sales of unstamped cigarettes by licensed vendors, and stamp counterfeiting. The report shall include information to facilitate the evaluation of the effectiveness of P.L.1999, c.328 in preventing the stamping of reimported cigarettes originally produced for export.

The report shall also summarize any information available to the director on issues ancillary to tax evasion, such as the impact of the availability of counterfeit branded cigarettes; the hijacking, theft or other diversion of brand name cigarettes; and the theft or other diversion of cigarette stamps or stamp affixing equipment.

The director shall include in the report such further observations and recommendations about the evasion of the "Cigarette Tax Act" as the director deems appropriate.

4. This act shall take effect immediately.

Approved October 31, 2008.