

IC 6-7

ARTICLE 7. TOBACCO TAXES

IC 6-7-1

Chapter 1. Cigarette Tax

IC 6-7-1-0.3

Use of revenue stamps paid for before July 1, 2002, after June 30, 2002; conditions

Sec. 0.3. Notwithstanding section 14 of this chapter, revenue stamps paid for before July 1, 2002, and in the possession of a distributor may be used after June 30, 2002, only if the full amount of the tax imposed by section 12 of this chapter, as effective after June 30, 2002, and as amended by P.L.192-2002(ss), is remitted to the department under the procedures prescribed by the department. *As added by P.L.220-2011, SEC.160.*

IC 6-7-1-0.4

Use of revenue stamps paid for before July 1, 2007, after June 30, 2007; conditions

Sec. 0.4. Notwithstanding section 14 of this chapter, revenue stamps paid for before July 1, 2007, and in the possession of a distributor may be used after June 30, 2007, only if the full amount of the tax imposed by section 12 of this chapter, as effective after June 30, 2007, and as amended by P.L.218-2007, is remitted to the department under the procedures prescribed by the department. *As added by P.L.220-2011, SEC.161.*

IC 6-7-1-1

Purpose; liability for tax; separation of price and tax

Sec. 1. It is the intent and purpose of this chapter to levy a tax on all cigarettes sold, used, consumed, handled, or distributed within this state, and to collect the tax from the person who first sells, uses, consumes, handles, or distributes the cigarettes. It is further the intent and purpose of this chapter that whenever any cigarettes are given for advertising or any purpose whatsoever, they shall be taxed in the same manner as if they were sold, used, consumed, handled, or distributed in this state. Notwithstanding any other provisions contained in this chapter, the liability for the excise taxes imposed by this chapter shall be conclusively presumed to be on the retail purchaser or ultimate consumer, precollected for convenience and facility only. When such taxes are paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Distributors, wholesalers, or retailers may state the amount of the tax separately from the price of such cigarettes on all price display signs, sales or delivery slips, bills, and statements which advertise or indicate the price of such cigarettes.

(Formerly: Acts 1947, c.222, s.1; Acts 1963(ss), c.37, s.1.) As amended by P.L.2-1988, SEC.20.

IC 6-7-1-2

"Cigarette" defined

Sec. 2. Unless the context requires otherwise, "cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. Provided the definition in this section shall not be construed to include cigars. Excepting where context clearly shows that cigarettes alone are intended, the term "cigarettes" shall mean and include cigarettes, cigarette papers or wrappers, and tubes upon which a tax is imposed by sections 12 and 13 of this chapter.

(Formerly: Acts 1947, c.222, s.2.) As amended by P.L.2-1988, SEC.21.

IC 6-7-1-3

"Individual package" defined

Sec. 3. Unless the context requires otherwise, "individual package" shall mean and include every individual packet, box or other container used to contain or to convey cigarettes to the consumer. It shall also mean and include books and sets of papers, wrappers or tubes.

(Formerly: Acts 1947, c.222, s.3.) As amended by Acts 1980, P.L.60, SEC.1.

IC 6-7-1-4

"Person" or "company" defined

Sec. 4. Unless the context hereof requires otherwise, the term "person" or the term "company," herein used interchangeably, means and includes any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, bank, consignee, firm, partnership, limited liability company, joint venture, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, municipal corporation or any other political subdivision of the state engaged in private or proprietary activities or business, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(Formerly: Acts 1947, c.222, s.4.) As amended by P.L.8-1993, SEC.101.

IC 6-7-1-5

"Department" defined

Sec. 5. Unless the context hereof requires otherwise, "department" shall mean the Indiana department of state revenue and its duly authorized assistants and employees.

(Formerly: Acts 1947, c.222, s.5; Acts 1963(ss), c.37, s.2.) As amended by Acts 1980, P.L.61, SEC.12.

IC 6-7-1-6**"Distributor" defined**

Sec. 6. Unless the context requires otherwise, "distributor" shall mean and include every person who sells, barter, exchanges, or distributes cigarettes in the state of Indiana to retail dealers for the purpose of resale, or who purchases cigarettes directly from a manufacturer of cigarettes, or who purchases for resale cigarettes directly from a manufacturer of cigarettes, or from a wholesaler, jobber, or distributor outside of the state of Indiana who is not a distributor holding a registration certificate issued under this chapter. *(Formerly: Acts 1947, c.222, s.6.) As amended by P.L.2-1988, SEC.22.*

IC 6-7-1-7**"Retailer" defined**

Sec. 7. Unless the context hereof requires otherwise, "retailer" shall mean every person, other than a distributor, who purchases, sells, offers for sale, or distributes cigarettes, to consumers or to any person for any purpose other than resale, irrespective of quantity or amount, or the number of sales. *(Formerly: Acts 1947, c.222, s.7.)*

IC 6-7-1-8**"Consumption", "consumer", and "consume" defined**

Sec. 8. Unless the context hereof requires otherwise, "consumption" shall mean the possession for use or the use of a cigarette or cigarettes for the purpose of smoking the same; the term "consumer" shall mean the person so using the same; and the term "consume" shall mean so to use the same. *(Formerly: Acts 1947, c.222, s.8.)*

IC 6-7-1-9**"Stamps" defined**

Sec. 9. Unless the context requires otherwise, "stamps" shall mean the stamps printed, manufactured, or made by authority of the department, as provided in this chapter, and issued, sold, or circulated by it and by the use of which the tax levied under this chapter is paid, or any impression, indicium, or character imprinted upon individual packages of cigarettes, cigarette papers, or tubes by a metered stamping machine or other device such as may be authorized by the department for use by the holder of a certificate under the provisions of this chapter and by the use of which the tax levied under this chapter shall be paid. *(Formerly: Acts 1947, c.222, s.9.) As amended by P.L.2-1988, SEC.23.*

IC 6-7-1-10**"Counterfeit stamp" defined**

Sec. 10. Unless the context requires otherwise, "counterfeit stamp" shall mean any stamp, label, print, indicium, or character

which evidences, or purports to evidence the payment of any tax levied by this chapter, and which stamp, label, print, indicium, or character has not been printed, manufactured, or made by authority of the department as provided in this chapter, and issued, sold, or circulated by it.

(Formerly: Acts 1947, c.222, s.10.) As amended by P.L.2-1988, SEC.24.

IC 6-7-1-11

"Drop shipment" defined

Sec. 11. Unless the context hereof requires otherwise, "drop shipment" shall mean any shipment billed to one other than the person receiving such shipment.

(Formerly: Acts 1947, c.222, s.10 1/2.)

IC 6-7-1-12

Rate of taxation

Sec. 12. (a) The following taxes are imposed, and shall be collected and paid as provided in this chapter, upon the sale, exchange, bartering, furnishing, giving away, or otherwise disposing of cigarettes within the state of Indiana:

(1) On cigarettes weighing not more than three (3) pounds per thousand (1,000), a tax at the rate of four and nine hundred seventy-five thousandths cents (\$0.04975) per individual cigarette.

(2) On cigarettes weighing more than three (3) pounds per thousand (1,000), a tax at the rate of six and six hundred twelve thousandths cents (\$0.06612) per individual cigarette, except that if any cigarettes weighing more than three (3) pounds per thousand (1,000) shall be more than six and one-half (6 1/2) inches in length, they shall be taxable at the rate provided in subdivision (1), counting each two and three-fourths (2 3/4) inches (or fraction thereof) as a separate cigarette.

(b) Upon all cigarette papers, wrappers, or tubes, made or prepared for the purpose of making cigarettes, which are sold, exchanged, bartered, given away, or otherwise disposed of within the state of Indiana (other than to a manufacturer of cigarettes for use by him in the manufacture of cigarettes), the following taxes are imposed, and shall be collected and paid as provided in this chapter:

(1) On fifty (50) papers or less, a tax of one-half cent (\$0.005).

(2) On more than fifty (50) papers but not more than one hundred (100) papers, a tax of one cent (\$0.01).

(3) On more than one hundred (100) papers, one-half cent (\$0.005) for each fifty (50) papers or fractional part thereof.

(4) On tubes, one cent (\$0.01) for each fifty (50) tubes or fractional part thereof.

(Formerly: Acts 1947, c.222, s.11; Acts 1963(ss), c.37, s.3; Acts 1965, c.225, s.1.) As amended by Acts 1977(ss), P.L.9, SEC.3; P.L.96-1987, SEC.2; P.L.192-2002(ss), SEC.135; P.L.218-2007, SEC.2.

IC 6-7-1-13

Effective date

Sec. 13. There is levied, assessed, and imposed, and shall be collected and paid as provided in this chapter, upon the use, consumption, or possession for use of cigarettes within the state of Indiana, taxes at the rates set forth and in the manner provided in section 12 of this chapter. Provided, that the tax levied, assessed, and imposed by this section shall not be applicable to the use, consumption, or possession for use of cigarettes upon which the tax levied, assessed, and imposed by the provisions of section 12 of this chapter has been paid.

(Formerly: Acts 1947, c.222, s.12.) As amended by P.L.2-1988, SEC.25.

IC 6-7-1-13.5

Carriers; liability for unpaid taxes

Sec. 13.5. A common carrier is liable for any unpaid taxes imposed under this chapter on:

- (1) cigarettes, where the carrier takes possession of the cigarettes because they were damaged or they were not accepted by the consignee, and where the carrier does not return the cigarettes to the manufacturer; and
- (2) cigarettes that are lost or stolen in transit.

As added by Acts 1980, P.L.60, SEC.2.

IC 6-7-1-14

Stamps; evidence of tax paid

Sec. 14. All taxes levied, assessed, and imposed by this chapter shall be paid and the payment thereof evidenced by the purchase of stamps and by affixing the same to the individual packages, cigarette papers, wrappers, and tubes and duly cancelling said stamps, as provided in this chapter, but there shall be no further tax assessed, imposed, or collected by virtue of this chapter upon the sale or use of any package of cigarettes, cigarette papers, wrappers, or tubes upon which said stamps have been previously affixed as provided by this chapter.

(Formerly: Acts 1947, c.222, s.13.) As amended by P.L.2-1988, SEC.26.

IC 6-7-1-15

Department as official agent of state to administer and enforce chapter; salaries and expenses; powers

Sec. 15. (a) The department is the official agent of the state for the administration and enforcement of this chapter. A sufficient sum to pay salaries and expenses is appropriated to the department out of the monies received by virtue of this chapter.

(b) The department may issue registration certificates, upon the terms and conditions provided in this chapter, and may revoke or suspend the same upon the violation of this chapter by the holder of such a certificate.

(c) The department may apply for membership in the National Tobacco Tax Association.

(d) The department may design and have printed or manufactured stamps of sizes and denominations to be affixed to each individual package. The stamps shall be firmly affixed on each individual package in such a manner that the stamps can not be removed without being mutilated or destroyed; however, the department may by regulation designate some other manner for cancelation of stamps. In addition to the stamps, the department may by rules and regulations authorize distributors to use metered stamping machines or other devices which will imprint distinctive indicia evidencing the payment of the tax upon each individual package. The machines shall be constructed in such a manner as will accurately record or meter the number of impressions or tax stamps made. The tax meter machines or other devices shall be kept available at all reasonable times for inspection by the department, and the machines shall be maintained in proper operating condition. A person who knowingly tampers with the printing or recording mechanism of such a machine commits a Class B misdemeanor.

(Formerly: Acts 1947, c.222, s.14.) As amended by Acts 1978, P.L.2, SEC.644; Acts 1980, P.L.61, SEC.13.

IC 6-7-1-15.1

Metered tax stamping machines; recharging

Sec. 15.1. If at least one (1) financial institution in each county applies to the department and fulfills the bonding requirements established by the department, the department shall approve at least one (1) financial institution in each county to recharge the metered stamping machines referred to in section 15 of this chapter.

As added by Acts 1979, P.L.81, SEC.1.

IC 6-7-1-16

Distributor's registration certificate; application fee; bond; refunds

Sec. 16. (a) Each distributor shall obtain from the department a registration certificate. Application for a registration certificate shall be made in writing upon forms prescribed by the department and shall be signed and verified by the distributor.

(b) The registration certificate shall be issued only upon payment to the department of an annual fee of five hundred dollars (\$500) which shall accompany the application for the registration certificate. In addition, a distributor must concurrently file a bond or a letter of credit:

- (1) in a form and with a surety or financial institution approved by the department;
- (2) in the amount of one thousand dollars (\$1,000);
- (3) naming the state as obligee; and
- (4) conditioned upon the payment of taxes, damages, fines, penalties, or costs adjudged against the holder of the registration certificate by reason of the violation of any of the

provisions of this chapter.

(c) All registration certificates shall be personal, nontransferable, and valid for one (1) year from date of issuance unless revoked or suspended for cause by the department.

(d) If business is transacted at two (2) or more places by one (1) distributor, a separate registration certificate shall be required for each place of business where he operates as a distributor (as defined by section 6 of this chapter).

(e) Each certificate shall:

(1) be numbered;

(2) show the name and address of the distributor; and

(3) be posted in a conspicuous place at the place of business for which it is issued.

(f) Any person who changes his or her place of business shall return his or her certificate and the department shall issue a new certificate for the new place of business free of charge.

(g) Any certificate issued under this section may be surrendered to the department at any time prior to its expiration, and the department shall refund an amount of money which bears the same proportion to the fee originally paid therefor as the unexpired period of the permit bears to one (1) year. However, no refund shall be allowed in the event that a certificate is revoked as provided in this chapter, and no refund shall be made in excess of four hundred dollars (\$400).

(Formerly: Acts 1947, c.222, s.15; Acts 1969, c.324, s.1.) As amended by P.L.2-1988, SEC.27; P.L.49-1992, SEC.1.

IC 6-7-1-17

Distributors as agents of state for collection of tax; purchase of revenue stamps; execution of bond

Sec. 17. (a) Distributors who hold certificates and retailers shall be agents of the state in the collection of the taxes imposed by this chapter and the amount of the tax levied, assessed, and imposed by this chapter on cigarettes sold, exchanged, bartered, furnished, given away, or otherwise disposed of by distributors or to retailers. Distributors who hold certificates shall be agents of the department to affix the required stamps and shall be entitled to purchase the stamps from the department at a discount of one and two-tenths cents (\$0.012) per individual package of cigarettes as compensation for their labor and expense.

(b) The department may permit distributors who hold certificates and who are admitted to do business in Indiana to pay for revenue stamps within thirty (30) days after the date of purchase. However, the privilege is extended upon the express condition that:

(1) except as provided in subsection (c), a bond or letter of credit satisfactory to the department, in an amount not less than the sales price of the stamps, is filed with the department;

(2) proof of payment is made of all property taxes, excise taxes, and listed taxes (as defined in IC 6-8.1-1-1) for which any such distributor may be liable; and

(3) payment for the revenue stamps must be made by electronic funds transfer (as defined in IC 4-8.1-2-7).

The bond or letter of credit, conditioned to secure payment for the stamps, shall be executed by the distributor as principal and by a corporation duly authorized to engage in business as a surety company or financial institution in Indiana.

(c) If a distributor has at least five (5) consecutive years of good credit standing with the state, the distributor shall not be required to post a bond or letter of credit under subsection (b).

(Formerly: Acts 1947, c.222, s.16; Acts 1963(ss), c.37, s.4; Acts 1965, c.225, s.7.) As amended by P.L.2-1988, SEC.28; P.L.49-1992, SEC.2; P.L.192-2002(ss), SEC.136; P.L.252-2003, SEC.1; P.L.211-2007, SEC.36; P.L.218-2007, SEC.3; P.L.131-2008, SEC.23.

IC 6-7-1-17.5

Credit against the cost of certain stamps

Sec. 17.5. (a) Except as otherwise provided in this section, in determining the amount to pay for stamps purchased under this chapter, a distributor is entitled to a credit against the cost of stamps purchased in an amount equal to the distributor's receivables that:

- (1) are attributable to stamps purchased by the distributor under this chapter and affixed to cigarettes that were transferred to a retailer;
- (2) resulted from a transfer of cigarettes to a retailer in which the distributor did not collect the tax imposed by this chapter from the retailer; and
- (3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code after December 31, 2006.

(b) If a distributor claims a credit under subsection (a) and subsequently collects all of the associated receivable, the distributor shall remit the entire amount of the credit previously claimed under subsection (a) to the department within thirty (30) days of collection.

(c) If a distributor claims a credit under subsection (a) and subsequently collects part of the associated receivable, the distributor shall remit the amount determined under STEP SIX of the following formula to the department within thirty (30) days after collection:

STEP ONE: Determine the part of the associated receivable before collection that is attributable to the taxable price of the products subject to the tax imposed by this chapter.

STEP TWO: Determine the part of the associated receivable before collection that is attributable to the amount paid by the distributor for the stamps affixed to the products that were transferred to the retailer.

STEP THREE: Determine the sum of:

- (A) the STEP ONE result; plus
- (B) the STEP TWO result.

STEP FOUR: Determine the lesser of:

- (A) the amount collected; or

(B) the STEP THREE result.

STEP FIVE: Divide:

(A) the STEP TWO result; by

(B) the STEP THREE result.

STEP SIX: Multiply:

(A) the STEP FOUR result; by

(B) the STEP FIVE result.

(d) If the amount of the credit to which a distributor is entitled under subsection (a) exceeds the cost of the stamps that the distributor seeks to purchase, the remainder of the credit may be applied to future purchases of stamps by the distributor. For any uncollectible receivable used to establish a credit under subsection (a), the amount of the credit that is available to be applied to a purchase of stamps is the total amount of the credit determined under subsection (a) reduced by the sum of partial credits applied by the distributor to previous purchases of stamps.

(e) As used in this subsection, "affiliated group" means any combination of the following:

(1) An affiliated group within the meaning provided in Section 1504 of the Internal Revenue Code (except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%)) or a relationship described in Section 267(b)(11) of the Internal Revenue Code.

(2) Two (2) or more partnerships (as defined in IC 6-3-1-19), including limited liability companies and limited liability partnerships, that have the same degree of mutual ownership as an affiliated group described in subdivision (1), as determined under the rules adopted by the department.

The right to a credit under this section is not assignable to an individual or entity that is not part of the same affiliated group as the assignor.

As added by P.L.211-2007, SEC.37.

IC 6-7-1-18

Affixing stamps; invoices

Sec. 18. Every distributor, upon the receipt of cigarettes taxed under this chapter, shall cause each individual package to have the requisite denomination and amount of stamps firmly affixed. Every retailer, upon receipt of cigarettes not having the proper amount of stamps firmly affixed, to each individual package, or stamped by a meter stamping machine, by a distributor shall stamp or firmly affix stamps immediately on each individual package. Provided, however, that any distributor engaged in interstate business, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Every distributor, at the time of shipping or delivering any cigarettes, shall make a duplicate invoice, showing complete details of each transaction, and shall retain the duplicate subject to the inspection by the department or its agent. Every

distributor shall include with each shipment or delivery of cigarettes an invoice showing complete details of the transactions. Every retailer shall retain for not less than two (2) weeks the invoice included with each shipment or delivery of cigarettes subject to inspection by the department or its agent. A retailer may request a duplicate invoice from a distributor.

(Formerly: Acts 1947, c.222, s.17.) As amended by P.L.2-1988, SEC.29; P.L.252-2003, SEC.2.

IC 6-7-1-19

Distributors' records and reports

Sec. 19. (a) Every distributor of cigarettes shall keep and preserve for three (3) years records and invoices, showing the purchase and sale of all cigarettes. Such distributors shall also keep separate invoices, and records of stamps purchased. All the aforementioned records, invoices, and stocks of cigarettes and unused stamps on hand shall be open to inspection by the department at all reasonable times. Provided, however, that all distributors, within fifteen (15) days after the first day of each month, shall file with the department a report of all drop shipment sales made by them to other distributors within this state during the preceding month, which report shall give the name and address of the distributor, the kind and quantity of the sales, and their dates of delivery. Provided, further, however, that every distributor engaged in interstate business shall, within ten (10) days after the first day of each month, file with the department a report of all such interstate sales made during the preceding month, which report shall give the name and address of the person to whom sold, the kind and quantity of the sales, and their dates of delivery.

(b) All drop shipments made by manufacturers of cigarettes within the state of Indiana must be shipped and billed through a regularly licensed distributor licensed by the state of Indiana (as defined in section 6 of this chapter).

(Formerly: Acts 1947, c.222, s.18.) As amended by P.L.2-1988, SEC.30.

IC 6-7-1-19.5

Transporting cigarettes without stamps affixed; invoice or delivery ticket requirement; exceptions

Sec. 19.5. A person who transports cigarettes which do not bear an Indiana tax stamp over Indiana highways shall carry invoices or delivery tickets for those cigarettes containing the following information:

- (1) the name and address of the consignor or seller;
- (2) the name and address of the consignee or purchaser;
- (3) the quantity and brands of the cigarettes; and
- (4) the name and address of the person liable for the tax imposed on those cigarettes under this chapter.

However, this section does not apply to licensed distributors, to common carriers, or to employees of the state or federal government who are performing their official duties in the enforcement of this

chapter.
As added by Acts 1980, P.L.60, SEC.3.

IC 6-7-1-20

Repealed

(Repealed by Acts 1978, P.L.2, SEC.656.)

IC 6-7-1-21

Selling packages with counterfeit stamps; affixing used stamps; offenses

Sec. 21. A distributor or other person who knowingly sells or offers for sale an individual package, having affixed thereto any fraudulent, spurious, imitation, or counterfeit stamp, or stamp which has been previously affixed, commits a Class C felony. A person who knowingly affixes to an individual package either a fraudulent, spurious, imitation, or counterfeit stamp or a stamp which has previously been affixed to an individual package commits a Class C felony.

(Formerly: Acts 1947, c.222, s.20.) As amended by Acts 1978, P.L.2, SEC.645; Acts 1980, P.L.60, SEC.4.

IC 6-7-1-22

Record keeping violations; offense

Sec. 22. A person required by this chapter to keep records who recklessly:

- (1) fails to keep the record so required;
- (2) falsifies the records; or
- (3) fails to safely preserve the records for the period of three (3) years in such a manner as to insure permanency and accessibility for inspection by the department;

commits a Class C misdemeanor.

(Formerly: Acts 1947, c.222, s.21.) As amended by Acts 1978, P.L.2, SEC.646.

IC 6-7-1-23

Other violations; offense

Sec. 23. A person who recklessly violates any provision of this chapter for which no other provision for punishment has been made commits a Class B misdemeanor.

(Formerly: Acts 1947, c.222, s.22.) As amended by Acts 1978, P.L.2, SEC.647.

IC 6-7-1-24

Sale or possession of cigarettes without payment of tax or stamps affixed; seizure; forfeiture; redemption penalty; offenses; exceptions

Sec. 24. (a) Whenever the department discovers any cigarettes which are subject to tax under this chapter and upon which the tax has not been paid or the stamps affixed as required, it may seize and take possession of the cigarettes together with any vending machine

or receptacle in which they are held for sale. The seized cigarettes, vending machine, or receptacle, not including money contained in the vending machine or receptacle, shall be forfeited to the state. The department may, within a reasonable time after the seizure:

- (1) sell the forfeited cigarettes and vending machines or receptacles at public auction, but the department shall require the purchaser to affix the proper amount of the stamps to the cigarettes upon delivery to the purchaser;
- (2) permit the person from whom the cigarettes were seized to redeem the cigarettes and any vending machine or receptacle seized therewith, by the payment of the tax due together with a penalty of fifty percent (50%) and the costs incurred in the proceeding; or
- (3) destroy the confiscated cigarettes and vending machine or receptacle.

(b) The confiscation, destruction, sale, or redemption of cigarettes does not relieve any person of criminal penalties imposed for violation of this chapter.

(c) Any person who sells or holds for sale any packages of cigarettes not bearing Indiana tax stamps commits a Class A misdemeanor. This subsection does not apply to distributors or to employees of the department who are performing their official duties.

(d) The possession of more than one thousand five hundred (1,500) cigarettes in packages not bearing Indiana tax stamps by any person other than a distributor, a common carrier, or an employee of the state or federal government performing his official duties in the enforcement of this chapter constitutes prima facie evidence that the cigarettes are possessed for the purpose of sale.

(e) A person who knowingly possesses more than twelve thousand (12,000) cigarettes not bearing Indiana tax stamps and who has previously been convicted of a misdemeanor for possession or sale of unstamped cigarettes commits a Class D felony.

(Formerly: Acts 1947, c.222, s.23; Acts 1969, c.324, s.2.) As amended by Acts 1978, P.L.2, SEC.648; Acts 1980, P.L.60, SEC.5; P.L.71-1993, SEC.14.

IC 6-7-1-25

Search warrants for untaxed cigarettes

Sec. 25. When the department has reason to believe that any cigarettes are being kept, sold, offered for sale, or given away in violation of this chapter, an officer of the department may make affidavit of such fact, describing the place or thing to be searched before a court of competent jurisdiction, and the judge thereof shall issue a search warrant directed to the sheriff, constable, police officer, or authorized agent of the department commanding him to search any place or vehicle that may be designated in the affidavit and search warrant, and to seize any cigarettes so possessed and to hold the same, and to arrest the person in control or possession of the same. If upon the return of the warrant it shall appear that cigarettes

were seized the same shall be sold according to law.
(Formerly: Acts 1947, c.222, s.24.) As amended by P.L.2-1988,
SEC.31.

IC 6-7-1-26

Repealed

(Repealed by Acts 1980, P.L.61, SEC.15.)

IC 6-7-1-27

Mutilated stamps; replacement; unused stamps; refund

Sec. 27. Where stamps or individual packages to which stamps have been affixed have become mutilated, or otherwise unfit for use, distributors shall notify the department, and, if an investigation discloses that said stamps have not evidenced a taxable transaction, replacement stamps shall be supplied to the distributor without cost. Any unused stamps may be returned to the department by the distributor who purchased such stamps, and the department shall then refund to such distributor an amount equal to that paid therefor.

(Formerly: Acts 1947, c.222, s.26.)

IC 6-7-1-28

Repealed

(Repealed by Acts 1977, P.L.89, SEC.6.)

IC 6-7-1-28.1

Taxes, registration fees, fines, and penalties collected; disposition

Sec. 28.1. The taxes, registration fees, fines, or penalties collected under this chapter shall be deposited in the following manner:

- (1) Four and twenty-two hundredths percent (4.22%) of the money shall be deposited in a fund to be known as the cigarette tax fund.
- (2) Six-tenths percent (0.6%) of the money shall be deposited in a fund to be known as the mental health centers fund.
- (3) The following amount of the money shall be deposited in the state general fund:
 - (A) After June 30, 2011, and before July 1, 2013, sixty and twenty-four hundredths percent (60.24%).
 - (B) After June 30, 2013, fifty-four and five-tenths percent (54.5%).
- (4) Five and forty-three hundredths percent (5.43%) of the money shall be deposited into the pension relief fund established in IC 5-10.3-11.
- (5) Twenty-seven and five hundredths percent (27.05%) of the money shall be deposited in the Indiana check-up plan trust fund established by IC 12-15-44.2-17.
- (6) Two and forty-six hundredths percent (2.46%) of the money shall be deposited in the state general fund for the purpose of paying appropriations for Medicaid—Current Obligations, for provider reimbursements.
- (7) The following amount of the money shall be deposited in

the state retiree health benefit trust fund established by IC 5-10-8-8.5 as follows:

(A) Before July 1, 2011, five and seventy-four hundredths percent (5.74%).

(B) After June 30, 2011, and before July 1, 2013, zero percent (0%).

(C) After June 30, 2013, five and seventy-four hundredths percent (5.74%).

The money in the cigarette tax fund, the mental health centers fund, the Indiana check-up plan trust fund, or the pension relief fund at the end of a fiscal year does not revert to the state general fund. However, if in any fiscal year, the amount allocated to a fund under subdivision (1) or (2) is less than the amount received in fiscal year 1977, then that fund shall be credited with the difference between the amount allocated and the amount received in fiscal year 1977, and the allocation for the fiscal year to the fund under subdivision (3) shall be reduced by the amount of that difference. Money deposited under subdivisions (6) through (7) may not be used for any purpose other than the purpose stated in the subdivision.

As added by Acts 1977, P.L.89, SEC.1. Amended by Acts 1977(ss), P.L.9, SEC.4; Acts 1981, P.L.11, SEC.37; P.L.96-1987, SEC.3; P.L.18-1994, SEC.39; P.L.192-2002(ss), SEC.137; P.L.218-2007, SEC.4; P.L.3-2008, SEC.66; P.L.182-2009(ss), SEC.246; P.L.229-2011, SEC.95.

IC 6-7-1-29

Repealed

(Repealed by Acts 1977, P.L.89, SEC.6.)

IC 6-7-1-29.1

Cigarette tax fund; annual appropriation to department of natural resources; use

Sec. 29.1. (a) One-sixth (1/6) of the money in the cigarette tax fund is annually appropriated to the department of natural resources.

(b) The department shall use at least two percent (2%) but not more than twenty-one percent (21%) of the money appropriated to it under this section for:

(1) flood control and water resource projects, including multiple-purpose reservoirs; and

(2) applied research related to technical water resource problems.

The department may use the money to plan, design, acquire land for, or construct the projects.

(c) The department shall use at least thirty-six percent (36%) of the money appropriated to it under this section to construct, reconstruct, rehabilitate, or repair general conservation facilities or to acquire land.

(d) The department shall use at least forty-three percent (43%) of the money appropriated to the department under this section for soil conservation and lake and river enhancement under IC 14-32.

As added by Acts 1977, P.L.89, SEC.2. Amended by P.L.96-1987, SEC.4; P.L.70-1991, SEC.5; P.L.80-1993, SEC.6; P.L.1-1995, SEC.52; P.L.241-2005, SEC.1.

IC 6-7-1-29.3

Cigarette tax fund; deposit to clean water fund

Sec. 29.3. One-sixth (1/6) of the money in the cigarette tax fund shall be deposited in the clean water Indiana fund established by IC 14-32-8-6.

As added by P.L.241-2005, SEC.2.

IC 6-7-1-30

Repealed

(Repealed by Acts 1977, P.L.89, SEC.6.)

IC 6-7-1-30.1

Cigarette tax fund; annual appropriation to local governmental entities; allocation; disposition

Sec. 30.1. (a) Two-thirds (2/3) of the money in the cigarette tax fund is annually appropriated to the cities and towns of this state and to certain local governmental entities.

(b) The amount which is allocated to each city or town under this section equals the product of:

- (1) the total amount appropriated under subsection (a); multiplied by
- (2) a fraction, the numerator of which is the population of the city or town, and the denominator of which is the total population of all the cities and towns of Indiana.

(c) The auditor of state shall calculate and distribute the amount allocated to each city or town under this section on or before June 1 and December 1 of each year. To make these semiannual distributions, the auditor of state shall issue warrants drawn on the cigarette tax fund to the officials designated in subsection (d) or (e).

(d) For a consolidated city, or a city or town which is located in the same county as the consolidated city, the auditor of state shall issue a warrant for:

- (1) three-fourteenths (3/14) of the money allocated to the city or town under subsection (b) to the fiscal officer of the city or town; and
- (2) the remaining eleven-fourteenths (11/14) of the money to the treasurer of that county.

The fiscal officer of the city or town shall deposit the money distributed to him under this subsection in the city's or town's general fund. The county treasurer shall annually deposit three hundred fifty thousand dollars (\$350,000) which he receives under this subsection in the capital improvement bond fund of the county. The remainder of the money which the county treasurer receives under this subsection is appropriated to the department of transportation of the consolidated city. The county treasurer shall serve as custodian of the money so appropriated to the department.

(e) For a city or town which is not located in the same county as a consolidated city, the auditor of state shall issue a warrant for the total amount allocated to the city or town under subsection (b) to the fiscal officer of the city or town. The fiscal officer shall deposit three-fourteenths (3/14) of the money in the city's or town's general fund, and he shall deposit the remaining eleven-fourteenths (11/14) of the money in the city's or town's cumulative capital improvement fund.

As added by Acts 1977, P.L.89, SEC.3. Amended by Acts 1981, P.L.11, SEC.38; P.L.96-1987, SEC.5; P.L.2-1990, SEC.9.

IC 6-7-1-30.2

Appropriations for local health funds

Sec. 30.2. (a) There is annually appropriated to the state department of health one hundred ninety thousand dollars (\$190,000) from the state general fund for the purpose of providing supplementary funding for the WIC (Women, Infants, and Children) program (42 U.S.C. 1786) in Indiana. The appropriation shall be administered by the nutrition division of the state department of health and shall be allocated to fund local WIC programs.

(b) There is annually appropriated to the state department of health one hundred ninety thousand dollars (\$190,000) from the state general fund for the purpose of providing supplementary funding for maternal and child health services. The appropriation shall be administered by the maternal and child health division of the state department of health. The funds appropriated under this subsection must be used to:

- (1) supplement federal Maternal and Child Health Services Block Grant funds provided under 42 U.S.C. 701 et seq. for the purpose of establishing and maintaining programs of pregnancy care in underserved areas of Indiana; and
- (2) provide funding for the hospital and medical expenses connected with the delivery of children whose parents are eligible for services that may be reimbursed with funds provided under the federal Maternal and Child Health Services Block Grant Program (42 U.S.C. 701 et seq.).

(c) There is annually transferred to the school age child care project fund established under IC 12-17-12-7 from the state general fund five hundred fifty thousand dollars (\$550,000) for carrying out the purposes of the school age child care project.

As added by P.L.96-1987, SEC.6. Amended by P.L.71-1988, SEC.1; P.L.20-1992, SEC.3; P.L.21-1992, SEC.2; P.L.1-1993, SEC.42; P.L.82-1993, SEC.1.

IC 6-7-1-30.5

Appropriations to local health maintenance fund

Sec. 30.5. (a) There is annually appropriated to the local health maintenance fund established by IC 16-46-10 two million four hundred thirty thousand dollars (\$2,430,000) from the state general fund to provide funds for annual distribution to local boards of health

in accordance with IC 16-46-10-2 to enable local boards of health to provide basic health services.

(b) The state department of health may retain annually a maximum of fifty thousand dollars (\$50,000) of the total appropriation to the local health maintenance fund under subsection (a) to pay administrative expenses incurred by the state department of health in distributing the funds to local health departments.

As added by P.L.82-1993, SEC.2. Amended by P.L.47-1994, SEC.1; P.L.224-2003, SEC.119.

IC 6-7-1-31

Repealed

(Repealed by Acts 1977, P.L.89, SEC.6.)

IC 6-7-1-31.1

Cities and towns; cumulative capital improvement fund; use

Sec. 31.1. (a) The fiscal body of each city and the fiscal body of each town shall, by ordinance or resolution, establish a cumulative capital improvement fund for the city or town. Except as otherwise provided in subsection (c), the city or town may only use money in its cumulative capital improvement fund:

- (1) to purchase land, easements, or rights-of-way;
- (2) to purchase buildings;
- (3) to construct or improve city owned property;
- (4) to design, develop, purchase, lease, upgrade, maintain, or repair:
 - (A) computer hardware;
 - (B) computer software;
 - (C) wiring and computer networks; and
 - (D) communications access systems used to connect with computer networks or electronic gateways;
- (5) to pay for the services of full-time or part-time computer maintenance employees;
- (6) to conduct nonrecurring in-service technology training of unit employees;
- (7) to undertake Internet application development;
- (8) to retire general obligation bonds issued by the city or town for one (1) of the purposes stated in subdivision (1), (2), (3), (4), (5), or (6); or
- (9) for any other governmental purpose for which money is appropriated by the fiscal body of the city or town.

(b) The money in the city's or town's cumulative capital improvement fund does not revert to its general fund.

(c) A city or town may at any time, by ordinance or resolution, transfer to:

- (1) its general fund; or
- (2) an authority established under IC 36-7-23;

money derived under this chapter that has been deposited in the city's or town's cumulative capital improvement fund.

As added by Acts 1977, P.L.89, SEC.4. Amended by P.L.8-1989,

SEC.31; P.L.346-1989(ss), SEC.4; P.L.1-1990, SEC.83; P.L.140-2002, SEC.1; P.L.113-2010, SEC.69.

IC 6-7-1-32

Repealed

(Repealed by Acts 1977, P.L.89, SEC.6.)

IC 6-7-1-32.1

Mental health centers fund; annual appropriation to division; use of money by division

Sec. 32.1. (a) The money in the mental health centers fund is annually appropriated to the division of mental health and addiction.

(b) The division may use the money:

(1) to pay the state's share of the cost of acquiring sites for, constructing, remodeling, equipping, or operating community mental health centers; and

(2) to provide grants for a partial facility if there is a reasonable assurance that the facility will provide community mental health services within five (5) years after it provides any partial service to the public.

As added by Acts 1977, P.L.89, SEC.5. Amended by P.L.28-1985, SEC.4; P.L.337-1989(ss), SEC.3; P.L.2-1992, SEC.71; P.L.40-1994, SEC.2; P.L.6-1995, SEC.2; P.L.215-2001, SEC.11.

IC 6-7-1-33

Repealed

(Repealed by Acts 1977, P.L.89, SEC.6.)

IC 6-7-1-34

Repealed

(Repealed by Acts 1977, P.L.89, SEC.6.)

IC 6-7-1-35

Tax evasion; unlawful advertising

Sec. 35. It shall be unlawful to procure or induce the evasion of any tax imposed by this chapter. It shall be unlawful for any person to advertise, print, publish, or circulate through or by use of any medium of communication any advertisement or offer to sell cigarettes within or into the state of Indiana, in which it is stated or implied that any taxes provided for in this chapter will not or need not be paid.

(Formerly: Acts 1947, c.222, s.28.) As amended by P.L.2-1988, SEC.32.

IC 6-7-1-36

Evasion of tax; offense

Sec. 36. It is a Class C misdemeanor for a person to make any false report or false statement in any report, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this chapter.

(Formerly: Acts 1947, c.222, s.28a; Acts 1969, c.324, s.3.) As amended by Acts 1978, P.L.2, SEC.649.