

By Mr. LaFontaine of Gardner, petition of Raymond M. LaFontaine relative to the cigarette excise tax. Taxation.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Seventy-Five.

AN ACT RELATIVE TO THE CIGARETTE EXCISE TAX.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 6 of chapter 64C of the General Laws is  
2 hereby amended by striking out the second and third sentences,  
3 as most recently amended by section 1 of chapter 245 of the acts  
4 of 1971, and inserting in place thereof the following two  
5 sentences: — Such license shall, at the time of filing such return,  
6 pay to the Commissioner an excise equal to six mills for each  
7 cigarette so sold during the calendar month covered by the  
8 return; provided, that cigarettes with respect to which the excise  
9 under this chapter has once been imposed and has not been  
10 refunded, if paid, shall not be subject upon a subsequent sale to  
11 the excise imposed by this chapter. Each unclassified acquirer  
12 shall, upon importation or acquisition of cigarettes into or  
13 within the Commonwealth, file with the Commissioner a return  
14 under penalties of perjury, on a form to be furnished by the  
15 Commissioner, stating the number of cigarettes imported or  
16 acquired and such other information as the Commissioner shall  
17 require, and shall, at the time of filing such return, pay to the  
18 Commissioner an excise equal to six mills for each cigarette so  
19 imported or acquired and held for sale or consumption, and  
20 cigarettes, with respect to which such excise has been imposed  
21 and has not been refunded if paid, shall not be subject, when  
22 subsequently sold, to any further excise under this chapter.

1 SECTION 2. Chapter 64C of the General Laws is hereby  
2 further amended by inserting after section 6 the following

3 section:—

4 *Section 6A.* Any licensed wholesaler who has paid an excise  
5 under section six upon an account later determined to be  
6 uncollectible shall be entitled to an abatement of the excise paid  
7 on such account. A claim for such abatement shall be filed on or  
8 before April fifteenth of each year covering the amount of the  
9 excise on such accounts determined to be uncollectible in the  
10 prior calendar year.

11 Any licensed wholesaler who shall recover an excise on an  
12 account of such abatement, shall report and include the same in  
13 his monthly return at the time of recovery.

1 SECTION 3. Section 13 of chapter 64C of the General Laws,  
2 is hereby further amended by striking out paragraph (c), inserted  
3 by section 1 of chapter 547 of the acts of 1945, and inserting in  
4 place thereof the following paragraph:—

5 (c) The term "cost to the wholesaler" shall mean the invoice  
6 cost of the cigarettes to the wholesaler, or the replacement cost  
7 of the cigarettes to the wholesaler within thirty days prior to the  
8 date of sale, in the quantity last purchased, whichever is lower,  
9 less all trade discounts except customary discounts for cash; to  
10 which shall be added a wholesaler's mark-up to cover in part the  
11 cost of doing business, which wholesaler's mark-up, in the  
12 absence of proof of a lesser or higher cost of doing business by  
13 the said wholesaler as evidenced by the standards and methods  
14 of accounting regularly employed by him in his allocation of  
15 overhead cost and expenses, paid or incurred, including without  
16 limitation, labor, salaries of executives and officers, rent,  
17 depreciation, selling costs, maintenance of equipment, delivery,  
18 delivery costs, all types of licenses, taxes, including state  
19 cigarette excise taxes, insurance and advertising, shall be two per  
20 centum of said invoice cost of the cigarettes to the wholesaler  
21 plus cartage to the retail outlet if performed or paid for by the  
22 wholesaler, which cartage cost shall be deemed to be three  
23 fourths of one per cent of the cost of the cigarettes to the  
24 wholesaler, unless said wholesaler claims and proves a lower  
25 cartage cost, or of the replacement cost of the cigarettes to the  
26 wholesaler within thirty days prior to the date of sale, in the  
27 quantity last purchased, whichever is lower, less all trade  
28 discounts except customary discounts for cash.

1 SECTION 4. Section 28 of chapter 64C of the General Laws,  
2 is hereby amended by striking out paragraph (a), as most  
3 recently amended by section 3 of chapter 245 of the acts of 1971,  
4 and inserting in place thereof the following paragraph:—

5 (a) Six mills of the excise imposed by section six and a  
6 proportionate amount of all sums received as penalties,  
7 forfeitures, interest, costs of suits and fines shall be credited to  
8 the General Fund and five sixths thereof shall be used solely  
9 toward meeting the debt service obligations of the General  
10 Fund.

1 SECTION 5. Section 30 of chapter 64C of the General Laws  
2 is hereby amended by striking out the third paragraph, as most  
3 recently amended by section 3 of chapter 361 of the acts of 1969,  
4 and inserting in place thereof the following paragraph:—

5 Every such stamper who has complied with the provisions of  
6 this chapter and the pertinent rules and regulations made  
7 thereunder may withhold and retain from each payment to be  
8 made by him for such stamps, as compensation for service  
9 rendered in compliance with this chapter, two dollars for each  
10 six hundred cigarette excise adhesive or meter stamps purchas-  
11 ed, and a proportionate amount for any fraction thereof.

1 SECTION 6. Section 6-104 of chapter 106 of the General  
2 Laws, as most recently amended by section 10 of chapter 188 of  
3 the acts of 1963, is hereby amended by adding after subsection  
4 (3) the following subsection:—

5 (4) In the event that a transferor or his agent swears or affirms  
6 that there are no creditors then the transferee shall hold in  
7 escrow fifty per cent of the proceeds of the sale for fifteen days  
8 following the day of the sale. The transferee shall within  
9 three days following the day of the sale, give notice to all  
10 persons with whom the transferor has conducted his usual  
11 business within sixty days prior to the day of the sale that a sale  
12 has taken place and the transferor or his agent has sworn or  
13 affirmed that there were no creditors. On the sixteenth day  
14 following the sale, if no creditors notify the transferee then the  
15 proceeds held in escrow shall be paid over to the transferor.

1 SECTION 7. Chapter 138 of the General Laws is hereby  
2 amended by inserting after section 20A the following section: —  
3 *Section 20B.* Each wholesaler of cigarettes shall pay to the  
4 alcoholic beverages control commission a fee of two hundred  
5 dollars as an excise for the enforcement of the provisions of  
6 section twenty-five F of chapter one hundred and thirty-eight.

1 SECTION 8. Chapter 138 of the General Laws is hereby  
2 amended by inserting after section 25E the following section: —  
3 *Section 25F.* It shall be unlawful for any licensee under  
4 section two of chapter sixty-four C to receive or extend credit,  
5 either directly or indirectly, for cigarettes sold or delivered to  
6 any licensee engaged in the sale of cigarettes except in the usual  
7 course of business and for a period of not more than forty-five  
8 days. Nothing in this chapter shall require any manufacturer or  
9 wholesaler to extend credit to any licensee. The credit period  
10 shall be calculated from the date of the delivery of the cigarettes  
11 to the purchaser to the date when the purchaser discharges in  
12 full the indebtedness for which the credit was extended. If any  
13 licensee does not discharge in full any such indebtedness within  
14 such forty-five day period, the indebtedness shall be overdue  
15 and such licensee shall be delinquent within the meaning of this  
16 section. Within three days after a licensee becomes delinquent,  
17 the licensee who extended the credit shall mail a letter of notice  
18 by certified mail to the commission and a copy thereof to the  
19 delinquent licensee. The letter of notice shall be in forms  
20 provided by the commission. The notice shall contain the name  
21 of the delinquent licensee, the date of delivery of the cigarettes  
22 and the amount of the indebtedness remaining undischarged.  
23 Within five days after receipt of such a letter of notice, the  
24 commission shall post the name and address only of the  
25 delinquent licensee in a delinquent list containing the names and  
26 addresses of all delinquent licensees. Such posting shall  
27 constitute notice to all licensees of the delinquency of such  
28 licensee.  
29 If a licensee is seriously damaged in his business by riot,  
30 insurrection, civil disturbance, fire, explosion or by an act of  
31 God, so-called, the licensee may file an application with the  
32 commission requesting that the provisions of the first paragraph

33 of this section be suspended as to him for a reasonable period.  
34 The commission shall set down the application for hearing  
35 within twenty-one days and shall notify all licensees engaged in  
36 selling to said applicant of the hearing and give all interested  
37 parties the right to be heard. Pending such hearing, the  
38 commission may, after an investigation and determination that  
39 the facts as stated by the licensee in his application would  
40 constitute reasonable grounds for relief, order that such licensee  
41 shall not be posted as delinquent. If the commission finds it is in  
42 the public interest to do so, it may suspend the application of  
43 said first paragraph with respect to the applicant for such period  
44 as it may consider to be reasonable and in the public interest.  
45 Such action shall not deprive creditors of all legal rights  
46 available to them for the collection of the indebtedness and shall  
47 be contingent on such terms and conditions as the commission  
48 shall determine.

49 No licensee under this chapter shall sell or deliver, directly or  
50 indirectly, cigarettes to a licensee whose name is posted on the  
51 delinquent list, except for payment in cash on or before delivery,  
52 and no licensee who is posted on the delinquent list shall  
53 purchase or accept delivery of any cigarettes except for payment  
54 in cash on or before delivery. No licensee shall sell or deliver  
55 any cigarettes to any licensee under this chapter whose name has  
56 appeared on the delinquent list on ninety or more consecutive  
57 days, and no licensee whose name has appeared on the  
58 delinquent list on ninety or more consecutive days shall  
59 purchase or accept delivery of any cigarettes. Whenever the  
60 license of any licensee whose name appears on the delinquent list  
61 is transferred, the name of the transferee shall appear in the  
62 place and stead of the transferor as of the date of license  
63 transfer, in the same manner as if no transfer had occurred but  
64 the provisions of this sentence shall not apply to transfers of  
65 licenses by assignees or trustees under a voluntary assignment  
66 for the benefit of creditors, provided that prior approval of such  
67 assignment is obtained from the commission, after notice to all  
68 creditors has been given and reasonable time allowed for  
69 objections by such creditors.

70 Upon full discharge of the indebtedness for which a licensee  
71 was posted, the licensee who filed the letter of notice of

72 delinquency shall, within twenty-four hours thereafter, notify the  
73 commission, by mailing a letter by certified mail addressed to  
74 the commission of the discharge of the indebtedness. The  
75 commission shall immediately strike the name of the delinquent  
76 licensee from the list. The commission shall by regulation  
77 prescribe how licensees, other than the two concerned, shall be  
78 notified of the filing of the name of a licensee on the delinquency  
79 list and of the removal of the name of a delinquent from such  
80 list. If, after a hearing, the commission finds that any licensee  
81 has violated this section or participated in such violation, the  
82 commission shall suspend the license of the licensee until full  
83 discharge of the indebtedness.

84 Notwithstanding and in lieu of any other penalty in any other  
85 provision of this chapter, any person who violates any provision  
86 of this section shall be punished by a fine of not more than five  
87 thousand dollars.

88 The posting list shall be available for inspection by any  
89 licensee or his duly authorized agent only.

90 The provisions of this section shall be enforced by the  
91 alcoholic beverages control commission.

1 SECTION 9. The provisions of section twenty-five F of  
2 chapter one hundred thirty-eight of the General Laws, inserted  
3 by section 8 of this act, shall not apply to credit extended prior  
4 to January first, nineteen hundred and seventy-four.

1 SECTION 10. Chapter 361 of the acts of 1969 is hereby  
2 amended by striking out section 2 and inserting in place thereof  
3 the following section:—

4 *Section 2.* Every manufacturer, wholesaler, vending machine  
5 operator, unclassified acquirer or retailer, as defined in Section 1  
6 of Chapter 64C of the General Laws, who, at the commence-  
7 ment of business on the day next following the effective date of  
8 this act, has on hand any cigarettes for sale or any unused  
9 adhesive or meter stamps, shall make and file with the  
10 Commissioner of Corporations and Taxation within twenty days  
11 thereafter a return, subscribed under the penalties of perjury,  
12 showing a complete inventory of such cigarettes and stamps, and

13 shall, at the same time he is required to file such return, be  
14 credited with two mills per cigarette on all cigarettes and all  
15 unused adhesive and meter stamps upon which an excise of eight  
16 mills has previously been paid.

