

## ACT TO ASSIST STATES IN COLLECTING SALES AND USE TAXES ON CIGARETTES

JULY 26, 1955.—Ordered to be printed

Mr. BYRD, from the Committee on Finance, submitted the following

### R E P O R T

[To accompany H. R. 6886]

The Committee on Finance, to whom was referred the bill (H. R. 6886) to amend the act of October 19, 1949, entitled "An act to assist States in collecting sales and use taxes on cigarettes," having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

By virtue of this act, the Committee on Finance accepts the report of the Committee on Ways and Means, which is as follows:

#### ACT OF OCTOBER 19, 1949

The act of October 19, 1949 (title 15, U. S. C., secs. 375-377), provided that persons who sell or dispose of cigarettes in interstate commerce to a person other than a distributor licensed by or located in a State taxing the sale or use of cigarettes must "forward to" the tobacco tax administrator of the receiving State monthly reports setting forth the names and addresses of the persons to whom shipments were made and the brand and quantity of cigarettes so shipped. The failure of the seller or disposer to comply with this act subjected him to a fine of \$1,000 or imprisonment for not more than 6 months, or both.

The act of October 19, 1949, was enacted for three major reasons:

- (1) The large and increasing loss of revenue to the States caused by the evasion of sales and use taxes on cigarettes shipped in interstate commerce to consumers;
- (2) The discrimination caused by this evasion against sellers of cigarettes in States having a higher tax than the tax of the seller States; and
- (3) The fact that this evasion was accomplished through the use of the United States mail.

#### 1953 AMENDMENTS

The act of August 15, 1953, amended the original act to require the actual filing of the reports of cigarette sales to such nondistributors with the tobacco tax administrator of the receiving State instead of merely forwarding such reports to that official. The purpose of that amendment was to place the Federal venue, in case of violation of the act, in the district in which the State tobacco tax administrator of the receiving State has his office, and not in the district from which the cigarettes are shipped.

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### CHANGES MADE BY BILL

This bill makes four important changes in the 1949 act as amended. The first redefines the term "State" to include the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico. This extends the coverage of the act to shipments of cigarettes to consumers in these areas. This change is contained in the first section of the act, as amended, by the bill.

The second major change made by this bill is contained in section 2 (a) of the act as amended by the bill. Existing law only requires that one who sells and causes cigarettes to be shipped in interstate commerce to other than a distributor must each month file memoranda or copies of invoices with the tobacco tax administrator of the State imposing the tax. The memoranda or invoice copies are to cover each shipment of cigarettes to a State made during the prior month. This requirement is retained and section 2 (a) of this bill adds a further requirement. The new provision requires anyone who advertises or offers cigarettes for sale and shipment in interstate commerce to a nondistributor in a taxing State to file his (i. e., the advertiser's) name, trade name, address, and places of business with the tobacco tax administrator of the State in which the advertisement or offer is disseminated. One who sells and causes cigarettes to be shipped in interstate commerce to a nondistributor in a taxing State also is required to file such information in the State into which the cigarettes are shipped. The bill changes the language in the present law to make certain that the law applies only to shipments of cigarettes into those States which tax their sale or use.

The third important change in existing law is contained in section 2 (b) of the act as amended by the bill. This section creates a presumption that once cigarettes are shipped or delivered for shipment into a State in which a statement has been filed, then such shipment is to be presumptive evidence (1) that there was a sale for profit by the shipper and (2) that the sale was to a person other than a distributor licensed by or located in the receiving State. This provision is intended to remove the very real difficulty of locating the buyer and obtaining his testimony as to violations of this act.

The fourth major change in present law is contained in section 4 of the bill. This section gives the United States district courts the power to restrain violations of this act. Formerly the district courts only had the power to punish violations after they occurred. It is felt that this amendment will greatly improve the enforcement of this act.

Minor changes effected by this bill are as follows:

(1) The broadening of the term "person" to include, but not to be limited to, various additional forms of business operation. This was done to avoid any technical dispute as to the scope of its meaning.

(2) Inserting and defining the term "distributor licensed by or located in such State." The effect of the mandatory provisions of section 2 of the act of October 19, 1949 (title 15, U. S. C., sec. 376), was to exempt shipments solely to distributors as distinguished from those who ship to consumers. This amendment makes it clear that the filing requirements do not apply to those who ship solely to wholesale or retail distributors in States which do not actually issue an authorization or license.

(3) Instead of using the term "disposing of" this bill inserts and defines the term "transfer for profit" and provides specifically that this includes the situation where the seller appoints the buyer as his agent. The purpose of this is to cover a possible evasion of the act by subterfuge. It is declaratory of existing law.

(4) In section 2 (a) (2) the word "calendar" is inserted before the word "month" where the latter word first appears.

Those provisions regarding the filing of memoranda or copies of invoices in the District of Columbia, Alaska, Hawaii, and Puerto Rico are to apply to shipments in the calendar months after the month in which the bill is enacted. The remainder of the provisions of this bill are to take effect 30 days after enactment.

The amendment by this bill would place no additional burden upon anyone shipping cigarettes to licensed distributors. It would require information to be supplied only by establishments which, without paying the tax, ship cigarettes across a State border to consumers in States imposing a tax on cigarettes and by this means evade the State tax on cigarettes.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 19, 1949

AN ACT To assist States in collecting sales and use taxes on cigarettes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That as used in this Act the term—

[(a) "person" means any individual, partnership, corporation, or association;

[(b) "disposing of" means any transfer for profit;

[(c) "cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is 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;

[(d) "licensed distributor" means any person authorized by State statute or regulation to distribute cigarettes at wholesale or retail;

[(e) "use", in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes;

[(f) "tobacco tax administrator" means the State official duly authorized to administer the cigarette tax law of a State.

[SEC. 2. Any person selling or disposing of cigarettes in interstate commerce whereby such cigarettes are shipped to other than a distributor licensed by or located in a State taxing the sale or use of cigarettes shall, not later than the 10th day of each month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every such shipment of cigarettes made during the previous calendar month into said State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

[SEC. 3. Whoever violates the provisions of this Act shall be guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than six months, or both.]

*That for the purposes of this Act—*

(1) *The term "person" includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.*

(2) *The term "cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is 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.*

(3) *The term "distributor licensed by or located in such State" means—*

(A) *in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or*

(B) *in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail;*

*but such term in no case includes a person who acquires cigarettes for purposes other than resale.*

(4) *The term "use", in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes.*

(5) *The term "tobacco tax administrator" means the State official duly authorized to administer the cigarette tax law of a State.*

(6) *The term "State" includes the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico.*

(7) *The term "transfers for profit" means any transfer for profit or other disposition for profit, including any transfer or disposition by an agent to his principal in connection with which the agent receives anything of value.*

SEC. 2. (a) *Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes, to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such a sale or transfer and shipment, shall—*

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(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a) (1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

SEC. 3. Whoever violates any provision of this Act shall be guilty of a misdemeanor and shall be fined not more than \$1,000, or imprisoned not more than 6 months, or both.

SEC. 4. The United States district courts shall have jurisdiction to prevent and restrain violations of this Act.

