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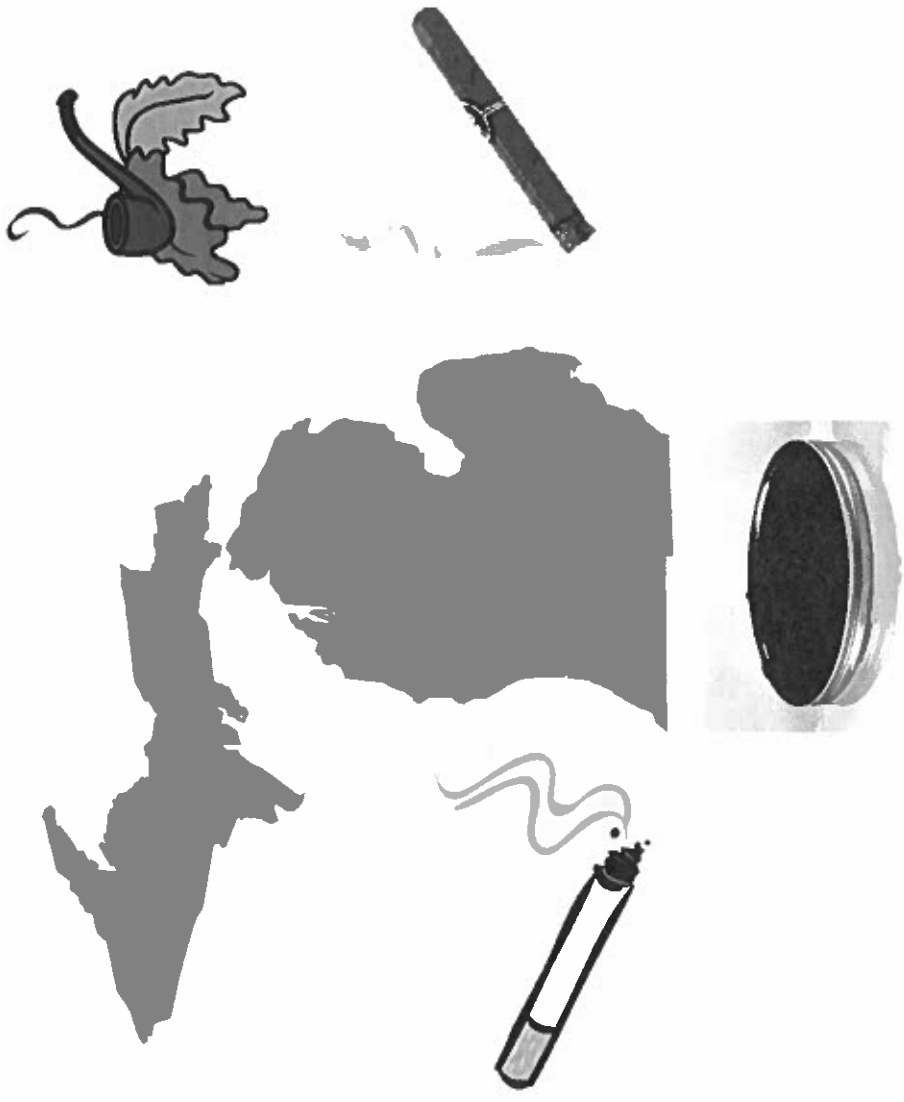
**Modernization of the Tobacco Products Tax
Act: Senate Bills 720-722**

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**Background:
Tobacco
Products Tax
Act (TPTA)**

**Public Act
327 of 1993
(as amended by
2020 PA 326)**



TPTA Background

- Creates a pervasive taxation regime for “tobacco products” and related licensing, recordkeeping, and enforcement mechanisms
- Act became law March 15, 1994

TPTA

Background: What is a “Tobacco Product”?

- **“Tobacco product” means a product containing any amount of tobacco regardless of form**
- **Includes: Cigarettes, cigars, noncigarette smoking tobacco (e.g., pipe tobacco, hookah tobacco, and roll-your-own cigarette tobacco), and smokeless tobacco (e.g., snuff, snus, and chewing tobacco)**
- **Excludes: A tobacco product does not include FDA regulated drugs, devices, or combination products under 21 USC 351 to 360ff-7**
- **A tobacco-free product does not qualify as a “tobacco product” even if that product contains nicotine (See Letter Ruling 2015-3)**

TPTA

Background: What tax rates apply to Tobacco Products?

- **Cigarettes** are taxed at a rate of \$0.10 per stick (\$2.00 for a pack of 20; \$2.50 for a pack of 25)
- **Other Tobacco Products (OTP)** are taxed at the rate of 32% of the “wholesale price” (but the tax on cigars is capped at \$0.50 per cigar)

TPTA

Background: Who is responsible for the tobacco tax and how is it collected?

- Tax is pre-collected and remitted to Treasury by Wholesalers and Unclassified Acquirers either after the tobacco products have been sold by Wholesalers or upon import into or acquisition in Michigan by Unclassified Acquirers (See Letter Ruling 2015-4)
- Tax ultimately imposed on the consumer and is reflected in the product price (MCL 205.427a)

TPTA Background: Stamping of Cigarettes

- Cigarettes are the only tobacco products required to bear a “stamp” under the TPTA (stamping implemented by 1997 PA 187)
- OTP is not stamped
- Digital stamping implemented by 2012 PA 188:



- Unstamped cigarettes are contraband

TPTA Background: Annual Licensing

- Retailers are **NOT** licensed under the TPTA
- License Types & Annual Fees (fixed by statute)
 - Wholesaler (\$100)
 - Secondary Wholesaler (\$25)
 - Vending Machine Operator (\$25)
 - Transporter (\$50)
 - Transportation Company (\$5)
 - Unclassified Acquirer (by subcategory)
 - Retail Importer of OTP (\$10)
 - Retail Importer of Cigarettes (\$100)
 - Manufacturer (\$100)
 - State of Michigan (\$0)
 - Vending Machine Operator - buying directly from manufacturer (\$100)
 - Any Other Importer (\$100)
- TPTA Fees set in **1997** (many date back to **1961**)!

TPTA Background: MSA compliance and Equity Assessment

- The TPTA (MCL 205.426c) aids administration and enforcement of the escrow requirements under 1999 PA 244 for purposes of the Master Settlement Agreement (MSA):
 - Escrow certification of compliance filing requirements
 - Maintaining directory (listing) of tobacco product manufacturers for purposes of the MSA
 - Only brands and manufacturers listed on the directory may be sold for consumption in Michigan
- The TPTA (MCL 205.426d) imposes an “equity assessment” of \$0.0175 on each cigarette sold in Michigan produced by a manufacturer that is not a participant in the MSA (i.e., a “nonparticipating manufacturer”) to fund administration and enforcement of the TPTA and 1999 PA 244

TPTA Background: Enforcement

- Inspections of records and regulated premises
- Seizure and forfeiture of “contraband” and tangible personal property containing contraband
 - Mandatory destruction of forfeited cigarettes
 - Destruction or sale of forfeited OTP
- License denial, suspension, or revocation
- Civil infractions, fines, and penalties (including 500% tax penalty)
- Criminal sanctions (felony and misdemeanor)
- Michigan State Police (MSP), Attorney General, and Prosecuting Attorney co-enforcement or as Treasury designee

TPTA Revenue and Earmarks: The HEART of the TPTA

People v Nasir, 255 Mich App 38, 42 (2003)

The TPTA “is at its heart a **revenue** statute, designed to assure that tobacco taxes levied in support of Michigan schools are not evaded.”

TPTA Revenue

(in millions)

Fund	FY 2022	FY 2023	FY 2024
General Fund Cigarette	\$147.6	\$144.9	\$142.1
School Aid Cigarette	\$318.2	\$312.5	\$306.5
Medicaid Cigarette	\$243.8	\$239.4	\$234.9
Other Funds Cigarette	\$58.4	\$57.6	\$56.5
Total Cigarette	\$768.0	\$754.4	\$740.0
General Fund OTP	\$27.4	\$27.6	\$27.9
Medicaid OTP	\$82.1	\$82.9	\$83.6
Total OTP	\$110.0	\$111.0	\$112.0

Source: Consensus Revenue Estimating Conference (January 2022)

TPTA Revenue and Earmarks

- Nearly **\$1 billion** in annual revenue
- Primary statutory earmarks include to the School Aid Fund (SAF), Medicaid Benefits Trust Fund, and General Fund

TPTA Revenue Statutory Earmarks

Cigarettes

• School Aid Fund	41.6%
• Medicaid Benefits Trust Fund	31.9%
• General Fund	19.3%
• Healthy Michigan Fund	3.8%
• Health and Safety Fund	2.4%
• Wayne County (indigent health care)	0.6%
• Capitol Historic Site Fund (2014 PA 272)	0.4%*

* Adjusted annually for inflation (based on \$3,000,000 earmark from General Fund)

OTP

• Medicaid Benefits Trust Fund	75.0%
• General Fund	25.0%

SB 720

Modernize by Technical Fixes and Removal of Obsolete Language

- TPTA (1993 PA 327) originates from 1961 Cigarette Tax Act
- Multiple provisions concerning implementation dates that have long since passed
- Provisions made obsolete by the use of digital stamps
- Definition enhancements (e.g., moving substantive requirements from definitions to general provisions)
- Consolidates the revenue earmarks by repealing obsolete provisions; does not change actual revenue deposited through these earmarks

SB 720

Modernize Business Provisions

- Section 3a authorizes Treasury to permit a creditor to sell tobacco products acquired upon exercise of its security interest (e.g., inventory of borrower used as collateral) without requiring a license to do so.
- Eliminates the permit requirement for transporters under MCL 205.426(8).
- Section 3(2) provides flexibility to the Department to license out-of-state unclassified acquirers that may not have a "place of business" where tobacco products are sold, brought, or stored. This is designed to ensure compliance and allow for licensing such businesses to prevent a barrier to entry into the marketplace.

SB 720

Modernize Business Provisions

- Section 2(v) adds the definition “remote retail sale” to describe remote sales by unclassified acquirers with Michigan consumers where the delivery takes place without the consumer being in presence of the seller.
- Section 2(gg) amends the definition of “unclassified acquirer” to include a person located in-state or out-of-state that makes a remote retail sale to an in-state consumer.
- Section 2(ii) amends the definition of “wholesale price” to authorize the Department to permit an unclassified acquirer making remote retail sales to base the wholesale price for those sales on the average price paid (during the immediately preceding calendar year) to acquire or purchase the same type of tobacco product if that information is made available to the Department.
- Section 2(z) amends the definition of “secondary wholesaler” to include a retailer, not otherwise licensed under the TPTA, who transfers or exchanges a tobacco product from one place of business of the retailer to another place of business of the retailer.
- Section 6(15) adds a new section to allow retailers to deliver tax paid tobacco products with its own vehicles or by a third party to consumers without requiring a transporter license under certain conditions.

Section 6(11) For purposes of forfeiture only (not criminal conviction), provides an exemption to the *rebuttable* “presumption” of a violation of the TPTA for failure to comply with the TPTA’s requirements to a limited *per se* violation to address the weakening of enforcement arising from the binding decision in *Value Inc v Treasury*, 320 Mich App 571 (2017)

SB 720

Modernize Tobacco Enforcement w/o Tax Enhancements

The *Value Inc* decision results in tobacco products a court rules were **lawfully** seized being returned if the aggrieved person presents the required records **after the fact**

Because of *Value Inc*, enforcement and legal resources can be expended just to have product ultimately returned (even though the seizure is determined to be lawful by a court) because the person ultimately provides documentation

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It keeps the general presumption, but makes an exception **ONLY** for forfeiture purposes. We didn't want any spillover into criminal matters. Therefore, I explained it as establishing that for **FORFEITURE** purposes **ONLY**, if a tobacco product is adjudicated (after all appeals have been exhausted or expired) by a court of competent jurisdiction to have been properly seized (e.g., for being held in violation of the TPTA), then that tobacco product is automatically forfeited to the state and the person from whom it was seized shall be liable for the tobacco tax on that product notwithstanding any other provision of the TPTA.

Connors, Paul (Treasury), 11/9/2021

SB 720

Modernize Tobacco Enforcement w/o Tax Enhancements

- **Section 6(6) Requires that a licensee or retailer that claims that tobacco products in its possession or control were acquired MORE THAN four years ago must preserve sufficient documentation to establish that fact (this does not mean they need to retain the exact same documentation otherwise required within the general 4-year timeframe).**

SB 721
Health and Safety
Fund Act

Technical Changes to Revenue Earmarks to
Align with SB 720

SB 722

MSA Escrow Act

Technical changes to address incorrect statutory and subsection citations.

Questions

