

House Bill 826

By: Representatives Peake of the 137th, Williams of the 4th, Abrams of the 84th, McBrayer of the 153rd, Baker of the 78th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide that any taxes imposed on cigars and little cigars on or after
3 January 1, 2013, shall be collected and paid through the use of stamps; to provide for
4 definitions; to establish a rate of the tax on certain tobacco products; to provide that the
5 commissioner of revenue shall provide by regulation for stamps to be affixed to cigars and
6 little cigars prior to April 10, 2013, for which taxes are collected and paid prior to January 1,
7 2013; to provide for changes throughout the chapter to certain provisions in order to remove
8 references to the collection and payment of taxes on cigars using an alternate method; to
9 provide for annual renewal of licenses; to provide exemptions from certain taxes; to
10 authorize the collection and payment of the first transaction in the state; to change certain
11 provisions regarding civil and criminal penalties; to provide for related matters; to provide
12 for effective dates; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **PART I**
15 **SECTION 1-1.**

16 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
17 amended by revising Code Section 48-11-1, relating to definitions, as follows:

18 "48-11-1.

19 As used in this chapter, the term:

20 (1) 'Cigar' means any roll for smoking made wholly or in part of tobacco when the cover
21 of the roll is also tobacco.

22 (2) 'Cigar dealer' means any person located within the borders of this state who sells or
23 distributes cigars or little cigars to a consumer in this state.

24 (3) 'Cigar distributor' means any person, whether located within or outside the borders
25 of this state, other than a cigar dealer, who sells or distributes cigars or little cigars within
26 or into the boundaries of this state and who:

27 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
28 contact and call on cigar dealers; and

29 (B) Is engaged in the business of:

30 (i) Importing cigars or little cigars into this state or purchasing cigars or little cigars
31 from other cigar manufacturers or cigar distributors; and

32 (ii) Selling the cigars or little cigars to cigar dealers in this state for resale but is not
33 in the business of selling the cigars or little cigars directly to the ultimate consumer
34 of the cigars.

35 (4) 'Cigar importer' means any person who imports into or who brokers within the United
36 States, either directly or indirectly, a finished cigar or little cigar for sale or distribution.

37 (5) 'Cigar manufacturer' means any person who manufactures, fabricates, assembles,
38 processes, or labels a finished cigar or little cigar.

39 (6) 'Cigarette' means any roll for smoking made wholly or in part of tobacco when the
40 cover of the roll is paper or any substance other than tobacco.

41 (7) 'Cigarette dealer' means any person located within the borders of this state who sells
42 or distributes cigarettes to a consumer in this state.

43 (8) 'Cigarette distributor' means any person, whether located within or outside the
44 borders of this state, other than a cigarette dealer, who sells or distributes cigarettes
45 within or into the boundaries of this state and who:

46 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
47 contact and call on cigarette dealers; and

48 (B) Is engaged in the business of:

49 (i) Importing cigarettes into this state or purchasing cigarettes from other cigarette
50 manufacturers or cigarette distributors; and

51 (ii) Selling the cigarettes to cigarette dealers in this state for resale but is not in the
52 business of selling the cigarettes directly to the ultimate consumer of the cigarettes.

53 Such term shall not include any cigarette manufacturer, export warehouse proprietor, or
54 cigarette importer with a valid permit under 26 U.S.C. Section 5712, if such person sells
55 or distributes cigarettes in this state only to cigarette distributors who hold valid and
56 current licenses under Code Section 48-11-4 or to an export warehouse proprietor or
57 another cigarette manufacturer with a valid permit under 26 U.S.C. Section 5712.

58 (9) 'Cigarette importer' means any person who imports into or who brokers within the
59 United States, either directly or indirectly, a finished cigarette for sale or distribution.

60 (10) 'Cigarette manufacturer' means any person who manufactures, fabricates, assembles,
61 processes, or labels a finished cigarette.

62 (11) 'Counterfeit cigarette' means cigarettes that are manufactured, fabricated, assembled,
63 processed, packaged, or labeled by any person other than the trademark owner of a
64 cigarette brand or the owner's designated agent.

65 (12) 'Dealer' means any person who is a cigar dealer, a cigarette dealer, or a loose or
66 smokeless tobacco dealer.

67 (13) 'Distributor' means any person who is a cigar distributor, a cigarette distributor, or
68 a loose or smokeless tobacco distributor.

69 (14) 'First taxable transaction' means the first sale, receipt, purchase, possession,
70 consumption, handling, distribution, or use of cigars, little cigars, cigarettes, or loose or
71 smokeless tobacco within this state.

72 (15) 'Little cigar' means any roll for smoking weighing not more than four pounds per
73 thousand made wholly or in part of tobacco when the cover of the roll contains tobacco
74 but is not a natural leaf tobacco wrapper.

75 ~~(15)~~(16) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready
76 rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist
77 tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings,
78 and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such
79 manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for
80 chewing and smoking but does not include ~~cigarettes or cigars~~, little cigars, or cigarettes
81 or tobacco purchased for the manufacture of ~~cigarettes or cigars~~, little cigars, or cigarettes
82 by cigarette manufacturers or cigar manufacturers.

83 ~~(16)~~(17) 'Loose or smokeless tobacco dealer' means any person located within the
84 borders of this state who sells or distributes loose or smokeless tobacco to a consumer in
85 this state.

86 ~~(17)~~(18) 'Loose or smokeless tobacco distributor' means any person who:

87 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
88 contact and call on loose or smokeless tobacco dealers; and

89 (B) Is engaged in the business of:

90 (i) Importing loose or smokeless tobacco into this state or purchasing loose or
91 smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or
92 smokeless tobacco distributors; and

93 (ii) Selling the loose or smokeless tobacco to loose or smokeless tobacco dealers in
94 this state for resale but is not in the business of selling the loose or smokeless tobacco
95 directly to the ultimate consumer of the loose or smokeless tobacco.

96 ~~(18)~~(19) 'Loose or smokeless tobacco importer' means any person who imports into or
 97 who brokers within the United States, either directly or indirectly, finished loose or
 98 smokeless tobacco for sale or distribution.

99 ~~(19)~~(20) 'Loose or smokeless tobacco manufacturer' means any person who
 100 manufactures, fabricates, assembles, processes, or labels finished loose or smokeless
 101 tobacco.

102 ~~(20)~~(21) 'Related machinery' means any item, device, conveyance, or vessel of any kind
 103 or character used in manufacturing, packaging, labeling, stamping, transporting,
 104 distributing, selling, or possessing counterfeit cigarettes.

105 ~~(21)~~(22) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and
 106 distribution in any manner or by any means whatever.

107 ~~(22)~~(23) 'Stamp' means any impression, device, stamp, label, or print manufactured,
 108 printed, made, or affixed as prescribed by the commissioner.

109 ~~(23)~~(24) 'Vending machine' means any coin-in-the-slot device used for the automatic
 110 merchandising of cigars, little cigars, cigarettes, or loose or smokeless tobacco."

111 **SECTION 1-2.**

112 Said title is further amended by revising Code Section 48-11-3, relating to collection of tax
 113 by stamps, sale at discount to distributors, basis of discount percentage, alternate method of
 114 collection of tax on cigars, prohibition of sale or exchange of stamps with another distributor,
 115 and redemption, as follows:

116 "48-11-3.

117 (a) Except as otherwise provided in this Code section, the taxes imposed by Code Section
 118 48-11-2 shall be collected and paid through the use of stamps. The commissioner shall
 119 secure stamps of such design and materials as the commissioner deems appropriate to
 120 protect the revenue and shall sell the stamps to licensed distributors at a discount of ~~not less~~
 121 ~~than 2 percent and not more than 8~~ 4 percent of the value of the stamps. ~~The exact~~
 122 ~~percentage of the discount shall be based on brackets according to the volume of cigars,~~
 123 ~~cigarettes, and loose or smokeless tobacco handled by the distributor pursuant to~~
 124 ~~regulations promulgated by the commissioner.~~ The commissioner shall prescribe by
 125 regulation the condition, method, and manner in which stamps are to be affixed to
 126 containers of cigars, cigarettes, and loose or smokeless tobacco.

127 (b)(1)(A) ~~The~~ Prior to January 1, 2013, the commissioner may prescribe by regulation
 128 an alternate method, in lieu of the sale of stamps, of collecting and paying the tax
 129 imposed upon cigars and little cigars. Any such regulations shall be promulgated so
 130 that the use of the alternate method will result in the same revenue to the state as the
 131 state would realize through the sale of stamps to the distributors.

132 (B) Beginning on January 1, 2013, the taxes imposed upon cigars and little cigars shall
 133 be collected and paid through the use of stamps as provided in subsection (a) of this
 134 Code Section. The commissioner shall prescribe by regulation the condition, method,
 135 and manner in which stamps are to be affixed to containers of cigars and little cigars for
 136 which taxes imposed upon cigars and little cigars were collected and paid by an
 137 alternate method prior to January 1, 2013, such that all such containers of cigars and
 138 little cigars for which taxes have been collected and paid imposed by Code Section
 139 48-11-2 shall be required to have an affixed stamp as of April 10, 2013.

140 (2) The commissioner may also prescribe by regulation an alternate method, in lieu of
 141 the sale of stamps, of collecting and paying the tax imposed on loose or smokeless
 142 tobacco. Any such regulations shall be promulgated so that use of the alternate method
 143 will result in the same revenue to the state as the state would realize through the sale of
 144 stamps to the distributors.

145 (c) No distributor shall sell or exchange with another distributor any stamps issued
 146 pursuant to this chapter. The commissioner is authorized to redeem at cost price any
 147 stamps presented for redemption by a licensed distributor when the commissioner
 148 determines from physical inspection that no cigars, cigarettes, or loose or smokeless
 149 tobacco has been sold by the distributor under pretense of the tax imposed by this chapter
 150 having been paid through use of the stamps."

151 PART II

152 SECTION 2-1.

153 Said title is further amended by revising Chapter 11, relating to taxes on tobacco products,
 154 as follows:

155 "48-11-1.

156 As used in this chapter, the term:

157 (1) 'Cigar' means any roll for smoking made wholly or in part of tobacco when the cover
 158 of the roll is also tobacco.

159 (2) 'Cigar dealer' means any person located within the borders of this state who sells or
 160 distributes cigars or little cigars to a consumer in this state.

161 (3) 'Cigar distributor' means any person, whether located within or outside the borders
 162 of this state, other than a cigar dealer, who sells or distributes cigars or little cigars within
 163 or into the boundaries of this state and who:

164 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 165 contact and call on cigar dealers; and

166 (B) Is engaged in the business of:

- 167 (i) Importing cigars or little cigars into this state or purchasing cigars or little cigars
 168 from other cigar manufacturers or cigar distributors; and
- 169 (ii) Selling the cigars or little cigars to cigar dealers in this state for resale but is not
 170 in the business of selling the cigars or little cigars directly to the ultimate consumer
 171 of the cigars.
- 172 (4) 'Cigar importer' means any person who imports into or who brokers within the United
 173 States, either directly or indirectly, a finished cigar or little cigar for sale or distribution.
- 174 (5) 'Cigar manufacturer' means any person who manufactures, fabricates, assembles,
 175 processes, or labels a finished cigar or little cigar.
- 176 (6) 'Cigarette' means any roll for smoking made wholly or in part of tobacco when the
 177 cover of the roll is paper or any substance other than tobacco.
- 178 (7) 'Cigarette dealer' means any person located within the borders of this state who sells
 179 or distributes cigarettes to a consumer in this state.
- 180 (8) 'Cigarette distributor' means any person, whether located within or outside the
 181 borders of this state, other than a cigarette dealer, who sells or distributes cigarettes
 182 within or into the boundaries of this state and who:
- 183 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
 184 contact and call on cigarette dealers; and
- 185 (B) Is engaged in the business of:
- 186 (i) Importing cigarettes into this state or purchasing cigarettes from other cigarette
 187 manufacturers or cigarette distributors; and
- 188 (ii) Selling the cigarettes to cigarette dealers in this state for resale but is not in the
 189 business of selling the cigarettes directly to the ultimate consumer of the cigarettes.
- 190 Such term shall not include any cigarette manufacturer, export warehouse proprietor, or
 191 cigarette importer with a valid permit under 26 U.S.C. Section 5712, if such person sells
 192 or distributes cigarettes in this state only to cigarette distributors who hold valid and
 193 current licenses under Code Section 48-11-4 or to an export warehouse proprietor or
 194 another cigarette manufacturer with a valid permit under 26 U.S.C. Section 5712.
- 195 (9) 'Cigarette importer' means any person who imports into or who brokers within the
 196 United States, either directly or indirectly, a finished cigarette for sale or distribution.
- 197 (10) 'Cigarette manufacturer' means any person who manufactures, fabricates, assembles,
 198 processes, or labels a finished cigarette.
- 199 (11) 'Counterfeit cigarette' means cigarettes that are manufactured, fabricated, assembled,
 200 processed, packaged, or labeled by any person other than the trademark owner of a
 201 cigarette brand or the owner's designated agent.
- 202 (12) 'Dealer' means any person who is a cigar dealer, a cigarette dealer, or a loose or
 203 smokeless tobacco dealer.

204 (13) 'Distributor' means any person who is a cigar distributor, a cigarette distributor, or
205 a loose or smokeless tobacco distributor.

206 (14) 'First taxable transaction' means the first sale, receipt, purchase, possession,
207 consumption, handling, distribution, or use of cigars, little cigars, cigarettes, or loose or
208 smokeless tobacco within this state.

209 (15) 'Little cigar' means any roll for smoking made wholly or in part of tobacco if the
210 product is wrapped in any substance containing tobacco, other than a natural leaf tobacco
211 wrapper, and weighing not more than four pounds per thousand.

212 ~~(15)~~(16) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready
213 rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist
214 tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings,
215 and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such
216 manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for
217 chewing and smoking but does not include ~~cigarettes or cigars~~, little cigars, or ~~cigarettes~~
218 or tobacco purchased for the manufacture of ~~cigarettes or cigars~~, little cigars, or ~~cigarettes~~
219 by cigarette manufacturers or cigar manufacturers.

220 ~~(16)~~(17) 'Loose or smokeless tobacco dealer' means any person located within the
221 borders of this state who sells or distributes loose or smokeless tobacco to a consumer in
222 this state.

223 ~~(17)~~(18) 'Loose or smokeless tobacco distributor' means any person who:

224 (A) Maintains a warehouse, warehouse personnel, and salespersons who regularly
225 contact and call on loose or smokeless tobacco dealers; and

226 (B) Is engaged in the business of:

227 (i) Importing loose or smokeless tobacco into this state or purchasing loose or
228 smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or
229 smokeless tobacco distributors; and

230 (ii) Selling the loose or smokeless tobacco to loose or smokeless tobacco dealers in
231 this state for resale but is not in the business of selling the loose or smokeless tobacco
232 directly to the ultimate consumer of the loose or smokeless tobacco.

233 ~~(18)~~(19) 'Loose or smokeless tobacco importer' means any person who imports into or
234 who brokers within the United States, either directly or indirectly, finished loose or
235 smokeless tobacco for sale or distribution.

236 ~~(19)~~(20) 'Loose or smokeless tobacco manufacturer' means any person who
237 manufactures, fabricates, assembles, processes, or labels finished loose or smokeless
238 tobacco.

239 ~~(20)~~(21) 'Related machinery' means any item, device, conveyance, or vessel of any kind
 240 or character used in manufacturing, packaging, labeling, stamping, transporting,
 241 distributing, selling, or possessing counterfeit cigarettes.

242 (22) 'Retail unit' means the quantity or packaging bundle as determined by the
 243 commissioner that must bear a stamp.

244 ~~(21)~~(23) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and
 245 distribution in any manner or by any means whatever.

246 ~~(22)~~(24) 'Stamp' means any impression, device, stamp, label, or print manufactured,
 247 printed, made, or affixed as prescribed by the commissioner.

248 ~~(23)~~(25) 'Vending machine' means any coin-in-the-slot device used for the automatic
 249 merchandising of cigars, little cigars, cigarettes, or loose or smokeless tobacco.

250 48-11-2.

251 (a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed
 252 upon the sale, receipt, purchase, possession, consumption, handling, distribution, or use of
 253 cigars, little cigars, cigarettes, and loose or smokeless tobacco in this state at the following
 254 rates:

255 (1) ~~Little cigars weighing not more than three pounds per thousand: two and one-half~~
 256 ~~mills each~~ Cigars other than little cigars: 10¢ per cigar;

257 (2) ~~All other cigars: 23 percent of the wholesale cost price, exclusive of any trade, cash,~~
 258 ~~or other discounts or any promotion, advertising, display, or similar allowances~~ Little
 259 cigars: 37¢ per pack of 20 little cigars and a like rate, pro rata, for other size packages;

260 (3) Cigarettes: 37¢ per pack of 20 cigarettes and a like rate, pro rata, for other size
 261 packages; and

262 (4) Loose or smokeless tobacco: 10 percent of the wholesale cost price, exclusive of any
 263 trade, cash, or other discounts or any promotion, advertising, display, or similar
 264 allowances.

265 (b) When the retail selling price is referred to in this chapter as the basis for computing the
 266 tax, it is intended to mean the ordinary retail selling price of the article to the consumer
 267 before adding the amount of the tax.

268 (c) The taxes imposed by this chapter are levied with respect to the purchase or use of
 269 cigars, little cigars, cigarettes, or loose or smokeless tobacco by the state or any
 270 department, institution, or agency of the state and by the political subdivisions of the state
 271 and their departments, institutions, and agencies. The taxes imposed by this chapter are not
 272 imposed with respect to cigars, little cigars, cigarettes, or loose or smokeless tobacco
 273 purchased exclusively for use by the patients at the Georgia War Veterans Home and the
 274 Georgia War Veterans Nursing Home.

275 (d) The taxes imposed by this chapter are not levied with respect to cigars, little cigars,
 276 cigarettes, or loose or smokeless tobacco the purchase or use of which this state is
 277 prohibited from taxing under the Constitution or statutes of the United States.

278 (e) The taxes imposed by this chapter shall be advanced and paid by the dealer or
 279 distributor licensed pursuant to this chapter to the commissioner for deposit and
 280 distribution as provided in this chapter upon the first ~~taxable~~ transaction within the state,
 281 whether or not the transaction involves the ultimate purchaser or consumer. The ~~seller~~
 282 licensed dealer or distributor shall collect the tax on the first transaction within the state
 283 from the purchaser or consumer and the purchaser or consumer shall pay the tax to the
 284 seller or distributor. The ~~seller~~ dealer or distributor shall be responsible for the collection
 285 of the tax and the payment of the tax to the commissioner. Whenever cigars, little cigars,
 286 cigarettes, or loose or smokeless tobacco is shipped from outside the state to anyone other
 287 than a distributor, the person receiving the cigars, little cigars, cigarettes, or loose or
 288 smokeless tobacco shall be deemed to be a distributor and shall be immediately responsible
 289 for the tax on the cigars, little cigars, cigarettes, or loose or smokeless tobacco and the
 290 payment of the tax to the commissioner. No tobacco products shall be sold in or shipped
 291 into this state unless lawfully obtained from a person licensed pursuant to this chapter.

292 (f) The amount of taxes advanced and paid to the state as provided in this Code section
 293 shall be added to and collected as a part of the sales price of the cigars, little cigars,
 294 cigarettes, or loose or smokeless tobacco sold or distributed. The amount of the tax shall
 295 be stated separately from the price of the cigars, little cigars, cigarettes, or loose or
 296 smokeless tobacco.

297 (g) The cigars, little cigars, cigarettes, and loose or smokeless tobacco tax imposed shall
 298 be collected only once upon the same ~~cigarettes~~, cigars, little cigars, ~~cigarettes~~, or loose or
 299 smokeless tobacco.

300 48-11-3.

301 (a) Except as otherwise provided in this Code section, the taxes imposed by Code
 302 Section 48-11-2 shall be collected and paid through the use of stamps. The commissioner
 303 shall secure stamps of such design and materials as the commissioner deems appropriate
 304 to protect the revenue and shall sell the stamps to licensed distributors at a discount of ~~not~~
 305 ~~less than 2 percent and not more than 8 4~~ 4 percent of the value of the stamps. ~~The exact~~
 306 ~~percentage of the discount shall be based on brackets according to the volume of cigars,~~
 307 ~~cigarettes, and loose or smokeless tobacco handled by the distributor pursuant to~~
 308 ~~regulations promulgated by the commissioner.~~ The commissioner shall prescribe by
 309 regulation the condition, method, and manner in which stamps are to be affixed to
 310 containers or retail units of cigars, little cigars, cigarettes, and loose or smokeless tobacco.

311 ~~(b) The commissioner may prescribe by regulation an alternate method, in lieu of the sale~~
 312 ~~of stamps, of collecting and paying the tax imposed upon cigars and little cigars. The~~
 313 commissioner may also prescribe by regulation an alternate method, in lieu of the sale of
 314 stamps, of collecting and paying the tax imposed on loose or smokeless tobacco. Any
 315 such regulations shall be promulgated so that use of the alternate method will result in the
 316 same revenue to the state as the state would realize through the sale of stamps to the
 317 distributors.

318 (c) No distributor shall sell or exchange with another distributor any stamps issued
 319 pursuant to this chapter. The commissioner is authorized to redeem at cost price any
 320 stamps presented for redemption by a licensed distributor when the commissioner
 321 determines from physical inspection that no cigars, little cigars, cigarettes, or loose or
 322 smokeless tobacco has been sold by the distributor under pretense of the tax imposed by
 323 this chapter having been paid through use of the stamps.

324 48-11-4.

325 (a) No person shall engage in or conduct the business of manufacturing, importing,
 326 brokering, purchasing, selling, consigning, vending, dealing in, shipping, receiving, or
 327 distributing cigars, little cigars, cigarettes, or loose or smokeless tobacco in this state
 328 without first obtaining a license from the commissioner.

329 (b) All licenses shall be issued by the commissioner, who shall make rules and regulations
 330 with respect to applications for and issuance of the licenses and for other purposes of
 331 enforcing this chapter. The commissioner may refuse to issue any license under this
 332 chapter when the commissioner has reasonable cause to believe that the applicant has
 333 willfully withheld information requested of the applicant or required by the regulations to
 334 be provided or reported or when the commissioner has reasonable cause to believe that the
 335 information submitted in any application or report is false or misleading and is not given
 336 in good faith.

337 ~~(c)(1) The fee for a manufacturer's, importer's, or distributor's, or dealer's license shall~~
 338 ~~be \$50.00 annually, except that for a person commencing business as a manufacturer,~~
 339 ~~importer, or distributor for the first time the first year's fee shall be \$250.00. Each dealer~~
 340 ~~shall have a permanent license issued by the commissioner free of charge.~~

341 (2) All renewal applications shall be filed at least 30 days in advance of the expiration
 342 date shown on the license. Each license, except a dealer's license, shall begin on July 1
 343 and end on June 30 of the next succeeding year. Each dealer's license shall be valid for
 344 12 months from the date of issue for the initial license and shall be valid for 12 months
 345 from the first day of the month of issue for all subsequent licenses. The prescribed fee

346 shall accompany every application for a license and shall apply for any portion of the
347 annual period.

348 (3) Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to
349 suspension or revocation for violation of any of the provisions of this chapter or of the
350 rules and regulations made pursuant to this chapter. A separate license shall be required
351 for each place of business. No person shall hold a distributor's license and a dealer's
352 license at the same time.

353 (d) The commissioner may make rules and regulations governing the sale of cigars, little
354 cigars, cigarettes, loose or smokeless tobacco, and other tobacco products in vending
355 machines. The commissioner shall require annually a special registration of each vending
356 machine for any operation in this state and charge a license fee for the registration in the
357 amount of ~~\$1.00~~ \$10.00 for each machine. The annual registration shall indicate the
358 location of the vending machine. No vending machine shall be purchased or transported
359 into this state for use in this state when the vending machine is not so designed as to permit
360 inspection without opening the machine for the purpose of determining that all cigars, little
361 cigars, cigarettes, loose or smokeless tobacco, and other tobacco products contained in the
362 machine bear the tax stamp required under this chapter.

363 (e) The manufacturer's, importer's, distributor's, or dealer's license shall be exhibited in the
364 place of business for which it is issued in the manner prescribed by the commissioner. The
365 commissioner shall require each licensed manufacturer, importer, or distributor to file with
366 the commissioner a bond in an amount of not less than \$1,000.00 to guarantee the proper
367 performance of the manufacturer's, importer's, or distributor's duties and the discharge of
368 the manufacturer's, importer's, or distributor's liabilities under this chapter. The bond shall
369 run concurrently with the manufacturer's, importer's, or distributor's license but shall
370 remain in full force and effect for a period of one year after the expiration or revocation of
371 the manufacturer's, importer's, or distributor's license unless the commissioner certifies that
372 all obligations due the state arising under this chapter have been paid.

373 (f) The jurisdiction of the commissioner in the administration of this chapter shall extend
374 to every person using or consuming cigars, little cigars, cigarettes, or loose or smokeless
375 tobacco in this state and to every person dealing in cigars, little cigars, cigarettes, or loose
376 or smokeless tobacco in any way for business purposes and maintaining a place of business
377 in this state. For the purpose of this chapter, the maintaining of an office, store, plant,
378 warehouse, stock of goods, or regular sales or promotional activity, whether carried on
379 automatically or by salespersons or other representatives, shall constitute, among other
380 activities, the maintaining of a place of business. For the purpose of enforcement of this
381 chapter and the rules and regulations promulgated ~~hereunder~~ under this chapter,
382 notwithstanding any other provision of law, the commissioner or his or her duly appointed

383 hearing officer is granted authority to conduct hearings which shall at all times be exercised
384 in conformity with the rules and regulations promulgated by the commissioner and
385 consistent with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

386 (g) The commissioner may provide for the licensing of promotional activities, not
387 including the sale of cigars, little cigars, cigarettes, or loose or smokeless tobacco, carried
388 on by the manufacturer. The fee for any such license shall be \$10.00 annually.

389 48-11-5.

390 (a)(1) If the commissioner finds that the collection of the tax imposed by this chapter
391 would be facilitated by such action, the commissioner may authorize any person residing
392 or located outside this state who is engaged in the business of manufacturing cigars, little
393 cigars, cigarettes, or loose or smokeless tobacco or any person residing or located outside
394 this state who ships cigars, little cigars, cigarettes, or loose or smokeless tobacco into this
395 state for sale to licensed dealers in this state, to be licensed as a distributor and, after the
396 person complies with the commissioner's requirements, to affix or cause to be affixed the
397 stamps required by this chapter on behalf of the purchasers of the cigars, little cigars,
398 cigarettes, or loose or smokeless tobacco who would otherwise be taxable for the cigars,
399 little cigars, cigarettes, and loose or smokeless tobacco. The commissioner may sell tax
400 stamps to an authorized person or may authorize the use of a metering machine by the
401 person as provided in Code Section 48-11-3.

402 (2) The commissioner shall require a bond of a nonresident distributor satisfactory to the
403 commissioner and in an amount of not less than ~~\$1,000.00~~ \$5,000.00, conditioned upon
404 the payment of the tax and compliance with any other requirements specified by the
405 commissioner. As a condition of authorization as provided in this Code section, a
406 nonresident distributor shall agree to submit the distributor's books, accounts, and records
407 for examination by the commissioner or the commissioner's duly authorized agent during
408 reasonable business hours and shall appoint in writing an agent who resides in this state
409 for the purpose of service. Service upon an agent shall be sufficient service upon the
410 nonresident distributor and made by leaving a duly attested copy of the process with the
411 agent. When legal process against any nonresident distributor is served upon the agent,
412 the agent shall notify the nonresident distributor in the manner specified in Code Section
413 40-12-2.

414 (3) Upon the grant of authorization as provided in this subsection and except as may
415 otherwise be determined by the commissioner, a nonresident distributor shall become a
416 licensed distributor within the meaning of this chapter and shall be subject to all
417 provisions of this chapter applicable to licensed distributors.

418 (b) Every nonresident manufacturer, importer, or distributor of cigars, little cigars,
 419 cigarettes, or loose or smokeless tobacco making shipments of cigars, little cigars,
 420 cigarettes, or loose or smokeless tobacco by common carrier or otherwise for their own
 421 account or for the account of others to distributors or dealers of cigars, little cigars,
 422 cigarettes, or loose or smokeless tobacco located within this state shall make reports of the
 423 shipments when and as required by rules and regulations of the commissioner.

424 48-11-6.

425 The commissioner may suspend or refuse to renew a license issued to any person under this
 426 chapter for violation of any provision of this chapter or of any rule or regulation of the
 427 commissioner made pursuant to this chapter. After notice and opportunity for hearing, the
 428 commissioner may revoke a license issued to any person under this chapter for violation
 429 of any provision of this chapter or of any rule or regulation of the commissioner made
 430 pursuant to this chapter. Any person aggrieved by the suspension of or refusal to renew
 431 his license may apply to the commissioner for a hearing as provided in subsection (a) of
 432 Code Section 48-11-18; and any person aggrieved by the action of the commissioner in
 433 revoking or refusing to renew his license after hearing may further appeal to the courts as
 434 provided in subsection (b) of Code Section 48-11-18. No legal proceedings or other action
 435 by the commissioner shall be barred or abated by the suspension, revocation, or expiration
 436 of any license issued under this chapter.

437 48-11-7.

438 Each bond required to be filed pursuant to this chapter shall be executed by the distributor
 439 as principal and, as surety, by a corporation authorized to engage in business as a surety
 440 company in this state.

441 48-11-8.

442 (a)(1) No person shall sell, offer for sale, or possess with intent to sell any cigarettes in
 443 this state when the cigarette container does not bear the tax stamps required by Code
 444 Section 48-11-3.

445 (2) No person shall sell, offer for sale, or possess with intent to sell in this state any
 446 cigars or little cigars ~~upon which the tax has not been paid under the alternate method of~~
 447 ~~collecting the taxes provided in Code Section 48-11-3~~ or which do not bear the tax
 448 stamps required by Code Section 48-11-3.

449 (3) No person shall sell, offer for sale, or possess with intent to sell any loose or
 450 smokeless tobacco in this state when the loose or smokeless tobacco container does not
 451 bear the tax stamps required by Code Section 48-11-3 or upon which the tax has not been

452 paid under the alternate method of collecting the tax provided under Code
453 Section 48-11-3.

454 (4) No person shall sell, offer for sale, or possess with intent to sell cigarettes as
455 prohibited by Code Section 10-13A-5.

456 (b) Each distributor at the location for which such distributor's license is issued and in the
457 manner specified by the commissioner shall affix the stamps required by this Code section
458 to each individual package or retail unit of cigarettes, cigars, or little cigars sold or
459 distributed by such distributor, except as prohibited by Code Section 10-13A-5. Each
460 distributor shall comply with the commissioner's regulations for the payment of the tax on
461 ~~cigars~~ or loose or smokeless tobacco as provided in Code Section 48-11-3 or shall affix to
462 each container of ~~cigars~~ or loose or smokeless tobacco sold by such distributor or from
463 which such distributor sells ~~cigars~~ or loose or smokeless tobacco the stamps required by
464 this chapter. The stamps may be affixed or the tax under the alternate method may be paid
465 by a distributor at any time before the cigars, little cigars, cigarettes, or loose or smokeless
466 tobacco is transferred out of such distributor's possession.

467 (c) It is the intent of this chapter that the tax imposed by this chapter be paid only once and
468 that, if the distributor acquires stamped cigarettes, ~~tax-paid cigars~~, stamped cigars, stamped
469 little cigars, stamped loose or smokeless tobacco, or tax-paid loose or smokeless tobacco,
470 such distributor is not required to affix additional stamps or provide other evidence of
471 payment of the tax.

472 (d) Every dealer or person who comes into possession of cigars, little cigars, cigarettes, or
473 loose or smokeless tobacco not bearing proper tax stamps or other evidence of the tax
474 imposed by this chapter shall immediately report the cigars, little cigars, cigarettes, or loose
475 or smokeless tobacco to the commissioner prior to displaying, selling, using, or otherwise
476 disposing of the cigars, little cigars, cigarettes, and loose or smokeless tobacco. After a
477 report, the commissioner shall authorize a licensed distributor to affix the proper stamps
478 to the cigars, little cigars, cigarettes, and loose or smokeless tobacco or, in the case of
479 ~~cigars~~ or loose or smokeless tobacco, authorize the dealer to remit the tax by the alternate
480 method promulgated by the commissioner in accordance with Code Section 48-11-3. A
481 licensed distributor shall affix the stamps or comply with the alternate regulations when
482 presented a permit for such action issued by the commissioner. A licensed distributor shall
483 stamp cigarettes, cigars, or little cigars or comply with the alternate method provided in this
484 chapter with respect to ~~cigars~~ or loose or smokeless tobacco, other than such distributor's
485 own, only when authorized by the permit issued by the commissioner.

486 (e) No wholesale or retail distributor or wholesale or retail dealer shall accept deliveries
487 of unstamped cigars, little cigars, cigarettes, or loose or smokeless tobacco or nontax-paid
488 ~~cigars~~ or loose or smokeless tobacco which is shipped to such distributor or acquired by

489 such distributor at any place within the state except as authorized and provided in this Code
 490 section. All cigars, little cigars, cigarettes, and loose or smokeless tobacco shall be
 491 examined by the distributor, ~~or dealer, or person~~ on receipt, and the distributor, dealer, or
 492 person shall immediately report the cigars, little cigars, cigarettes, or loose or smokeless
 493 tobacco to the commissioner as provided in subsection (d) of this Code section.

494 (f) The commissioner may prescribe the charges which may be made by a distributor to
 495 any person for the services of the distributor as provided in this chapter in affixing the tax
 496 stamps to each individual package or retail unit of cigars, little cigars, cigarettes, or loose
 497 or smokeless tobacco and may prescribe the charges which may be made by a distributor
 498 in complying with the commissioner's alternate regulations for the collection of the tax on
 499 ~~cigars and little cigars~~ or loose or smokeless tobacco.

500 (g) This Code section shall not apply to unstamped ~~cigars and little cigars~~ or loose or
 501 smokeless tobacco upon which the tax has been paid in accordance with the alternate
 502 regulations promulgated by the commissioner under Code Section 48-11-3.

503 48-11-9.

504 (a)(1) Any cigars, little cigars, cigarettes, or loose or smokeless tobacco found at any
 505 place in this state without stamps affixed to them as required by this chapter and any
 506 cigarettes seized pursuant to subsection (b) of Code Section 10-13A-8 are declared to be
 507 contraband articles and ~~may~~ shall be seized by the commissioner, the commissioner's
 508 agents or employees, or any peace officer of this state when directed by the commissioner
 509 to do so.

510 (2) Paragraph (1) of this subsection shall not apply when:

511 (A) The tax has been paid on the unstamped ~~cigars and little cigars~~ or loose or
 512 smokeless tobacco in accordance with the commissioner's regulations promulgated
 513 pursuant to Code Section 48-11-3;

514 (B) The cigars, little cigars, cigarettes, or loose or smokeless tobacco is in the
 515 possession of a licensed distributor;

516 (C) The cigars, little cigars, cigarettes, or loose or smokeless tobacco is in course of
 517 transit from outside the state and is consigned to a licensed distributor;

518 (D) The cigars, little cigars, cigarettes, or loose or smokeless tobacco is in the
 519 possession of a transporter who is in compliance with Code Section 48-11-22; or

520 (E) The cigars, little cigars, cigarettes, or loose or smokeless tobacco is in the
 521 possession of a registered taxpayer as defined in Code Section 48-11-14 and the time
 522 for making the report required by Code Section 48-11-14 has not expired.

523 ~~(3) This subsection shall not be construed to require the commissioner to confiscate~~
 524 ~~unstamped or nontax-paid cigars, cigarettes, and loose or smokeless tobacco or other~~

525 ~~property when the commissioner has reason to believe that the owner of the cigars,~~
 526 ~~cigarettes, loose or smokeless tobacco, or property is not willfully or intentionally~~
 527 ~~evading the tax imposed by this chapter.~~

528 (b) Any cigars, little cigars, cigarettes, loose or smokeless tobacco, or other property
 529 seized pursuant to this chapter may be offered for sale by the commissioner, at the
 530 commissioner's discretion, at public auction to the highest bidder after advertisement as
 531 provided in this Code section. The commissioner shall deliver to the Office of the State
 532 Treasurer the proceeds of any sale made under this Code section. Before delivering any
 533 cigars, little cigars, cigarettes, or loose or smokeless tobacco sold to a purchaser at the sale,
 534 the commissioner shall require the purchaser to affix to the packages or retail units the
 535 amount of stamps required by this chapter or to comply with the commissioner's alternate
 536 method. The seizure and sale of any cigars, little cigars, cigarettes, loose or smokeless
 537 tobacco, or property pursuant to this chapter shall not relieve any person from a fine,
 538 imprisonment, or other penalty for violation of this chapter.

539 (c) When any cigars, little cigars, cigarettes, loose or smokeless tobacco, or other property
 540 has been seized pursuant to this chapter, the commissioner, at the commissioner's
 541 discretion, may advertise it for sale in a newspaper published or having a circulation in the
 542 place in which the seizure occurred, at least five days before the sale. Any person claiming
 543 an interest in the cigars, little cigars, cigarettes, loose or smokeless tobacco, or other
 544 property may make written application to the commissioner for a hearing. The application
 545 shall state the person's interest in the cigars, little cigars, cigarettes, loose or smokeless
 546 tobacco, or other property and such person's reasons why the cigars, little cigars, cigarettes,
 547 loose or smokeless tobacco, or other property should not be forfeited. Further proceedings
 548 on the application for hearing shall be taken as provided in subsection (a) of Code Section
 549 48-11-18. No sale of any cigars, little cigars, cigarettes, loose or smokeless tobacco, or
 550 property seized pursuant to this chapter shall be made while an application for a hearing
 551 is pending before the commissioner. The pendency of an appeal under subsection (b) of
 552 Code Section 48-11-18 shall not prevent the sale unless the appellant posts a satisfactory
 553 bond with surety in an amount double the estimated value of the cigars, little cigars,
 554 cigarettes, loose or smokeless tobacco, or other property and conditioned upon the
 555 successful termination of the appeal.

556 (d) Any vending machine containing or dispensing any cigars, little cigars, cigarettes, or
 557 loose or smokeless tobacco which does not bear the tax stamps required under this chapter
 558 or containing or dispensing any ~~cigars~~ or loose or smokeless tobacco upon which the tax
 559 has not been paid either through the purchase of stamps or the alternate procedure provided
 560 by the commissioner as required under this chapter shall be a contraband article. The
 561 commissioner ~~may~~ shall seize any such machine and deal with it in the same manner as

562 provided by law for the seizure and sale of unstamped cigarettes, cigars, little cigars, or
 563 loose or smokeless tobacco and nontax-paid ~~cigars~~ or loose or smokeless tobacco.

564 48-11-10.

565 (a) Every licensed distributor shall file with the commissioner, on or before the tenth day
 566 of each month, a report in the form prescribed by the commissioner ~~and~~ disclosing:

567 (1) The quantity of cigars, little cigars, cigarettes, or loose or smokeless tobacco on hand
 568 on the first and last days of the calendar month immediately preceding the month in
 569 which the report is filed;

570 (2) Information required by the commissioner concerning the amount of stamps
 571 purchased, used, and on hand during the report period; and

572 (3) Information otherwise required by the commissioner for the report period.

573 (b) The commissioner may require other reports as the commissioner deems necessary for
 574 the proper administration of this chapter including, but not limited to, reports from common
 575 carriers and warehousemen with respect to cigars, little cigars, cigarettes, and loose or
 576 smokeless tobacco delivered to or stored at any point in this state.

577 (c) Any person who fails to file any report when due shall forfeit as a penalty for each day
 578 after the due date until the report is filed the sum of ~~\$1.00~~ \$25.00, to be collected in the
 579 manner provided in subsection (c) of Code Section 48-11-24 for the collection of penalties.

580 48-11-11.

581 (a) Each distributor and each dealer shall keep complete and accurate records of all cigars,
 582 little cigars, cigarettes, and loose or smokeless tobacco manufactured, produced, purchased,
 583 and sold. The original records ~~shall be of the kind and in the form prescribed by the~~
 584 ~~commissioner~~ or a complete and legible photocopy or electronic image and shall be safely
 585 preserved for three years in an appropriate manner to ensure permanency and accessibility
 586 for inspection by the commissioner and the commissioner's authorized agents. The
 587 commissioner and the commissioner's authorized agents may examine the books, papers,
 588 and records of any distributor or dealer in this state for the purpose of determining whether
 589 the tax imposed by this chapter has been fully paid and, for the purpose of determining
 590 whether the provisions of this chapter are properly observed, may investigate and examine
 591 the stock of cigars, little cigars, cigarettes, or loose or smokeless tobacco in or upon any
 592 premises including, but not limited to, public and private warehouses where the cigars,
 593 little cigars, cigarettes, or loose or smokeless tobacco is possessed, stored, or sold. Invoices
 594 sufficient to cover current inventory at a licensed location shall be maintained at that
 595 licensed location and made available for immediate inspection. All other records may be
 596 kept at a locality other than the licensed location and shall be provided for inspection

597 within two business days after receipt of notification from the commissioner or the
 598 commissioner's authorized agents to make such records available.

599 (b) The commissioner and his authorized agents may examine the books, papers, and
 600 records of any transportation company, any common, contract, or private carrier, and any
 601 public or private warehouse for the purpose of determining whether the provisions of this
 602 chapter are properly observed.

603 48-11-12.

604 (a)(1) The commissioner shall assess a deficiency and may assess a penalty of 10 percent
 605 of the deficiency if, after an examination of the invoices, books, and records of a licensed
 606 distributor or dealer or of any other information obtained by the commissioner or the
 607 commissioner's authorized agents, the commissioner determines that:

608 (A) The report of the licensed distributor or licensed dealer is incorrect;

609 (B) The licensed distributor or dealer has not paid the tax in accordance with the
 610 alternate regulations promulgated by the commissioner under Code Section 48-11-3;
 611 or

612 (C) The licensed distributor or dealer has not purchased sufficient stamps to cover such
 613 licensed distributor or dealer's receipts for sales or other disposition of unstamped
 614 cigars, little cigars, cigarettes, or loose or smokeless tobacco and nontax-paid ~~cigars or~~
 615 loose or smokeless tobacco.

616 (2) In any case where a licensed distributor or dealer cannot produce evidence of
 617 sufficient stamps purchased or other payment of the tax to cover the receipt of unstamped
 618 cigars, little cigars, cigarettes, or loose or smokeless tobacco or nontax-paid ~~cigars or~~
 619 loose or smokeless tobacco, it shall be assumed that the cigars, cigarettes, and loose or
 620 smokeless tobacco were sold without having either the proper stamps affixed or the tax
 621 paid on unstamped ~~cigars or~~ loose or smokeless tobacco.

622 (b) If the commissioner determines that the deficiency or any part of the deficiency is due
 623 to a fraudulent intent to evade the tax, a penalty of 50 percent of the deficiency shall be
 624 added to the amount due.

625 48-11-13.

626 (a) There is imposed a tax on every person for the privilege of using, consuming, or storing
 627 cigars, little cigars, cigarettes, and loose or smokeless tobacco in this state on which the tax
 628 imposed by Code Section 48-11-2 has not been paid. The tax shall be measured by and
 629 graduated in accordance with the volume of cigars, little cigars, cigarettes, and loose or
 630 smokeless tobacco used, consumed, or stored as set forth in Code Section 48-11-2.

631 (b) This Code section shall not apply to:

- 632 (1) Cigars, little cigars, cigarettes, or loose or smokeless tobacco in the hands of a
 633 licensed distributor or dealer;
- 634 (2) Cigars, little cigars, cigarettes, or loose or smokeless tobacco in the possession of a
 635 carrier complying with Code Section 48-11-22;
- 636 (3) Cigars, little cigars, cigarettes, or loose or smokeless tobacco stored in a public
 637 warehouse;
- 638 (4) Cigarettes in an amount not exceeding 200 cigarettes which have been brought into
 639 the state on the person;
- 640 (5) Cigars in an amount not exceeding 20 cigars which have been brought into the state
 641 on the person; ~~or~~
- 642 (6) Little cigars in an amount not exceeding 200 little cigars which have been brought
 643 into the state on the person; or
- 644 ~~(6)(7)~~ Loose or smokeless tobacco in an amount not exceeding six containers which has
 645 been brought into the state on the person.

646 48-11-14.

647 (a) Before any person acquires cigars, little cigars, cigarettes, or loose or smokeless
 648 tobacco subject to the tax imposed by Code Section 48-11-13, such person shall register
 649 with the commissioner as a responsible taxpayer subject to the obligation of maintaining
 650 records and making reports in the form prescribed by the commissioner. The report shall
 651 be made on or before the tenth day of the month following the month in which the cigars,
 652 little cigars, cigarettes, or loose or smokeless tobacco was acquired and shall be
 653 accompanied by the amount of tax due.

654 (b) If any person subject to the tax imposed by Code Section 48-11-13 fails to make the
 655 required report or makes an incorrect report, the commissioner shall assess the correct
 656 amount of tax due from that person from the best information available to him or her. A
 657 copy of the assessment shall be furnished the person by registered or certified mail or
 658 statutory overnight delivery, return receipt requested, or by personal service. Any person
 659 aggrieved by any assessment pursuant to this Code section may request a hearing in the
 660 manner provided in subsection (a) of Code Section 48-11-18.

661 (c) Every person subject to the tax imposed by Code Section 48-11-13 who fails to register
 662 with the commissioner as a responsible taxpayer, who fails to make a report within the time
 663 specified, or who fails to remit the tax within the time specified may be required to pay a
 664 penalty of not less than \$25.00 nor more than \$250.00 in addition to the tax and any other
 665 penalties imposed by law and found due by the commissioner. The commissioner may
 666 proceed to collect the tax and penalty in the manner provided in subsection (c) of Code
 667 Section 48-11-24.

668 (d) Except as otherwise provided in this Code section, the sanctions and penalties set forth
 669 in Code Sections 48-11-15, 48-11-17, 48-11-18, and 48-11-20 through 48-11-24 and in
 670 Code Sections 48-7-2 and 48-13-38 shall be imposed where applicable for any violations
 671 of this chapter by consumers.

672 48-11-15.

673 The Office of the State Treasurer is authorized to pay, on the order of the commissioner,
 674 claims for refunds of cigar, little cigar, cigarette, or loose or smokeless tobacco taxes found
 675 by the commissioner or the courts to be due any distributor, dealer, or taxpayer. The
 676 commissioner, upon proof satisfactory to the commissioner and in accordance with
 677 regulations promulgated by the commissioner, shall refund the cost price of stamps affixed
 678 to any package or retail unit of cigars, little cigars, cigarettes, or loose or smokeless tobacco
 679 or shall refund the tax paid on ~~cigars~~ or loose or smokeless tobacco under the alternate
 680 method when the cigars, little cigars, cigarettes, or loose or smokeless tobacco has become
 681 unfit for use, consumption, or sale and has been securely destroyed or shipped out of the
 682 state.

683 48-11-16.

684 (a) The commissioner may permit licensed distributors to purchase tax stamps from the
 685 department on account. Permits may be granted only to licensed distributors who post
 686 bonds with the commissioner in amounts sufficient in the opinion of the commissioner to
 687 secure payment for stamps delivered on account. Tax stamps purchased by licensed
 688 distributors shall be paid for in full on or before the twentieth day of the month next
 689 succeeding the purchase. The bond provided in this Code section shall be secured by cash
 690 which shall bear no interest, by negotiable securities approved by the Office of the State
 691 Treasurer, or by a surety bond executed by a surety company licensed to do business in this
 692 state and approved by the commissioner.

693 (b) The commissioner may cancel without notice any permit or authorization issued under
 694 this Code section if the licensed distributor fails or refuses to comply with the requirements
 695 of this Code section or with the rules and regulations adopted under authority of this Code
 696 section.

697 (c) On or before June 30 of each fiscal year, the licensed distributor shall pay in its entirety
 698 any liability for the purchase of tax stamps due at that time.

699 48-11-17.

700 The amount of any unpaid tax shall be a lien against the property of any distributor or
 701 dealer who sells cigars, little cigars, cigarettes, or loose or smokeless tobacco without

702 collecting the tax and against the property of any person using or consuming cigars, little
 703 cigars, cigarettes, or loose or smokeless tobacco without proper stamps affixed to the
 704 cigars, little cigars, cigarettes, or loose or smokeless tobacco or without the tax paid on the
 705 ~~cigars~~ or loose or smokeless tobacco as otherwise provided in this chapter. The
 706 commissioner or the commissioner's authorized agents are authorized to seize the property
 707 of a delinquent distributor, dealer, or taxpayer and sell it as provided by law to satisfy the
 708 claim for taxes due under this chapter; or the commissioner may record the commissioner's
 709 lien specifying and describing the property against which the lien is effective, and the lien
 710 shall be good as against any other person until the claim for taxes is satisfied.

711 48-11-18.

712 (a) Any person aggrieved by any action of the commissioner or the commissioner's
 713 authorized agent may apply to the commissioner, in writing within ten days after the notice
 714 of the action is delivered or mailed to the commissioner, for a hearing. The application
 715 shall set forth the reasons why the hearing should be granted and the manner of relief
 716 sought. The commissioner shall notify the applicant of the time and place fixed for the
 717 hearing. After the hearing, the commissioner may make an order as may appear to the
 718 commissioner to be just and lawful and shall furnish a copy of the order to the applicant.
 719 The commissioner at any time by notice in writing may order a hearing on the
 720 commissioner's own initiative and require the taxpayer or any other person whom the
 721 commissioner believes to be in possession of information concerning any manufacture,
 722 importation, delivery, receipt, use, consumption, storage, or sale of cigars, little cigars,
 723 cigarettes, or loose or smokeless tobacco which has escaped taxation to appear before the
 724 commissioner or the commissioner's duly authorized agent with any specific books of
 725 account, papers, or other documents for examination under oath relative to the information.

726 (b) Any person aggrieved because of any final action or decision of the commissioner,
 727 after hearing, may appeal from the decision to the superior court of the county in which the
 728 appellant resides. The appeal shall be returnable at the same time and shall be served and
 729 returned in the same manner as required in the case of a summons in a civil action. The
 730 authority issuing the citation shall take from the appellant a bond of recognizance to the
 731 state, with surety, conditioned to prosecute the appeal and to effect and comply with the
 732 orders and decrees of the court. The action of the commissioner shall be sustained unless
 733 the court finds that ~~he~~ the commissioner misinterpreted this chapter or that there is no
 734 evidence to support ~~his~~ the commissioner's action. If the commissioner's action is not
 735 sustained, the court may grant equitable relief to the appellant. Upon all appeals which are
 736 denied, costs may be taxed against the appellant at the discretion of the court. No costs of
 737 any appeal shall be taxed against the state.

738 48-11-19.

739 (a) Each person appointed by the commissioner as a special agent or enforcement officer
740 of the department for the enforcement of the laws of this state with respect to the
741 manufacture, transportation, distribution, sale, possession, and taxation of cigars, little
742 cigars, cigarettes, ~~little cigars~~, and loose or smokeless tobacco shall have the authority
743 throughout the state to:

744 (1) Obtain and execute warrants for arrest of persons charged with violations of such
745 laws;

746 (2) Obtain and execute search warrants in the enforcement of such laws;

747 (3) Arrest without warrant any person violating such laws in the officer's presence or
748 within such officer's immediate knowledge when there is likely to be a failure of
749 enforcement of such laws for want of a judicial officer to issue a warrant;

750 (4) Make investigations in the enforcement of such laws and, in connection with such
751 investigations, to go upon any property outside buildings, whether posted or otherwise,
752 in the performance of such officer's duties;

753 (5) Seize and take possession of all property which is declared contraband under such
754 laws; and

755 (6) Carry firearms while performing such officer's duties.

756 (b) Each special agent or enforcement officer shall file with the commissioner a public
757 official's bond in the amount of \$1,000.00, the cost of the bond to be borne by the
758 department. Nothing in this chapter shall be construed to relieve agents and officers, after
759 making an arrest, from the duties imposed generally to obtain a warrant promptly and to
760 return arrested persons without undue delay before a person authorized to examine,
761 commit, or receive bail as required by general law.

762 (c) After a special agent or enforcement officer has accumulated 25 years of service with
763 the department, upon leaving the department under honorable conditions, such special
764 agent or enforcement officer shall be entitled as part of such officer's compensation to
765 retain his or her weapon and badge pursuant to regulations promulgated by the
766 commissioner.

767 (d) As used in this subsection, the term 'disability' means a disability that prevents an
768 individual from working as a law enforcement officer. When a special agent or
769 enforcement officer leaves the department as a result of a disability arising in the line of
770 duty, such special agent or enforcement officer shall be entitled as part of such officer's
771 compensation to retain his or her weapon and badge in accordance with regulations
772 promulgated by the commissioner.

773 48-11-20.

774 The failure to do any act required by this chapter shall be deemed an act committed in part
775 at the office of the commissioner in Atlanta. The certificate of the commissioner to the
776 effect that any act required by this chapter has not been done shall be prima-facie evidence
777 that the act has not been done.

778 48-11-21.

779 The superior courts of this state shall have jurisdiction of offenses against this chapter
780 which are punishable by fine or imprisonment, or both.

781 48-11-22.

782 (a) Every person who transports upon the public highways, roads, and streets of this state
783 cigars, little cigars, cigarettes, or loose or smokeless tobacco not stamped or on which tax
784 has not been paid in accordance with the alternate regulations provided by the
785 commissioner under Code Section 48-11-3 shall have in such person's actual possession
786 invoices or delivery tickets for the cigars, little cigars, cigarettes, and loose or smokeless
787 tobacco which show the true name and address of the consignor or seller, the true name of
788 the consignee or purchaser, the quantity and brands of the cigars, little cigars, cigarettes,
789 or loose or smokeless tobacco transported, and the name and address of the person who has
790 assumed or shall assume the payment of the tax at the point of ultimate destination. In the
791 absence of the invoices or delivery tickets, the cigars, little cigars, cigarettes, or loose or
792 smokeless tobacco being transported and the vehicles in which the cigars, little cigars,
793 cigarettes, or loose or smokeless tobacco is being transported shall be confiscated and
794 disposed of as provided in Code Section 48-11-9; and the transporter may be liable for a
795 penalty of not more than ~~\$25.00 for each individual carton of cigarettes~~, \$50.00 for each
796 individual box of cigars, \$50.00 for each individual carton of little cigars, \$50.00 for each
797 individual carton of cigarettes, and ~~\$25.00~~ \$50.00 for each individual container of loose or
798 smokeless tobacco being transported by such person. The penalty shall be recovered as
799 provided in subsection (c) of Code Section 48-11-24.

800 (b) ~~This Code section shall apply only with respect to the transportation of more than 200~~
801 ~~cigarettes, more than 20 cigars, or more than six containers of loose or smokeless tobacco.~~

802 48-11-23.

803 (a) It shall be unlawful for any person, with intent to evade the tax imposed by this
804 chapter, to transport cigars, little cigars, cigarettes, or loose or smokeless tobacco in
805 violation of Code Section 48-11-22.

806 (b) Any person who violates Code Section 48-11-22 by transporting more than 20 but less
 807 than 60 cigars, more than 200 but less than 600 little cigars, more than 200 but less than
 808 600 cigarettes, or more than six but less than 18 containers of loose or smokeless tobacco
 809 shall be guilty of a misdemeanor.

810 (c) Any person who violates Code Section 48-11-22 by transporting 60 or more but less
 811 than 200 cigars; 600 or more but less than 2,000 little cigars; 600 or more but less than
 812 2,000 cigarettes; or 18 or more but less than 60 containers of loose or smokeless tobacco
 813 shall be guilty of a misdemeanor of a high and aggravated nature.

814 (d) Any person who violates Code Section 48-11-22 by transporting 200 or more cigars;
 815 2,000 or more little cigars; 2,000 or more cigarettes; or 60 or more containers of loose or
 816 smokeless tobacco shall be guilty of a felony and, upon conviction thereof, shall be
 817 imprisoned for not less than three years nor more than ten years.

818 48-11-23.1.

819 (a) As used in this Code section, the term 'package' means a pack, carton, or container of
 820 any kind in which cigars, little cigars, cigarettes, or loose or smokeless tobacco is offered
 821 for sale, sold, or otherwise distributed, or intended for distribution, to consumers.

822 (b) No tax stamp may be affixed to, or made upon, any package or retail unit of cigars,
 823 little cigars, cigarettes, or loose or smokeless tobacco if:

824 (1) The package differs in any respect with the requirements of the Federal Cigarette
 825 Labeling and Advertising Act, 15 U.S.C. Sec. 1331, et seq., for the placement of labels,
 826 warnings, or any other information upon a package of cigars, little cigars, cigarettes, or
 827 loose or smokeless tobacco that is to be sold within the United States;

828 (2) The package is labeled 'For Export Only,' 'U.S. Tax Exempt,' 'For Use Outside U.S.,'
 829 or similar wording indicating that the manufacturer did not intend that the product be sold
 830 in the United States;

831 (3) The package or retail unit, or a package or retail unit containing individually stamped
 832 packages or retail units, has been altered by adding or deleting the wording, labels, or
 833 warnings described in paragraph (1) or (2) of this subsection;

834 (4) The package has been imported into the United States after January 1, 2000, in
 835 violation of 26 U.S.C. Sec. 5754;

836 (5) The package in any way violates federal trademark or copyright laws; or

837 (6) The package in any way violates Code Section 10-13A-5.

838 (c) Any person who sells or holds for sale a cigar, little cigar, cigarette, or loose or
 839 smokeless tobacco package to which is affixed a tax stamp in violation of subsection (b)
 840 of this Code section shall be guilty of a misdemeanor.

841 (d) Notwithstanding any other provision of law, the commissioner may revoke any license
 842 issued under this chapter to any person who sells or holds for sale a cigar, little cigar,
 843 cigarette, or loose or smokeless tobacco package or retail unit to which is affixed a tax
 844 stamp in violation of subsection (b) of this Code section.

845 (e) Notwithstanding any other provision of law, the commissioner may seize and destroy
 846 or sell to the manufacturer, only for export, packages or retail units that do not comply with
 847 subsection (b) of this Code section.

848 (f) A violation of subsection (b) of this Code section shall constitute an unfair and
 849 deceptive act or practice under Part 2 of Article 15 of Chapter 1 of Title 10, the 'Fair
 850 Business Practices Act of 1975.'

851 48-11-24.

852 (a) Any person who possesses unstamped cigars, little cigars, or cigarettes ~~or loose or~~
 853 ~~smokeless tobacco~~ or nontax-paid ~~cigars or~~ loose or smokeless tobacco in violation of this
 854 chapter shall be liable for a penalty of not more than ~~\$25.00~~ \$50.00 for each individual
 855 carton or retail unit of unstamped cigars, little cigars, or cigarettes ~~or loose or smokeless~~
 856 ~~tobacco~~ and \$50.00 for each individual ~~box~~ container of nontax-paid ~~cigars or~~ loose or
 857 smokeless tobacco in his or her possession.

858 (b) Any person who engages in any business or activity for which a license is required by
 859 this chapter without first having obtained a license to do so or any person who continues
 860 to engage in or conduct the business after ~~his~~ the person's license has been revoked or
 861 during a suspension of the license shall be ~~liable for a penalty of not more than \$250.00~~
 862 guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof,
 863 shall be imprisoned for a period not to exceed 12 months, a fine of not more than
 864 \$5,000.00, or both. Each day that the business is engaged in or conducted shall be deemed
 865 a separate offense.

866 (c) Proceedings to enforce and collect the penalties provided by this chapter shall be
 867 brought by and in the name of the commissioner. With respect to offenses committed
 868 within the territorial jurisdiction of the court, each superior court shall have jurisdiction to
 869 enforce and collect the penalty. The costs recoverable in any such proceeding shall be
 870 recovered by the commissioner in the event of judgment in ~~his~~ the commissioner's favor.
 871 If the judgment is for the defendant, it shall be without costs against the commissioner. All
 872 expenses incident to the recovery of any penalty pursuant to this Code section shall be paid
 873 in the same manner as any other expense incident to the administration of this chapter.

874 48-11-25.

875 (a)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this
876 chapter, to possess unstamped cigars, little cigars, cigarettes, or loose or smokeless
877 tobacco or nontax-paid ~~cigars~~ or loose or smokeless tobacco.

878 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a
879 misdemeanor.

880 (b)(1) It shall be unlawful for any person, with the intent to evade the tax imposed by this
881 chapter, to:

882 (A) Sell cigars, little cigars, cigarettes, or loose or smokeless tobacco without the
883 stamps required by this chapter being affixed to the cigars, little cigars, cigarettes, or
884 loose or smokeless tobacco; or

885 (B) Sell ~~cigars~~ or loose or smokeless tobacco without the stamp or stamps required by
886 this chapter or without the tax being paid on the ~~cigars~~ or loose or smokeless tobacco
887 in accordance with the alternate method.

888 (2) Any person who violates paragraph (1) of this subsection shall be guilty of a felony
889 and, upon conviction thereof, shall be imprisoned for not less than ~~one year~~ three years
890 nor more than ten years.

891 48-11-26.

892 (a) With respect to this chapter, it shall be unlawful for any person, with the intent to
893 defraud the state or evade the payment of any tax, penalty, or interest or any part of a
894 payment when due, to:

895 (1) Willfully fail or refuse to file any report or statement required to be filed pursuant to
896 this chapter or by the commissioner's rules and regulations;

897 (2) File or cause to be filed with the commissioner any false or fraudulent report or
898 statement; or

899 (3) Aid or abet another in the filing with the commissioner of any false or fraudulent
900 report or statement.

901 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
902 misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be
903 punished by a fine of not more than \$1,000.00 for each separate offense.

904 48-11-27.

905 (a) It shall be unlawful for any person to:

906 (1) Make a false entry upon any invoices or any record relating to the purchase,
907 possession, or sale of cigars, little cigars, cigarettes, or loose or smokeless tobacco; or

908 (2) With intent to evade any tax imposed by this chapter, present any false entry upon
 909 any such invoice or record for the inspection of the commissioner or the commissioner's
 910 authorized agents.

911 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
 912 misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be
 913 punished by a fine of not more than ~~\$250.00~~ \$1,000.00 for each separate offense.

914 48-11-28.

915 (a) With respect to this chapter, it shall be unlawful for any person to:

916 (1) Fraudulently make, utter, forge, or counterfeit any stamp prescribed by the
 917 commissioner;

918 (2) Cause or procure a violation of paragraph (1) of this subsection to be done;

919 (3) Willfully utter, publish, pass, or render as true any false, altered, forged, or
 920 counterfeited stamp;

921 (4) Knowingly possess any false, altered, forged, or counterfeited stamp;

922 (5) For the purpose of evading the tax imposed, use more than once any stamp required
 923 by this chapter; or

924 (6) Tamper with or cause to be tampered with any metering machine authorized to be
 925 used.

926 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
 927 and, upon conviction thereof, shall be imprisoned for not less than ~~one year~~ three years nor
 928 more than ten years.

929 48-11-29.

930 ~~(a) It shall be unlawful for any person to:~~

931 ~~(1) Knowingly swear to or affirm any false or fraudulent statement with intent to evade~~
 932 ~~the payment of any tax imposed by this chapter; or~~

933 ~~(2) Under oath, testify falsely at any hearing held pursuant to this chapter.~~

934 ~~(b) Any person who violates subsection (a) of this Code section shall be guilty of a~~
 935 ~~misdemeanor~~ Reserved.

936 48-11-30.

937 (a) Notwithstanding any other provision of law, the sale or possession for sale of
 938 counterfeit cigarettes by any person shall result in the seizure of the product and related
 939 machinery by the commissioner or his or her authorized agents and any law enforcement
 940 agency at the direction of the commissioner and shall be punishable as follows:

941 (1) A first violation with a total quantity of less than two cartons of cigarettes shall be
942 punishable by a fine of \$1,000.00 or five times the retail value of the cigarettes involved,
943 whichever is greater, or imprisonment not to exceed five years, or both the fine and
944 imprisonment;

945 (2) A subsequent violation with a total quantity of less than two cartons of cigarettes
946 shall be punishable by a fine of \$5,000.00 or five times the retail value of the cigarettes
947 involved, whichever is greater, or imprisonment not to exceed five years, or both the fine
948 and imprisonment;

949 (3) A first violation with a total quantity of two cartons of cigarettes or more shall be
950 punishable by a fine of \$2,000.00 or five times the retail value of the cigarettes involved,
951 whichever is greater, or imprisonment not to exceed five years, or both the fine and
952 imprisonment; and

953 (4) A subsequent violation with a quantity of two cartons of cigarettes or more shall be
954 punishable by a fine of \$50,000.00 or five times the retail value of the cigarettes involved,
955 whichever is greater, or imprisonment not to exceed five years, or both the fine and
956 imprisonment.

957 (b) An act committed by or on behalf of a licensed cigarette manufacturer, cigarette
958 importer, cigarette distributor, or cigarette dealer in violation of paragraph (2) or (4) of
959 subsection (a) of this Code section shall also result in the revocation of the license by the
960 department pursuant to Code Section 48-11-6.

961 (c) Any counterfeit cigarette seized by or at the direction of the commissioner shall be
962 destroyed by the commissioner or his or her designee. Any related machinery seized by
963 or at the direction of the commissioner may be sold by the commissioner at public auction
964 in accordance with the requirements of Code Section 48-11-9."

965 **PART III**

966 **SECTION 3-1.**

967 (a) Except as provided in subsection (b) of this section, this Act shall become effective on
968 July 1, 2012.

969 (b) Part II of this Act shall become effective on April 10, 2013, on which date the
970 amendments made to Code Section 48-11-3 by Part I of this Act shall stand repealed.

971 **SECTION 3-2.**

972 All laws and parts of laws in conflict with this Act are repealed.