

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 660 Section 660.50 Tobacco Products Tax Act of 1995</b>
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**TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 660  
TOBACCO PRODUCTS TAX ACT OF 1995**

**Section 660.50 Penalties, Interest and Procedures**

- a) The provisions of the Uniform Penalty and Interest Act [35 ILCS 735] that are not inconsistent with the Act apply to the enforcement of the Act. See Section 3-1A of the Uniform Penalty and Interest Act.
- b) *When the amount due is under \$300, any distributor who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class 4 felony.*
- c) *When the amount due is under \$300, any person who accepts money that is due to the Department under the Act from a taxpayer for the purpose of acting as the taxpayer's agent to make the payment to the Department, but who fails to remit the payment to the Department when due, is guilty of a Class 4 felony.*
- d) *When the amount due is \$300 or more, any distributor who files, or causes to be filed, a fraudulent return, or any officer or agent of a corporation engaged in the business of distributing tobacco products to retailers and consumers located in this State who files or causes to be filed or signs or causes to be signed a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class 3 felony.*
- e) *When the amount due is \$300 or more, any person engaged in the business of distributing tobacco products to retailers and consumers located in this State who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or accepts money that is due to the Department under the Act from a taxpayer for the purpose of acting as the taxpayer's agent to make payment to the Department but fails to remit that payment to the Department when due is guilty of a Class 3 felony.*
- f) *Any person who violates any provision of Section 10-20 of the Act and, beginning January 1, 2016, Sections 10-21 and 10-22 of the Act, fails to keep books and records as required under the Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of the Act, is guilty of a Class 4 felony. A person commits a separate offense on each day that he or she engages in business in violation*

*of Section 10-20 of the Act and, beginning January 1, 2016, Section 10-21 or 10-22 of the Act. If a person fails to produce the books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under this Act. A person who is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in this Section.*

- g) Any taxpayer or agent of a taxpayer who, with the intent to defraud, purports to make a payment due to the Department by issuing or delivering a check or other order upon a real or fictitious depository for the payment of money, knowing that it will not be paid by the depository, is guilty of a deceptive practice in violation of Section 17-1 of the Criminal Code of 2012.*
- h) Any person who violates any provision of Sections 10-20, 10-21 and 10-22 of the Act, fails to keep books and records as required under the Act, or willfully violates a rule or regulation of the Department for the administration and enforcement of the Act, is guilty of a business offense and may be fined up to \$5,000. If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to keep books and records as required under the Act. A person who is unable to rebut this presumption is in violation of the Act and is subject to the penalties provided in this Section. A person commits a separate offense on each day that he or she engages in business in violation of Sections 10-20, 10-21 and 10-22 of the Act.*
- i) When the amount due is under \$300, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and consumption located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class A misdemeanor for a first offense and a Class 4 felony for each subsequent offense.*
- j) When the amount due is \$300 or more, any retailer who fails to file a return, willfully fails or refuses to make any payment to the Department of the tax imposed by the Act, or files a fraudulent return, or any officer or agent of a corporation engaged in the retail business of selling tobacco products to purchasers of tobacco products for use and consumption located in this State who signs a fraudulent return filed on behalf of the corporation, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class 4 felony.*
- k) A prosecution for a violation described in subsections (b) through (j) may be commenced within 3 years after the commission of the act constituting the violation. [35 ILCS 143/10-50]*
- l) Any person who knowingly acts as a retailer of tobacco products in this State without first having obtained a license to do so in compliance with Section 10-21 of the Act or a license in compliance with Section 4g of the Cigarette Tax Act shall be guilty of a Class A misdemeanor for the first offense and a Class 4 felony for a second or subsequent offense. Each day the person operates as a retailer without a license constitutes a separate offense. [35 ILCS 143/10-53]*

- m) *The Department may impose a civil penalty on distributors and retailers not to exceed \$1,000 for the first violation and \$3,000 for each subsequent violation of Section 10-37 of the Act. [35 ILCS 143/10-37]*
- n) *Any person whose principal place of business is in the State and who is charged with a violation under Section 10-50 of the Act shall be tried in the county where his or her principal place of business is located unless he or she asserts a right to be tried in another venue. If the taxpayer does not have his or her principal place of business in this State, however, the hearing must be held in Sangamon County unless the taxpayer asserts a right to be tried in another venue. [35 ILCS 143/10-50]*
- o) Except as otherwise provided in this Part, any person aggrieved by any decision of the Department under this Part may, within 60 days after notice of the decision, protest in writing and request a hearing. Upon receiving a written request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of this Part and then issue its final administrative decision in the matter to that person. In the absence of a protest and request for a hearing within 60 days, the Department's decision shall become final without any further determination being made or notice given.
- p) *Except as provided by the Constitution of the United States, the Constitution of the State of Illinois, or any statutes of this State, including, but not limited to, the State Officers and Employees Money Disposition Act [30 ILCS 230], the Tax Tribunal established pursuant to the Illinois Independent Tax Tribunal Act of 2012 [35 ILCS 1010] shall have original jurisdiction over all determinations of the Department reflected on a Notice of Deficiency, Notice of Tax Liability, Notice of Claim Denial, or Notice of Penalty Liability issued under the Tobacco Products Tax Act of 1995 or the Uniform Penalty and Interest Act. Jurisdiction of the Tax Tribunal is limited to Notices of Tax Liability, Notices of Deficiency, Notices of Claim Denial, and Notices of Penalty Liability when the amount at issue in a notice, or the aggregate amount at issue in multiple notices issued for the same tax year or audit period, exceeds \$15,000, exclusive of penalties and interest. In notices solely asserting either an interest or penalty assessment, or both, the Tax Tribunal shall have jurisdiction over cases in which the combined total of all penalties or interest assessed exceeds \$15,000. [35 ILCS 1010/1-45]*
- q) *Any person who fails to keep books and records or fails to produce books and records for inspection, as required by Section 10-35, is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first failure to keep books and records or failure to produce books and records for inspection, as required by Section 10-35, and \$3,000 for each subsequent failure to keep books and records or failure to produce books and records for inspection, as required by Section 10-35. [35 ILCS 143/10-35a]*
  - 1) All books and records and other papers and documents that are required to be kept by the Act shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. (See Sections 660.24(b) and 660.25(b).) A person that prohibits a duly authorized agent of the Department from inspecting books and records

during usual business hours of the day has failed to produce books and records to the Department for inspection as required by this Section. The Department may issue a notice of penalty to that person pursuant to this subsection (q)(1). The Department is not required to provide the retailer with a written document request pursuant to this subsection (q)(1) or provide additional time for the retailer to allow the inspection of the premises and the books and records at the location.

- 2) Except for retailers that are permitted to maintain books and records at another location pursuant to Section 660.24(a), distributors and retailers must have a person at their place of business at all times during the usual business hours of the day who is authorized to produce books and records for inspection by the Department. It is presumed that a person working at a place of business has authority to permit the Department to inspect the books and records at the business location. If a retail establishment has only one employee working at the time of the request for the books and records who has no ownership interest in the establishment and is not authorized to produce books and records, the employee is required to advise the Department he or she does not have authority to provide books and records for inspection. The Department will not issue a notice of penalty to a distributor or retailer for failure to produce books and records if a person who is authorized to produce the books and records can be contacted by the employee and arrives at the place of business within 2 hours and produces the books and records. The Department may extend the period either on verbal or written request for good cause shown or on its own motion.

EXAMPLE 1: An authorized agent of the Department attempts to inspect the books and records of a tobacco retailer. The person at the store states the records are at the store but refuses to provide access to the books and records because the owner of the store told him not to let anyone have access to the records. The person states the owner is unavailable and cannot be contacted. The Department will issue a notice of penalty.

EXAMPLE 2: An authorized agent of the Department attempts to inspect the books and records of a tobacco retailer. The person at the store states the records are at the store but refuses to provide access to the books and records because the owner of the store told him not to let anyone have access to the records. The person states he can call a person responsible for making the records available to the agent. The employee calls the person and the person arrives at the store in less than 60 minutes and makes the records available to the agent. The Department will not issue a notice of penalty.

EXAMPLE 3: An authorized agent of the Department enters a retailer's place of business and requests to see the books and records. The person at the store states the books and records are maintained at another business location in Illinois. The agent cannot issue a notice of penalty unless the retailer failed to notify the Department that the books and records are located at another location pursuant to Section 660.24(a). However, the authorized agent of the Department does have authority to inspect the premises pursuant to Section 620.24(b).

- 3) If a person fails to produce books and records for inspection by the Department upon request, a prima facie presumption shall arise that the person has failed to

keep the books and records as required. A person who is unable to rebut this presumption is subject to the penalty provided in this subsection (q).

- 4) Except as otherwise provided by subsection (q)(1), if a request for the production of books and records has been made and not honored, prior to issuing a notice of penalty for a failure to maintain books and records or a failure to produce books and records, the Department must provide the taxpayer with a document request in writing. The written document request must contain:
  - A) the name of the person receiving the request;
  - B) the name of the business;
  - C) the date and time of the original request or requests;
  - D) the books and records requested;
  - E) the books and records that the person failed to produce;
  - F) the number of days the person has to produce the books and records; and
  - G) the name of the Department agent or employee and his or her contact information.
- 5) The Department agent or employee shall sign and date the written document request and personally provide or mail a copy of the written document request to the business at its last known address. The person shall have 30 days from the date of the written document request to produce the books and records the person has failed to produce. The Department may extend the period either on written request for good cause shown or on its own motion. If the person fails to produce the books and records within the time allotted, the Department may issue a notice of penalty pursuant to this subsection (q) to the business at its last known address.

**EXAMPLE:** An authorized agent of the Department enters a convenience store and requests to see all the invoices for tobacco products purchased by the store in the last 60 days and all cash register receipts for sales made in the last 60 days. The person at the store produces the cash register receipts but states that they have no invoices for tobacco products purchased in the last 60 days. The agent fills out a written document request, provides a copy of the written document request to the person, and provides the person 30 days to produce the invoices. The agent returns 30 days later and requests the invoices. The person at the store cannot produce the invoices. The Department issues a notice of penalty to the business at its last known address.

- 6) Any person receiving a notice of penalty may, within 20 days after the date on the notice of penalty, protest and request a hearing. Upon receiving a request for a hearing, the Department shall give notice to the person requesting the hearing of the time and place fixed for the hearing and shall hold a hearing in conformity with the provisions of the Act and then issue its final administrative decision in the matter to that person. If the request is made during an audit, the

Department shall postpone the hearing until completion of the audit or inspection. In the absence of a protest and request for a hearing within 20 days, the Department's decision shall become final without any further determination being made or notice given.

- 7) The Department cannot impose more than one penalty for failing to produce books and records for a calendar month.

EXAMPLE 1: An authorized agent of the Department inspects a tobacco retailer and requests the records for the first week in April. The retailer does not produce the records. The agent subsequently requests the records for the remaining 3 weeks in April. The retailer does not produce the records. The agent can assess only one penalty for the month of April.

EXAMPLE 2: An authorized agent of the Department inspects a tobacco retailer and requests all purchase invoices for cigarettes for March. The invoices are not provided by the retailer and the Department issues a notice of penalty. The agent returns in May and ask to see all the tobacco sales receipts for March. The retailer fails to produce the sales receipts. The Department cannot issue a notice of penalty for failure of the retailer to provide sales receipts for March because the agent has previously issued a notice of penalty for failure to produce records for March.

- 8) A records request can cover multiple periods. The Department is authorized to issue a separate penalty for each period; e.g., for a taxpayer that files returns monthly, the period is one month.

EXAMPLE: An authorized agent of the Department inspects a tobacco retailer and requests the books and records for the months of January through July. The retailer cannot produce the books and records for any of the months. The agent fills out a written document request, provides a copy to the person, and provides the person 30 business days to produce the invoices. The agent returns 30 business days later and requests the invoices. The person at the store cannot produce the invoices. The Department will issue a notice of penalty in the amount of \$1,000 for the month of January and \$3,000 for each of the months February through July, for a total penalty of \$19,000.

- r) *Any distributor or retailer who violates Section 10-38 of the Act is liable to pay to the Department, for deposit in the Tax Compliance and Administration Fund, a penalty of \$1,000 for the first violation and \$3,000 for any subsequent violation. [35 ILCS 143/10-38] (See Sections 660.24(c) and 660.25(i).)*

(Source: Amended at 43 Ill. Reg. 8923, effective July 30, 2019)