



**Senate Fiscal Agency**  
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**BILL ANALYSIS**



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Senate Bill 533 (as enrolled)  
 Sponsor: Senator Robert Geake  
 Senate Committee: Finance  
 House Committee: Tax Policy

**PUBLIC ACT 118 of 1995**

Date Completed: 7-6-95

**RATIONALE**

In March 1994 the voters approved Proposal A which, as part of many major changes regarding school finance reform, constitutionally altered the State's tax structure in several ways. The approval of Proposal A also gave effect to a number of related statutory changes, including Public Act 327 of 1993, the Tobacco Products Tax Act. That Act increased the tax on cigarettes by 50 cents per pack to a total of 75 cents per pack, effective May 1, 1994. To accomplish this and put into effect other changes regarding the administration and enforcement of tobacco taxes, the Tobacco Products Tax Act repealed and replaced Public Act 265 of 1947 (the former cigarette tax Act). Like the old law, the new Act contains provisions authorizing the Department of Treasury to seize and confiscate tobacco products, vending machines, vehicles, and other tangible personal property used by persons trafficking in illegal tobacco products. Recently, provisions of the new Act were challenged.

On December 1, 1994, the State Police raided a Dearborn shop and seized about \$200,000 worth of tobacco products, plus \$200,000 cash, a car, books, records, and a computer. The State alleged that the businesses involved, Global Imports, Inc. and several others, owed over \$240,000 in unpaid tobacco taxes. Global Imports brought an action in Wayne County Circuit Court asking that the State be restrained from seizing and retaining the property. On March 2, 1995, a Wayne County Circuit Court judge ruled that Section 9 of the Tobacco Products Tax Act is unconstitutionally flawed and ordered the State to return the property it had seized in the raid on Global Imports. In the ruling, the court cited the Tobacco Products Tax Act's provision that *requires* the Revenue Commissioner to promulgate rules to implement the Act, and said

that because rules had not been promulgated, the plaintiff had been denied due process. A second flaw, the court said, was that the statute contained no time line for the Department of Treasury to issue a decision after a hearing on the question of whether property was legally seized. The Court of Appeals reportedly has refused to stay the circuit court order, and it has been suggested that the Act be amended to address these concerns.

Further, it has been pointed out that under the old cigarette tax Act, the State Treasurer was authorized to pay informants for information leading to the seizure of property or the collection of a tax. Since the new Tobacco Products Tax Act does not include such a provision, it has been suggested that language be included to address this concern.

**CONTENT**

**The bill amended the Tobacco Products Tax Act to revise procedures that must be followed regarding the forfeiture of tobacco products and property seized under the Act. Further, the bill allows the State Treasurer to compensate a person who furnishes information concerning a violation of the Act, that results in the collection or recovery of any tax or penalty or leads to the forfeiture of cigarettes or property.**

Previously, after the seizure of any tobacco product and property alleged to be in violation of the Act, upon the receipt of an inventory statement of the property or the publication in a newspaper of the statement, the person from whom the seizure was made had five days to demand a hearing. The bill provides that the person has 10 business days to demand a hearing. Further, the bill

requires the Department of Treasury to hold the hearing within 15 business days after receiving a request for a hearing, and to render its decision within 10 business days of the hearing. Previously, the Act did not specify a time within which the Department had to hold a hearing or render a decision.

The bill provides that if a person from whom property was seized does not file a demand for a hearing within 10 business days after service of the inventory statement, the property must be considered forfeited and may be disposed of by the Department. Previously, if the person had not demanded a hearing within five days, the property was considered forfeited.

The bill provides that a person who is not an employee or officer of the State (or a political subdivision of the State) who furnishes to the Department or to any law enforcement agency original information concerning a violation of the Act, which information results in the collection and recovery of any tax or penalty or leads to the forfeiture of any cigarettes, or other property, may be awarded by the State Treasurer upon the certification of the Revenue Commissioner, compensation of up to 10% of the net amount received from the sale of any forfeited cigarettes or other property, not to exceed \$5,000. The award must be paid out of the receipts from the sale of the property. If in the opinion of the Attorney General, the Commissioner, and the Director of the Department of State Police it is necessary to preserve the identity of the person furnishing the information, the Attorney General, the Commissioner, and the Director must file with the State Treasurer an affidavit setting forth that necessity, and a warrant may be issued jointly to the Attorney General, the Commissioner, and the Director. Upon payment to the person furnishing the information, the Attorney General, Commissioner, and Director must file with the State Treasurer an affidavit that the money has been paid.

(Note: House Bill 4845, which has passed both houses of the Legislature and been enrolled, would amend the Tobacco Products Tax Act to *permit* the Revenue Commissioner to promulgate rules to implement the Act. Currently, the Act *requires* the Commissioner to promulgate rules to implement the Act.)

MCL 205.429

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The Tobacco Products Tax Act gave Michigan one of the highest cigarette taxes in the country. Because of the difference between Michigan's substantial cigarette tax and the minimal tax levied in other states, the incentive to smuggle cigarettes into Michigan is high. This State needs to maintain a strong enforcement pressure to prevent widespread smuggling of cigarettes across the State line for distribution and sale in Michigan. The recent ruling in Wayne County, which required the State to return property, money, and tobacco products that had been seized, was a setback to enforcement efforts. The bill, together with House Bill 4845, will prevent future difficulties by remedying the problems in the Act cited by the Wayne County Circuit Court. Senate Bill 533 places in statute time frames for the Department of Treasury to hold a hearing and render a decision regarding forfeited property; this will satisfy the need for due process provisions cited by the court.

### **Supporting Argument**

The bill restores authorization for the Department to pay informants for information leading to the seizure of contraband tobacco products. This provision, which was in the old cigarette tax Act but was not included in the 1993 rewrite of the Act, is a necessary tool for law enforcement efforts in this area.

Legislative Analyst: G. Towne

## **FISCAL IMPACT**

The fiscal impact of this bill is very difficult to quantify. With the large increase in the State's cigarette tax, from \$.25 to \$.75 per pack, effective May 1, 1994, the amount of tobacco products that are in violation of the Tobacco Products Tax Act is increasing as is the level of enforcement by the Department of Treasury, the State Police, and the Attorney General. Therefore, the revenue directly derived by the State from identifying, seizing, and selling tobacco products that have avoided the State tax, is expected to increase significantly compared with past experience, but by how much is not known. Current law requires that all revenue

derived from the sale of confiscated or forfeited tobacco products be credited to the State's General Fund. In FY 1993-94, the General Fund revenue account entitled "Revenue from the sale of confiscated cigarettes" contained only \$6,235.

Fiscal Analyst: J. Wortley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.