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## REVENUE AND TAXATION Cigar, Cigarette, and Loose Tobacco Taxes: Increase Excise Tax Rate on Little Cigars, Cigars, and Cigarettes and Impose Excise Tax on Loose Tobacco

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## REVENUE AND TAXATION

### *Cigar, Cigarette, and Loose Tobacco Taxes: Increase Excise Tax Rate on Little Cigars, Cigars, and Cigarettes and Impose Excise Tax on Loose Tobacco*

CODE SECTIONS: O.C.G.A. §§ 35-3-8, 36-89-2 to -3, 48-1-2, 48-2-32, 48-7-27, -40.16 to -40.17 (amended), 48-7-40.24 to -40.25 (new), 48-7-103, 48-8-2 to -3, -6, -49 to -50, 48-9-14, -16, 48-11-1 to -5, -8 to -15, -17 to -19, -22 to -23, -23.1, -24 to -25, -27, 48-18-3, -9, 50-5-76, 50-6-5 (amended)

BILL NUMBER: HB 43

ACT NUMBER: 343

GEORGIA LAWS: 2003 Ga. Laws 665

SUMMARY: The Act increases the excise tax on little cigars, cigars, and cigarettes and imposes a tax on loose tobacco. The tax on little cigars increases from two mills each to two and one-half mills each. The Act increases the tax on other cigars to 23% of the wholesale cost price, an increase of 10% over the former rate. The Act increases the tax on cigarettes from 12 cents per pack to 37 cents per pack. The Act creates a tax on loose or smokeless tobacco at a rate of 10% of the wholesale cost price. The Act subjects loose tobacco to the same requirements formerly imposed only on cigarettes and cigars, including licensing requirements, reporting procedures, and criminal repercussions for noncompliance. The Act does not require a person to pay tax on loose tobacco if the person brings the tobacco

into the state on his person and the amount does not exceed six containers. The Act also affects areas that fall outside of the scope of this Legislative Review, as this Review only focuses on the Act's tobacco tax amendments.

**EFFECTIVE DATE:**

June 3, 2003; O.C.G.A. §§ 35-3-8, 48-11-1, -27, 50-6-5 July 1, 2003; O.C.G.A. § 48-7-27 January 1, 2006; O.C.G.A. §§ 48-8-2, -49, -50, 48-9-14, -16 January 1, 2004<sup>1</sup>

*History*

"Some experts have projected a revenue shortfall" of more than \$600 million for the State of Georgia's 2004 fiscal year.<sup>2</sup> Although "House budget writers" substantially cut state spending, a \$128 million deficit still remained in the waning days of the 2003 legislative session.<sup>3</sup> Members of the Georgia General Assembly faced a "difficult choice of either approving a new revenue source, or cutting" spending on critical programs benefiting the elderly, children, or the indigent.<sup>4</sup> The General Assembly chose the former and increased taxes on cigars and cigarettes and created a loose tobacco tax to meet the budget shortfall.<sup>5</sup>

Although covering budget shortfalls is a common reason for increasing tobacco taxes, it was not the only reason for this increase.<sup>6</sup> While the tax increase will generate approximately \$180 million in increased revenue for the state, legislators cited other reasons for increasing the tobacco tax, such as curbing teen smoking, cutting

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1. Code sections 48-1-2, 48-7-27, 48-7-40.16, 48-7-40.17, 48-7-40.24, and 48-7-40.25 become "applicable to all taxable years beginning on or after January 1, 2003." Code sections 48-2-32 and 48-7-103 become "applicable to all calendar quarters beginning on or after April 1, 2004." 2003 Ga. Laws 665, § 47, at 706.

2. See Georgia House of Representatives, Daily Legislative Report No. 40, at [http://www.legis.state.ga.us/legis/2003\\_04/house/hinfo/daily40c.htm](http://www.legis.state.ga.us/legis/2003_04/house/hinfo/daily40c.htm) [hereinafter Daily Report 40].

3. See *id.*

4. See *id.*

5. See *id.*

6. See Audio Recording of House Proceedings, Mar. 26, 2003 (remarks by Rep. Glenn Richardson), at <http://www.ganet.org/services/leg/audio/2003archive.html> [hereinafter House Audio].

healthcare costs, and preventing childhood sickness and possible death.<sup>7</sup>

Representative Glenn Richardson of the 26th district cited many reasons for raising the tobacco tax. Representative Richardson relayed the following statistics: (1) The “single most effective way to reduce teen smoking is [to increase the] price” of cigarettes, (2) “Eighty-nine percent of adult smokers began smoking before the age of 18,” (3) “The average age of a first-time smoker . . . is 13,” and (4) “Every 10% increase in the cost of tobacco [results in a] corresponding 6% reduction in teen smoking.”<sup>8</sup> In addition, Representative Richardson commented that in 2002, “Georgia taxpayers spent \$419 million treating” tobacco-related illnesses, while the former excise tax of 12 cents per cigarette pack only covered \$88 million of the total treatment cost.<sup>9</sup> He stated that the addition of the loose tobacco tax would help cover this healthcare shortfall.<sup>10</sup> Another reason Representative Richardson offered for increasing the cigarette tax was the state’s interest in keeping children healthy; the tax increase will decrease smoking and consequently reduce second-hand smoke, which is especially harmful to children and may cause “SIDS [Sudden Infant Death Syndrome], asthma, inner ear infections, respiratory infections, and low birth weight.”<sup>11</sup>

Increasing the tobacco tax was “not unreasonable”<sup>12</sup> considering the former Georgia cigarette tax was lower than the tax imposed by 45 other states.<sup>13</sup> Georgia’s cigarette tax had remained unchanged at 12 cents per pack since 1971.<sup>14</sup> Meanwhile, 28 other states have increased tobacco taxes since 2001.<sup>15</sup> In 1971, the price of cigarettes was 41 cents per pack and the tax was 12 cents per pack, which resulted in a tax rate of 29%.<sup>16</sup> Today, the 12 cents per pack yields a tax rate of only 5% because of the increased cost of cigarettes.<sup>17</sup>

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7. *Id.*; see also James Salzer, *Lawmakers Use Tobacco Tax Hike to Balance Budget*, ATLANTA J. CONST., Apr. 26, 2003, at G1.

8. See House Audio, *supra* note 6.

9. See *id.*

10. See *id.*

11. See *id.*

12. See *id.*

13. See House Audio, *supra* note 6.

14. See *id.*

15. See *id.*

16. See *id.*

17. See *id.*

Additionally, 68% of Georgians agree with raising the cigarette tax by as much as \$1 per pack, while 82% of Georgians agree with raising the tax to 50 cents per pack.<sup>18</sup>

Despite these reasons for increasing tobacco taxes, many members of the General Assembly expressed concern over the proposed tax measure.<sup>19</sup> Some members argued that the tax increase would cause smokers to cross state lines to buy cheaper cigarettes and that the increase would put convenience store owners out of business.<sup>20</sup> Other legislators opposed the increase because of campaign promises not to raise taxes.<sup>21</sup> Other critics argued that an increase in the tobacco tax may “disproportionately affect the poor” and may only temporarily solve the budget shortfall because tobacco taxes are a “declining revenue source.”<sup>22</sup> Some members of the General Assembly inquired into how a tax increase would affect the amount of money Georgia would receive under the Tobacco Master Settlement Agreement (“MSA”).<sup>23</sup> Representative Richardson stated that the tobacco tax increase would not severely affect the amount of money Georgia receives from the MSA.<sup>24</sup> Another legislator argued that raising tobacco taxes would not decrease tobacco sales because consumers will switch to cheaper, foreign brands that may prove more harmful than domestic brands.<sup>25</sup>

On the day HB 43 passed, “Republicans were [still] 10 votes short on the tax bill in the 56-member Senate.”<sup>26</sup> Senator Kasim Reed of the 35th district “could supply” the votes of five African-American Senators.<sup>27</sup> This was significant because legislators were also considering changing the state flag.<sup>28</sup> According to Senator Reed, Governor Sonny Perdue “sent word” to the Senate that he would sign a referendum bill that did not contain a flag with the controversial Confederate battle emblem “if [Senator] Reed would help pass the

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18. *See generally* House Audio, *supra* note 6.

19. *See id.*

20. *See id.*

21. *See id.*

22. *See id.*

23. *See* House Audio, *supra* note 6 (remarks by Rep. David E. Lucas, Sr.).

24. *See id.* (remarks by Rep. Glenn Richardson).

25. *See id.* (remarks by Rep. Tommy Smith).

26. *See* Jim Galloway, *Legislature 2003: Deal Let Both Sides Dodge Minie Ball*, ATLANTA J. CONST., Apr. 27, 2003, at C6.

27. *See id.*

28. *See id.*

tobacco tax increase.”<sup>29</sup> Consequently, a vote on the tax increase “was delayed until immediately after a vote on the state flag.”<sup>30</sup> Governor Perdue denied making any deal.<sup>31</sup>

### *HB 379 and HB 43*

#### *Introduction*

Representatives Glenn Richardson of the 26th district, Larry O’Neal of the 117th district, and Warren Massey of the 24th district sponsored HB 379.<sup>32</sup> The Speaker assigned the bill to the House Ways and Means Committee, which adopted a Committee substitute and favorably reported it on March 26, 2003.<sup>33</sup> The House offered a floor substitute to HB 379, but the bill failed on March 26, 2003.<sup>34</sup> The next day, the House voted in favor of a motion to reconsider HB 379, and on April 17, 2003, the House passed the bill.<sup>35</sup>

HB 379 did not reach the Senate before the end of the 33rd day of the legislative session; therefore, it was not under Senate consideration.<sup>36</sup> The Senate “refused to suspend its rules to” consider the bill.<sup>37</sup> “Normally, this would spell doom for” a bill’s provisions.<sup>38</sup> However, legislators were “[d]etermined to pass a responsible and balanced budget,” so House members sought out germane legislation affecting the “same Code section containing the same subject matter” that they could amend to include HB 379’s content, thus circumventing the “33rd day rule.”<sup>39</sup> Legislators amended the germane legislation, HB 43, to include “a variation on the Governor’s” tobacco tax proposal.<sup>40</sup> HB 43 “began in the House as a sales tax exemption for certain nonprofit archaeological preservation

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29. *See id.*

30. *See id.*

31. *See id.*

32. HB 379, as introduced, 2003 Ga. Gen. Assem.

33. *See State of Georgia Final Composite Status Sheet, HB 379, Apr. 25, 2003.*

34. *Georgia House of Representatives Voting Record, HB 379 (Mar. 26, 2003).*

35. *See State of Georgia Final Composite Status Sheet, HB 379, Apr. 25, 2003; Georgia House of Representatives Voting Record, HB 379 (Apr. 17, 2003).*

36. *See House of Representatives, Daily Legislative Report No. 39, at [http://www.legis.state.ga.us/legis/2003\\_04/house/hinfo/daily39c.htm](http://www.legis.state.ga.us/legis/2003_04/house/hinfo/daily39c.htm) [hereinafter Daily Report 39].*

37. *See id.*

38. *See id.*

39. *See id.*

40. *See id.*

organizations.”<sup>41</sup> Because the Senate made changes to HB 43, the House had to reconsider the bill.<sup>42</sup> Ultimately, Representatives “transformed [HB 43] into an overall tax code revision bill,” incorporating HB 379’s provisions.<sup>43</sup>

On April 22, 2003, both the House and the Senate appointed a Conference Committee to consider HB 43.<sup>44</sup> House Conference Committee members were Representatives Richard Royal of the 140th district, Keith Heard of the 75th district, and Jimmy Skipper of the 116th district.<sup>45</sup> Senate Conference Committee members were Senators Thomas Price of the 56th district, Don Balfour of the 9th district, and Bill Stephens of the 51st district.<sup>46</sup> The Conference Committee offered a substitute to HB 43 and “recommended[] that both the Senate and House of Representatives recede from their positions” and adopt the Conference Committee’s substitute to HB 43.<sup>47</sup> On April 25, 2003, the final day of the legislative session, both the Senate and the House adopted the Conference Committee’s report and passed the bill.<sup>48</sup> On May 5, 2003, the House sent the bill to Governor Perdue, who signed the bill into law on June 3, 2003.<sup>49</sup>

### *Subjects Not Covered*

HB 43 covers other revenue and taxation issues not covered in this Legislative Review.<sup>50</sup> Other areas contained in HB 43 include: (1) electronic fund transfers, (2) taxation of retirement and military income, (3) low emission vehicle tax credits, (4) relocating headquarters tax credits, (5) withholding tax, (6) motor fuel sales tax, (7) sales taxes for samples of contact lenses, (8) sales tax for aquariums, (9) sales tax holiday, (10) sales tax limitations, (11) dealers’ sales tax exemptions, (12) dealer compensation, (13)

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41. See HB 43, as introduced, 2003 Ga. Gen. Assem.

42. See Daily Report 39, *supra* note 36.

43. See *id.*

44. See State of Georgia Final Composite Status Sheet, HB 43, Apr. 25, 2003.

45. See HB 43 (CCS), 2003 Ga. Gen. Assem.

46. See *id.*

47. See *id.*; State of Georgia Final Composite Status Sheet, HB 43, Apr. 25, 2003.

48. Georgia House of Representatives Voting Record, HB 43 (Apr. 25, 2003); Georgia Senate Voting Record, HB 43 (Apr. 25, 2003).

49. See 2003 Ga. Laws 665.

50. See O.C.G.A. §§ 36-89-2, 48-2-32, 48-7-27, -40.16, -40.17, -103, 48-8-2, -3, -6, -49, -50, 48-9-14, -16, 48-18-3 (Supp. 2003).

distributor's tax, (14) certified capital and premium tax credits, and (15) homeowner tax relief grants.<sup>51</sup>

### *HB 379 As Originally Introduced*

HB 379, as introduced, would have increased the excise tax for little cigars, cigars, and cigarettes and would have added a new excise tax for loose or smokeless tobacco.<sup>52</sup> Representatives Glenn Richardson of the 26th district, Warren Massey of the 24th district, Rich Golick of the 34th district, and Douglas Dean of the 49th district handled HB 379 on the House floor.<sup>53</sup> These legislators cited compensating “for the revenue shortfall” resulting in part from rising Medicaid costs as a reason the state needed this bill.<sup>54</sup> Although raising the tobacco tax could reduce smoking, and as a result reduce applicable sales and tax revenues, Representative Richardson projected that proceeds from the tobacco tax increase will “dramatically exceed[]” any loss of revenue occurring from a decrease in tobacco sales.<sup>55</sup>

Representative Richardson suspected that the General Assembly never initiated a loose tobacco tax previously due to powerful lobbying efforts.<sup>56</sup> Originally, the bill provided for a one-half mill increase for little cigars, a 23% increase for cigars, a 46-cent per pack increase for cigarettes, and a new 36% tax for loose tobacco.<sup>57</sup> The original bill provided an exemption to patients at the Georgia War Veterans Home and at the Georgia War Veterans Nursing Home from paying these increased rates.<sup>58</sup> It required that manufacturers, sellers, vendors, and distributors of loose tobacco obtain a license.<sup>59</sup> The bill, as introduced, also provided that the State Revenue Commissioner “may prescribe by regulation a [tax collection] method” other than

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51. See O.C.G.A. §§ 36-89-2, 48-2-32, 48-7-27, -40.16, -40.17, -103, 48-8-2, -3, -6, -49, -50, 48-9-14, -16, 48-18-3 (Supp. 2003).

52. See HB 379, as introduced, 2003 Ga. Gen. Assem.

53. See House Audio, *supra* note 6.

54. See Electronic Mail Interview with Rep. Glenn Richardson, House District No. 26 (May 16, 2003) [hereinafter Richardson Interview]. Representative Richardson noted that because “over [\$420] million . . . funds smoking related illness in Medicaid, it made sense to raise revenue in this fashion.” *Id.*

55. See *id.*

56. See *id.*

57. See HB 379, as introduced, 2003 Ga. Gen. Assem.

58. See *id.*

59. See *id.*



tax stamps for loose tobacco.<sup>60</sup> Further, the original bill required licensed distributors to report the quantity of loose tobacco on hand each month and required distributors and dealers to keep records of all loose tobacco manufactured, produced, purchased, and sold.<sup>61</sup> It allowed people to transport across state lines loose tobacco without proper tax stamps or tax payment if the transporter carried no more than six containers.<sup>62</sup> In the criminal context, the bill, as introduced, provided for making the possession of loose tobacco “with the intent to evade” the tobacco tax a misdemeanor.<sup>63</sup> It also provided for making the sale of tobacco “with the intent to evade” the tobacco tax a felony subject to one to ten years in prison.<sup>64</sup> The original bill created a tax on loose tobacco, increased the tax on other forms of tobacco, and subjected loose tobacco to the same requirements previously imposed solely on cigarettes and cigars.<sup>65</sup>

The House Ways and Means Committee offered a substitute to HB 379.<sup>66</sup> The House Committee substitute retained the same tax increases as the bill’s original version.<sup>67</sup> Representative Richardson attempted to convince the Governor to support an even higher tax increase of 75 cents per cigarette pack, but this measure lacked support.<sup>68</sup> In the House Committee, only 3 or 4 of the 17 Committee members would have voted for a 75-cent increase.<sup>69</sup> Consequently, the House Committee made no major changes to the bill.<sup>70</sup> The bill failed by a vote of 47 to 127 on March 26, 2003.<sup>71</sup> Representative Richardson moved to reconsider the bill, and on March 27, 2003, the House voted in favor of reconsidering HB 379 by a vote of 144 to 29.<sup>72</sup>

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60. *See id.*

61. *See id.*

62. *See* HB 379, as introduced, 2003 Ga. Gen. Assem.

63. *See id.*

64. *See id.*

65. *See generally id.*

66. *See* HB 379 (HCS), 2003 Ga. Gen. Assem.

67. *Compare* HB 379, as introduced, 2003 Ga. Gen. Assem., *with* HB 379 (HCS), 2003 Ga. Gen. Assem.

68. *See* Richardson Interview, *supra* note 54.

69. *See id.*

70. *Compare* HB 379, as introduced, 2003 Ga. Gen. Assem., *with* HB 379 (HCS), 2003 Ga. Gen. Assem.

71. Georgia House of Representatives Voting Record, HB 379 (Mar. 26, 2003).

72. Georgia House of Representatives Voting Record, HB 379 (Mar. 27, 2003).

### *The Floor Substitute to HB 379*

On reconsideration, the House adopted a floor substitute to HB 379 and passed the bill, as substituted, on April 17, 2003.<sup>73</sup> Identically to the original bill, the floor substitute provided for a one-half mill tax increase for little cigars.<sup>74</sup> However, the floor substitute provided for a 28% tax increase on cigars instead of a 23% increase as proposed in the original and House Committee substitute versions.<sup>75</sup> The cigarette tax portion of the floor substitute provided for a 21-cent per pack increase instead of the 46 cents per pack increase proposed in the original and House Committee substitute versions.<sup>76</sup> Additionally, the floor substitute provided for subjecting tobacco manufacturers who (1) sell cigarettes to Georgians and (2) are not part of the MSA to an additional tax of 50-cents per pack (in addition to the 21-cent increase that the bill would require).<sup>77</sup> The floor substitute's remaining provisions did not substantially differ from the original bill's provisions or the Committee substitute's provisions.<sup>78</sup>

### *The Conference Committee Report of HB 43*

After failing to reach the Senate because of procedural rules, the tobacco tax increase originally contained in HB 379 reappeared in the HB 43 Conference Committee report.<sup>79</sup> The HB 43 Committee Conference report provided for an effective tax rate of two-and-one-half mills on little cigars – the same rate proposed by HB 379, as introduced; HB 379's Committee substitute version; and HB 379's floor substitute version.<sup>80</sup> The report provided for a 23% tax on cigars, though the original rate and the Committee substitute rate on

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73. Georgia House of Representatives Voting Record, HB 379 (Apr. 17, 2003).

74. See HB 379 (HFS), 2003 Ga. Gen. Assem.

75. Compare HB 379, as introduced, 2003 Ga. Gen. Assem., and HB 379 (HCS), 2003 Ga. Gen. Assem., with HB 379 (HFS), 2003 Ga. Gen. Assem.

76. Compare HB 379, as introduced, 2003 Ga. Gen. Assem., and HB 379 (HCS), 2003 Ga. Gen. Assem., with HB 379 (HFS), 2003 Ga. Gen. Assem.

77. See HB 379 (HFS), 2003 Ga. Gen. Assem.

78. Compare HB 379, as introduced, 2003 Ga. Gen. Assem., and HB 379 (HCS), 2003 Ga. Gen. Assem., with HB 379 (HFS), 2003 Ga. Gen. Assem.

79. Compare HB 43, as introduced, 2003 Ga. Gen. Assem., and HB 43 (SCS), 2003 Ga. Gen. Assem., and HB 43 (SCSFA), 2003 Ga. Gen. Assem., and HB 43 (HFS), 2003 Ga. Gen. Assem., with HB 43 (CCS), 2003 Ga. Gen. Assem.

80. Compare HB 379, as introduced, 2003 Ga. Gen. Assem., and HB 379 (HCS), 2003 Ga. Gen. Assem., and HB 379 (HFS), 2003 Ga. Gen. Assem., with HB 43 (CCS), 2003 Ga. Gen. Assem.

cigars in HB 379 had been 36%.<sup>81</sup> The report provided for a 37-cent per pack tax on cigarettes, which differed from HB 379's original total rate of 58 cents, the Committee substitute's total rate of 58 cents, and the House floor substitute's total rate of 33 cents.<sup>82</sup> The report provided for setting a new 10% tax on loose tobacco.<sup>83</sup> This rate also differed from HB 379's original rate and the Committee substitute's total rate of 36% but was consistent with the House floor substitute's 10% rate.<sup>84</sup> The report also disposed of the extra 50-cent per cigarette pack tax contained in the floor substitute to HB 379 that was to apply if the manufacturer was not part of the MSA.<sup>85</sup>

Although some members of the General Assembly opposed tax increases, "[s]upporters of the conference committee compromise . . . noted that the alternative was to balance the state's budget by cutting essential services for the state's elderly and poor population during an economic recession when they are most vulnerable."<sup>86</sup> Legislators believed such action would be "undesirable" and "irresponsible."<sup>87</sup> The report offered no other major changes and easily passed both chambers.<sup>88</sup>

### *The Act*

The Act amends 25 Code sections related to tobacco.<sup>89</sup> Specifically, the Act amends Code section 48-11-1 by changing certain definitions to include and define loose or smokeless tobacco.<sup>90</sup> The Act amends Code section 48-11-2 by changing the tax on little cigars from two mills to two-and-one-half mills, changing the tax on other cigars from 13% to 23% of the wholesale price, raising the tax on cigarettes from 12 cents per pack to 37 cents per pack, and

81. Compare HB 379, as introduced, 2003 Ga. Gen. Assem., and HB 379 (HCS), 2003 Ga. Gen. Assem., with HB 43 (CCS), 2003 Ga. Gen. Assem.

82. Compare HB 379, as introduced, 2003 Ga. Gen. Assem., and HB 379 (HCS), 2003 Ga. Gen. Assem., and HB 379 (HFS), 2003 Ga. Gen. Assem., with HB 43 (CCS), 2003 Ga. Gen. Assem.

83. See HB 43 (CCS), 2003 Ga. Gen. Assem.

84. Compare HB 379, as introduced, 2003 Ga. Gen. Assem., and HB 379 (HCS), 2003 Ga. Gen. Assem., and HB 379 (HFS), 2003 Ga. Gen. Assem., with HB 43 (CCS), 2003 Ga. Gen. Assem.

85. See HB 43 (CCS), 2003 Ga. Gen. Assem.

86. See Daily Report 40, *supra* note 2.

87. See *id.*

88. Georgia House of Representatives Voting Record, HB 43 (Apr. 25, 2003); Georgia Senate Voting Record, HB 43 (Apr. 25, 2003).

89. See 2003 Ga. Laws 665.

90. See O.C.G.A. § 48-11-1 (Supp. 2003).

creating a new tax on loose and smokeless tobacco equal to 10% of the wholesale cost.<sup>91</sup> Code section 48-11-3 allows the State Revenue Commissioner to collect taxes on loose and smokeless tobacco either through stamps or through an alternative method, but the alternative method must produce the same revenue to the state as the sale of stamps to distributors.<sup>92</sup> The Act's other sections subject loose tobacco to the same requirements previously imposed only on cigarettes and cigars, such as: licensing requirements, reporting procedures, and criminal repercussions for the illegal sale of tobacco products.<sup>93</sup>

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91. See O.C.G.A. § 48-11-2 (Supp. 2003).

92. See O.C.G.A. § 48-11-3 (Supp. 2003).

93. See O.C.G.A. §§ 35-3-8, 48-11-4 to -5, -8 to -15, -17 to -19, -22 to -23.1, -24, -25, -27, 50-5-76, 50-6-5 (Supp. 2003).