

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116-260 effective on the date that is 90 days after Dec. 27, 2020, see section 602(b) of Pub. L. 116-260, set out as a note under section 375 of this title.

EFFECTIVE DATE

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111-154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

§ 377. Penalties**(a) Criminal penalties****(1) In general**

Except as provided in paragraph (2), whoever knowingly violates this chapter shall be imprisoned for not more than 3 years, fined under title 18, or both.

(2) Exceptions**(A) Governments**

Paragraph (1) shall not apply to a State, local, or tribal government.

(B) Delivery violations

A common carrier or independent delivery service, or employee of a common carrier or independent delivery service, shall be subject to criminal penalties under paragraph (1) for a violation of section 376a(e) of this title only if the violation is committed knowingly—

(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 376a of this title.

(b) Civil penalties**(1) In general**

Except as provided in paragraph (3), whoever violates this chapter shall be subject to a civil penalty in an amount not to exceed—

(A) in the case of a delivery seller, the greater of—

(i) \$5,000 in the case of the first violation, or \$10,000 for any other violation; or

(ii) for any violation, 2 percent of the gross sales of cigarettes or smokeless tobacco of the delivery seller during the 1-year period ending on the date of the violation.

(B) in the case of a common carrier or other delivery service, \$2,500 in the case of a first violation, or \$5,000 for any violation within 1 year of a prior violation.

(2) Relation to other penalties

A civil penalty imposed under paragraph (1) for a violation of this chapter shall be imposed in addition to any criminal penalty under subsection (a) and any other damages, equitable relief, or injunctive relief awarded by the court, including the payment of any unpaid taxes to the appropriate Federal, State, local, or tribal governments.

(3) Exceptions**(A) Delivery violations**

An employee of a common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 376a(e) of this title only if the violation is committed intentionally—

(i) as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value; or

(ii) for the purpose of assisting a delivery seller to violate, or otherwise evading compliance with, section 376a of this title.

(B) Other limitations

No common carrier or independent delivery service shall be subject to civil penalties under paragraph (1) for a violation of section 376a(e) of this title if—

(i) the common carrier or independent delivery service has implemented and enforces effective policies and practices for complying with that section; or

(ii) the violation consists of an employee of the common carrier or independent delivery service who physically receives and processes orders, picks up packages, processes packages, or makes deliveries, taking actions that are outside the scope of employment of the employee, or that violate the implemented and enforced policies of the common carrier or independent delivery service described in clause (i).

(Oct. 19, 1949, ch. 699, §3, as added Pub. L. 111-154, §2(d), Mar. 31, 2010, 124 Stat. 1100.)

Editorial Notes

PRIOR PROVISIONS

A prior section 377, act Oct. 19, 1949, ch. 699, §3, 63 Stat. 885; Aug. 9, 1955, ch. 695, §1, 69 Stat. 628, which related to penalties for violations of any provision of this chapter, was repealed, effective on the date that is 90 days after March 31, 2010, by Pub. L. 111-154, §§2(d), 6, Mar. 31, 2010, 124 Stat. 1100, 1110.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111-154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

§ 378. Enforcement**(a) In general**

The United States district courts shall have jurisdiction to prevent and restrain violations of this chapter and to provide other appropriate injunctive or equitable relief, including money damages, for the violations.

(b) Authority of the Attorney General

The Attorney General of the United States shall administer and enforce this chapter.

(c) State, local, and tribal enforcement**(1) In general****(A) Standing**

A State, through its attorney general, or a local government or Indian tribe that levies

a tax subject to section 376a(a)(3) of this title, through its chief law enforcement officer, may bring an action in a United States district court to prevent and restrain violations of this chapter by any person or to obtain any other appropriate relief from any person for violations of this chapter, including civil penalties, money damages, and injunctive or other equitable relief.

(B) Sovereign immunity

Nothing in this chapter shall be deemed to abrogate or constitute a waiver of any sovereign immunity of a State or local government or Indian tribe against any unconsented lawsuit under this chapter, or otherwise to restrict, expand, or modify any sovereign immunity of a State or local government or Indian tribe.

(2) Provision of information

A State, through its attorney general, or a local government or Indian tribe that levies a tax subject to section 376a(a)(3) of this title, through its chief law enforcement officer, may provide evidence of a violation of this chapter by any person not subject to State, local, or tribal government enforcement actions for violations of this chapter to the Attorney General of the United States or a United States attorney, who shall take appropriate actions to enforce this chapter.

(3) Use of penalties collected

(A) In general

There is established a separate account in the Treasury known as the “PACT Anti-Trafficking Fund”. Notwithstanding any other provision of law and subject to subparagraph (B), an amount equal to 50 percent of any criminal and civil penalties collected by the Federal Government in enforcing this chapter shall be transferred into the PACT Anti-Trafficking Fund and shall be available to the Attorney General of the United States for purposes of enforcing this chapter and other laws relating to contraband tobacco products.

(B) Allocation of funds

Of the amount available to the Attorney General of the United States under subparagraph (A), not less than 50 percent shall be made available only to the agencies and offices within the Department of Justice that were responsible for the enforcement actions in which the penalties concerned were imposed or for any underlying investigations.

(4) Nonexclusivity of remedy

(A) In general

The remedies available under this section and section 377 of this title are in addition to any other remedies available under Federal, State, local, tribal, or other law.

(B) State court proceedings

Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized State official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of State or other law.

(C) Tribal court proceedings

Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized Indian tribal government official to proceed in tribal court, or take other enforcement actions, on the basis of an alleged violation of tribal law.

(D) Local government enforcement

Nothing in this chapter shall be construed to expand, restrict, or otherwise modify any right of an authorized local government official to proceed in State court, or take other enforcement actions, on the basis of an alleged violation of local or other law.

(d) Persons dealing in tobacco products

Any person who holds a permit under section 5712 of title 26 (regarding permitting of manufacturers and importers of tobacco products and export warehouse proprietors) may bring an action in an appropriate United States district court to prevent and restrain violations of this chapter by any person other than a State, local, or tribal government.

(e) Notice

(1) Persons dealing in tobacco products

Any person who commences a civil action under subsection (d) shall inform the Attorney General of the United States of the action.

(2) State, local, and tribal actions

It is the sense of Congress that the attorney general of any State, or chief law enforcement officer of any locality or tribe, that commences a civil action under this section should inform the Attorney General of the United States of the action.

(f) Public notice

(1) In general

The Attorney General of the United States shall make available to the public, by posting information on the Internet and by other appropriate means, information regarding all enforcement actions brought by the United States, or reported to the Attorney General of the United States, under this section, including information regarding the resolution of the enforcement actions and how the Attorney General of the United States has responded to referrals of evidence of violations pursuant to subsection (c)(2).

(2) Reports to Congress

Not later than 1 year after March 31, 2010, and every year thereafter until the date that is 5 years after March 31, 2010, the Attorney General of the United States shall submit to Congress a report containing the information described in paragraph (1).

(Oct. 19, 1949, ch. 699, § 4, as added Pub. L. 111–154, § 2(e), Mar. 31, 2010, 124 Stat. 1101.)

Editorial Notes

PRIOR PROVISIONS

A prior section 378, act Oct. 19, 1949, ch. 699, § 4, as added Aug. 9, 1955, ch. 695, § 1, 69 Stat. 628, which provided U.S. district courts with jurisdiction to prevent and restrain violations of this chapter, was repealed, ef-

fective on the date that is 90 days after March 31, 2010, by Pub. L. 111-154, §§ 2(e), 6, Mar. 31, 2010, 124 Stat. 1101, 1110.

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EFFECTIVE DATE

Section effective on the date that is 90 days after March 31, 2010, see section 6 of Pub. L. 111-154, set out as an Effective Date of 2010 Amendment note under section 375 of this title.

CHAPTER 10B—STATE TAXATION OF INCOME FROM INTERSTATE COMMERCE

SUBCHAPTER I—NET INCOME TAXES

- Sec. 381. Imposition of net income tax.
- 382. Assessment of net income taxes.
- 383. “Net income tax” defined.
- 384. Separability.

SUBCHAPTER II—DISCRIMINATORY TAXES

- 391. Tax on or with respect to generation or transmission of electricity.

SUBCHAPTER I—NET INCOME TAXES

§ 381. Imposition of net income tax

(a) Minimum standards

No State, or political subdivision thereof, shall have power to impose, for any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:

- (1) the solicitation of orders by such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and
- (2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

(b) Domestic corporations; persons domiciled in or residents of a State

The provisions of subsection (a) shall not apply to the imposition of a net income tax by any State, or political subdivision thereof, with respect to—

- (1) any corporation which is incorporated under the laws of such State; or
- (2) any individual who, under the laws of such State, is domiciled in, or a resident of, such State.

(c) Sales or solicitation of orders for sales by independent contractors

For purposes of subsection (a), a person shall not be considered to have engaged in business activities within a State during any taxable year merely by reason of sales in such State, or the solicitation of orders for sales in such State, of tangible personal property on behalf of such person by one or more independent contractors,

or by reason of the maintenance, of an office in such State by one or more independent contractors whose activities on behalf of such person in such State consist solely of making sales, or soliciting orders for sales, or tangible personal property.

(d) Definitions

For purposes of this section—

- (1) the term “independent contractor” means a commission agent, broker, or other independent contractor who is engaged in selling, or soliciting orders for the sale of, tangible personal property for more than one principal and who holds himself out as such in the regular course of his business activities; and
- (2) the term “representative” does not include an independent contractor.

(Pub. L. 86-272, title I, § 101, Sept. 14, 1959, 73 Stat. 555.)

Statutory Notes and Related Subsidiaries

STUDY AND REPORT BY CONGRESSIONAL COMMITTEES OF STATE TAXATION FROM INTERSTATE COMMERCE

Title II of Pub. L. 86-272, as amended by Pub. L. 87-17, Apr. 7, 1961, 75 Stat. 41; Pub. L. 87-435, Apr. 21, 1962, 76 Stat. 55; Pub. L. 88-42, June 21, 1963, 77 Stat. 67; Pub. L. 88-286, Mar. 18, 1964, 78 Stat. 166, and repealed by Pub. L. 94-455, title XXI, § 2121(a), Oct. 4, 1976, 90 Stat. 1914, provided for a study by the Committee on the Judiciary of the House of Representatives and the Committee on Finance of the United States Senate, acting separately or jointly, or any duly authorized subcommittee thereof, of all matters pertaining to the taxation of interstate commerce by the States, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, or any political or taxing subdivision of the foregoing, and for a report together with their proposals for legislation on or before June 30, 1965.

§ 382. Assessment of net income taxes

(a) Limitations

No State, or political subdivision thereof, shall have power to assess, after September 14, 1959, any net income tax which was imposed by such State or political subdivision, as the case may be, for any taxable year ending on or before such date, on the income derived within such State by any person from interstate commerce, if the imposition of such tax for a taxable year ending after such date is prohibited by section 381 of this title.

(b) Collections

The provisions of subsection (a) shall not be construed—

- (1) to invalidate the collection, on or before September 14, 1959, of any net income tax imposed for a taxable year ending on or before such date, or
- (2) to prohibit the collection, after September 14, 1959, of any net income tax which was assessed on or before such date for a taxable year ending on or before such date.

(Pub. L. 86-272, title I, § 102, Sept. 14, 1959, 73 Stat. 556.)

§ 383. “Net income tax” defined

For purposes of this chapter, the term “net income tax” means any tax imposed on, or measured by, net income.