



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

May 29, 2013

Joint Committee on Finance

Paper #300

Definition of Cigarette Manufacturer (General Fund Taxes -- Sales and Excise Taxes)

[LFB 2013-15 Budget Summary: Page 188, #11]

CURRENT LAW

The state imposes an excise tax on the sale of cigarettes in this state. The tax rate is generally \$2.52 per pack of 20 cigarettes. The tax is paid through the purchase of tax stamps from the Department of Revenue (DOR), generally by a manufacturer or distributor. The tax stamps must be affixed to each pack of cigarettes prior to its first sale in the state. Manufacturers and distributors receive a 0.7% discount on stamp purchases (or tax payments) as compensation for their administrative costs.

A "manufacturer," for purposes of the cigarette tax, is any person who manufactures cigarettes for the purpose of sale, including the authorized agent of a person who manufactures cigarettes for the purpose of sale. A cigarette "manufacturer" does not specifically include a person who owns an automated roll-your-own (RYO) machine; however, DOR's interpretation of current law is that a person operating such an RYO machine is a manufacturer of cigarettes, provided that person sells or distributes those cigarettes for non-personal use.

Under current law, the state imposes an excise tax on the sale of all tobacco products except cigarettes. The tobacco products tax is paid by distributors at rates of 100% of the manufacturer's list price for moist snuff and 71% of the manufacturer's list price for all other tobacco products, with a maximum tax of \$0.50 per cigar. According to the Department, a person operating an automated RYO machine for non-personal use is not a tobacco products distributor and is not subject to the tobacco products tax.

GOVERNOR

Specify that the definition of a "manufacturer" under laws governing cigarette taxes

includes a person who owns an automated RYO machine that is used to make cigarettes, but does not include an individual who owns such an RYO machine and uses that machine in his or her home solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home. This provision would take effect on the first day of the third month beginning after publication of the budget bill.

According to DOR, this provision would codify the Department's current position that operators of such automated RYO machines for non-personal use are subject to the state cigarette tax (generally \$2.52 per pack of 20 cigarettes) rather than the tax on tobacco products (generally 71% of the manufacturer's list price). However, operators of automated RYO machines that currently operate at non-profit corporations, cooperatives, social clubs, and similar entities have paid the state tobacco products tax, rather than the cigarette tax, and have entered into several lawsuits against the state to argue that position. The Department's fiscal estimate is based on the anticipation that, as a result of this proposal, persons currently operating automated RYO machines at those locations would no longer find operations profitable and would cease operating in the state. If such machines were no longer in operation, the Department expects that consumers would shift purchases of cigarettes that were manufactured by automated RYO machines (currently paying the tobacco products tax) in this state to purchase taxable packs of cigarettes and other tobacco products, such as small cigars and other RYO tobacco. The administration estimates that the AB 40 provision would increase state tax collections by \$1,400,000 in 2013-14 and 2014-15.

MODIFICATION

Reduce the estimated increase in cigarette tax revenue by \$200,000 in 2013-14.

Explanation: The administration's estimated fiscal effect did not account for the delayed effective date of this provision. Assuming an effective date of September 1, 2013, this provision would increase tax revenues by an estimated \$1,200,000 in 2013-14 and \$1,400,000 in 2014-15.

Change to Bill Revenue	
GPR-Tax	- \$200,000

Prepared by: Sean Moran