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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **1733**

05/19/2011 Authored by Lenczewski, Loeffler, Hilstrom, Liebling and Fritz
The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; tobacco; increasing the cigarette and tobacco products taxes
1.3 and fees; modifying definitions; requiring a study; imposing a floor stocks tax
1.4 on cigarettes; adjusting the 2011 rate of the cigarette sales tax; appropriating
1.5 money; amending Minnesota Statutes 2010, sections 297F.01, subdivisions 3,
1.6 19; 297F.05, subdivisions 1, 3, 4; 325D.32, subdivision 2.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2010, section 297F.01, subdivision 3, is amended to read:

1.9 Subd. 3. **Cigarette.** "Cigarette" means any roll for smoking made wholly or in part
1.10 of tobacco; that weighs 4.5 pounds or less per thousand:

1.11 (1) the wrapper or cover of which is made of paper or another substance or material
1.12 except tobacco; or

1.13 (2) wrapped in any substance containing tobacco, however labeled or named, which,
1.14 because of its appearance, size, the type of tobacco used in the filler, or its packaging,
1.15 pricing, marketing, or labeling, is likely to be offered to or purchased by consumers as
1.16 a cigarette, as defined in clause (1), unless it is wrapped in whole tobacco leaf and does
1.17 not have a cellulose acetate or other cigarette-like filter.

1.18 **EFFECTIVE DATE.** This section is effective July 1, 2011.

1.19 Sec. 2. Minnesota Statutes 2010, section 297F.01, subdivision 19, is amended to read:

1.20 Subd. 19. **Tobacco products.** "Tobacco products" means any product containing,
1.21 made, or derived from tobacco that is intended for human consumption, whether chewed,
1.22 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means,
1.23 or any component, part, or accessory of a tobacco product, including, but not limited
1.24 to, cigars; ~~little cigars~~; cheroots; stogies; periques; granulated, plug cut, crimp cut,

ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco; but does not include cigarettes as defined in this section. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

EFFECTIVE DATE. This section is effective July 1, 2011.

Sec. 3. Minnesota Statutes 2010, section 297F.05, subdivision 1, is amended to read:

Subdivision 1. **Rates; cigarettes.** A tax is imposed upon the sale of cigarettes in this state, upon having cigarettes in possession in this state with intent to sell, upon any person engaged in business as a distributor, and upon the use or storage by consumers, at the following rates:

(1) on cigarettes weighing not more than three pounds per thousand, ~~24~~ 99 mills on each such cigarette; and

(2) on cigarettes weighing more than three pounds per thousand, ~~48~~ 123 mills on each such cigarette.

EFFECTIVE DATE. This section is effective July 1, 2011.

Sec. 4. Minnesota Statutes 2010, section 297F.05, subdivision 3, is amended to read:

Subd. 3. **Rates; tobacco products.** A tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor, at the rate of ~~35~~ 47.5 percent of the wholesale sales price of the tobacco products. The tax is imposed at the time the distributor:

(1) brings, or causes to be brought, into this state from outside the state tobacco products for sale;

(2) makes, manufactures, or fabricates tobacco products in this state for sale in this state; or

(3) ships or transports tobacco products to retailers in this state, to be sold by those retailers.

EFFECTIVE DATE. This section is effective July 1, 2011.

Sec. 5. Minnesota Statutes 2010, section 297F.05, subdivision 4, is amended to read:

Subd. 4. **Use tax; tobacco products.** A tax is imposed upon the use or storage by consumers of tobacco products in this state, and upon such consumers, at the rate of ~~35~~ 47.5 percent of the cost to the consumer of the tobacco products.

EFFECTIVE DATE. This section is effective July 1, 2011.

Sec. 6. Minnesota Statutes 2010, section 325D.32, subdivision 2, is amended to read:

Subd. 2. **Cigarettes.** "Cigarettes" means and includes any roll for smoking, made wholly or in part of tobacco, irrespective of size and shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except whole tobacco leaf, and includes any cigarette as defined in section 297F.01, subdivision 3.

EFFECTIVE DATE. This section is effective July 1, 2011.

Sec. 7. **TOBACCO TAX COLLECTION REPORT.**

Subdivision 1. **Report to legislature.** (a) The commissioner of revenue shall report to the 2012 legislature on the tobacco tax collection system, including recommendations to improve compliance under the excise tax for both cigarettes and other tobacco products. The purpose of the report is to provide information and guidance to the legislature on improvements to the tobacco tax collection system to:

(1) provide a unified system of collecting both the cigarette and other tobacco products taxes, regardless of category, size, or shape, that ensures the highest reasonable rates of tax collection;

(2) discourage tax evasion; and

(3) help to prevent illegal sale of tobacco products, which may make these products more accessible to youth.

(b) In the report, the commissioner shall:

(1) provide a detailed review of the present excise tax collection and compliance system as it applies to both cigarettes and other tobacco products. This must include an assessment of the levels of compliance for each category of products and the effect of the stamping requirement on compliance rates for cigarettes relative to other tobacco products. It also must identify any weaknesses in the system;

(2) survey the methods of collection and enforcement used by other states or nations, including identifying and discussing emerging best practices that ensure tracking of both cigarettes and other tobacco products and result in the highest rates of tax collection and compliance. These best practices must consider high-technology alternatives, such as use

of bar codes, radio-frequency identification tags, or similar mechanisms for tracking compliance;

(3) evaluate the adequacy and effectiveness of the existing penalties and other sanctions for noncompliance;

(4) evaluate the adequacy of the resources allocated by the state to enforce the tobacco tax and prevention laws; and

(5) make recommendations on implementation of a comprehensive tobacco tax collection system for Minnesota that can be implemented by January 1, 2014, including:

(i) recommendations on the specific steps needed to institute and implement the new system, including estimates of the state's costs of doing so and any additional personnel requirements;

(ii) recommendations on methods to recover the cost of implementing the system from the industry;

(iii) evaluation of the extent to which the proposed system is sufficiently flexible and adaptable to adjust to modifications in the construction, packaging, formatting, and marketing of tobacco products by the industry; and

(iv) recommendations to modify existing penalties or to impose new penalties or other sanctions to ensure compliance with the system.

Subd. 2. Due date. The report required by subdivision 1 is due January 15, 2012.

Subd. 3. Procedure. The report required under this section must be made in the manner provided under Minnesota Statutes, section 3.195. In addition, copies must be provided to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over taxation.

Subd. 4. Appropriation. (a) \$100,000 is appropriated from the general fund to the commissioner of revenue for fiscal year 2012 for the cost of preparing the report under subdivision 1.

(b) The appropriation under this subdivision is a onetime appropriation and is not included in the base budget.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 8. **FLOOR STOCKS TAX.**

Subdivision 1. Cigarettes. A floor stocks cigarette tax is imposed on every person engaged in the business in this state as a distributor, retailer, subjobber, vendor, manufacturer, or manufacturer's representative of cigarettes, on the stamped cigarettes and unaffixed stamps in the person's possession or under the person's control at 12:01 a.m. on July 1, 2011. The tax is imposed at the rate of 75 mills on each cigarette.

5.1 Each distributor, on or before July 11, 2011, shall file a return with the commissioner
5.2 of revenue, in the form the commissioner prescribes, showing the stamped cigarettes and
5.3 unaffixed stamps on hand at 12:01 a.m. on July 1, 2011, and the amount of tax due on
5.4 the cigarettes and unaffixed stamps. Each retailer, subjobber, vendor, manufacturer, or
5.5 manufacturer's representative, on or before July 11, 2011, shall file a return with the
5.6 commissioner of revenue, in the form the commissioner prescribes, showing the cigarettes
5.7 on hand at 12:01 a.m. on July 1, 2011, and the amount of tax due on the cigarettes. The
5.8 tax imposed by this section is due and payable on or before August 8, 2011, and after that
5.9 date bears interest at the rate of one percent per month.

5.10 Subd. 2. **Audit and enforcement.** The tax imposed by this section is subject to
5.11 the audit, assessment, interest, appeal, refund, penalty, enforcement, administrative, and
5.12 collection provisions of Minnesota Statutes, chapters 270C and 297F. The commissioner
5.13 of revenue may require a distributor to receive and maintain copies of floor stocks fee
5.14 returns filed by all persons requesting a credit for returned cigarettes.

5.15 Subd. 3. **Deposit of proceeds.** The commissioner of revenue shall deposit the
5.16 revenues from the tax under this section in the state treasury and credit them to the
5.17 general fund.

5.18 **EFFECTIVE DATE.** This section is effective July 1, 2011.

5.19 Sec. 9. **ADJUSTMENT OF CIGARETTE SALES TAX.**

5.20 The commissioner of revenue shall adjust the cigarette sales tax rate under Minnesota
5.21 Statutes, section 297F.25, that is effective August 1, 2011, to reflect the estimated effect on
5.22 cigarette prices of the imposition of the increased cigarette taxes under this act.