

1 **TOBACCO TAX REVISIONS**

2 2010 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Paul Ray**

5 Senate Sponsor: Allen M. Christensen

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Cigarette and Tobacco Tax Act by increasing the tax rates on the
10 sale, use, storage, or distribution of cigarettes in the state and the sale, use, or storage
11 of tobacco products in the state for the 2010-11 state fiscal year, and by providing a
12 calculation by which those tax rates will either remain the same, or increase, every
13 third fiscal year after the 2010-11 state fiscal year.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ increases the tax rate for the sale, use, storage, or distribution of cigarettes in the
17 state and for the sale, use, or storage of tobacco products in the state, for the 2010-
18 11 state fiscal year, as follows:
- 19 • for cigarettes weighing not more than three pounds per thousand cigarettes,
20 from 3.475 cents per cigarette to 8.5 cents per cigarette;
 - 21 • for cigarettes weighing in excess of three pounds per thousand cigarettes, from
22 4.075 cents per cigarette to 9.963 cents per cigarette;
 - 23 • for tobacco products, except moist snuff, from 35% to 86% of the
24 manufacturer's sale price; and
 - 25 • for moist snuff, from \$.75 to \$1.83 per ounce;
- 26 ▶ sets the tax rate for the sale, use, storage, or distribution of cigarettes in the state
27 and for the sale, use, or storage of tobacco products in the state, for each third year
28 after the 2010-11 state fiscal year, as follows:
- 29 • for cigarettes weighing not more than three pounds per thousand cigarettes, at

30 the greater of the rate for the preceding state fiscal year or one-half of one cent above the
31 national average, excluding certain tobacco producing states;

32 • for cigarettes weighing in excess of three pounds per thousand cigarettes, at a
33 rate that is 1.172 times higher than the rate described in the preceding
34 paragraph;

35 • for tobacco products, except moist snuff, the greater of the rate for the
36 preceding state fiscal year and a percentage rate that is modified by the
37 percentage change in the rate for cigarettes weighing not more than three
38 pounds per thousand cigarettes; and

39 • for moist snuff, the greater of the tax rate for the preceding state fiscal year and
40 an amount that is modified by the percentage change described in the preceding
41 paragraph;

- 42 ▶ allocates money from funds generated by the tax increase described in this bill;
- 43 ▶ levies a transitional inventory tax on cigarettes and tobacco products subject to the
44 tax increase described in this bill; and
- 45 ▶ makes technical changes.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 AMENDS:

52 **59-14-204**, as last amended by Laws of Utah 2008, Chapter 382

53 **59-14-302**, as last amended by Laws of Utah 2008, Chapter 204

54 **63J-1-201**, as last amended by Laws of Utah 2009, Chapters 183 and 368

55 ENACTS:

56 **59-14-215**, Utah Code Annotated 1953

57 **59-14-304**, Utah Code Annotated 1953

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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-14-204** is amended to read:

59-14-204. Tax basis -- Rate -- Future increase -- Restricted account -- Use of revenues.

(1) Except for cigarettes described under Subsection 59-14-210(3), there is levied a tax upon the sale, use, storage, or distribution of cigarettes in the state.

(2) The rates of the tax levied under Subsection (1) are:

(a) beginning on July 1, 2010, and ending on June 30, 2013:

~~[(a) 3.475]~~ (i) 8.5 cents on each cigarette, for all cigarettes weighing not more than three pounds per thousand cigarettes; and

~~[(b) 4.075]~~ (ii) 9.963 cents on each cigarette, for all cigarettes weighing in excess of three pounds per thousand cigarettes[=];

(b) beginning on July 1 of every third state fiscal year after the 2010-11 fiscal year, for all cigarettes weighing not more than three pounds per thousand cigarettes, the greater of:

(i) the rate for the preceding state fiscal year; or

(ii) the rate calculated under Subsection (3); and

(c) beginning on July 1 of every third state fiscal year after the 2010-11 fiscal year, for all cigarettes weighing in excess of three pounds per thousand cigarettes, calculated by:

(i) multiplying the rate calculated under Subsection (3) by 1.172; and

(ii) rounding the product of the calculation described in Subsection (2)(c)(i) to the nearest thousandth of one cent.

(3) On or before April 1 of 2013, and on or before April 1 of each third year after 2013, the tax commission shall calculate the tax rate described in Subsection (2)(b) by:

(a) determining the sum of the state tax rates, as the rates were on January 1 of that year, for the cigarettes described in Subsection (2)(b), for each state of the United States, except Georgia, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia;

(b) dividing the sum described in Subsection (3)(a) by 44 and rounding the result to

86 the nearest thousandth of one cent; and

87 (c) adding one-half of one cent to the rounded amount described in Subsection (3)(b).

88 [~~3~~] (4) Except as otherwise provided under this chapter, the tax levied under
89 Subsection (1) shall be paid by any person who is the manufacturer, jobber, importer,
90 distributor, wholesaler, retailer, user, or consumer.

91 [~~4~~] (5) The tax rates specified in this section shall be increased by the commission by
92 the same amount as any future reduction in the federal excise tax on cigarettes.

93 [~~5~~] (6) (a) There is created within the General Fund a restricted account known as
94 the "Cigarette Tax Restricted Account."

95 (b) Beginning on July 1, 1998, \$250,000 of the revenues generated by the increase in
96 the cigarette tax under this section enacted during the 1997 Annual General Session shall be
97 annually deposited into the account.

98 (c) The Department of Health shall expend the funds deposited in the account under
99 Subsection [~~5~~] (6)(b) for a tobacco prevention and control media campaign targeted towards
100 children.

101 (d) The following revenue generated from the tax increase imposed under Subsection
102 (1) during the 2002 General Session shall be deposited in the Cigarette Tax Restricted
103 Account:

104 (i) 22% of the revenue to be annually appropriated to the Department of Health for
105 tobacco prevention, reduction, cessation, and control programs;

106 (ii) 15% of the revenue to be annually appropriated to the University of Utah Health
107 Sciences Center for the Huntsman Cancer Institute for cancer research; and

108 (iii) 21% of the revenue to be annually appropriated to the University of Utah Health
109 Sciences Center for medical education at the University of Utah School of Medicine.

110 (e) \$250,000 of the revenue generated from the tax increase imposed under this
111 section during the 2010 General Session shall be annually appropriated to the Department of
112 Health for use in the Gold Medal Schools Program.

113 [~~e~~] (f) Any balance remaining in the Cigarette Tax Restricted Account at the end of

114 the fiscal year shall be appropriated during the next fiscal year for the purposes set forth in
115 Subsections [~~(5)~~] (6)(d)(i) through [~~(5)~~] (6)(d)(iii) in proportion to the amount of revenue
116 deposited into the account for each purpose.

117 [~~(f)~~] (g) The Legislature shall give particular consideration to appropriating any
118 revenues resulting from the change in tax rates under Subsection (2) adopted during the 2002
119 Annual General Session and not otherwise appropriated pursuant to Subsection [~~(5)~~] (6)(d) to
120 enhance Medicaid provider reimbursement rates and medical coverage for the uninsured.

121 [~~(g)~~] (h) Any program or entity that receives funding under Subsection [~~(5)~~] (6)(d) or
122 (e) shall provide an annual report to the Health and Human Services Interim Committee no
123 later than September 1 of each year. The report shall include:

- 124 (i) the amount funded;
- 125 (ii) the amount expended;
- 126 (iii) a description of the effectiveness of the program; and
- 127 (iv) if the program is a tobacco cessation program, the report required in Section
128 51-9-203.

129 Section 2. Section **59-14-215** is enacted to read:

130 **59-14-215. Transitional inventory tax on cigarettes -- Credit or refund for**
131 **outdated, unaffixed stamps.**

132 (1) In addition to the tax described in Section 59-14-204, there is levied, beginning on
133 July 1, 2010, an inventory tax on all cigarettes subject to the tax described in Section
134 59-14-204, upon the sale, use, storage, or distribution of those cigarettes in the state, as
135 follows:

136 (a) the tax levied in this section applies only to cigarettes sold, used, stored, or
137 distributed in the state on or after July 1, 2010:

138 (i) that have a stamp that reflects that the tax paid on those cigarettes was paid at the
139 tax rate levied under Section 59-14-204 that was applicable on June 30, 2010; and

140 (ii) for which the tax levied in this section has not been paid; and

141 (b) the tax levied in this section is equal to the difference between:

142 (i) the tax levied on those cigarettes under Section 59-14-204, beginning on July 1,
143 2010; and

144 (ii) the tax levied on those cigarettes under Section 59-14-204 on or before June 30,
145 2010.

146 (2) The tax described in this section shall be submitted to the commission with a form,
147 prescribed by the commission, on or before July 31, 2010.

148 (3) Failure of a person to comply with the requirements of this section subjects the
149 person to the penalties and interest described in Sections 59-1-401 and 59-1-402.

150 (4) Except as otherwise provided under this chapter, the tax levied under this section
151 shall be paid by any person who is the manufacturer, jobber, importer, distributor, wholesaler,
152 or retailer.

153 (5) The commission may not waive the interest or penalties imposed on a person for
154 failure to comply with the requirements of this section.

155 (6) (a) Beginning on July 1, 2010, it is unlawful to affix a stamp to cigarettes that
156 reflects payment of the tax levied under Section 59-14-204 at the rate that was applicable on or
157 before June 30, 2010.

158 (b) A person who violates Subsection (6)(a) may be required by the commission to pay
159 as part of the tax, and in addition to any other penalty provided in this chapter, a penalty of
160 \$25 for each offense, to be assessed and collected by the commission in accordance with
161 Chapter 1, Part 14, Assessment, Collections, and Refunds Act.

162 (c) A person who, on or after July 1, 2010, possesses tax stamps described in
163 Subsection (6)(a), may return the stamps to the commission for a credit or refund.

164 Section 3. Section **59-14-302** is amended to read:

165 **59-14-302. Tax basis -- Rates.**

166 (1) As used in this section:

167 (a) "Manufacturer's sales price" means the amount the manufacturer of a tobacco
168 product charges after subtracting a discount.

169 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,

170 regardless of:

- 171 (i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or
- 172 (ii) who pays the original Utah destination freight charge.
- 173 (2) There is levied a tax upon the sale, use, or storage of tobacco products in the state.
- 174 (3) The tax levied under Subsection (2) shall be paid by the manufacturer, jobber,
- 175 distributor, wholesaler, retailer, user, or consumer.

176 (4) The rate of the tax under this section is:

177 (a) beginning on July 1, 2010, and ending on June 30, 2013:

178 ~~[(a)]~~ (i) for tobacco products except for moist snuff, [35% of] .86 multiplied by the
179 manufacturer's sales price; ~~[or]~~ and

180 ~~[(b)]~~ (ii) subject to Subsection (5), for moist snuff, [~~\$.75~~] \$1.83 per ounce[-]; and

181 (b) beginning on July 1 of every third state fiscal year after the 2010-11 fiscal year:

182 (i) for tobacco products, except moist snuff, the greater of:

183 (A) the rate for the preceding state fiscal year; or

184 (B) an amount calculated by:

185 (I) dividing the rate calculated under Subsection 59-14-204(3) by the rate for all
186 cigarettes weighing not more than three pounds per thousand cigarettes for the state fiscal year
187 that ended the day before July 1; and

188 (II) multiplying the result of the calculation described in Subsection (4)(b)(i)(B)(I) by
189 the tax rate for tobacco products, except moist snuff, for the state fiscal year that ended the day
190 before July 1; and

191 (ii) for moist snuff, an amount equal to the greater of the per ounce tax rate for moist
192 snuff for:

193 (A) the fiscal year that ended the day before July 1; or

194 (B) the fiscal year that ended the day before July 1, multiplied by the result of the
195 calculation described in Subsection (4)(b)(i)(B)(I).

196 (5) (a) The tax under this section on moist snuff shall be imposed on the basis of the
197 net weight of the moist snuff as listed by the manufacturer.

198 (b) If the net weight of moist snuff is in a quantity that is a fractional part of one
199 ounce, a proportionate amount of the tax described in Subsection (4)~~(b)~~(a)(ii) is imposed:

200 (i) on that fractional part of one ounce; and

201 (ii) in accordance with rules made by the commission in accordance with Title 63G,
202 Chapter 3, Utah Administrative Rulemaking Act.

203 Section 4. Section **59-14-304** is enacted to read:

204 **59-14-304. Transitional inventory tax on tobacco products.**

205 (1) In addition to the tax described in Section 59-14-302, there is levied, beginning on
206 July 1, 2010, an inventory tax on all tobacco products subject to the tax described in Section
207 59-14-302, upon the sale, use, or storage of those tobacco products in the state, as follows:

208 (a) the tax levied in this section applies only to tobacco products sold, used, or stored
209 in the state on or after July 1, 2010:

210 (i) for which the tax was paid at the tax rate levied under Section 59-14-302 that was
211 applicable on June 30, 2010; and

212 (ii) for which the tax levied in this section has not been paid; and

213 (b) the tax levied in this section is equal to the difference between:

214 (i) the tax levied on those tobacco products under Section 59-14-302, beginning on
215 July 1, 2010; and

216 (ii) the tax levied on those tobacco products under Section 59-14-302 on or before
217 June 30, 2010.

218 (2) The tax levied in this section shall be submitted to the commission with a form,
219 prescribed by the commission, on or before July 31, 2010.

220 (3) Failure of a person to comply with the requirements of this section subjects the
221 person to the penalties and interest described in Sections 59-1-401 and 59-1-402.

222 (4) The tax levied in this section shall be paid by the manufacturer, jobber, distributor,
223 wholesaler, or retailer.

224 (5) The commission may not waive the interest or penalties imposed on a person for
225 failure to comply with the requirements of this section.

226 Section 5. Section **63J-1-201** is amended to read:

227 **63J-1-201. Governor to submit budget to Legislature -- Contents -- Preparation**
228 **-- Appropriations based on current tax laws and not to exceed estimated revenues.**

229 (1) The governor shall deliver, not later than 30 days before the date the Legislature
230 convenes in the annual general session, a confidential draft copy of the governor's proposed
231 budget recommendations to the Office of the Legislative Fiscal Analyst.

232 (2) (a) The governor shall, within the first three days of the annual general session of
233 the Legislature, submit to the presiding officer of each house of the Legislature:

234 (i) a proposed budget for the ensuing fiscal year;

235 (ii) a schedule for all of the proposed appropriations of the budget, with each
236 appropriation clearly itemized and classified;

237 (iii) the statement described in Subsection (2)(c); and

238 (iv) as applicable, a document showing proposed expenditures and estimated revenues
239 that are based on changes in state tax laws or rates.

240 (b) The proposed budget shall include:

241 (i) a projection of estimated revenues and expenditures for the next fiscal year;

242 (ii) the source of all direct, indirect, and in-kind matching funds for all federal grants
243 or assistance programs included in the budget;

244 (iii) a complete plan of proposed expenditures and estimated revenues for the next
245 fiscal year that is based upon the current fiscal year state tax laws and rates;

246 (iv) an itemized estimate of the proposed appropriations for:

247 (A) the Legislative Department as certified to the governor by the president of the
248 Senate and the speaker of the House;

249 (B) the Executive Department;

250 (C) the Judicial Department as certified to the governor by the state court
251 administrator;

252 (D) payment and discharge of the principal and interest of the indebtedness of the
253 state;

254 (E) the salaries payable by the state under the Utah Constitution or under law for the
255 lease agreements planned for the next fiscal year;

256 (F) other purposes that are set forth in the Utah Constitution or under law; and

257 (G) all other appropriations;

258 (v) for each line item, the average annual dollar amount of staff funding associated
259 with all positions that were vacant during the last fiscal year; and

260 (vi) deficits or anticipated deficits.

261 (c) The budget shall be accompanied by a statement showing:

262 (i) the revenues and expenditures for the last fiscal year;

263 (ii) the current assets, liabilities, and reserves, surplus or deficit, and the debts and
264 funds of the state;

265 (iii) an estimate of the state's financial condition as of the beginning and the end of the
266 period covered by the budget;

267 (iv) a complete analysis of lease with an option to purchase arrangements entered into
268 by state agencies;

269 (v) the recommendations for each state agency for new full-time employees for the
270 next fiscal year, which shall also be provided to the State Building Board as required by
271 Subsection 63A-5-103(2);

272 (vi) any explanation that the governor may desire to make as to the important features
273 of the budget and any suggestion as to methods for the reduction of expenditures or increase of
274 the state's revenue; and

275 (vii) information detailing certain fee increases as required by Section 63J-1-504.

276 (3) (a) (i) For the purpose of preparing and reporting the proposed budget, the
277 governor shall require the proper state officials, including all public and higher education
278 officials, all heads of executive and administrative departments and state institutions, bureaus,
279 boards, commissions, and agencies expending or supervising the expenditure of the state
280 monies, and all institutions applying for state monies and appropriations, to provide itemized
281 estimates of revenues and expenditures.

282 (ii) The governor may also require other information under these guidelines and at
283 times as the governor may direct, which may include a requirement for program productivity
284 and performance measures, where appropriate, with emphasis on outcome indicators.

285 (b) The governor may require representatives of public and higher education, state
286 departments and institutions, and other institutions or individuals applying for state
287 appropriations to attend budget meetings.

288 (c) (i) (A) In submitting the budgets for the Departments of Health and Human
289 Services and the Office of the Attorney General, the governor shall consider a separate
290 recommendation in the governor's budget for funds to be contracted to:

291 (I) local mental health authorities under Section 62A-15-110;

292 (II) local substance abuse authorities under Section 62A-15-110;

293 (III) area agencies under Section 62A-3-104.2;

294 (IV) programs administered directly by and for operation of the Divisions of
295 Substance Abuse and Mental Health and Aging and Adult Services;

296 (V) local health departments under Title 26A, Chapter 1, Local Health Departments;
297 and

298 (VI) counties for the operation of Children's Justice Centers under Section 67-5b-102.

299 (B) In the governor's budget recommendations under Subsections (3)(c)(i)(A)(I), (II),
300 and (III), the governor shall consider an amount sufficient to grant local health departments,
301 local mental health authorities, local substance abuse authorities, and area agencies the same
302 percentage increase for wages and benefits that the governor includes in the governor's budget
303 for persons employed by the state.

304 (C) If the governor does not include in the governor's budget an amount sufficient to
305 grant the increase described in Subsection (3)(c)(i)(B), the governor shall include a message to
306 the Legislature regarding the governor's reason for not including that amount.

307 (ii) (A) In submitting the budget for the Department of Agriculture, the governor shall
308 consider an amount sufficient to grant local conservation districts and Utah Association of
309 Conservation District employees the same percentage increase for wages and benefits that the

310 governor includes in the governor's budget for persons employed by the state.

311 (B) If the governor does not include in the governor's budget an amount sufficient to
312 grant the increase described in Subsection (3)(c)(ii)(A), the governor shall include a message
313 to the Legislature regarding the governor's reason for not including that amount.

314 (iii) (A) In submitting the budget for the Utah State Office of Rehabilitation and the
315 Division of Services for People with Disabilities, the Division of Child and Family Services,
316 and the Division of Juvenile Justice Services within the Department of Human Services, the
317 governor shall consider an amount sufficient to grant employees of corporations that provide
318 direct services under contract with those divisions, the same percentage increase for
319 cost-of-living that the governor includes in the governor's budget for persons employed by the
320 state.

321 (B) If the governor does not include in the governor's budget an amount sufficient to
322 grant the increase described in Subsection (3)(c)(iii)(A), the governor shall include a message
323 to the Legislature regarding the governor's reason for not including that amount.

324 (iv) (A) The Families, Agencies, and Communities Together Council may propose a
325 budget recommendation to the governor for collaborative service delivery systems operated
326 under Section 63M-9-402, as provided under Subsection 63M-9-201(4)(e).

327 (B) The Legislature may, through a specific program schedule, designate funds
328 appropriated for collaborative service delivery systems operated under Section 63M-9-402.

329 (v) The governor shall include in the governor's budget the state's portion of the
330 budget for the Utah Communications Agency Network established in Title 63C, Chapter 7,
331 Utah Communications Agency Network Act.

332 (vi) (A) The governor shall include a separate recommendation in the governor's
333 budget for funds to maintain the operation and administration of the Utah Comprehensive
334 Health Insurance Pool.

335 (B) In making the recommendation, the governor may consider:

336 (I) actuarial analysis of growth or decline in enrollment projected over a period of at
337 least three years;

338 (II) actuarial analysis of the medical and pharmacy claims costs projected over a
339 period of at least three years;

340 (III) the annual Medical Care Consumer Price Index;

341 (IV) the annual base budget for the pool established by the Commerce and Revenue
342 Appropriations Subcommittee for each fiscal year;

343 (V) the growth or decline in insurance premium taxes and fees collected by the State
344 Tax Commission and the Insurance Department; and

345 (VI) the availability of surplus General Fund revenue under Section 63J-1-312 and
346 Subsection 59-14-204~~(5)~~(6)(b).

347 (d) (i) The governor may revise all estimates, except those relating to the Legislative
348 Department, the Judicial Department, and those providing for the payment of principal and
349 interest to the state debt and for the salaries and expenditures specified by the Utah
350 Constitution or under the laws of the state.

351 (ii) The estimate for the Legislative Department, as certified by the presiding officers
352 of both houses, shall be included in the budget without revision by the governor.

353 (iii) The estimate for the Judicial Department, as certified by the state court
354 administrator, shall also be included in the budget without revision, but the governor may
355 make separate recommendations on the estimate.

356 (e) The total appropriations requested for expenditures authorized by the budget may
357 not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing
358 fiscal year.

359 (4) In considering the factors in Subsections (3)(c)(vi)(B)(I), (II), and (III) and
360 Subsections (5)(b)(ii)(A), (B), and (C), the governor and the Legislature may consider the
361 actuarial data and projections prepared for the board of the Utah Comprehensive Health
362 Insurance Pool as it develops its financial statements and projections for each fiscal year.

363 (5) (a) In adopting a budget for each fiscal year, the Legislature shall consider an
364 amount sufficient to grant local health departments, local mental health authorities, local
365 substance abuse authorities, area agencies on aging, conservation districts, and Utah

366 Association of Conservation District employees the same percentage increase for wages and
367 benefits that is included in the budget for persons employed by the state.

368 (b) (i) In adopting a budget each year for the Utah Comprehensive Health Insurance
369 Pool, the Legislature shall determine an amount that is sufficient to fund the pool for each
370 fiscal year.

371 (ii) When making a determination under Subsection (5)(b)(i), the Legislature shall
372 consider factors it determines are appropriate, which may include:

373 (A) actuarial analysis of growth or decline in enrollment projected over a period of at
374 least three years;

375 (B) actuarial analysis of the medical and pharmacy claims costs projected over a
376 period of at least three years;

377 (C) the annual Medical Care Consumer Price Index;

378 (D) the annual base budget for the pool established by the Commerce and Revenue
379 Appropriations Subcommittee for each fiscal year;

380 (E) the growth or decline in insurance premium taxes and fees collected by the tax
381 commission and the insurance department from the previous fiscal year; and

382 (F) the availability of surplus General Fund revenue under Section 63J-1-312 and
383 Subsection 59-14-204~~(5)~~(6)(b).

384 (iii) The funds appropriated by the Legislature to fund the Utah Comprehensive Health
385 Insurance Pool as determined under Subsection (5)(b)(i):

386 (A) shall be deposited into the fund established by Section 31A-29-120; and

387 (B) are restricted and are to be used to maintain the operation, administration, and
388 management of the Utah Comprehensive Health Insurance Pool created by Section
389 31A-29-104.

390 (6) If any item of the budget as enacted is held invalid upon any ground, the invalidity
391 does not affect the budget itself or any other item in it.