

**TOBACCO TAX REVISIONS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Cigarette and Tobacco Tax Act by increasing the tax rates on the sale, use, storage, or distribution of tobacco products in the state for the 2010-11 fiscal year and allowing the rates to fluctuate in subsequent fiscal years.

**Highlighted Provisions:**

This bill:

▶ increases the tax rate for the sale, use, storage, or distribution of tobacco products in the state, for the 2010-11 fiscal year, as follows:

- for cigarettes weighing not more than three pounds per thousand cigarettes, from 3.475 cents per cigarette to 6.55 cents per cigarette;
- for cigarettes weighing in excess of three pounds per thousand cigarettes, from 4.075 cents per cigarette to 7.68 cents per cigarette;
- for tobacco products, except moist snuff, from 35% to 66% of the manufacturer's sales price; and
- for moist snuff, from \$.75 to \$1.41 per ounce;

▶ sets the tax rate for the sale, use, storage, or distribution of tobacco products in the state, for each year after the 2010-11 fiscal year, as follows:

- for cigarettes weighing not more than three pounds per thousand cigarettes, at one-tenth of one cent above the national average rate, excluding certain tobacco producing states;



28 • for cigarettes weighing in excess of three pounds per thousand cigarettes, at a  
29 rate that is 1.173 times higher than the rate described in the preceding  
30 paragraph;

31 • for tobacco products, except moist snuff, at a percentage rate that is modified by  
32 the percentage change in the rate for cigarettes weighing not more than three  
33 pounds per thousand cigarettes; and

34 • for moist snuff, at an amount that is modified by the percentage change  
35 described in the preceding paragraph;

36 ▶ allocates, on an annual basis, \$1,000,000 of the funds generated by the tax increase  
37 in this bill to the Department of Health for the Gold Medal Schools Program; and

38 ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 AMENDS:

45 **59-14-204**, as last amended by Laws of Utah 2008, Chapter 382

46 **59-14-302**, as last amended by Laws of Utah 2008, Chapter 204

47 **63J-1-201**, as last amended by Laws of Utah 2009, Chapters 183 and 368



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

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

51 **59-14-204. Tax basis -- Rate -- Future increase -- Restricted account -- Use of**  
52 **revenues.**

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

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

56 (a) beginning on July 1, 2010, and ending on June 30, 2011:

57 [~~(a) 3.475~~] (i) 6.55 cents on each cigarette, for all cigarettes weighing not more than  
58 three pounds per thousand cigarettes; and

59           ~~[(b) 4.075]~~ (ii) 7.68 cents on each cigarette, for all cigarettes weighing in excess of  
60 three pounds per thousand cigarettes[-];

61           (b) beginning on July 1 of each state fiscal year after the 2010-11 fiscal year, for all  
62 cigarettes weighing not more than three pounds per thousand cigarettes, as calculated under  
63 Subsection (3); and

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

66           (i) multiplying the rate that is calculated under Subsection (3) by 1.173; and

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

69           (3) Beginning in 2011, on or before April 1 of each year the tax commission shall  
70 calculate the tax rate described in Subsection (2)(b) by:

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

74           (b) dividing the sum described in Subsection (3)(a) by 44 and rounding the result to the  
75 nearest thousandth of one cent; and

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

77           ~~[(3)]~~ (4) Except as otherwise provided under this chapter, the tax levied under  
78 Subsection (1) shall be paid by any person who is the manufacturer, jobber, importer,  
79 distributor, wholesaler, retailer, user, or consumer.

80           ~~[(4)]~~ (5) The tax rates specified in this section shall be increased by the commission by  
81 the same amount as any future reduction in the federal excise tax on cigarettes.

82           ~~[(5)]~~ (6) (a) There is created within the General Fund a restricted account known as the  
83 "Cigarette Tax Restricted Account."

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

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

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

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

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

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

99 (e) One million dollars of the revenue generated from the tax increase imposed under  
100 this section during the 2009 General Session shall be annually appropriated to the Department  
101 of Health for use in the Gold Medal Schools program.

102 [~~e~~] (f) Any balance remaining in the Cigarette Tax Restricted Account at the end of  
103 the fiscal year shall be appropriated during the next fiscal year for the purposes set forth in  
104 Subsections [~~5~~] (6)(d)(i) through [~~5~~] (6)(d)(iii) in proportion to the amount of revenue  
105 deposited into the account for each purpose.

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

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

- 113 (i) the amount funded;
- 114 (ii) the amount expended;
- 115 (iii) a description of the effectiveness of the program; and
- 116 (iv) if the program is a tobacco cessation program, the report required in Section  
117 51-9-203.

118 Section 2. Section **59-14-302** is amended to read:

119 **59-14-302. Tax basis -- Rates.**

120 (1) As used in this section:

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

123 (b) "Manufacturer's sales price" includes an original Utah destination freight charge,  
124 regardless of:

125 (i) whether the tobacco product is shipped f.o.b. origin or f.o.b. destination; or

126 (ii) who pays the original Utah destination freight charge.

127 (2) There is levied a tax upon the sale, use, or storage of tobacco products in the state.

128 (3) The tax levied under Subsection (2) shall be paid by the manufacturer, jobber,  
129 distributor, wholesaler, retailer, user, or consumer.

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

131 (a) beginning on July 1, 2010, and ending on June 30, 2011:

132 [~~(a)~~] (i) for tobacco products except for moist snuff, [~~35% of~~] .66, multiplied by the  
133 manufacturer's sales price; [~~or~~] and

134 [~~(b)~~] (ii) subject to Subsection (5), for moist snuff, [~~\$.75~~] \$1.41 per ounce[-]; and

135 (b) beginning on July 1 of each state fiscal year after the 2010-11 fiscal year:

136 (i) for tobacco products, except moist snuff, an amount calculated by:

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

140 (B) multiplying the result of the calculation described in Subsection (4)(b)(i)(A) by the  
141 tax rate for tobacco products, except moist snuff, for the state fiscal year that ended the day  
142 before July 1; and

143 (ii) for moist snuff, an amount equal to the per ounce tax rate for moist snuff, for the  
144 fiscal year that ended the day before July 1, multiplied by the result of the calculation described  
145 in Subsection (4)(b)(i)(A).

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

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

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

151 (ii) in accordance with rules made by the commission in accordance with Title 63G,

152 Chapter 3, Utah Administrative Rulemaking Act.

153 Section 3. Section **63J-1-201** is amended to read:

154 **63J-1-201. Governor to submit budget to Legislature -- Contents -- Preparation --**  
155 **Appropriations based on current tax laws and not to exceed estimated revenues.**

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

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

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

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

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

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

167 (b) The proposed budget shall include:

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

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

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

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

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

176 (B) the Executive Department;

177 (C) the Judicial Department as certified to the governor by the state court  
178 administrator;

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

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

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

- 183 (G) all other appropriations;
- 184 (v) for each line item, the average annual dollar amount of staff funding associated  
185 with all positions that were vacant during the last fiscal year; and
- 186 (vi) deficits or anticipated deficits.
- 187 (c) The budget shall be accompanied by a statement showing:
- 188 (i) the revenues and expenditures for the last fiscal year;
- 189 (ii) the current assets, liabilities, and reserves, surplus or deficit, and the debts and  
190 funds of the state;
- 191 (iii) an estimate of the state's financial condition as of the beginning and the end of the  
192 period covered by the budget;
- 193 (iv) a complete analysis of lease with an option to purchase arrangements entered into  
194 by state agencies;
- 195 (v) the recommendations for each state agency for new full-time employees for the  
196 next fiscal year, which shall also be provided to the State Building Board as required by  
197 Subsection 63A-5-103(2);
- 198 (vi) any explanation that the governor may desire to make as to the important features  
199 of the budget and any suggestion as to methods for the reduction of expenditures or increase of  
200 the state's revenue; and
- 201 (vii) information detailing certain fee increases as required by Section 63J-1-504.
- 202 (3) (a) (i) For the purpose of preparing and reporting the proposed budget, the governor  
203 shall require the proper state officials, including all public and higher education officials, all  
204 heads of executive and administrative departments and state institutions, bureaus, boards,  
205 commissions, and agencies expending or supervising the expenditure of the state monies, and  
206 all institutions applying for state monies and appropriations, to provide itemized estimates of  
207 revenues and expenditures.
- 208 (ii) The governor may also require other information under these guidelines and at  
209 times as the governor may direct, which may include a requirement for program productivity  
210 and performance measures, where appropriate, with emphasis on outcome indicators.
- 211 (b) The governor may require representatives of public and higher education, state  
212 departments and institutions, and other institutions or individuals applying for state  
213 appropriations to attend budget meetings.

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

- 217 (I) local mental health authorities under Section 62A-15-110;
- 218 (II) local substance abuse authorities under Section 62A-15-110;
- 219 (III) area agencies under Section 62A-3-104.2;
- 220 (IV) programs administered directly by and for operation of the Divisions of Substance  
221 Abuse and Mental Health and Aging and Adult Services;
- 222 (V) local health departments under Title 26A, Chapter 1, Local Health Departments;
- 223 and

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

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

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

233 (ii) (A) In submitting the budget for the Department of Agriculture, the governor shall  
234 consider an amount sufficient to grant local conservation districts and Utah Association of  
235 Conservation District employees the same percentage increase for wages and benefits that the  
236 governor includes in the governor's budget for persons employed by the state.

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

240 (iii) (A) In submitting the budget for the Utah State Office of Rehabilitation and the  
241 Division of Services for People with Disabilities, the Division of Child and Family Services,  
242 and the Division of Juvenile Justice Services within the Department of Human Services, the  
243 governor shall consider an amount sufficient to grant employees of corporations that provide  
244 direct services under contract with those divisions, the same percentage increase for



245 cost-of-living that the governor includes in the governor's budget for persons employed by the  
246 state.

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

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

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

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

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

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

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

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

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

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

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

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

273 (d) (i) The governor may revise all estimates, except those relating to the Legislative  
274 Department, the Judicial Department, and those providing for the payment of principal and  
275 interest to the state debt and for the salaries and expenditures specified by the Utah

276 Constitution or under the laws of the state.

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

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

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

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

289 (5) (a) In adopting a budget for each fiscal year, the Legislature shall consider an  
290 amount sufficient to grant local health departments, local mental health authorities, local  
291 substance abuse authorities, area agencies on aging, conservation districts, and Utah  
292 Association of Conservation District employees the same percentage increase for wages and  
293 benefits that is included in the budget for persons employed by the state.

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

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

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

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

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

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

306 (E) the growth or decline in insurance premium taxes and fees collected by the tax

307 commission and the insurance department from the previous fiscal year; and  
308 (F) the availability of surplus General Fund revenue under Section 63J-1-312 and  
309 Subsection 59-14-204[(5)](6)(b).  
310 (iii) The funds appropriated by the Legislature to fund the Utah Comprehensive Health  
311 Insurance Pool as determined under Subsection (5)(b)(i):  
312 (A) shall be deposited into the fund established by Section 31A-29-120; and  
313 (B) are restricted and are to be used to maintain the operation, administration, and  
314 management of the Utah Comprehensive Health Insurance Pool created by Section  
315 31A-29-104.  
316 (6) If any item of the budget as enacted is held invalid upon any ground, the invalidity  
317 does not affect the budget itself or any other item in it.

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**Legislative Review Note**  
as of 7-9-09 10:20 AM

**Office of Legislative Research and General Counsel**

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**H.B. 196 - Tobacco Tax Revisions**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill could increase the General Fund by \$22,500,000 in FY 2011 and by \$23,000,000 in FY 2012. One million of the increase is earmarked for the Gold Medal Schools program in the Department of Health.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$1,000,000	\$1,000,000	\$0	\$22,500,000	\$23,000,000
<b>Total</b>	<b>\$0</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$0</b>	<b>\$22,500,000</b>	<b>\$23,000,000</b>

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**Individual, Business and/or Local Impact**

Enactment of this bill should have no impact on local entities. Businesses are expected to see a decrease in revenue of \$38,600,000 in FY 2011 and by \$39,400,000 in FY 2012. Individuals will see an increase in cost in the aggregate of \$22,500,000 in FY 2011 and by \$23,000,000 in FY 2012.