

Senator Allen M. Christensen proposes the following substitute bill:

**TOBACCO TAX AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Allen M. Christensen**

House 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 cigarettes in the state and the sale, use, or storage of tobacco products in the state.

**Highlighted Provisions:**

This bill:

- ▶ increases the tax rate for the sale, use, storage, or distribution of cigarettes in the state and for the sale, use, or storage of tobacco products in the state, as follows:
  - for cigarettes weighing not more than three pounds per thousand cigarettes, from 3.475 cents per cigarette to 8.5 cents per cigarette;
  - for cigarettes weighing in excess of three pounds per thousand cigarettes, from 4.075 cents per cigarette to 9.963 cents per cigarette;
  - for tobacco products, except moist snuff ~~and cigars~~, from 35% to 86% of

the

manufacturer's sale price; ~~and~~

- for moist snuff, from \$.75 to \$1.83 per ounce; ~~and~~
  - for cigars, the lesser of 86% of the manufacturer's sale price or \$10 per cigar;

[~~allocates money from funds generated by the tax increase described in this bill;~~

▶ modifies allocation of funds from the Cigarette Tax Restricted Account; ~~and~~

- ▶ imposes a transitional inventory tax on cigarettes and tobacco products subject to the tax increase described in this bill; and



26           ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**

28           None

29 **Other Special Clauses:**

30           This bill takes effect on July 1, 2010.

31           This bill coordinates with H.B. 196, Tobacco Tax Revisions, by providing substantive  
32 amendments.

33 **Utah Code Sections Affected:**

34 AMENDS:

34a **§→ 59-14-102, as last amended by Laws of Utah 2008, Chapter 204 ←§**

35           **59-14-204**, as last amended by Laws of Utah 2008, Chapter 382

36           **59-14-302**, as last amended by Laws of Utah 2008, Chapter 204

37 ENACTS:

38           **59-14-215**, Utah Code Annotated 1953

39           **59-14-304**, Utah Code Annotated 1953

40 **Utah Code Sections Affected by Coordination Clause:**

41           **59-14-204**, as last amended by Laws of Utah 2008, Chapter 382

42           **59-14-215**, Utah Code Annotated 1953

43           **59-14-302**, as last amended by Laws of Utah 2008, Chapter 204

44           **59-14-304**, Utah Code Annotated 1953

45           **63J-1-201**, as last amended by Laws of Utah 2009, Chapters 183 and 368



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

47a **§→ Section 1. Section 59-14-102 is amended to read:**

47b           **59-14-102. Definitions.**

47c           **As used in this chapter:**

47d **(1) "Cigar" means a roll for smoking made wholly or in part of tobacco:**

47e           **(a) regardless of:**

47f                   **(i) the size of the roll;**

47g                   **(ii) the shape of the roll; or**

47h                   **(iii) whether the tobacco is:**

47i                           **(A) flavored;**

47j                           **(B) adulterated; or**

47k                           **(C) mixed with any other ingredient; and**

47l           **(b) that is wrapped in leaf tobacco or any substance or material containing tobacco.**

47m           **[†] (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:**

47n                   **(a) regardless of:**

47o                           **(i) the size of the roll; ←§**

- 47p **§→** (ii) the shape of the roll; or
- 47q (iii) whether the tobacco is:
- 47r (A) flavored;
- 47s (B) adulterated; or
- 47t (C) mixed with any other ingredient; and
- 47u (b) if the wrapper or cover of the roll is made of paper or any other substance or
- 47v material except tobacco.
- 47w [~~(2)~~] (3) "Consumer" means a person that is not required:
- 47x (a) under Section 59-14-201 to obtain a license under Section 59-14-202; or
- 47y (b) under Section 59-14-301 to obtain a license under Section 59-14-202.
- 47z [~~(3)~~] (4) "Counterfeit cigarette" means:
- 47aa (a) a cigarette that has a false manufacturing label; or
- 47ab (b) a package of cigarettes bearing a counterfeit tax stamp.
- 47ac [~~(4)~~] (5) "Importer" means a person who imports into the United States, either directly or
- 47ad indirectly, a finished cigarette for sale or distribution.
- 47ae [~~(5)~~] (6) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or
- 47af any other person doing business as a distributor or retailer of cigarettes on tribal lands located
- 47ag in the state.
- 47ah [~~(6)~~] (7) "Manufacturer" means a person who manufactures, fabricates, assembles,
- 47ai processes, or labels a finished cigarette.
- 47aj [~~(7)~~] (8) "Moist snuff" means tobacco that is:
- 47ak (a) finely:
- 47al (i) cut;
- 47am (ii) ground; or
- 47an (iii) powdered; and
- 47ao (b) not intended to be:
- 47ap (i) smoked; or
- 47aq (ii) placed in the nasal cavity.
- 47ar [~~(8)~~] (9) "Retailer" means a person that:
- 47as (a) sells or distributes a cigarette to a consumer in the state; or
- 47at (b) intends to sell or distribute a cigarette to a consumer in the state.
- 47au [~~(9)~~] (10) "Stamp" means the indicia required to be placed on a cigarette package that
- 47av evidences payment of the tax on cigarettes required by Section 59-14-205.
- 47aw [~~(10)~~] (11) (a) "Tobacco product" means a product made of, or containing tobacco.
- 47ax (b) "Tobacco product" includes moist snuff.
- 47ay (c) "Tobacco product" does not include a cigarette.
- 47az [~~(11)~~] (12) "Tribal lands" means land held by the United States in trust for a federally
- 47ba recognized Indian tribe. **←§**
- 48 Section 1. Section 59-14-204 is amended to read:

49           **59-14-204. Tax basis -- Rate -- Future increase -- Restricted account -- Use of**  
50 **revenues.**

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

53           (2) The rates of the tax levied under Subsection (1) are, beginning on July 1, 2010:

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

56           (b) [~~4.075~~] 9.963 cents on each cigarette, for all cigarettes weighing in excess of three

57 pounds per thousand cigarettes.

58 (3) Except as otherwise provided under this chapter, the tax levied under Subsection  
59 (1) shall be paid by any person who is the manufacturer, jobber, importer, distributor,  
60 wholesaler, retailer, user, or consumer.

61 (4) The tax rates specified in this section shall be increased by the commission by the  
62 same amount as any future reduction in the federal excise tax on cigarettes.

63 (5) (a) There is created within the General Fund a restricted account known as the  
64 "Cigarette Tax Restricted Account."

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

68 (c) The Department of Health shall expend the funds deposited in the account under  
69 Subsection (5)(b) for a tobacco prevention and control media campaign targeted towards  
70 children.

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

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

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

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

80 ~~§~~ → ~~[(e) \$250,000 of the revenue generated from the tax increase imposed under this section~~  
81 ~~during the 2010 General Session shall be annually appropriated to the Department of Health for~~  
82 ~~use in the Gold Medal Schools Program.~~

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

87 ~~—— [(f)] (g) (e) ←~~ § The Legislature shall give particular consideration to appropriating any

88 revenues resulting from the change in tax rates under Subsection (2) adopted during the 2002  
 89 Annual General Session and not otherwise appropriated pursuant to Subsection (5)(d) to  
 90 enhance Medicaid provider reimbursement rates and medical coverage for the uninsured.

91 ~~[(g)]~~ ~~Ŝ~~→ ~~[(h)]~~ (f) ←~~Ŝ~~ Any program or entity that receives funding under Subsection (5)(d)  
 91a ~~Ŝ~~→ ~~[or (e)]~~ ←~~Ŝ~~

92 shall provide an annual report to the Health and Human Services Interim Committee no later  
 93 that September 1 of each year. The report shall include:

- 94 (i) the amount funded;
- 95 (ii) the amount expended;
- 96 (iii) a description of the effectiveness of the program; and
- 97 (iv) if the program is a tobacco cessation program, the report required in Section  
 98 51-9-203.

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

100 **59-14-215. Transitional inventory tax on cigarettes -- Penalties and interest for**  
 101 **failure to comply -- Credit or refund for outdated, unaffixed, stamps.**

102 (1) In addition to the tax described in Section 59-14-204, there is imposed, beginning  
 103 on July 1, 2010, an inventory tax on all cigarettes subject to the tax described in Section  
 104 59-14-204, upon the sale, use, storage, or distribution of those cigarettes in the state, as  
 105 follows:

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

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

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

111 (b) the tax imposed in this section is equal to the difference between:

112 (i) the tax imposed on those cigarettes under Section 59-14-204, beginning on July 1,  
 113 2010; and

114 (ii) the tax imposed on those cigarettes under Section 59-14-204 on or before June 30,  
 115 2010.

116 (2) Except as otherwise provided under this chapter, the tax imposed under this section  
 117 shall be paid by any person who is the manufacturer, jobber, importer, distributor, wholesaler,  
 118 or retailer.

119 (3) A person described in Subsection (2) shall remit the tax imposed in this section, on  
 120 a return prescribed by the commission, on or before July 31, 2010.

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

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

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

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

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

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

135 **59-14-302. Tax basis -- Rates.**

136 (1) As used in this section:

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

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

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

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

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

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

146 (4) The rate of the tax under this section is, beginning on July 1, 2010:

147 (a) for tobacco products except for moist snuff ~~and cigars~~ , [35% of] .86  
 147a multiplied by the

148 manufacturer's sales price; [or] ~~and~~ ~~and~~

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

149a (c) for cigars, the lesser of:

149b (i) .86 multiplied by the manufacturer's sales price; or

149c (ii) \$10 per cigar. ~~and~~

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

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

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

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

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

158 **59-14-304. Transitional inventory tax on tobacco products -- Penalties and**  
159 **interest for failure to comply.**

160 (1) In addition to the tax described in Section 59-14-302, there is imposed, beginning  
161 on July 1, 2010, an inventory tax on all tobacco products subject to the tax described in Section  
162 59-14-302, upon the sale, use, or storage of those tobacco products in the state, as follows:

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

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

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

168 (b) the tax imposed in this section is equal to the difference between:

169 (i) the tax imposed on those tobacco products under Section 59-14-302, beginning on  
170 July 1, 2010; and

171 (ii) the tax imposed on those tobacco products under Section 59-14-302 on or before  
172 June 30, 2010.

173 (2) The tax imposed in this section shall be paid by the manufacturer, jobber,  
174 distributor, wholesaler, or retailer.

175 (3) A person described in Subsection (2) shall remit the tax imposed in this section, in  
176 a return prescribed by the commission, on or before July 31, 2010.

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

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



181 Section 5. **Effective date.**

182 This bill takes effect on July 1, 2010.

183 Section 6. **Coordinating S.B. 40 with H.B. 196, Tobacco Tax Revisions --**

184 **Substantive amendments.**

185 If this S.B. 40 and H.B. 196, Tobacco Tax Revisions, both pass, it is the intent of the  
186 Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah  
187 Code database for publication as follows:

188 (1) the amendments to Section 59-14-204 in S.B. 40 supersede the amendments to  
189 Section 59-14-204 in H.B. 196;

190 (2) the amendments to Section 59-14-302 in S.B. 40 supersede the amendments to  
191 Section 59-14-302 in H.B. 196;

192 (3) the amendments to Section 59-14-215 in S.B. 40 supersede the amendments to  
193 Section 59-14-215 in H.B. 196;

194 (4) the amendments to Section 59-14-304 in S.B. 40 supersede the amendments to  
195 Section 59-14-304 in H.B. 196;

196 (5) the amendments to Section 63J-1-201 in H.B. 196, Tobacco Tax Revisions, do not  
197 take effect; and

198 (6) the effective date of H.B. 196 is July 1, 2010.

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**S.B. 40 1st Sub. (Green) - Tobacco Tax Amendments - As Amended**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enactment of this bill could increase revenue to the General Fund by \$43,193,000 in FY 2011 and \$44,057,000 in FY 2012.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund	\$0	\$0	\$0	\$0	\$43,193,000	\$44,057,000
<b>Total</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$43,193,000</b>	<b>\$44,057,000</b>

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

Businesses are expected to see a decrease in revenue of \$53,911,000 annually. Individuals will see total tobacco costs increase by \$43,193,000 in FY 2011 and \$44,057,000 in FY 2012. Local governments are unaffected.

