

AMENDMENTS TO TAX ON CIGARS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the tax imposed on certain cigars.

Highlighted Provisions:

This bill:

- ▶ defines "cigar";
- ▶ changes the tax rate imposed on certain cigars; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2014.

Utah Code Sections Affected:

AMENDS:

59-14-102, as last amended by Laws of Utah 2013, Chapter 148

59-14-302, as last amended by Laws of Utah 2013, Chapter 148

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

Section 1. Section **59-14-102** is amended to read:

59-14-102. Definitions.

As used in this chapter:



- 28 (1) (a) "Cigar" means a roll for smoking:
- 29 (i) made wholly or in part of tobacco; and
- 30 (ii) that is wrapped in a substance:
- 31 (A) containing tobacco; and
- 32 (B) that is exclusively natural leaf tobacco.
- 33 (b) "Cigar" does not include:
- 34 (i) a cigarette; or
- 35 (ii) a little cigar.
- 36 ~~[(1)]~~ (2) "Cigarette" means a roll for smoking made wholly or in part of tobacco:
- 37 (a) regardless of:
- 38 (i) the size of the roll;
- 39 (ii) the shape of the roll; or
- 40 (iii) whether the tobacco is:
- 41 (A) flavored;
- 42 (B) adulterated; or
- 43 (C) mixed with any other ingredient; and
- 44 (b) if the wrapper or cover of the roll is made of paper or any other substance or
- 45 material except tobacco.
- 46 ~~[(2)]~~ (3) "Cigarette rolling machine" means a device or machine that has the capability
- 47 to produce at least 150 cigarettes in less than 30 minutes.
- 48 ~~[(3)]~~ (4) "Cigarette rolling machine operator" means a person who:
- 49 (a) (i) controls, leases, owns, possesses, or otherwise has available for use a cigarette
- 50 rolling machine; and
- 51 (ii) makes the cigarette rolling machine available for use by another person to produce
- 52 a cigarette; or
- 53 (b) offers for sale, at retail, a cigarette produced from the cigarette rolling machine.
- 54 ~~[(4)]~~ (5) "Consumer" means a person that is not required:
- 55 (a) under Section [59-14-201](#) to obtain a license under Section [59-14-202](#); or
- 56 (b) under Section [59-14-301](#) to obtain a license under Section [59-14-202](#).
- 57 ~~[(5)]~~ (6) "Counterfeit cigarette" means:
- 58 (a) a cigarette that has a false manufacturing label; or

59 (b) a package of cigarettes bearing a counterfeit tax stamp.

60 ~~[(6)]~~ (7) "Importer" means a person who imports into the United States, either directly
61 or indirectly, a finished cigarette for sale or distribution.

62 ~~[(7)]~~ (8) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or
63 any other person doing business as a distributor or retailer of cigarettes on tribal lands located
64 in the state.

65 ~~[(8)]~~ (9) "Little cigar" means a roll for smoking:

66 (a) made wholly or in part of tobacco;

67 (b) that uses an integrated cellulose acetate filter or other similar filter; and

68 (c) that is wrapped in a substance:

69 (i) containing tobacco; and

70 (ii) that is not exclusively natural leaf tobacco.

71 ~~[(9)]~~ (10) (a) Except as provided in Subsection ~~[(9)]~~ (10)(b), "manufacturer" means a
72 person who manufactures, fabricates, assembles, processes, or labels a finished cigarette.

73 (b) "Manufacturer" does not include a cigarette rolling machine operator.

74 ~~[(10)]~~ (11) "Moist snuff" means tobacco that:

75 (a) is finely:

76 (i) cut;

77 (ii) ground; or

78 (iii) powdered;

79 (b) has at least 45% moisture content, as determined by the commission by rule made
80 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

81 (c) is not intended to be:

82 (i) smoked; or

83 (ii) placed in the nasal cavity; and

84 (d) except for single-use pouches of loose tobacco, is not packaged, produced, sold, or
85 distributed in single-use units, including:

86 (i) tablets;

87 (ii) lozenges;

88 (iii) strips;

89 (iv) sticks; or

90 (v) packages containing multiple single-use units.

91 [~~(11)~~] (12) "Retailer" means a person that:

92 (a) sells or distributes a cigarette to a consumer in the state; or

93 (b) intends to sell or distribute a cigarette to a consumer in the state.

94 [~~(12)~~] (13) "Stamp" means the indicia required to be placed on a cigarette package that
95 evidences payment of the tax on cigarettes required by Section 59-14-205.

96 [~~(13)~~] (14) (a) "Tobacco product" means a product made of, or containing, tobacco.

97 (b) "Tobacco product" includes:

98 (i) a cigarette produced from a cigarette rolling machine;

99 (ii) a little cigar; or

100 (iii) moist snuff.

101 (c) "Tobacco product" does not include a cigarette.

102 [~~(14)~~] (15) "Tribal lands" means land held by the United States in trust for a federally
103 recognized Indian tribe.

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

105 **59-14-302. Tax basis -- Rates.**

106 (1) As used in this section:

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

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

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

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

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

114 (3) (a) Subject to Subsection (3)(b), the tax levied under Subsection (2) shall be paid
115 by the manufacturer, jobber, distributor, wholesaler, retailer, user, or consumer.

116 (b) The tax levied under Subsection (2) on a cigarette produced from a cigarette rolling
117 machine shall be paid by the cigarette rolling machine operator.

118 (4) For tobacco products except for moist snuff, a little cigar, a cigar, or a cigarette
119 produced from a cigarette rolling machine, the rate of the tax under this section is .86
120 multiplied by the manufacturer's sales price.

121 (5) (a) Subject to Subsection (5)(b), the tax under this section on moist snuff is
122 imposed:

123 (i) at a rate of \$1.83 per ounce; and

124 (ii) on the basis of the net weight of the moist snuff as listed by the manufacturer.

125 (b) If the net weight of moist snuff is in a quantity that is a fractional part of one ounce,
126 a proportionate amount of the tax described in Subsection (5)(a) is imposed:

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

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

130 (6) (a) A little cigar is taxed at the same tax rates manner as a cigarette is taxed under
131 Subsection 59-14-204(2).

132 (b) (i) Subject to Subsection (6)(b)(ii), a cigarette produced from a cigarette rolling
133 machine is taxed at the same tax rates as a cigarette is taxed under Subsection 59-14-204(2).

134 (ii) A tax under this Subsection (6)(b) is imposed on the date the cigarette is produced
135 from the cigarette rolling machine.

136 (7) ~~Ĥ~~→ (a) ~~[The]~~ **Except as provided in Subsection (7)(b), the** ←Ĥ tax under this
136a section on a cigar is imposed at a rate of Ĥ→ **.86 multiplied by the manufacturer's sales price.**

136b **(b) Beginning on or after July 1, 2016, but on or before June 30, 2021, the tax under**
136c **this section on a cigar is imposed at a rate of** ←Ĥ **the lesser of:**

137 ~~Ĥ~~→ ~~[(a)]~~ (i) ←Ĥ .86 multiplied by the manufacturer's sales price; or

138 ~~Ĥ~~→ ~~[(b)]~~ (ii) ←Ĥ 50 cents per cigar.

139 ~~[(7)]~~ (8) (a) Moisture content of a tobacco product is determined at the time of
140 packaging.

141 (b) A manufacturer who distributes a tobacco product in, or into, Utah, shall:

142 (i) for a period of three years after the last day on which the manufacturer distributes
143 the tobacco product in, or into, Utah, keep valid scientific evidence of the moisture content of
144 the tobacco product available for review by the commission, upon demand; and

145 (ii) provide a document, to the person described in Subsection (3) to whom the
146 manufacturer distributes the tobacco product, that certifies the moisture content of the tobacco
147 product, as verified by the scientific evidence described in Subsection ~~[(7)]~~ (8)(b)(i).

148 (c) A manufacturer who fails to comply with the requirements of Subsection ~~[(7)]~~
149 (8)(b) is liable for the nonpayment or underpayment of taxes on the tobacco product by a
150 person who relies, in good faith, on the document described in Subsection ~~[(7)]~~ (8)(b)(ii).

151 (d) A person described in Subsection (3) who is required to pay tax on a tobacco

152 product:

153 (i) shall, for a period of three years after the last day on which the person pays the tax
154 on the tobacco product, keep the document described in Subsection [~~(7)~~] (8)(b)(ii) available for
155 review by the commission, upon demand; and

156 (ii) is not liable for nonpayment or underpayment of taxes on the tobacco product due
157 to the person's good faith reliance on the document described in Subsection [~~(7)~~] (8)(b)(ii).

158 Section 3. **Effective date.**

159 This bill takes effect on July 1, 2014.

Legislative Review Note
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Office of Legislative Research and General Counsel