



## DAILY NEWS CLIPS

June 25, 2012

### **ROLL YOUR OWN TOBACCO WINS NY STATE TAX FIGHT**

By Associated Press

June 25, 2012

***\*\*This story was picked up throughout the entire State of New York over the weekend, including the New York Times and Wall Street Journal***

A new player dealing in loose tobacco rolled in retail stores, but taxed far less than cigarettes, has won a battle in New York.

A bill to tax loose tobacco rolled in stores at the same level as cigarettes passed the Democrat-led Assembly but never made it to the floor of the Republican-led Senate during the legislative session that ended last week.

The difference in federal taxes between the roll-your-owns and prepackaged smokes is \$20 a pound.

Cartons of roll-your-owns, with 200 cigarettes, cost about \$38, compared to \$108 at a gas station across the street or \$125 in New York City.

The industry's biggest player, RYO Filling Station of Ohio, hired a lobbying firm run by former U.S. Sen. Alfonse D'Amato. State records show D'Amato met with Gov. Andrew Cuomo in February.

Originally published here: <http://online.wsj.com/article/AP84a06af7b2d34fc2a9325546b5726205.html>

### **CONVENIENCE STORES: RYO CIGARETTE SHOPS SHOULD BE HELD TO THE SAME STANDARDS**

By Cara Matthews

LoHud Tax Watch Blog (NY)

As the legislative session winds to a close this week, the New York Association of Convenience Stores is making a final push for legislation that essentially would put roll-your-own cigarette stores out of business. The chances of passage aren't looking so great—neither house has passed the legislation.

The bill would classify roll-your-own cigarette stores as manufacturers, which are subject to higher taxes. The association put out a statement Friday that said there is a “desperate need” for New York to regulate commercial roll-your-own cigarette machines.

“The Senate and Assembly must act now to stop the spread of unregulated RYO shops, before they do more damage to law-abiding retailers, New York taxpayers, and public health,” James Calvin, president of the organization, said in the statement.

Calvin said Arkansas, Connecticut, Iowa, Idaho, Illinois, Michigan, Oklahoma, South Dakota, Tennessee, Vermont, Virginia, Washington, and Wyoming all have either enacted, or are in the process of enacting, legislation to require commercial roll-your-own shops to abide by the same rules as other tobacco retailers.

“This is not about trying to put anyone out of business,” he said. “Rather, it is about holding everyone in the cigarette retailing business to the same standards. It’s only fair.”

State Attorney General Eric Schneiderman has filed two lawsuits, one jointly with New York City, against several roll-your-own stores. The lawsuits allege the stores violate law and regulatory statutes.

Roll-your-own cigarette stores refute the argument that they are manufacturing cigarettes. They sell pipe tobacco to customers, but the customers operate the machines.

Locally, there are several shops in Rockland County. A roll-your-own store in New Rochelle recently went out of business. Smokers can buy inexpensive pipe tobacco in the store and operate a machine that takes the tobacco and tubes and spits out a carton’s worth of cigarettes. The process takes about 10 minutes. Taxes on the loose tobacco are very low compared to cigarettes, so smokers save hundreds or thousands of dollars a year.

The federal government increased the excise tax on a pack of cigarettes to \$1.06 per pack in 2009, along with similar hikes on roll-your-own tobacco and small cigars. The excise tax for roll-your-own tobacco was set at \$24.78 per pound. That prompted a shift toward using pipe tobacco, whose excise tax is \$2.83 per pound, for roll-your-own cigarettes. New York has an excise tax of \$4.35 per pack of cigarettes.

The federal Centers for Disease Control and Prevention estimated that New York lost \$16.9 million on potential tobacco tax revenue between April 2009 and August 2011. Another recent report, published by the Government Accountability Office, estimated the market shift cost the federal government between \$615 million and \$1.1 billion between April 2009 and September 2011.

*Originally published here:* <http://taxes.lohudblogs.com/tag/roll-your-own-cigarettes/>

## **UP IN SMOKE: TOBACCO TAXES TO RISE SUNDAY**

Chicago Tribune  
June 23, 2012

With state cigarette taxes to more than double Sunday, experts say some smokers might quit, some will shop elsewhere and some will just pay the extra fee.

Earlier this month Gov. Pat Quinn signed a package of bills into law that will slash health care coverage for the poor and hike cigarette taxes by \$1-a-pack to help pay for the struggling Medicaid program.

Quinn had warned that without action the health care program would collapse under a mountain of debt.

*Originally published here:* [http://articles.chicagotribune.com/2012-06-23/news/chi-tobacco-taxes-to-rise-sunday-20120623\\_1\\_cigarette-tax-tobacco-taxes-pack-rate](http://articles.chicagotribune.com/2012-06-23/news/chi-tobacco-taxes-to-rise-sunday-20120623_1_cigarette-tax-tobacco-taxes-pack-rate)

## **CIGARETTE TAX HIKE GOES INTO EFFECT**

By Michael Illiopoulos  
WGN TV (IL)  
June 24, 2012

Cigarettes are expected to go up in price by one dollar a pack effected June 24.

Earlier this month, Gov. Pat Quinn signed a bill into law that will raise cigarette taxes by one dollar a pack to help pay for the struggling Medicaid program. In addition, the law will slash health care coverage for the poor. Gov. Quinn warned that without action, the health care program would be jeopardized under a mountain of debt.

Another reason for the hike is to encourage people to stop smoking or to never start, according to Quinn. However, opponents say that it will make smokers buy cigarettes across state lines.

The hike is expected to bring in an estimated \$350 million from new taxes on cigarettes and other tobacco products.

Illinois' cigarette tax now ranks 32nd among the states and the District of Columbia.

*Originally published here with video:* <http://www.wgntv.com/news/wgntv-cigarette-tax-hike-goes-into-effect-20120624,0,3575823.story>

## **SMOKERS BRACE FOR CIGARETTE TAX INCREASE TODAY**

By Associated Press

Daily Herald (IL)

June 24, 2012

Illinois smokers are bracing for a \$1-per-pack increase on cigarette taxes that takes effect Sunday, with many trying to stock up and others vowing to kick the habit.

The tax on a pack of cigarettes will jump from 98 cents to \$1.98, a move lawmakers and health advocates say will generate desperately needed revenue for the state while cutting smoking rates.

“Every research organization that’s looked at this ... has concluded that raising price is one of the most effective ways to reduce tobacco use, especially among young people,” said Danny McGoldrick, vice president of research for the Campaign for Tobacco Free Kids, a nationwide anti-smoking organization.

The group estimates the increase will prevent 72,700 Illinois kids from becoming smokers and cause 53,400 adults to quit smoking while raising \$350 million per year in new revenue.

Gov. Pat Quinn said the increase could help offset Medicaid cuts.

Lorraine Harvey, assistant manager at Discount Tobacco in Peoria, said she personally plans to try to quit smoking rather than pay more.

She and other retailers also hear customers talking about making a run for the border. The cigarette tax in neighboring Missouri is just 17 cents, the lowest in the nation.

“You’re literally sending business away from Illinois,” Mike Sours, co-owner of the Cornerstore on Main, told the (Peoria) Journal Star.

Meanwhile, so many smokers have been stocking up that distributors are having trouble meeting demand. Harvey got only 127 cartons in a recent shipment that normally would have at least 200, so she limited her customers to two cartons apiece until the tax increase takes effect.

“It’s going to be a zoo in here,” Harvey said.

McGoldrick, the anti-smoking advocate, hopes low-tax states like Missouri will follow Illinois’ example and raise taxes, too.

“That’s the best solution for everybody,” he said.

*Originally published here:* <http://www.dailyherald.com/article/20120624/news/706249885/>

## **CALIFORNIA TOBACCO TAX HIKE NARROWLY DEFEATED AT POLLS**

By Mary Slosson  
Reuters  
June 22, 2012

California will not raise cigarette taxes by \$1 a pack after vote results posted on Friday showed a ballot initiative on the matter narrowly failed, and proponents of the tax on tobacco products conceded defeat.

The measure, known as Proposition 29, was defeated 50.3 percent to 49.7 percent, according to full precinct count results posted on Friday by California's Secretary of State. Some absentee and other ballots remained to be counted.

"While the final numbers are not yet in, it appears that California's Prop 29 will be defeated," proponents of the measure said in a statement. "We are sorely disappointed that, yet again, Big Tobacco placed its profits ahead of the health of California and the nation."

The initiative would have raised the tax on cigarette packs by \$1 and added an equivalent tax increase on other tobacco products, with the extra tax revenue dedicated to research on cancer and other tobacco-related illnesses.

With the no vote, California's cigarette tax remains at 87 cents per pack. That tax revenue already goes toward various tobacco prevention and cessation programs, according to the state.

A coalition of groups including the American Cancer Society and cycling great and cancer survivor Lance Armstrong were prominent supporters of the initiative, but opponents led by Altria's Philip Morris and Reynolds American Inc vastly outspent their rivals, blanketing airwaves in much of the state with a message that cast doubt on how the tax revenues would be spent.

"The defeat of this life-saving initiative is a genuine tragedy. Big Tobacco lied to voters to protect its profits and spent \$50 million to ensure it can continue peddling its deadly products to California kids," Doug Ulman, President and CEO of the Lance Armstrong Foundation, said in a statement on Friday.

Just under 28,000 votes separated the more than 5 million ballots cast in the June 5 election.

*Originally published here:* <http://in.reuters.com/article/2012/06/22/usa-campaign-tobacco-idINL2E8HMDT720120622>

## **BACKERS OF PROP. 29 TOBACCO TAX CONCEDE DEFEAT**

Los Angeles Times  
June 22, 2012

Proponents of the tobacco tax initiative on the June 5 ballot conceded defeat Friday after weeks of holding out hope that the measure would eke out a victory as elections officials across California tallied an estimated 1 million uncounted ballots.

"The defeat of this life-saving initiative is a genuine tragedy," said Doug Ulman, president and chief executive of the Lance Armstrong Foundation, which backed the measure known as Proposition 29. "Big Tobacco lied to voters to protect its profits and spent \$50 million to ensure it can continue peddling its deadly products to California kids.

"We will not let this setback defeat us," he continued. "In a time when one in two men and one in three women will be diagnosed with cancer in our nation, we must continue fighting for new investments in cancer research and smoking cessation."

The measure on Friday was losing by more than 27,000 votes with only 111,000 uncounted ballots remaining -- realistically too few to close the gap.

Proposition 29 would have added a \$1-per-pack tax on cigarettes, and an equivalent amount on other tobacco products, to raise an estimated \$860 million a year for research on tobacco-related diseases and prevention programs. The American Cancer Society and cycling champ Lance Armstrong, a cancer survivor, were among the measure's biggest proponents, raising more than \$11 million to support the ballot initiative.

Tobacco companies poured nearly \$47 million into their campaign to defeat Proposition 29 and were joined by anti-tax and business groups.

*Originally published here:* <http://latimesblogs.latimes.com/california-politics/2012/06/proposition-29-concede-robacco.html>

## **JUDGE: STATE HAS 'NO LEGAL AUTHORITY' TO SEIZE CIGARETTES IN OUT-OF-STATE SALES**

By Gale Courey Toensing  
Indian Country  
June 22, 2012

A New York State Supreme Court justice has ruled that the state had no legal authority to seize and hold a shipment of untaxed cigarettes that were manufactured on Indian land and being sold to an out-of-state Indian reservation.

In an 11-page ruling on June 18, Justice David Damarest ordered the state police "to return, immediately, any and all property seized" from HCI Distribution, Inc., a company owned by the Winnebago Tribe of Nebraska. HCI sued the state after state police on January 23 seized 26,160 cartons of Signal brand cigarettes and cigars and 72 bags of loose tobacco the company had purchased from Ohserase Manufacturing, LLC, a federally-licensed manufacturer that is organized under the laws of the St. Regis Mohawk Tribe and is owned by St. Regis citizens. The products, worth more than \$2 million, were manufactured on St. Regis territory and were being trucked to HCI on Winnebago territory in Nebraska.

Border Patrol officers pulled the truck over and broke open the seal on the cargo doors of the semi-trailer transport truck without a warrant even though the driver, Michael Cagle, “readily supplied the agents with his bill of lading and advised them of his ultimate destination,” the ruling says. Cagle was detained for hours and then let go. But the cigarettes were seized and locked up in state police barracks. No criminal or civil charges were laid against any of the parties.

Jennifer Givner, a spokeswoman in New York Attorney General Eric T. Schneiderman’s office declined to comment on the ruling, but confirmed that the attorney general will appeal it.

The trade in Indian-manufactured cigarettes has mushroomed in the past two years since New York’s Department of Taxation and Finance (DTF) amended the state’s cigarette tax law in early 2010 to force Indian tobacco businesses to collect state taxes by requiring all cigarettes sold to reservations to have an affixed \$4.35 cigarette stamp. The nations responded by announcing they would no longer buy the famous brand cigarettes manufactured by Philip Morris (Altria), Reynolds-American and Lorillard. Instead they would manufacture and sell their own brands of cigarettes.

In his ruling, Demarest established that no taxes were due on the cigarettes. New York’s “ability” to tax on-reservation sales of cigarettes to non-members of an Indian tribe and to make off-reservation seizures of illegally transported products is well established, Demarest says. “The ultimate taxable event in New York is the sale of cigarettes to a non-member of an Indian tribe within the boundaries of New York state,” he writes. But, he notes, the consumer is responsible for paying the tax. Quoting a section of the tax law, Demarest says the law “makes it quite clear that ‘the ultimate incidence of and liability for the tax shall be upon the consumer.’ The requirements of (tax) stamping are merely a way to collect the tax, if, in fact, there is a tax due,” Demarest writes. A section of the New York Tax Law also clearly states that no tax will be imposed on cigarettes sold to out-of-state purchasers, he writes.

Demarest rejects the respondents’ claim that the cigarettes might be re-introduced into New York and subject to taxation, calling it “pure speculation.” Statements made by the driver about past deliveries and information on HCI’s website “are not sufficient to support the confiscation of private property without a warrant or the initiation of a criminal or civil proceeding,” Demarest writes. He also dismisses the respondents’ reliance on seizure laws from other states. The respondents had cited a case in Maryland in which a driver transporting un-stamped cigarettes was detained and charged because he didn’t have the proper paperwork. “The New York statute expressly exempts common carriers with a proper bill of lading, there was no tax due and no civil or criminal proceedings have ever been instituted,” Demarest writes. Finally, he throws out the respondents’ argument that Indian cigarette manufacturers can only make out-of-state sales through state-licensed agents or become agents themselves. “There is no such requirement either in the New York Tax law or in any regulations. Where the law is clear that no tax is due, for the court to extrapolate the type of regulatory scheme proposed by Respondents would be improper,” Demarest writes, adding that the issue should be left for the Department of taxation and Finance or the legislature.

Joseph Messineo, an attorney with the firm of Frederick Peebles & Morgan who represents HCI, told Indian Country Today Media Network that any attempt to pass such a law or regulation would be challenged. “They have very little jurisdiction. The only thing the (state) Supreme Court has said is the state has enough interest in collecting the tax on sales to non-Indians on Indian land,” Messineo said.

Messineo said he is working with the state to get HCI's cigarettes and other tobacco products back. "We'll need to inspect them and make sure they're in good order. We filed a notice of intent to file a civil claim against the state and county should our cigarettes be unusable," Messineo said.

HCI is prepared to argue against the state's appeal. "This is speculation on my part, but I would presume that they'll (the state will) spin this issue to their advantage in whatever way they can to limit the fallout of the decision, New York's been fighting this too long to just say, 'We're going to let this go,'" Messineo said. "It's a good ruling. We're pleased with it and, hopefully, we'll get our cigarettes back soon."

*Originally published here:* <http://indiancountrytodaymedianetwork.com/2012/06/22/judge-state-has-no-legal-authority-to-seize-untaxed-indian-cigarettes-in-out-of-state-sales-119936#ixzz1yoNT1n00>