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RELABELED ROLL-YOUR-OWN-TOBACCO COSTING FEDS, STATES $1.3 BILLION IN LOST REVENUES

By Janice Podsada
The Hartford Courant (CT)
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Tobacco manufacturers that re-label roll-your-own cigarette tobacco as pipe tobacco are cheating federal and state authorities out of an estimated $1.3 billion in lost state and federal tax revenues, according to a report released Wednesday by the Centers for Disease Control and Prevention.

Last month, the Government Accountability Office found that cases of roll-your-own tobacco were being sold in packages labeled as pipe tobacco. The federal excise tax on loose tobacco used for roll-your-own cigarettes is $22 per pound higher than the excise tax on pipe tobacco.

According to the report, 45 million pounds of this mis-labeled tobacco has been sold from April 2009 to August 2011, lowering state and federal tax revenues by more than $1.3 billion.

Connecticut's revenue loss is estimated at more than $3.1 million. About a dozen roll-your-own tobacco shops have opened around the state in the past two years.

U.S. Sen. Richard Blumenthal, who led a multistate lawsuit against cigarette companies years ago as state attorney general, joined a group of senators Wednesday who condemned the practice of re-labeling loose tobacco. They expressed concern that it reduces the amount of federal taxes collected on roll-your-own tobacco, a portion of which would otherwise be used to support programs to curtail tobacco use.

"Tobacco manufacturers have once again found a way to skirt the law in order to continue peddling their dangerous product," Blumenthal said in a joint statement with U.S. Sens. Tom Harkin, D-Iowa, Dick Durbin, D-Ill., and Frank Lautenberg, D-N.J.

"Congress instituted tax increases and established tobacco-cessation programs to help encourage Americans to quit this harmful habit, and these efforts have proven effective. However, due to this tax loophole, tobacco companies are still able to make cheap tobacco products available, which may discourage some smokers from quitting. We … remain committed to closing this loophole and will continue our efforts to help Americans quit tobacco."

The self-serve shops sell loose tobacco and "rent" the use of an automated cigarette-rolling machine to customers. Employees don't touch the machines, but "talk" customers through the process. The machine makes the equivalent of a carton — 200 cigarettes — in 10 minutes for about $40, a savings of $25 or more over a carton of brand name cigarettes.

The General Assembly is considering legislation that would require roll-your-own tobacco shops to pay $5,000 for an annual manufacturer's license.

In addition, the measure would require roll-your-own shops to comply with all manufacturing rules and regulations related to cigarette manufacturing -- including paying Connecticut's cigarette tax, which adds about $3.40 to a pack of cigarettes, Department of Revenue Commissioner Kevin B. Sullivan has said.

The added fees and taxes would bump up the price of roll-your-own cigarettes to the point where they could cost almost as much as a name-brand pack, Sullivan said.

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FLORIDA LOSES $63M IN TOBACCO TAX WITH FEDERAL LAW'S LOOPHOLE

By Marni Jameson
Sun Sentinel (FL)
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Florida missed out on $63 million in tobacco-tax revenue from April 2009 to August 2011 because of a loophole in a federal law that went into effect in 2009, according to a report released Wednesday by the Centers for Disease Control and Prevention.

The law enabled smokers who roll their own cigarettes to pay less in taxes, because that type of tobacco could be reclassified into a lower tax rate.

Federal law classifies a product as either pipe tobacco or roll-your-own tobacco based on the product's label rather than on its characteristics, so tobacco manufacturers started labeling more of their loose tobacco as pipe tobacco. The tax difference amounted to $21.95 per pound.

As a result, Florida missed out on more than twice as much tobacco-tax revenue than any other state, the report said. Texas was second at $31 million in missed tax revenues.

"When cigarette smokers use pipe tobacco to roll their own cigarettes, they blunt the impact the tobacco tax is having, and it allows smokers to maintain their addiction to tobacco," said Michael Tynan, co-author of the CDC report.

Nationally, the total amount of state and federal tax revenues not collected in this period exceeded $1.3 billion, according to the CDC report. Eleven states each missed out on at least $10 million in tax revenues.

Once smokers realized they could roll their own and get cigarettes at a much lower price, the market responded accordingly.

Pipe-tobacco sales, which had been flat before the tax increase, jumped tenfold.

Helping the trend is the rising number of stores that sell loose tobacco and the use of high-speed rolling machines that let consumers make their own cigarettes.

"Everybody is sick of paying these incredible prices to smoke," said Alan Siegel, owner of Ciggys4less, which has roll-your-own-cigarette franchises across Central Florida. "And they're looking for a cheaper alternative, which we can offer.

"They're not so much looking for a tax loophole," Siegel said. "The tobacco is by no means tax-free. Roll your own saves money and offers a higher-quality alternative [to manufactured cigarettes]."

Florida topped the national list for lost tobacco revenue for three reasons, Tynan said. As the fourth-most-populous state, it has a large population. And many of its residents are smokers. Among Florida's adult population, 17.1 percent smoke compared with 15.8 percent of Texans and 12 percent of Californians.

And third, it has a relatively high state cigarette tax — nearly five times that of Illinois, another fairly populous state, Tynan said.

The funds Florida did not get would have come from state — not federal — tobacco taxes. The Sunshine State has an annual budget of nearly $70 billion.

Although the report only captured tax revenues for 28 months through August 2011, CDC analysts have continued to track the numbers.

"All indications are that the trends have continued and not slowed," Tynan said.

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NEW YORK LOST $16.9 MILLION FROM TOBACCO TAX LOOPHOLE

By Brian Tumulty
Ithaca Journal (NY)
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New York lost an estimated $16.9 million in potential tobacco tax revenue during the first 28 months following a federal excise tax increase on cigarettes, small cigars and roll-your-own tobacco.

That's the finding of a new report released Wednesday by the Centers for Disease Control and Prevention, which said states collectively lost $374 million in tobacco revenue from April 2009 to August 2011 because of a market shift to lower-priced pipe tobacco to make roll-your-own cigarettes.

Florida topped the list of states with lost revenue of more than $63 million, followed by Texas at $31.2 million and California at $27.7 million.

New York ranked No. 4.

The Empire State has among the highest tobacco taxes in the nation with an excise tax of $4.35 on a pack of cigarettes.

The market shift is traced to an April 2009 increase in the federal excise tax on a pack of cigarettes to $1.06 a pack in April 2009 with a similar increase imposed on roll-your-own tobacco and small cigars.

The federal excise tax on roll-your-own tobacco increased to $24.78 per pound, while the federal tax on pipe tobacco increased to only $2.83 a pound.

That prompted many smoke shops to begin marketing lower priced pipe tobacco as "dual use" tobacco that can also be used for less-expensive roll-your-own-cigarettes.

Since then, a significant number of smokers have switched to pipe tobacco, often using roll-your-own machines located in neighborhood smoke shops that can produce a carton of cigarettes in about 8 minutes.

Roll-your-own machines are not as common in New York as some other states, but they have been installed in several smoke shops in Rochester; two in the Buffalo area in Depew and Lewiston; five in the Hudson Valley in New Rochelle, Nanuet, Garnerville, Newburgh and Kingston; two in New York City in Brooklyn and Staten Island; and one in Ithaca.

New Yorkers also have traveled to neighboring states to purchase cheaper cigarettes, including roll-your-own cigarettes.

Tim McAfee, director of the CDC's Office on Smoking and Health, said in an interview Wednesday that several states have tried to control the growth of roll-your-own machines by designating the stores that use them as manufacturers. But those proposals have been challenged in the courts.

McAfee said the switch to pipe tobacco undercuts the public health benefit of the higher taxes on cigarettes.

"The evidence shows that a 10 percent increase in the price of tobacco leads to a 4 percent reduction in consumption," McAfee said. "High prices have an even greater impact on kids and generally on lower-income smokers. Cigarette smokers who switch to roll-your-own because of the price differential may instead maintain their addiction with lower priced roll-your-own cigarettes. So we do think this source of cheap cigarettes is blunting the impact higher prices might otherwise have on preventing youth initiation, reducing consumption and prompting quit attempts."

Two weeks ago the Government Accountability Office issued a report recommending that Congress fix the tax disparity between pipe tobacco and other tobacco products.

The GAO estimated the federal revenue loss at $615 million to $1.1 billion between April 2009 and September 2011 due to a market shift toward lower priced pipe tobacco and large cigars.

The CDC report issued Wednesday did not include large cigars in its calculations. It estimated the federal revenue loss from the increase in pipe tobacco sales at $985 million through August 2011.

Four Senate Democrats -- Sens. Tom Harkin of Iowa, Dick Durbin of Illinois, Frank Lautenberg of New Jersey and Richard Blumenthal of Connecticut -- issued a joint statement Wednesday criticizing tobacco companies. "Tobacco manufacturers have once again found a way to skirt the law in order to continue peddling their dangerous product," the senators stated.

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ROLL-YOUR-OWN SMOKES COST STATE TAX REVENUE

By Tom Precious
Buffalo News (NY)
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New York State is losing millions of dollars in tax revenues by roll-your- own cigarette outlets selling loose tobacco at a lower tax rate usually reserved for pipe tobacco, federal officials warned Wednesday.

The U.S. Centers for Disease Control said the state lost nearly $17 million in tobacco tax revenue in a 16-month period ending last August. Nationwide, all states were out nearly $400 million and the federal government lost out on nearly $1 billion.

The situation has likely only worsened in New York since last summer as more roll-your-own cigarettes are sold in tobacco shops — which health groups say skirts state law and will raise smoking rates because of the cheaper access to cigarettes.

Attorney General Eric Schneiderman recently acted on roll-your-own shops in New York City and the Syracuse area.

New York trailed only Florida, California and Texas in lost tobacco tax revenues under a practice in which roll-your-own shops sell pipe tobacco to make cigarettes at a tobacco tax level that is nearly $22 per pound cheaper than loose tobacco.

The report's authors said the tax scheme employed by roll-your-own shops "blunts the public health impact excise tax increases would otherwise have on reducing tobacco use through higher prices."

The CDC report did not look at tax avoidance issues by smokers turning to cheap, roll-your-own cigarettes compared with taxable, brand-name sales.

"Certainly, given New York's high cigarette tax, the lost revenue due to people switching from manufactured cigarettes to roll-your-own is even greater than the loss reported here due to the pipe tobacco versus roll--your-own taxes," said Russell Sciandra, director of advocacy at the American Cancer Society in New York.

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$31 MILLION IN UNINTENDED CONSEQUENCES

By Jeannie Kever
Houston Chronicle Blog (TX)
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Texas lost $31 million in sales tax revenues over a 17-month period as tobacco manufacturers took advantage of a change in federal tax laws to sell pipe tobacco – taxed at a lower rate — to people who roll their own cigarettes.

That added up to $1.3 billion in lost state and federal revenue between April 2009 and August 2011, according to a report released Wednesday by the Centers for Disease Control and Prevention.

"It's fair to categorize it as an unintended consequence," said Michael A. Tynan, one of the report's authors.

Congress raised federal taxes on tobacco products in April 2009. Before that, taxes on pipe tobacco and roll-your-own tobacco were the same; the increase put roll-your-own tobacco on a par with manufactured cigarettes.

The goal was simple. Make tobacco more expensive, and fewer people will use it.

"We've done numerous studies, and that's absolutely clear," said Darryl Konter, a spokesman for the CDC. "A 10 percent increase in price results in a 4 percent overall decline in consumption."

Among teen-age smokers, the drop is 7 percent.

But the increase in federal taxes didn't extend to pipe tobacco, and manufacturers simply repackaged it as "dual purpose" tobacco, making it less expensive than both manufactured cigarettes and traditional roll-your-own tobacco.

Pipe tobacco is coarser and more moist than roll-your-own tobacco, according to the report, but Tynan said the health impact is the same.

"It's not a healthy alternative," he said. "The 2010 Surgeon General's report concluded that all combustible tobacco is unhealthy and dangerous."

Texas was second only to Florida in the projected loss of state sales tax revenue. Florida lost an estimated $63 million, according to the report.

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LEGISLATURE EXPANDS CIGARETTE TAX TO INCLUDE 'ROLL-YOUR-OWN' SELLERS

Missouri News Horizon
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The Tennessee Legislature has passed a bill to require roll-your-own tobacco shops and their customers to pay more in taxes, but they're refusing to call the plan a tax increase.

The measure, HB1054/SB1738, would require owners of corner stores that offer roll-your-own cigarette services to pay a $500-per-machine licensing fee, pay the same tax per pack as pre-rolled cigarettes, and pay into a massive settlement between cigarette makers and the states. Lawmakers say they are concerned about loss of revenues and want the state's tax policy to be fair.

The "crux of the argument" for this bill is that, although the roll-your-own cigarettes are nearly identical to prepackaged cigarettes, they are taxed at a much lower rate, meaning that they are sold for a much lower price, said Rep. Steve McDaniel, R-Parkers Crossroads, on the House floor, April 30.

"The conventional cigarettes are taxed under the agreement, the Federal MSA directory, the Attorney General's directory, and created the escrow account and the payments – we get over $140 million a year, because of the lawsuit that was settled some time ago," McDaniel said. "We could endanger, I believe, that agreement, where we're getting that money into our state system, into our revenues."

McDaniel was referring to a settlement reached in 1998 between the top four cigarette companies and the states. The companies were required to end certain marketing techniques and pay a minimum of $206 billion to the states over a 25-year period. The agreement also made the companies exempt from future private liability suits that might be brought against them in regards to harm caused by tobacco use.

The bill passed the House 68-22.

While the House bill passed with little-to-no discussion, it was a different story in the Senate.

"The dilemma we have as a state — and we're not the only state that's addressing this — is how do we treat these cigarettes that are manufactured, that are made in a machine in eight minutes, and you walk out of the store" said Sen. Jack Johnson, R-Franklin, sponsor of the bill. "They're not paying the (Tobacco) Master Settlement Agreement fees, they're not paying the $0.62 state tax, and they're not paying federal tax on these cigarettes."

Much of the debate on the Senate floor wasn't regarding the regulation of commerce or revenue lost by the state, but about the length of time to give businesses to adapt and comply with the measure. The Senate settled on a compliance date of July 1, 2013.

Sen. Bill Ketron, R-Murfreesboro, said the state should be more aggressive and bring the money in starting in January of that year. His amendment failed.

"In the meantime, the state of Tennessee is losing a lot of revenue from taxes, as well as your other convenience stores in your district are losing business, because people are going to be driven to the location where they can get cheaper cigarettes," Ketron said.

Ketron admitted to looking for competitive advantages when he himself ran a convenience store, including buying his own machine to produce ice himself. He said that store owners who have roll-your-own machines, which cost $30,000, have an unfair advantage.

"This is not a tax bill. All it's doing is leveling the playing field. They can still sell these cigarettes cheaper than what your name-brand cigarettes will be sold for by the carton."

Sen. Bo Watson, R-Hixson, compared this legislative issue to last year's Amazon bill and recommended more time to allow the affected shop proprietors to comply.

"I think if we were truly advocates for small business, we would give them the same courtesy that we've given to large business and allow them more time to adapt," Watson said.

The Senate passed the bill 26-5 on April 25.

The House held steady with Jan. 1, 2014 as the effective date for the bill, despite the Senate's amendment changing the date. Following a conference committee between the chambers, they agreed upon yet another compromise, officially setting the effective date for Oct. 1, 2013.

The bill now travels to the governor for his signature.

U.S. Rep. Diane Black, R-Tenn., recently introduced a measure in Congress to label roll-your-own tobacco shops as manufacturers, according to the Wall Street Journal.

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