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DAILY NEWS CLIPS

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ROLL YOUR OWN SMOKES COULD FACE HIGHER TAXES

By Bob Mercer
Republic News Service (South Dakota)
February 11, 2012

State taxes on cigarettes produced from rolling machines at tobacco shops in South Dakota would increase more than six-fold, rising to the same rate as commercial cigarettes, under changes approved Friday by the state House of Representatives.

House members, after a 25-minute debate, voted 47-20 in favor of designating shops with roll-your-own machines as cigarette manufacturers.

That would make them subject to the same taxes as cigarettes purchased over the counter.

The legislation, House Bill 1138, crosses to the Senate for consideration next.

The changes would take effect July 1 of this year, with one exception. Requiring the use of slow-burning cigarette papers on roll-your-own cigarettes would be delayed until 2014. Rep. Justin Cronin, R-Gettysburg, said a single rolling machine can produce 15,000 cigarettes annually. He is the legislation’s prime sponsor. He said the taxes on the materials are “always much less” than the taxes on commercial cigarettes: $2.39 vs. $15.33, per carton. “There’s no denying this is a growing practice in South Dakota,” Cronin said. There are a dozen or so shops that have the rolling machines in South Dakota.

“These are entrepreneurs who figured out how to make money,” Rep. Mike Verchio, R-Hill City, said, urging defeat of the legislation.

Rep. Nick Moser, R-Yankton, said there is a state law that prohibits manufacturing cigarettes that don’t carry the state’s tax stamp.

He said the law should be enforced if the smoke shops are rolling cigarettes for customers, rather than designating them as manufacturers solely because they offer use of a rolling machine.

He said the first offense is a misdemeanor and subsequent offenses are a felony.

Rep. Tona Rozum, R-Mitchell, suggested the higher taxes shouldn’t take effect until July 1, 2014, so that business owners have time to recover the price of the machines, which she said run about $35,000.

BILL TACKLES TOBACCO SMUGGLING, COUNTERFIETING, ROLL-YOUR-OWN SHOPS

By Rina Miller
Michigan Public Radio
February 12, 2012

A Michigan lawmaker says counterfeit tobacco products and smuggling have cost the state up to $1 billion over the past five years. The state Senate is now considering a bill that would require a digital tax stamp and stronger tobacco enforcement.

State Sen. Roger Kahn says his bill tackles more than illegal activity.

It would also require small tobacco shops that provide so-called "roll-your-own" cigarette machines for customers' use to pay a state tax of $2 per pack.

Some tobacco shop owners oppose the bill because it would label them as cigarette manufacturers.

Kahn says that's exactly what they are.

"They pay some money in bulk tobacco, and then they have people who turn the crank on the machine, or they plug it into the wall, and they generate a carton of cigarettes," Kahn says. "And every carton that they send out the door costs the state of Michigan $20."

Kahn also says tobacco settlement money is being withheld from the state because of inadequate smuggling and counterfeit enforcement.

Michigan received compensation from the tobacco industry in a class-action lawsuit to reimburse smoking-related Medicaid costs.

REYNOLDS AMERICAN PROFITS JUMPS 16%

By John Kell and Melodie Warner
Wall Street Journal
February 10, 2012

Reynolds American Inc.'s fourth-quarter earnings rose 16% as higher prices and productivity improvements helped lift operating margins, offsetting a decline in cigarette volume.

Reynolds American, the nation's second-largest tobacco company behind Marlboro maker Altria Group Inc., has shifted its focus toward a few key brands as cigarette volumes decline industrywide. Reynolds has also diversified into smokeless tobacco and is seeking broader appeal with Camel dissolvables.

"Over the past year, the marketplace environment has been a difficult one," Chief Executive Dan Delen said on a conference call. "And the year ahead, it's not likely to be any easier."

Mr. Delen cited a weak economy and high unemployment continuing to put pressure on consumer disposable income, as well as competitive promotional activity that "remains intense."

The company has started a "comprehensive analysis" of most units—including head count and facilities—to better deploy human and financial resources, Mr. Delen said. The review is expected to be complete by the end of the first quarter, Mr. Delen said.

Reynolds American also projected that state excise taxes on cigarettes this year likely will increase in the range of five cents to 10 cents a pack.

Analysts praised two rounds of price increases by the three largest U.S. tobacco companies last year, as it signals they continue to command strong pricing power. The price increases, launched in July and December, were enacted even as state excise taxes have been fairly muted.

On Wednesday, Reynolds American reported a profit of $304 million, or 52 cents a share, up from $262 million, or 45 cents, a year earlier. Excluding items such as trademark impairments and mark-to-market adjustments for pension plans, earnings per share rose to 72 cents from 64 cents. Revenue edged up 0.1% to $2.08 billion. Operating margin rose to 24.8% from 23.5%.

At the R.J. Reynolds Tobacco cigarette unit, revenue edged down 0.4% to $1.76 billion as domestic volume fell 7.2%. Accounting for the elimination of private-label brands, volume dropped 7.1%. Total market share, excluding private label brands, fell 1.1 percentage points to 27%.

Growth brands, which include Camel and Pall Mall, gained 0.3 percentage point of market share to hold 16.5% of the market. Volume for those brands, however, inched down 1.8%.

At American Snuff, the smokeless tobacco unit that makes Grizzly and Kodiak moist snuff, total volume increased 6.1%, while the total share of shipments rose 0.9 percentage point to 32.1%.

Reynolds American expects full-year earnings of $2.91 to $3.01 a share while analysts most recently projected $2.98.

Altria late last month reported fourth-quarter earnings slid 9% due to several charges, though revenue jumped on strong volume growth for smokeless products and a modest increase in volume for cigarettes.

$300 MILLION TRIAL INTO THE 'REPREHENSIBILITY' OF PHILIP MORRIS BEGINS AGAIN

By Aimee Green
The Oregonian
February 12, 2012

Starting in 1976, Philip Morris marketed Merit low-tar cigarettes as a better alternative to regular "full-flavored" cigarettes. Michelle Schwarz, a Salem woman, bought into the marketing. Approximately 23 years later, she was dead.

Ten years after a Multnomah County jury awarded $150 million after finding Philip Morris deceived a low-tar cigarette smoker into thinking she'd chosen a healthier alternative, the case is before a jury again.

The Oregon Supreme Court overturned the first jury's punitive-damage award because of the way the jury was instructed to deliberate. This time, with a slight but important tweak to the instructions, a new 12-person jury will decide how reprehensible the tobacco maker's actions were in causing the death of Salem resident Michelle Schwarz. The jury can award up to $300 million. Jurors were not told about the original verdict of $150 million.

Opening statements began today in the courtroom of Judge Henry Kantor. The trial is expected to last four weeks.

Schwarz began smoking in 1964 when she was 18. She tried to quit but failed. In 1976, Philip Morris introduced a low-tar cigarette under the brand Merit. Schwarz, who smoked a pack a day, believed the low-tar cigarettes weren't as harmful as regular cigarettes, so she switched.

"She smoked these low-tar cigarettes from 1976 until her death in 1999" at age 53, said Larry Wobbrock, an attorney for Schwarz's estate. "She smoked them up until she got sick and couldn't."

Schwarz died after contracting lung cancer that metastasized with a tumor in her brain. The family's attorneys successfully argued to the first jury that Philip Morris was aware that low-tar smokers tended to inhale more deeply and hold the smoke longer in their lungs -- enabling smokers to rationalize a habit they would otherwise consider deadly.

"The case is no longer about the conduct of Michelle Schwarz. It's about the misconduct of Philip Morris," Wobbrock said.

An attorney for Philip Morris, however, spoke at length about how Schwarz should have known that smoking in general was dangerous. Attorney Frank Kelly said Schwarz had known since she was a little girl growing up in the 1950s and early 1960s that smoking was dangerous. Her parents were smokers.

She began smoking shortly after starting nursing school in 1964 and meeting her husband, a future doctor, who smoked. Her husband, Richard Schwarz, quit in 1968, but Schwarz continued and that created tension in the marriage. Her husband banned her from smoking around their sons, in the house, in the car or at the medical offices at which they both worked, Kelly said.

Kelly said that it was widely believed in the 1960s, 1970s and later that the less tar there was in cigarettes, the better. Even the U.S. Public Health Service -- using the voice of James Earl Jones -- promoted that message in 1976, he said.

"If you don't quit or can't quit, then switch to a low-tar cigarette. Bad is better than worse," said Kelly, summing up the message.

Each year, an estimated 443,000 people die of causes linked to smoking in the U.S., according to the Centers for Disease Control and Prevention.

Schwarz's family filed suit in 2000, and in 2002 the jury awarded $168,514 for economic and noneconomic damages, and $150 million in punitive damages. At the time of the verdict, it was the largest punitive damage award in an individual smoker case in the nation. A judge later reduced the punitive damages to $100 million.

In 2010, the Oregon Supreme Court reversed the punitive damages award. In doing so, the court acknowledged the "fine" distinction that the U.S. Supreme Court has established since the Schwarz verdict for instructing jurors on what to consider in awarding punitive damages. A jury can't impose punitive damages to punish a defendant directly for harm to other smokers, but a jury may "consider evidence to others when assessing the reprehensibility of the defendant's conduct," the court wrote.

Another tobacco case -- that of Jesse Williams, the late Portland janitor who died of lung cancer -- made headlines last month when Philip Morris decided to end a 14-year legal fight by paying the State of Oregon $56 million in punitive damages and interest.

Under Oregon law, the state's crime victims' compensation fund receives 60 percent of punitive damage awards -- and in this case is poised to take home many tens of millions of dollars if Schwarz's attorneys are successful.

The Schwarz family attorney, Wobbrock, said Philip Morris is worth $50 billion, and that a $300 million award represents only five days of cigarette sales for the "mega-corporation."

Philip Morris' attorney, Kelly, unsuccessfully objected to the term "mega corporation."

Kelly also said Philip Morris doesn't make $300 million of profit in five days. What's more, he said Philip Morris has paid dearly for damage caused by smoking -- $55 billion since 1997 as part of an agreement with 50 state attorneys general. About $526 million of that has gone to Oregon.