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ROLL-YOUR-OWN TOBACCO SHOP OWNERS BRISTLE AT BILL TO EXPAND TAXATION

By Brittany Smith
Cronkite News (AZ)
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Video available here: <http://cronkitenewsonline.com/2012/02/roll-your-own-tobacco-shop-owners-bristle-at-bill-that-would-expand-taxation/>

Customers of Tobacco Mizer save \$30 on the equivalent of a carton of cigarettes by buying loose tobacco and hollow tubes and then renting a machine that rolls their cigarettes.

“Each customer has his own blend,” said Bob Mizer, the store’s co-owner. “We have eight different types of tobacco here, and they can mix and blend to match what they want.”

The finished cigarettes come cheap because they aren’t subject to the same state and federal taxes as those from companies considered manufacturers under Arizona law.

Mizer says this setup allows his operation and others similar to it to compete with tobacco stores on American Indian reservations, where customers pay less in excise taxes.

That’s why Mizer and other roll-your-own shop owners say a bill advancing in the state Legislature would be a death blow.

HB 2717, authored by Rep. Jim Weiers, R-Phoenix, would classify businesses with cigarette rolling machines as manufacturers and subject them to the same regulations and taxes as companies that produce finished cigarettes.

The House Commerce Committee endorsed the bill Feb. 15 on a 5-3 vote, sending it to the full House by way of the Rules Committee.

Mizer said losing a tax advantage would be only part of the problem should the bill become law.

If he were classified as a manufacturer, he would be required to obtain a state manufacturing license. However, those seeking a state license must first obtain a federal manufacturing license, and with that comes a prohibition against selling directly to customers in the area where they manufacture cigarettes.

Mizer said he'd have no option other than giving up his three rolling machines, which together cost him about \$100,000. And because his business relies heavily on them, he said he'd have to close and put his 13 employees out of work.

"It's like a Catch-22," Mizer said. "You say we're manufacturers, but we can't get a license. We're going to be out of business if this bill passes."

This isn't the first effort to classify retailers with roll-your-own machines as manufacturers. In 2010, the U.S. Treasury Department's Alcohol and Tobacco Tax and Trade Bureau issued a ruling calling for that, but a federal court in Ohio granted an injunction in response to a lawsuit by RYO Machine Rental LLC, which sells and leases roll-your-own machines.

Jeffrey Burd, an Ohio attorney representing RYO Machine Rental, told lawmakers that he found the timing of this bill odd given that a hearing in his company's suit is scheduled for April.

Machines used by roll-your-own tobacco shops aren't comparable to the machines used by mainstream cigarette manufacturers, Burd said, adding that it would take a tobacco store rolling machine 16 hours to produce as many cigarettes as a manufacturer's machine makes in a minute.

"This is simply a situation where cigarette manufacturers would like to take a convenience away from 'rolling your own' customers because they would prefer their product be purchased," Burd said.

John Mangum, an attorney representing Altria Group Inc., formerly known as Philip Morris Companies Inc., which manufactures cigarettes under brands including Marlboro, told the committee that without a law customers will migrate to stores such as Mizer's. That will cut into revenue from the \$1.01 per pack federal manufacturer's tax and \$2 per pack state manufacturer's tax, he said.

Portions of both taxes go toward anti-smoking programs.

"The issue here is an unclear tax advantage," Mangum said. "What we are trying to do is restore what we would call a level playing field."

Burd said tobacco store machines aren't causing people to roll their own cigarettes but are merely a convenience for people who were already rolling their own cigarettes on less efficient machines at home.

“There is no tax loophole,” he said.

Groups joining Altria Group in signing support for the bill included Reynolds American Inc., the Arizona Retailers Association and the Cigar Association of America.

Groups joining RYO Machine Rental LLC and shop owners, including Mizer, in opposing the bill included the Goldwater Institute, an independent watchdog group that promotes limited government and free enterprise.

In voting for his bill, Weiers said the issue boils down to making sure no business has an unfair advantage when it comes to taxes.

“This is really a touchy issue with me because it goes to the very nerve of what I believe when it comes to taxes and how silly people have become,” Weiers said.

Reps. Rick Gray, R-Sun City, Bob Robson, R-Chandler and J.D. Mesnard, R-Chandler, voted against the bill.

“If I go out and rent all the equipment needed to do landscaping, does that make me a landscaper? None of this really makes any sense,” Robson said.

STATE TAX, LAW OFFICIALS CONSIDERING CRACKDOWN ON TAX-EVADING TOBACCO SHOPS

By Kevin Zwick
Capitolwire (Harrisburg, PA)
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Some tobacco sellers around the state could soon be facing more scrutiny from Gov. Tom Corbett's administration.

Top state tax and law officials said this week that some of those shops are selling loose pipe tobacco and paper tubes separately and providing customers with an in-house cigarette-rolling machine. Those shops are skirting the state cigarette tax laws, costing the state revenue, and possibly breaking the law, officials said.

Some lawmakers said they are aware of tobacconists in their districts that advertise using “roll-your-own” machines, which provide customers with a cheaper alternative to shelling out upwards of \$70 for a carton of cigarettes.

“Under Pennsylvania law, it doesn’t matter what kind of tobacco it is. If you’re selling tobacco that’s rolled in paper, it’s a cigarette and it’s taxable,” said Dan Hassell, deputy secretary for tax policy with the state revenue department.

Officials from the Office of Attorney General and the Revenue Department spoke on the issue this week during House Appropriations Committee budget hearings.

Rep. Paul Costa, D-Allegheny, said a constituent who owns a tobacco shop allows customers to operate the machines, but does not let employees receive orders from customers.

“My understanding is that there are retailers who unfortunately are using these machines on behalf of their customers, that in one place you could place a call to the tobacco store and say ‘hey I wanna come in, and I’d like to pick up a couple cartons of those cigarettes you already rolled for me’ ... and they will do that,” Hassell said.

“All I wanna say is that is clearly crossing the line. If those individuals who work for the store are creating those cigarettes, then they’re a manufacturer and they will be subject to penalties,” he added.

Joel Ressler, chief deputy attorney general, said those types of smoke shops that operate the “roll-your-own” cigarette machines for their customers could affect state funds regarding the Tobacco Master Settlement agreement.

“Looking at it from a protective stance of the commonwealth, we have to worry that it might have an impact, and therefore be proactive,” Ressler said.

“It’s a relatively new phenomenon and it’s growing pretty quickly,” state Attorney General Linda Kelly told the House Appropriations Committee on Wednesday.

“So it is a problem. My office is aware of the problem,” she added.

The Tobacco Master Settlement Agreement resulted in 1999 after 46 states filed Medicaid lawsuits against five major tobacco companies to recover tobacco-related health care costs.

Per the agreement, the states receive annual payments to treat individuals with tobacco-related illness, while companies agreed to stop certain marketing practices. The agreement also gave companies protection against private legal action due to harm from smoking.

The Tobacco Settlement Fund monies go to programs such as home and community-based care, tobacco use prevention and cessation, broad-based health research, medical care for workers with disabilities, contributions to the PACENET program and uncompensated care.

The state currently imposes a tax of \$0.08 per cigarette, with 200 cigarettes per carton. The cigarette tax on a carton of cigarettes is \$16. The state cigarette tax goes to programs like the

Children's Health Insurance Program. The tax also funds the Agricultural Conservation Easement Purchase Fund, which would be eliminated under the governor's proposed budget.

"Aside from the tax issue, there's an escrow issue," Ressler said. "And if in fact it were determined after the fact that we should have been collecting escrow on this and we weren't because they're not taxed right now, then of course that would have implications. As attorneys protecting the commonwealth, we wanna make sure we don't expose the commonwealth to liability."

"We're losing a tremendous amount of revenue because there's no per-cigarette per-pack tax," said Rep. Mario Scavello, R-Monroe, about the "roll-your-own" situation. "It's one thing when you buy tobacco, go home and you roll your own cigarettes. But this is happening in the business."

Kelly said staff in the office's tobacco litigation unit have been meeting with the governor's office to "try and work out a strategy of sorts" on the issue.

"Hopefully, we could do something about that. Obviously, another alternative would be some type of legislation, but we're not inclined at this point to go in that direction," she said.

On Tuesday, Revenue Secretary Dan Meuser said the department is evaluating whether the department has the power to regulate the issue.

"We're evaluating the situation itself," he said, "and it does seem to be growing and there is a negative fiscal impact on the commonwealth."

Meuser said the governor has been consulted but no decision has been made at this time.

MICHIGAN SENATE PASSES TAX ON ROLL-YOUR-OWN CIGARETTE SHOPS

By Rina Miller

Michigan Public Radio

February 22, 2012

A bill to increase taxes on Michigan's roll-your-own cigarette retailers was passed today by the State Senate.

The bill would require the shops to pay a \$2 per-pack state tax – the same as packaged cigarettes.

It would also classify the shops as manufacturers.

Patrick Brazil owns the "That's How We Roll" tobacco shop in Lansing.

He says the bill will cost jobs and lose revenue for the state.

Brazil also says such a law would force him out of business because he couldn't become a manufacturer, even if he wanted to.

"The federal government doesn't recognize us as a manufacturer, therefore we can't get a manufacturer's license," Brazil says. "So when the Vendor's Association says we can get one, they're mistaken. We don't qualify."

Brazil says even if they could get a license, the 32 roll-your-own shops in Michigan would have to move out of retail-zoned areas.

Sen. Roger Kahn sponsored the bill, which applies to cigarette tobacco. He says the state loses \$3 million to \$4 million dollars in revenue to the roll-your-own industry.

Kahn also accuses the shops of buying cigarette tobacco, and relabeling it as pipe tobacco, which has a lower tax rate.

When asked how he knew this, Kahn abruptly ended the interview.

Brazil denies Kahn's accusation. He claims big tobacco companies are behind the legislation to kill competition.

Tobacco shop customers use machines that produce about 24 cigarettes per minute. Brazil says he charges \$29.95 per carton -- the equivalent of 10 packs -- including taxes.

Large cigarette manufacturers turn out about 20,000 cigarettes per minute. A carton of brand-name cigarette sells for more than \$60 in Michigan.

Brazil says the bill was passed despite ongoing federal and state litigation.

MISSOURI MUST HELP THE BLIND AND POOR, NOT PUNISH THEM

Kansas City Star Editorial

February 22, 2012

You know a state has problems when lawmakers recommend taking money from the blind and the poor to spare colleges and universities from harmful cuts.

In Missouri's case, the problems include hostility toward a governor seen as autocratic on budget matters, and a callousness toward the poor which rears its ugly head all too often.

But the core issue is the refusal by Gov. Jay Nixon and legislators to find new sources of revenue for a chronically underfunded state. Whether it be reining in tax credits, collecting taxes on Internet purchases or supporting a higher tobacco tax, Missouri's leaders refuse to take the tough steps that would lead to long-term fiscal health.

Republicans in the Missouri House have vowed to stop Nixon, a Democrat, from balancing his \$23.3 billion spending plan with a cut to higher education spending. The governor's initial radical reduction was \$106 million but it's now down to \$66 million.

Last week, a House subcommittee recommended making up most of the remaining gap with cuts to social services, including \$28 million that the state spends to provide medical care for 3,000 blind Missourians.

Those recipients have an income above Missouri's Medicaid eligibility limit. Also, they receive a monthly payment of about \$700 from the Blind Pension Fund. But Missouri's threshold for adults to obtain Medicare is appallingly low. And a \$700 stipend is no substitute for reliable medical care.

Other proposed cuts by the subcommittee would affect child care subsidies, prescription drug help for seniors and some services for the developmentally disabled.

Nixon is calling for the cuts to be stopped, and they should be. But there are no political points to be scored here. Responsible leaders should have taken steps to avoid being painted into this corner.