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AMENDMENT TO HIGHWAY BILL SIDESWIPES LITTLE TOBACCO

By Rosiland S. Helderman
Washington Post
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Nobody mentioned tobacco last week when the U.S. Senate adopted an amendment to the \$109 billion federal highway bill.

But tucked into the 5,600-word amendment to provide aid for rural schools was a single paragraph that would settle a two-year-old fight between Big Tobacco and a small Ohio company that builds a do-it-yourself machine that allows smokers to get their cigarettes a lot cheaper.

The amendment would reclassify tobacco shops that offer the machines as “tobacco manufacturers,” imposing on them new regulations and higher taxes, and it opens a window into the ways of Washington, where the powerful and the connected can sometimes win even before the opposition knows the game is underway.

“This is catastrophic,” was the response of Phil Accordino, whose tiny company builds the roll-your-own cigarette machines in Girard, Ohio, when he heard of the Senate action. Word arrived in Ohio after the amendment had already been approved on a bipartisan vote.

Officials with the tobacco companies, and allies who include some public health advocates, counter that they’ve been trying to crack down on ultra cheap and unregulated cigarettes, which they contend skirt tax and health laws.

Sen. Max Baucus (D-Mont.), who sponsored the Secure Rural Schools amendment, said that the \$346 million program supports schools and road projects in Montana and elsewhere. He said the \$97 million tobacco provision helps provide “critical funding” for the program by closing a loophole that some smokers have been using to avoid taxes.

Enjoying a tax loophole

“Roll-your-own cigarette machines take advantage of an unintended tax loophole, and that isn’t right, so this offset closes it,” he said in a statement.

But Accordino says the case illustrates how corporate America can quietly use its political influence in Washington to secure wins on the business battlefield.

He acknowledges that his corner of Little Tobacco, which has come under scrutiny from several state attorneys general, might not make for the most sympathetic poster child to talk about the ills of Washington. But he contends it was unfair that he lost his fight on the highway bill before he even knew it had begun.

“I don’t expect sympathy, but this is just big business influencing legislation through their dollars. . . . They want us gone, and they’re capable of paying to get us gone,” he said.

Despite the decline in the popularity of smoking, tobacco companies remain prolific campaign donors and aggressive lobbyists on Capitol Hill. The Altria Group, which used to be Philip Morris, spent \$11 million on lobbying last year.

Individuals and political action committees associated with the company have since 2007 given \$30,000 to Baucus and his PAC, according to the Center for Responsive Politics.

A spokesman for Altria, the nation’s largest cigarette maker, and the president of Liggett Vector Brands, the fourth-largest company, confirmed that they have been lobbying for congressional action on the roll-it-yourself machines, and say they have a compelling case to make.

Whether Washington’s mechanism for addressing the issue was fair to their opponents, they say, is Washington’s problem.

“I’ve got to be honest with you: That’s a question for members of Congress, not the company,” said David Sutton, a spokesman for Altria.

Accordino’s RYO Filter Station company makes ATM-sized machines that enable consumers to turn loose tobacco into a carton of cigarettes in about eight minutes. In some ways, the device is like the communal coffee grinder offered at many grocery stores to customers picking up a pound of coffee beans.

He sells the machines — 1,900 in 42 states — for more than \$30,000 a pop to tobacco stores. He said they mostly cater to people who have long rolled their own cigarettes at home and enjoyed exemptions from many tobacco regulations.

Ultra cheap smokes

The shops sell tobacco and rolling tubes and rent time with the devices to customers. They’re not allowed to resell the cigarettes, but the end product is much cheaper than buying manufactured smokes. Customers can get a carton of cigarettes at Accordino’s Ohio store for \$25. A carton of Marlboros there can cost as much as \$55; discount brands sell for \$32.

In part, the low price is Congress's fault, too. In 2009, Congress funded an expansion of a children's health-care program by dramatically raising federal taxes on cigarettes. But it raised taxes on pipe tobacco only by a little.

Since then, sales of pipe tobacco — some of it virtually indistinguishable from loose cigarette tobacco — have risen sevenfold. Many smokers use Accordino's machines to roll pipe tobacco into ultra cheap cigarettes.

"The fact of the matter is that all of the growth they've realized is only possible because of the use of mislabeled tobacco. . . . Without the evasion of the taxes, this wouldn't work," said Ron Bernstein, president and CEO of Liggett Vector Brands, a division of Vector Group.

Kathleen Dacheille, director of the Center for Tobacco Regulation at the University of Maryland law school, said cheap cigarettes hurt public health by removing an incentive for people to quit smoking. Congress had reason to act, she said.

"There's a reason we have high taxation and high regulation of cigarettes in this country," she said.

The most straightforward way to close the loophole would be to raise the federal tax on pipe tobacco to the same level as cigarette tobacco. Accordino said he would not object to that.

But in a gridlocked Washington, that might appear to be a tax increase. Instead, the language inserted into the rural schools amendment — made public on the morning of the Senate vote — would reclassify any shop that offers the use of one of RYO's machines as a "tobacco manufacturer."

The new label would subject the shops to a series of federal and state regulations, including the application of health labels to the loose cigarettes and separating retail and manufacturing areas.

"I don't see how I'd do it," said Laneia Horton, who borrowed money to open Roll Your Own Tobacco in Virginia Beach a year ago and employs two clerks. Zoning laws would not allow manufacturing in her shop, she said.

Accordino said that demand for his machines would dry up and he'd be forced out of business. Gone would be his new factory, which employs 35 workers in a corner of Ohio hit hard by steel mill closures.

Same rules for everyone

Dacheille and others contend that retailers should be subject to the same rules as everyone else who makes cigarettes — the same taxes, the same fire safety codes, the same requirements to provide health warnings.

The two sides are fighting the same battle in 20 statehouses around the country. And Accordino's company has sued federal regulators over the issue.

In court, a judge will hear Accordino's side. In most statehouses, his lobbyists can present his case, often in open hearings. But if the Senate's highway bill passes the House unchanged, the issue will be settled.

“We were blindsided by this,” Accordino said. “We expected them to continue this fight, yes. We didn’t expect this.”

An aide for the Senate Finance Committee, which handles tax issues and which Baucus chairs, said that discussions about the issue began long before the highway bill.

Congress’ deficit-reduction supercommittee, which met in the fall, quietly looked at ways to raise revenue by closing the tax loophole, as did negotiators looking for ways to pay for an extension of the payroll tax cut this year.

The aide said the item was included in the highway bill to help offset the cost of a program that provides a lifeline to counties for schools and roads, payments that make up for revenue lost to reductions in timber harvests because of federal environmental regulations. The item was chosen, the aide said, because it was good policy and could win support from both parties — not because it had tobacco industry support.

“Disguising one kind of tobacco as another simply to evade taxes just isn’t right, so our amendment helps fix that problem while maintaining funds that keep teachers in classrooms and improve county roads,” Baucus said.

Dachille said she has little sympathy for Accordino and his company.

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http://www.washingtonpost.com/politics/2012/03/14/qIQAKoCBJS_story.html

‘ROLL YOUR OWN’ CIGARETTE SHOPS TAKE FIRE

By Mike Esterl

The Wall Street Journal

March 16, 2012

Lawmakers, Big Tobacco Firms, Store Chains Say Upstarts Exploiting Loophole Should Be Taxed the Same as Manufacturers

A new generation of roll-your-own cigarette machines has been spreading like wildfire across the U.S. at upstart tobacco shops capitalizing on tax loopholes to deliver low-priced smokes.

Now lawmakers, backed by Big Tobacco and convenience-store chains, want to declare such shops to be manufacturers. That would subject them to the same taxes and regulations as the broader cigarette industry, likely snuffing them out.

Instead of buying ready-made cigarettes like Marlboros or Camels, the shops’ customers purchase loose tobacco and pour it into an ATM-sized machine that rolls 200 cigarettes in less than 10 minutes.

The cigarettes typically are made with leaves labeled “pipe tobacco” and can sell for half what major brands cost, depending on state taxes.

Hundreds of such shops—mostly or entirely focused on the roll-your-own machines— have opened since 2009, when Congress increased the federal excise tax on a carton of 200 cigarettes to \$10.066 from \$3.90 and hiked the tax on a pound of roll-your-own cigarette tobacco to \$24.78 from \$1.0969. The tax for a pound of pipe tobacco rose only to \$2.8311 from \$1.0969.

Under a Senate bill passed Wednesday, any retailers making roll-your-own machines available to customers would be treated like mainstream cigarette manufacturers. The provision was included in a rural school financing amendment tucked inside the federal surface transportation bill, which still needs House approval.

WSJ's Mike Esterl visits Tobacco Road, a roll-your-own cigarettes store outside Atlanta where, thanks to some loopholes, smokers are able to get their product for half the price. Now lawmakers and Big Tobacco are pushing back.

"Roll-your-own cigarette machines take advantage of an unintended tax loophole, and that isn't right," said Sen. Max Baucus (D., Mont.), who chairs the Senate Finance Committee and sponsored the amendment. Rep. Diane Black (R., Tenn.) introduced a separate bill earlier this month classifying the shops as manufacturers.

Major tobacco companies such as Altria Group Inc., MO 0.00% the country's largest, and the National Association of Convenience Stores have lobbied for such measures, which are finding support on both sides of the aisle. Governors in Virginia, South Dakota and Wyoming have signed similar bills this month, and legislatures in roughly 20 other states are weighing action. In New York, state and city authorities filed lawsuits this week against a handful of roll-your-own retailers for allegedly circumventing taxes and regulations. Ready-made cigarettes still have a market share of more than 95%, according to industry estimates.

RYO Machines LLC, the largest maker of the machines, has hired its own lobbyists and lawyers to try and turn the tide. The company and affected tobacco shops say they have no way of complying with the regulatory requirements of being a cigarette manufacturer. They say they haven't broken any laws and that large tobacco companies are trying to extinguish competition.

"I'm David fighting Goliath," said Phil Accordino, part-owner of Girard, Ohio-based RYO Machines, which began manufacturing the nearly five-foot-high machines in 2008. The company has sold about 1,900 machines to tobacco shops in more than 40 states, including roughly 1,000 last year. Stores pay a bit more than \$30,000 for each machine, which takes two to three seconds to roll a cigarette. That is several times faster than smaller table-top versions, but still roughly a thousand times slower than machines at big cigarette manufacturing plants.

The Alcohol and Tobacco Tax and Trade Bureau declared in 2010 that retailers with roll-your-own machines are manufacturers, but RYO secured a preliminary injunction in a federal court in Ohio. Oral arguments in that case are expected to begin next month. RYO also has won injunctions in a handful of states, including Connecticut and Wisconsin.

In the meantime, roll-your-own shops continue to spread in places like Smyrna, Ga., where Tobacco Road opened its doors last November with four machines in a converted KFC fast-food restaurant. A

steady stream of smokers filed in this week, drawn by signs touting cigarette cartons for \$23.80, which includes the fee to use a machine.

Customer Charlotte Johnston poured 8 ounces of labeled "Kentucky Select pipe tobacco" leaves into the top of a machine after inserting a cartridge with 200 empty cigarette tubes, pressed a few buttons on a computer screen, and sat back in a leather chair as the machine began spitting cigarettes into a bin. "It's not all that hard. It reminds me of sitting in front of a slot machine," said Ms. Johnston, a 65-year-old retiree. She said the cigarettes taste roughly the same as Marlboros, which she had smoked for years, but which sell for \$40 or more per carton in area stores.

Critics say such shops unfairly avoid hefty taxes and fees levied on cigarette manufacturers. They also say shops use cigarette tobacco that's been mislabeled as pipe tobacco to gain a further price advantage. Pipe tobacco traditionally is moister than cigarette tobacco with a wider cut.

"We want to see a level playing field," said Ronald Bernstein, chief executive of Liggett Group LLC, part of Vector Group Ltd., VGR -0.74% a large U.S. cigarette company.

Sales of pipe tobacco that end up in pipes have been declining for decades, shrinking by about two-thirds between 1990 and 2008, according to industry estimates. "When was the last time you saw someone smoking a pipe?" said Craig Williamson, head of the Pipe Tobacco Council, an industry trade group.

Originally published here (subscription required):

<http://online.wsj.com/article/SB10001424052702303863404577285694208319820.html?KEYWORDS=roll+your+own#printMode>

Video included here (subscription required): <http://online.wsj.com/video/smoke-out-big-tobacco-vs-roll-your-own-machines/3769A3C7-C81D-49FC-9946-6A0042721824.html>

UPDATE: DeWITT ROLL-YOUR-OWN CIGARETTE SHOP SUED BY STATE ALREADY SHUT DOWN

By Glenn Coin
Syracuse Post-Standard
March 17, 2012

The state Attorney General today sued a roll-your-own cigarette store in DeWitt, but the store has been closed for three weeks.

Tobacco House owners pulled their cigarette-making machines and supplies from the store on Genesee Street the night of March 26, said building owner Bob Cluce.

"They left in the middle of the night," Cluce said. "I have no idea where they went."

Tobacco House owner Kevin Liu did not return phone calls.

The state Attorney General's office filed a lawsuit this morning in federal court charging Tobacco House with evading cigarette taxes and manufacturing cigarettes in violation of federal laws.

The lawsuit will proceed even though the store has closed, said Jennifer Givner, spokeswoman for the attorney general's office. The state wants to recover any taxes Tobacco House should have paid on cigarettes it already sold, and to make sure the store doesn't re-open somewhere else, Givner said.

Customers at Tobacco House, which opened in October, bought loose tobacco and used a machine to roll 200 cigarettes for \$28.99.

"Rather than playing by the rules, this store and others like it are cheating the state out of millions of dollars per year in legitimate tax revenue and endangering public health and safety while they're doing it," Attorney General Eric Schneiderman said in a statement.

The state and New York City have sued several other similar stores Downstate. The roll-your-own store business has boomed in New York over the past several years as cigarette taxes have increased to \$4.35 a pack, plus \$1.50 a pack in the city.

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ROLL-YOUR-OWN CIGARETTE SHOP FACES FEDERAL LAWSUIT

Your News Now (Syracuse, NY)

March 17, 2012

A roll-your-own tobacco house promising cheap cigarettes in the Syracuse area now faces a federal lawsuit.

Attorney General Eric Schneiderman says the state is suing Tobacco House CCW, Inc. on East Genesee Street in DeWitt.

Schneiderman says the business is violating state and federal laws and evading taxes by providing customers with the tobacco and the tools needed to roll their own cigarettes.

The lawsuit also cites New York's Cigarette Fire Safety Act, claiming that the cigarettes being sold may be hazardous.

Officials say this kind of practice can deprive the state of millions of dollars of revenue.

"They're cheating taxpayers. They're cheating taxpayers from the revenues that we generate from the taxes that are imposed upon tobacco in the state," Assistant Attorney General Ed Thompson said.

The state wants the business to stop selling cigarettes, as well as compensate the state for lost tax revenue.

The lawsuit comes just days after two businesses in Brooklyn and Staten Island were also sued on similar charges.

Original story and video here: http://centralny.ynn.com/content/top_stories/577359/roll-your-own-cigarette-shop-faces-federal-lawsuit/

IDAHO PREEMPTING "ROLL-YOUR-OWN" SMOKES DEALERS

By Alex Morrell
Associated Press
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Idaho officials are making a pre-emptive strike against "roll-your-own" cigarette operations that they say could jeopardize lucrative state settlement agreements with tobacco companies.

The growing industry has also been targeted by Legislatures throughout the country for getting around hefty cigarette taxes.

Idaho officials say cigarette rolling machines have yet to pop up in any retail stores in the state. But Deputy Attorney General Brett DeLange told lawmakers Friday that the growing popularity of the machines in other states is reason enough for Idaho to position itself to regulate the practice.

DeLange warned that failing to monitor the machines and the sale of tobacco products consumers use to roll their own smokes could endanger the estimated \$25 million the state receives annually as part of a 1998 settlement with the nation's five biggest tobacco companies.

The Senate State Affairs Committee responded Friday, passing a bill that would impose a strict permitting process on businesses interested in tapping into the roll-your-own market.

"These machines have the potential of circumventing a number of important laws," DeLange said. "This is an issue we should address up front before it gets going."

In some tobacco retail stores across the country, customers can buy loose-leaf pipe tobacco and roll their own cigarettes using on-site machines, which cost about \$35,000 and have the capacity to churn out hundreds in minutes.

The companies can avoid state and federal excise taxes by selling cigarette tobacco at the lower prices set for loose-leaf pipe tobacco, creating a more affordable option for cigarette smokers than buying prepackaged smokes by the pack or carton.

Loose pipe tobacco is taxed by the federal government at about \$2.80 per pound compared with \$25 per pound for tobacco intended to make cigarettes.

Idaho taxes a pack of cigarettes 57 cents; all other tobacco products are taxed on a percentage of wholesale price.

Idaho is one of several state Legislatures taking steps to regulate the roll-your-own industry.

In Washington state, the House passed a bill mandating that roll-your-own stores collect cigarette taxes. Dozens of new shops have recently popped up in the state.

Wyoming, like Idaho, doesn't have machines up and running but passed pre-emptive legislation taxing all cigarettes made by a manufacturer on site.

New York has a proposal in the works backed by Gov. Andrew Cuomo to raise the tax rate for loose tobacco and another proposal to crack-down on the roll-your-own retailers. One company was sued out of business in November by the city of New York — home to priciest pack of cigarettes in the country at \$13.

Under the legislation making its way through the Idaho statehouse, vendors would only be able to sell tobacco from a state-approved directory, which currently lists more than 200 brands and varieties.

DeLange hopes the plan would level the playing field and prevent a legal skirmish with tobacco companies who might perceive the state as insufficiently regulating tobacco sales and lobby to reduce their annual settlement payments.

"It puts at jeopardy our payment sharing. And we just don't want to do that," DeLange said. "We have an obligation to make sure that tobacco companies with cigarettes and roll-your-own tobacco are complying with our master settlement agreement."

Ohio-based RYO Machine Rental, one of the largest manufacturers of the machines with 1,700 at stores in 40 states, has been fighting legislation and legal rulings across the country that threaten stores that use their machines as cigarette manufacturers.

The company has one machine in Idaho, located in a Nampa smoke shop, according to its website.

Steve Rector, an Idaho lobbyist for the company, said no machines are currently operational in Idaho and called the measure part of a tobacco "turf battle."

"This is big tobacco coming into Idaho not wanting to share a profit margin," Rector said.

The measure moving forward in Idaho overwhelmingly passed the House and heads to the Senate floor for final approval.

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ROLL-YOUR-OWN SAVINGS COULD GO UP IN SMOKE

By Sharon Salyer

The Herald (Everett, WA)

March 16, 2012

For Holly and Doug Halonen, it's not a matter of politics or taxes.

It's simply about saving money.

About 18 months ago, they became regulars at Tobacco Joes, a shop tucked into a small strip of business along Everett Mall Way.

People are drawn to the business by the promise of savings -- big savings -- on cigarettes.

But customers have to be willing to take on a do-it-yourself style project: picking out the specific type of tobacco they want from a line of plastic storage bins and choosing the paper cigarette tubes into which the tobacco will be inserted.

In a matter of about 10 minutes, a nearby automated machine can produce the equivalent of a carton of cigarettes for about half the price of store-bought.

Customers are able to bypass hefty cigarette taxes by using pipe tobacco, which is taxed at lower rates. It's triggered a debate among state lawmakers, who are considering whether this tobacco should be taxed at higher, cigarette-like rates.

The debate doesn't involve small change. At stake is about \$13 million a year in potential tax revenues, according to the state Office of Financial Management.

If the state does increase taxes on pipe tobacco, it would mean that the equivalent of a carton of cigarettes at the roll-your-own shops would cost about \$67.60, nearly matching the state average of \$70 a carton.

The state House approved increasing the tax before the end of the legislative session Thursday. The state Senate would need to take action in its special session that starts today for it to go into effect.

The equivalent of a carton of cigarettes can be purchased at Tobacco Joes for about \$39. Discounts for multiple purchases allow customers to buy the equivalent of two cartons for about \$68, a savings of as much as \$50 to \$60 a carton depending on brand, Holly Halonen said.

The roll-your-own shops are diverting business from the state's small convenience stores, where a carton of cigarettes can cost about \$80, said T.K. Bentler, executive director for the Washington Association of Neighborhood Stores.

Taxing the pipe tobacco at cigarette-like rates would take away the economic incentive for customers to come to his store, said Joe Baba, owner of Tobacco Joes.

That would put an estimated 250 employees out of work at the 65 Washington stores that have the \$30,000 roll-your-own cigarette machines, he said.

Stores like his are still paying tobacco taxes, he said. But if the Legislature approves the new tax, "it doubles the price of the tobacco we buy."

"The state believes our customers, by choosing pipe tobacco to make their smokes, are avoiding the cigarette excise tax," Baba said. "Rolling your own has been around for 100 years. People have always had that choice."

Many customers choose to buy pipe tobacco and make their own cigarettes "when it tastes good and it's a lot cheaper," Baba said. "In today's economy, saving money is a huge priority for most families."

Bentler said he thinks the machines will continue to spread across the state.

"It's very clever," Bentler said. "They basically buy loose tobacco, which we believe is really cigarette tobacco, where they don't have to pay as high of a tax as the cigarette excise tax."

Bentler said that those who think that the tobacco used in roll-your-own shops is inferior should go see for themselves what's being offered. "They'll ask what kind of cigarette (they want) and if they say Camel, they'll point you to the blend that's like that kind of cigarette," Bentler said.

"Convenience stores are losing money," he said. "The state's losing money. I believe these machines will continue to grow as long as people can purchase for 50 percent less what they buy at our stores."

Holly Halonen said she and her husband used to smoke Marlboros, and recently paid nearly \$9 for a pack for the name-brand cigarettes.

They're able to produce a pack of cigarettes at Tobacco Joes for about \$3 each, she said. "After we had been smoking these for a while, they are really good," she said.

Her husband said they both had the same reaction --"yuck" -- to temporarily switching back to Marlboros after running out of their roll-your-own supply.

The store has provided petitions so that customers can let lawmakers know about their objections to the proposed new tax on pipe tobacco.

"It would run us out of business," said Toni Haddanuff, the store manager.

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TOBACCO DEBATE CONTINUES

The Argus-Press (MI)

March 18, 2012

A meeting of the state House Tax Policy Committee Wednesday prompted so much discussion about a bill targeting roll-your-own tobacco shops, a second meeting has been slated for this coming Wednesday.

Committee members listened to comments from several roll-your-own advocates, reported Rob Bitz, owner of Rollin' Smokes in downtown Owosso, who attended the session along with about 200 others, including two busloads of people from Saginaw and Bay City.

Held in the Capitol building, the purpose of the meeting was to discuss a proposed law that would force roll-your-own shops to pay the same taxes as big tobacco manufacturers such as Philip Morris. Tobacco shop retailers oppose the move, saying it would put them out of business.

Last month, the Senate introduced and approved SB 930 within two weeks after minimal discussion. Bitz said that, by contrast, legislators Wednesday had many questions for the representatives of roll-your-own shops in the gallery.

"I feel the legislators are at least trying to find out what's going on this time — before they vote," Bitz said Thursday.

He said he is hoping the committee will remove the language in the bill that pertains to roll-your-own shops and vote on the remainder, which concerns tax-stamping to deter black-market cigarettes.

"That would give everyone more time to consider this confusing bill," Bitz said.

State Sen. Joe Hune, R-Howell, voted in favor of SB 930. State Rep. Ben Glardon, R-Owosso, recently said he has not yet made a decision on the bill.

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