

105TH CONGRESS
1ST SESSION

S. 1491

To increase the excise tax rate on tobacco products.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 1997

Mr. KENNEDY (for himself, Mr. LAUTENBERG, Mr. DURBIN, Mr. REED, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To increase the excise tax rate on tobacco products.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. INCREASE IN EXCISE TAX RATE ON TOBACCO**
4 **PRODUCTS IN ADDITION TO SUCH INCREASE**
5 **CONTAINED IN THE BALANCED BUDGET ACT**
6 **OF 1997.**

7 (a) CIGARETTES.—Subsection (b) of section 5701 of
8 the Internal Revenue Code of 1986 is amended—

9 (1) by striking “\$12 per thousand (\$10 per
10 thousand on cigarettes removed during 1991 or
11 1992);” in paragraph (1) and inserting “the applica-

1 ble rate per thousand determined in accordance with
 2 the following table:

“In the case of cigarettes removed during:	The applicable rate is:
1998	\$12.00
1999	\$37.00
2000	\$67.00
2001	\$92.00
2002	\$94.50.”;

3 and

4 (2) by striking paragraph (2) and inserting the
 5 following:

6 “(2) LARGE CIGARETTES.—

7 “(A) IN GENERAL.—Except as provided in
 8 subparagraph (B), on cigarettes, weighing more
 9 than 3 pounds per thousand, the applicable rate
 10 per thousand determined in accordance with the
 11 following table:

“In the case of cigarettes removed during:	The applicable rate is:
1998	\$25.20
1999	\$77.70
2000	\$140.70
2001	\$193.20
2002	\$198.45.

12 “(B) EXCEPTION.—On cigarettes more
 13 than 6½ inches in length, at the rate pre-
 14 scribed for cigarettes weighing not more than 3
 15 pounds per thousand, counting each 2¾ inches,
 16 or fraction thereof, of the length of each as one
 17 cigarette.”

1 (b) CIGARS.—Subsection (a) of section 5701 of such
 2 Code is amended—

3 (1) by striking “\$1.125 cents per thousand
 4 (93.75 cents per thousand on cigars removed during
 5 1991 or 1992),” in paragraph (1) and inserting “the
 6 applicable rate per thousand determined in accord-
 7 ance with the following table:

“In the case of cigars removed dur- ing:	The applicable rate is:
1998	\$1.125 cents
1999	\$3.4687 cents
2000	\$6.2822 cents
2001	\$8.6264 cents
2002	\$8.8588 cents.”;

8 and

9 (2) by striking paragraph (2) and inserting the
 10 following:

11 “(2) LARGE CIGARS.—On cigars, weighing more
 12 than 3 pounds per thousand, the applicable percent-
 13 age of the price for which sold but not more than the
 14 applicable rate per thousand determined in accord-
 15 ance with the following table:

In the case of cigars re- moved dur- ing:	The applicable percentage is:	The applicable rate is:
1998	12.750%	\$30.00
1999	39.312%	\$92.50
2000	71.189%	\$167.50
2001	97.753%	\$230.00
2002	100.407%	\$236.25.”

1 (c) CIGARETTE PAPERS.—Subsection (c) of section
2 5701 of such Code is amended to read as follows:

3 “(c) CIGARETTE PAPERS.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2), on each book or set of cigarette papers
6 containing more than 25 papers, manufactured in or
7 imported into the United States, there shall be im-
8 posed a tax of the applicable rate for each 50 papers
9 or fractional part thereof as determined in accord-
10 ance with the following table:

“In the case of cigarette papers removed during:	The applicable rate is:
199875 cent
1999	2.31 cents
2000	4.18 cents
2001	5.74 cents
2002	5.91 cents.

11 “(2) EXCEPTION.—If cigarette papers measure
12 more than 6½ inches in length, such cigarette pa-
13 pers shall be taxable at the rate prescribed, counting
14 each 2¾ inches, or fraction thereof, of the length of
15 each as one cigarette paper.”

16 (d) CIGARETTE TUBES.—Subsection (d) of section
17 5701 of such Code is amended to read as follows:

18 “(d) CIGARETTE TUBES.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), on cigarette tubes, manufactured in or
21 imported into the United States, there shall be

1 imposed a tax of the applicable rate for each 50
 2 tubes or fractional part thereof as determined in ac-
 3 cordance with the following table:

“In the case of cigarette tubes re- removed during:	The applicable rate is:
1998	1.50 cents
1999	4.62 cents
2000	8.39 cents
2001	11.53 cents
2002	11.82 cents.

4 “(2) EXCEPTION.—If cigarette tubes measure
 5 more than 6½ inches in length, such cigarette tubes
 6 shall be taxable at the rate prescribed, counting each
 7 2¾ inches, or fraction thereof, of the length of each
 8 as one cigarette tube.”

9 (e) SMOKELESS TOBACCO.—Paragraphs (1) and (2)
 10 of subsection (e) of section 5701 of such Code are amend-
 11 ed to read as follows:

12 “(1) SNUFF.—On snuff, the applicable rate per
 13 pound determined in accordance with the following
 14 table (and a proportionate tax at the like rate on all
 15 fractional parts of a pound):

“In the case of snuff removed dur- ing:	The applicable rate is:
1998	36 cents
1999	\$7.03
2000	\$13.84
2001	\$20.51
2002	\$20.58.

16 “(2) CHEWING TOBACCO.—On chewing tobacco,
 17 the applicable rate per pound determined in accord-

1 ance with the following table (and a proportionate
2 tax at the like rate on all fractional parts of a
3 pound):

“In the case of chewing tobacco removed during:	The applicable rate is:
1998	12 cents
1999	\$2.79
2000	\$5.50
2001	\$8.17
2002	\$8.19.”

4 (f) PIPE TOBACCO.—Subsection (f) of section 5701
5 of such Code is amended to read as follows:

6 “(f) PIPE TOBACCO.—On pipe tobacco, manufac-
7 tured in or imported into the United States, there shall
8 be imposed a tax of the applicable rate per pound deter-
9 mined in accordance with the following table (and a pro-
10 portionate tax at the like rate on all fractional parts of
11 a pound):

“In the case of pipe tobacco re- moved during:	The applicable rate is:
1998	67.5 cents
1999	\$2.0812 cents
2000	\$3.7705 cents
2001	\$5.1774 cents
2002	\$5.3157 cents.”

12 (g) IMPOSITION OF EXCISE TAX ON MANUFACTURE
13 OR IMPORTATION OF ROLL-YOUR-OWN TOBACCO.—

14 (1) IN GENERAL.—Section 5701 of such Code
15 (relating to rate of tax) is amended by redesignating
16 subsection (g) as subsection (h) and by inserting
17 after subsection (f) the following new subsection:

1 “(g) ROLL-YOUR-OWN TOBACCO.—On roll-your-own
 2 tobacco, manufactured in or imported into the United
 3 States, there shall be imposed a tax of the applicable rate
 4 per pound determined in accordance with the following
 5 table (and a proportionate tax at the like rate on all frac-
 6 tional parts of a pound):

“In the case of roll-your-own to- bacco removed during:	The applicable rate is:
1998	67.5 cents
1999	\$2.0812 cents
2000	\$3.7705 cents
2001	\$5.1774 cents
2002	\$5.3157 cents.”

7 (2) ROLL-YOUR-OWN TOBACCO.—Section 5702
 8 of such Code (relating to definitions) is amended by
 9 adding at the end the following new subsection:

10 “(p) ROLL-YOUR-OWN TOBACCO.—The term ‘roll-
 11 your-own tobacco’ means any tobacco which, because of
 12 its appearance, type, packaging, or labeling, is suitable for
 13 use and likely to be offered to, or purchased by, consumers
 14 as tobacco for making cigarettes.”

15 (3) TECHNICAL AMENDMENTS.—

16 (A) Subsection (c) of section 5702 of such
 17 Code is amended by striking “and pipe to-
 18 bacco” and inserting “pipe tobacco, and roll-
 19 your-own tobacco”.

20 (B) Subsection (d) of section 5702 of such
 21 Code is amended—

1 (i) in the material preceding para-
 2 graph (1), by striking “or pipe tobacco”
 3 and inserting “pipe tobacco, or roll-your-
 4 own tobacco”, and

5 (ii) by striking paragraph (1) and in-
 6 serting the following new paragraph:

7 “(1) a person who produces cigars, cigarettes,
 8 smokeless tobacco, pipe tobacco, or roll-your-own to-
 9 bacco solely for the person’s own personal consump-
 10 tion or use, and”.

11 (C) The chapter heading for chapter 52 of
 12 such Code is amended to read as follows:

13 **“CHAPTER 52—TOBACCO PRODUCTS AND**
 14 **CIGARETTE PAPERS AND TUBES”.**

15 (D) The table of chapters for subtitle E of
 16 such Code is amended by striking the item re-
 17 lating to chapter 52 and inserting the following
 18 new item:

“CHAPTER 52. Tobacco products and cigarette papers and tubes.”

19 (h) INFLATION ADJUSTMENT OF RATES AND FLOOR
 20 STOCKS TAXES.—Section 5701 of such Code, as amended
 21 by subsection (g), is amended by redesignating subsection
 22 (h) as subsection (j) and by inserting after subsection (g)
 23 the following:

24 “(h) INFLATION ADJUSTMENT.—In the case of a cal-
 25 endar year after 2002, the dollar amount contained in the

1 table in each of the preceding subsections (and the per-
2 centage contained in the table contained in subsection
3 (b)(2)) applicable to the preceding calendar year (after the
4 application of this subsection) shall be increased by an
5 amount equal to—

6 “(1) such dollar amount (or percentage), multi-
7 plied by

8 “(2) the greatest of—

9 “(A) the cost-of-living adjustment deter-
10 mined under section 1(f)(3) for such calendar
11 year by substituting ‘the second preceding cal-
12 endar year’ for ‘calendar year 1992’ in subpara-
13 graph (B) thereof,

14 “(B) the medical consumer price index for
15 such calendar year determined in the same
16 manner as the adjustment described in sub-
17 paragraph (A), or

18 “(C) 3 percent.

19 “(j) FLOOR STOCKS TAXES.—

20 “(1) IMPOSITION OF TAX.—On tobacco prod-
21 ucts and cigarette papers and tubes manufactured in
22 or imported into the United States which are re-
23 moved before any tax increase date, and held on
24 such date for sale by any person, there is hereby im-
25 posed a tax in an amount equal to the excess of—

1 “(A) the tax which would be imposed
2 under any preceding subsection of this section
3 on the article if the article had been removed on
4 such date, over

5 “(B) the prior tax (if any) imposed under
6 such subsection on such article.

7 “(2) LIABILITY FOR TAX AND METHOD OF PAY-
8 MENT.—

9 “(A) LIABILITY FOR TAX.—A person hold-
10 ing cigarettes on any tax increase date, to
11 which any tax imposed by paragraph (1) applies
12 shall be liable for such tax.

13 “(B) METHOD OF PAYMENT.—The tax im-
14 posed by paragraph (1) shall be paid in such
15 manner as the Secretary shall prescribe by reg-
16 ulations.

17 “(C) TIME FOR PAYMENT.—The tax im-
18 posed by paragraph (1) shall be paid on or be-
19 fore April 1 following any tax increase date.

20 “(3) ARTICLES IN FOREIGN TRADE ZONES.—
21 Notwithstanding the Act of June 18, 1934 (48 Stat.
22 998, 19 U.S.C. 81a) and any other provision of law,
23 any article which is located in a foreign trade zone
24 on any tax increase date, shall be subject to the tax
25 imposed by paragraph (1) if—

1 “(A) internal revenue taxes have been de-
2 termined, or customs duties liquidated, with re-
3 spect to such article before such date pursuant
4 to a request made under the 1st proviso of sec-
5 tion 3(a) of such Act, or

6 “(B) such article is held on such date
7 under the supervision of a customs officer pur-
8 suant to the 2d proviso of such section 3(a).

9 “(4) TAX INCREASE DATE.—The term “tax in-
10 crease date” means January 1.

11 “(5) CONTROLLED GROUPS.—Rules similar to
12 the rules of section 5061(e)(3) shall apply for pur-
13 poses of this subsection.

14 “(6) OTHER LAWS APPLICABLE.—All provisions
15 of law, including penalties, applicable with respect to
16 the taxes imposed by the preceding subsections of
17 this section shall, insofar as applicable and not in-
18 consistent with the provisions of this subsection,
19 apply to the floor stocks taxes imposed by paragraph
20 (1), to the same extent as if such taxes were im-
21 posed by such subsections. The Secretary may treat
22 any person who bore the ultimate burden of the tax
23 imposed by paragraph (1) as the person to whom a
24 credit or refund under such provisions may be al-
25 lowed or made.”

1 (i) MODIFICATIONS OF CERTAIN TOBACCO TAX PRO-
2 VISIONS.—

3 (1) EXEMPTION FOR EXPORTED TOBACCO
4 PRODUCTS AND CIGARETTE PAPERS AND TUBES TO
5 APPLY ONLY TO ARTICLES MARKED FOR EXPORT.—

6 (A) Subsection (b) of section 5704 of such
7 Code is amended by adding at the end the fol-
8 lowing new sentence: “Tobacco products and
9 cigarette papers and tubes may not be trans-
10 ferred or removed under this subsection unless
11 such products or papers and tubes bear such
12 marks, labels, or notices as the Secretary shall
13 by regulations prescribe.”

14 (B) Section 5761 of such Code is amended
15 by redesignating subsections (c) and (d) as sub-
16 sections (d) and (e), respectively, and by insert-
17 ing after subsection (b) the following new sub-
18 section:

19 “(c) SALE OF TOBACCO PRODUCTS AND CIGARETTE
20 PAPERS AND TUBES FOR EXPORT.—Except as provided
21 in subsections (b) and (d) of section 5704—

22 “(1) every person who sells, relands, or receives
23 within the jurisdiction of the United States any to-
24 bacco products or cigarette papers or tubes which

1 have been labeled or shipped for exportation under
2 this chapter,

3 “(2) every person who sells or receives such re-
4 landed tobacco products or cigarette papers or tubes,
5 and

6 “(3) every person who aids or abets in such
7 selling, relanding, or receiving,

8 shall, in addition to the tax and any other penalty provided
9 in this title, be liable for a penalty equal to the greater
10 of \$1,000 or 5 times the amount of the tax imposed by
11 this chapter. All tobacco products and cigarette papers
12 and tubes relanded within the jurisdiction of the United
13 States, and all vessels, vehicles, and aircraft used in such
14 relanding or in removing such products, papers, and tubes
15 from the place where relanded, shall be forfeited to the
16 United States.”

17 (C) Subsection (a) of section 5761 of such
18 Code is amended by striking “subsection (b)”
19 and inserting “subsection (b) or (c)”.

20 (D) Subsection (d) of section 5761 of such
21 Code, as redesignated by subparagraph (B), is
22 amended by striking “The penalty imposed by
23 subsection (b)” and inserting “The penalties
24 imposed by subsections (b) and (c)”.

1 (E)(i) Subpart F of chapter 52 of such
 2 Code is amended by adding at the end the fol-
 3 lowing new section:

4 **“SEC. 5754. RESTRICTION ON IMPORTATION OF PRE-**
 5 **VIOUSLY EXPORTED TOBACCO PRODUCTS.**

6 “(a) IN GENERAL.—Tobacco products and cigarette
 7 papers and tubes previously exported from the United
 8 States may be imported or brought into the United States
 9 only as provided in section 5704(d). For purposes of this
 10 section, section 5704(d), section 5761, and such other pro-
 11 visions as the Secretary may specify by regulations, ref-
 12 erences to exportation shall be treated as including a ref-
 13 erence to shipment to the Commonwealth of Puerto Rico.

14 “(b) CROSS REFERENCE.—

**“For penalty for the sale of tobacco products and
 cigarette papers and tubes in the United States
 which are labeled for export, see section 5761(c).”**

15 (ii) The table of sections for subpart F of
 16 chapter 52 of such Code is amended by adding
 17 at the end the following new item:

“Sec. 5754. Restriction on importation of previously exported to-
 bacco products.”

18 (2) IMPORTERS REQUIRED TO BE QUALIFIED.—

19 (A) Sections 5712, 5713(a), 5721, 5722,
 20 5762(a)(1), and 5763 (b) and (c) of such Code
 21 are each amended by inserting “or importer”
 22 after “manufacturer”.

1 (B) The heading of subsection (b) of sec-
2 tion 5763 of such Code is amended by inserting
3 “QUALIFIED IMPORTERS,” after “MANUFAC-
4 TURERS,”.

5 (C) The heading for subchapter B of chap-
6 ter 52 of such Code is amended by inserting
7 “**and Importers**” after “**Manufactur-**
8 **ers**”.

9 (D) The item relating to subchapter B in
10 the table of subchapters for chapter 52 of such
11 Code is amended by inserting “and importers”
12 after “manufacturers”.

13 (3) BOOKS OF 25 OR FEWER CIGARETTE PA-
14 PERS SUBJECT TO TAX.—Subsection (e) of section
15 5701 of such Code is amended by striking “On each
16 book or set of cigarette papers containing more than
17 25 papers,” and inserting “On cigarette papers,”.

18 (4) STORAGE OF TOBACCO PRODUCTS.—Sub-
19 section (k) of section 5702 of such Code is amended
20 by inserting “under section 5704” after “internal
21 revenue bond”.

22 (5) AUTHORITY TO PRESCRIBE MINIMUM MANU-
23 FACTURING ACTIVITY REQUIREMENTS.—Section
24 5712 of such Code is amended by striking “or” at
25 the end of paragraph (1), by redesignating para-

1 graph (2) as paragraph (3), and by inserting after
2 paragraph (1) the following new paragraph:

3 “(2) the activity proposed to be carried out at
4 such premises does not meet such minimum capacity
5 or activity requirements as the Secretary may pre-
6 scribe, or”.

7 (j) REPEAL OF DUPLICATIVE PROVISIONS.—Section
8 9302 (other than subsection (i)(2)) of the Balanced Budg-
9 et Act of 1997 is repealed.

10 (k) EFFECTIVE DATE.—The amendments and repeal
11 made by this section shall apply to articles removed (as
12 defined in section 5702(k) of the Internal Revenue Code
13 of 1986, as amended by this section) after December 31,
14 1997.

15 **SEC. 102. TAX TREATMENT FOR CERTAIN TOBACCO-RELAT-**
16 **ED EXPENSES.**

17 (a) IN GENERAL.—Section 275(a) of the Internal
18 Revenue Code of 1986 (relating to certain taxes) is
19 amended by inserting after paragraph (6) the following:

20 “(7) Taxes imposed by chapter 52, but only in
21 an amount determined at rates in excess of the rates
22 of such taxes effective in 1998.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to taxable years beginning after
3 December 31, 1998.

○