

The Children's Health Insurance Program Reauthorization Act of 2009 ("Act," Public Law 111-3), was signed into law on February 4, 2009. The Act increases the Federal excise taxes on tobacco products and sets forth new permit and enforcement provisions regarding tobacco products and processed tobacco.

## TITLE VII--REVENUE PROVISIONS

### SEC. 701. INCREASE IN EXCISE TAX RATE ON TOBACCO PRODUCTS.

(a) Cigars- Section 5701(a) of the Internal Revenue Code of 1986 is amended--

(1) by striking `1.828 cents per thousand (\$1.594 cents per thousand on cigars removed during 2000 or 2001)' in paragraph (1) and inserting `50.33 per thousand',

(2) by striking `20.719 percent (18.063 percent on cigars removed during 2000 or 2001)' in paragraph (2) and inserting `52.75 percent', and

(3) by striking `48.75 per thousand (\$42.50 per thousand on cigars removed during 2000 or 2001)' in paragraph (2) and inserting `40.26 cents per cigar'.

(b) Cigarettes- Section 5701(b) of such Code is amended--

(1) by striking `19.50 per thousand (\$17 per thousand on cigarettes removed during 2000 or 2001)' in paragraph (1) and inserting `50.33 per thousand', and

(2) by striking `40.95 per thousand (\$35.70 per thousand on cigarettes removed during 2000 or 2001)' in paragraph (2) and inserting `105.69 per thousand'.

(c) Cigarette Papers- Section 5701(c) of such Code is amended by striking `1.22 cents (1.06 cents on cigarette papers removed during 2000 or 2001)' and inserting `3.15 cents'.

(d) Cigarette Tubes- Section 5701(d) of such Code is amended by striking `2.44 cents (2.13 cents on cigarette tubes removed during 2000 or 2001)' and inserting `6.30 cents'.

(e) Smokeless Tobacco- Section 5701(e) of such Code is amended--

(1) by striking `58.5 cents (51 cents on snuff removed during 2000 or 2001)' in paragraph (1) and inserting `\$1.51', and

(2) by striking `19.5 cents (17 cents on chewing tobacco removed during 2000 or 2001)' in paragraph (2) and inserting `50.33 cents'.

(f) Pipe Tobacco- Section 5701(f) of such Code is amended by striking `\$1.0969 cents (95.67 cents on pipe tobacco removed during 2000 or 2001)' and inserting `\$2.8311 cents'.

(g) Roll-Your-Own Tobacco- Section 5701(g) of such Code is amended by striking `\$1.0969 cents (95.67 cents on roll-your-own tobacco removed during 2000 or 2001)' and inserting `\$24.78'.

(h) Floor Stocks Taxes-

(1) IMPOSITION OF TAX- On tobacco products (other than cigars described in section 5701(a)(2) of the Internal Revenue Code of 1986) and cigarette papers and tubes manufactured in or imported into the United States which are removed before April 1, 2009, and held on such date for sale by any person, there is hereby imposed a tax in an amount equal to the excess of--

(A) the tax which would be imposed under section 5701 of such Code on the article if the article had been removed on such date, over

(B) the prior tax (if any) imposed under section 5701 of such Code on such article.

(2) CREDIT AGAINST TAX- Each person shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to \$500. Such credit shall not exceed the amount of taxes imposed by paragraph (1) on April 1, 2009, for which such person is liable.

(3) LIABILITY FOR TAX AND METHOD OF PAYMENT-

(A) LIABILITY FOR TAX- A person holding tobacco products, cigarette papers, or cigarette tubes on April 1, 2009, to which any tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT- The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT- The tax imposed by paragraph (1) shall be paid on or before August 1, 2009.

(4) ARTICLES IN FOREIGN TRADE ZONES- Notwithstanding the Act of June 18, 1934 (commonly known as the Foreign Trade Zone Act, 48 Stat. 998, 19 U.S.C. 81a et seq.) or any other provision of law, any article which is located in a foreign trade zone on April 1, 2009, shall be subject to the tax imposed by paragraph (1) if--

(A) internal revenue taxes have been determined, or customs duties liquidated, with respect to such article before such date pursuant to a request made under the 1st proviso of section 3(a) of such Act, or

(B) such article is held on such date under the supervision of an officer of the United States Customs and Border Protection of the Department of Homeland Security pursuant to the 2d proviso of such section 3(a).

(5) DEFINITIONS- For purposes of this subsection--

(A) IN GENERAL- Any term used in this subsection which is also used in section 5702 of the Internal Revenue Code of 1986 shall have the same meaning as such term has in such section.

(B) SECRETARY- The term `Secretary' means the Secretary of the Treasury or the Secretary's delegate.

(6) CONTROLLED GROUPS- Rules similar to the rules of section 5061(e)(3) of such Code shall apply for purposes of this subsection.

(7) OTHER LAWS APPLICABLE- All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5701 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 5701. The Secretary may treat any person who bore the ultimate burden of the tax imposed by paragraph (1) as the person to whom a credit or refund under such provisions may be allowed or made.

(i) Effective Date- The amendments made by this section shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after March 31, 2009.

**SEC. 702. ADMINISTRATIVE IMPROVEMENTS.**

(a) Permit, Inventories, Reports, and Records Requirements for Manufacturers and Importers of Processed Tobacco-

(1) PERMIT-

(A) APPLICATION- Section 5712 of the Internal Revenue Code of 1986 is amended by inserting `or processed tobacco' after `tobacco products'.

(B) ISSUANCE- Section 5713(a) of such Code is amended by inserting `or processed tobacco' after `tobacco products'.

(2) INVENTORIES, REPORTS, AND PACKAGES-

(A) INVENTORIES- Section 5721 of such Code is amended by inserting `, processed tobacco,' after `tobacco products'.

(B) REPORTS- Section 5722 of such Code is amended by inserting `, processed tobacco,' after `tobacco products'.

(C) PACKAGES, MARKS, LABELS, AND NOTICES- Section 5723 of such Code is amended by inserting `, processed tobacco,' after `tobacco products' each place it appears.

(3) RECORDS- Section 5741 of such Code is amended by inserting `, processed tobacco,' after `tobacco products'.

(4) MANUFACTURER OF PROCESSED TOBACCO- Section 5702 of such Code is amended by adding at the end the following new subsection:

`(p) Manufacturer of Processed Tobacco-

`(1) IN GENERAL- The term `manufacturer of processed tobacco' means any person who processes any tobacco other than tobacco products.

`(2) PROCESSED TOBACCO- The processing of tobacco shall not include the farming or growing of tobacco or the handling of tobacco solely for sale,

shipment, or delivery to a manufacturer of tobacco products or processed tobacco.'.

(5) CONFORMING AMENDMENTS-

(A) Section 5702(h) of such Code is amended by striking `tobacco products and cigarette papers and tubes' and inserting `tobacco products or cigarette papers or tubes or any processed tobacco'.

(B) Sections 5702(j) and 5702(k) of such Code are each amended by inserting `, or any processed tobacco,' after `tobacco products or cigarette papers or tubes'.

(6) EFFECTIVE DATE- The amendments made by this subsection shall take effect on April 1, 2009.

(b) Basis for Denial, Suspension, or Revocation of Permits-

(1) DENIAL- Paragraph (3) of section 5712 of such Code is amended to read as follows:

`(3) such person (including, in the case of a corporation, any officer, director, or principal stockholder and, in the case of a partnership, a partner)--

`(A) is, by reason of his business experience, financial standing, or trade connections or by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter,

`(B) has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, or

`(C) has failed to disclose any material information required or made any material false statement in the application therefor.'.

(2) SUSPENSION OR REVOCATION- Subsection (b) of section 5713 of such Code is amended to read as follows:

`(b) Suspension or Revocation-

`(1) SHOW CAUSE HEARING- If the Secretary has reason to believe that any person holding a permit--

`(A) has not in good faith complied with this chapter, or with any other provision of this title involving intent to defraud,

`(B) has violated the conditions of such permit,

`(C) has failed to disclose any material information required or made any material false statement in the application for such permit,

`(D) has failed to maintain his premises in such manner as to protect the revenue,

`(E) is, by reason of previous or current legal proceedings involving a felony violation of any other provision of Federal criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, not likely to maintain operations in compliance with this chapter, or

`(F) has been convicted of a felony violation of any provision of Federal or State criminal law relating to tobacco products, processed tobacco, cigarette paper, or cigarette tubes, the Secretary shall issue an order, stating the facts charged, citing such person to show cause why his permit should not be suspended or revoked.

`(2) ACTION FOLLOWING HEARING- If, after hearing, the Secretary finds that such person has not shown cause why his permit should not be suspended or revoked, such permit shall be suspended for such period as the Secretary deems proper or shall be revoked.'.

(3) EFFECTIVE DATE- The amendments made by this subsection shall take effect on the date of the enactment of this Act.

(c) Application of Internal Revenue Code Statute of Limitations for Alcohol and Tobacco Excise Taxes-

(1) IN GENERAL- Section 514(a) of the Tariff Act of 1930 (19 U.S.C. 1514(a)) is amended by striking `and section 520 (relating to refunds)' and inserting `section 520 (relating to refunds), and section 6501 of the Internal

Revenue Code of 1986 (but only with respect to taxes imposed under chapters 51 and 52 of such Code)'.  
(2) EFFECTIVE DATE- The amendment made by this subsection shall apply to articles imported after the date of the enactment of this Act.

(d) Expansion of Definition of Roll-Your-Own Tobacco-

(1) IN GENERAL- Section 5702(o) of the Internal Revenue Code of 1986 is amended by inserting `or cigars, or for use as wrappers thereof' before the period at the end.

(2) EFFECTIVE DATE- The amendment made by this subsection shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after March 31, 2009.

(e) Time of Tax for Unlawfully Manufactured Tobacco Products-

(1) IN GENERAL- Section 5703(b)(2) of such Code is amended by adding at the end the following new subparagraph:

`(F) SPECIAL RULE FOR UNLAWFULLY MANUFACTURED TOBACCO PRODUCTS- In the case of any tobacco products, cigarette paper, or cigarette tubes manufactured in the United States at any place other than the premises of a manufacturer of tobacco products, cigarette paper, or cigarette tubes that has filed the bond and obtained the permit required under this chapter, tax shall be due and payable immediately upon manufacture.'.

(2) EFFECTIVE DATE- The amendment made by this subsection shall take effect on the date of the enactment of this Act.

(f) Disclosure-

(1) IN GENERAL- Paragraph (1) of section 6103(o) of such Code is amended by designating the text as subparagraph (A), moving such text 2 ems to the right, striking `Returns' and inserting `(A) IN GENERAL- Returns', and by inserting after subparagraph (A) (as so redesignated) the following new subparagraph:

(B) USE IN CERTAIN PROCEEDINGS- Returns and return information disclosed to a Federal agency under subparagraph (A) may be used in an action or proceeding (or in preparation for such action or proceeding) brought under section 625 of the American Jobs Creation Act of 2004 for the collection of any unpaid assessment or penalty arising under such Act.'

(2) CONFORMING AMENDMENT- Section 6103(p)(4) of such Code is amended by striking '(o)(1)' both places it appears and inserting '(o)(1)(A)'

(3) EFFECTIVE DATE- The amendments made by this subsection shall apply on or after the date of the enactment of this Act.

(g) Transitional Rule- Any person who--

(1) on April 1, 2009 is engaged in business as a manufacturer of processed tobacco or as an importer of processed tobacco, and

(2) before the end of the 90-day period beginning on such date, submits an application under subchapter B of chapter 52 of such Code to engage in such business, may, notwithstanding such subchapter B, continue to engage in such business pending final action on such application. Pending such final action, all provisions of such chapter 52 shall apply to such applicant in the same manner and to the same extent as if such applicant were a holder of a permit under such chapter 52 to engage in such business.

#### **SEC. 703. TREASURY STUDY CONCERNING MAGNITUDE OF TOBACCO SMUGGLING IN THE UNITED STATES.**

Not later than one year after the date of the enactment of this Act, the Secretary of the Treasury shall conduct a study concerning the magnitude of tobacco smuggling in the United States and submit to Congress recommendations for the most effective steps to reduce tobacco smuggling. Such study shall also include a review of the loss of Federal tax receipts due to illicit tobacco trade in the United States and the role of imported tobacco products in the illicit tobacco trade in the United States.