

On May 23, 2013, Governor Mark Dayton signed into law HF 677, significantly increasing excise tax rates on cigarettes and other tobacco products and making several other important changes to Minnesota tobacco tax laws. Most changes take effect July 1, 2013. The text of the session law, Chapter 143, Article 5 (HF 677), is available at: <https://www.revisor.mn.gov/data/revisor/law/2013/0/2013-143.pdf>. Highlights of key provisions are summarized below.

### **Cigarettes:**

The excise tax on cigarettes weighing three pounds or less per thousand – nearly all cigarettes – has been increased by \$1.60 to \$2.83 per pack.

In Minnesota, the tax on cigarettes weighing more than three pounds per thousand is \$5.66 per pack, twice the rate of regular cigarettes. Before the new law took effect, no cigarettes on the market fit into this higher-priced category but this rate may apply to some packs of so-called little cigars that are now taxed as cigarettes.



### **Little Cigars:**

The definition of a “cigarette” for excise tax purposes has been amended to include so-called little cigars. As a result, products that bear a close resemblance to standard cigarettes will now be taxed as cigarettes even if they are labeled as cigars, little cigars, small cigars, cigarillos, or mini-cigarillos. Because so-called little cigars are defined as cigarettes, a cigarette stamp must be affixed before they are sold at retail.

Under the amended definition, a roll of tobacco that weighs no more than 4.5 pounds per thousand and is wrapped in paper or something other than whole tobacco leaf will be taxed as a cigarette. A roll of tobacco will also be taxed as a cigarette if it is “likely to be offered to or purchased by consumers as a cigarette” because of the way it looks, its size, the type of tobacco in the filler, or its packaging, pricing, marketing or labeling.

Products will not be taxed as cigarettes if they are wrapped in whole tobacco leaf and do not have a cigarette-like filter. These products will continue to be defined and taxed as tobacco products, not as cigarettes.

### **Other Tobacco Products:**

The excise tax on tobacco products other than cigarettes has been increased from 70% to 95% of wholesale price. This tax rate applies to products such as cigarillos, low-priced cigars, chewing tobacco, snus, dissolvables, and nicotine cartridges of electronic cigarettes.

### **Minimum Tax on Moist Snuff:**

Through December 31, 2013, the excise tax on moist snuff will be 95% of the wholesale sales price. Effective January 1, 2014, a minimum excise tax will apply to containers of “moist snuff” (limited to snuff that is intended to be placed or dipped in the mouth). The excise tax will be either 95% of the wholesale price or \$2.83 per container – equal to the tax on a pack of cigarettes weighing three pounds or less per thousand – whichever is greater. A container of moist snuff is defined as the smallest consumer-size package, can, or other container marketed or packaged for sale to a retail consumer. If more than one container is packaged together, each container will be taxed separately.



### **Premium Cigars:**

The excise tax on a premium cigar is capped at 95% of its wholesale price or \$3.50 per premium cigar, whichever is less, and is imposed on distributors. A “premium cigar” is defined to mean any cigar that has a wholesale price of at least \$2 and is hand-constructed, hand-rolled, wrapped entirely in whole tobacco leaf, and has a filler and binder made entirely from tobacco, except for adhesives or other materials used to maintain its size, texture or flavor. For example, the tax on a cigar with a wholesale price of \$3.00 would be \$2.85 (95% of wholesale price). The tax on a cigar with a wholesale price of \$6.00 would be \$3.50 because although 95% of the wholesale price would be \$5.70, the tax is now capped.



---

### **Non-Settlement Manufacturers Fee:**

Tobacco companies that reached a landmark settlement with the State of Minnesota in 1998 in the historic lawsuit against the industry pass along settlement payments to consumers in the form of higher cigarettes prices. Because the settlement payments do not affect tobacco companies that were not involved in the lawsuit, and to compensate for the lower prices of cigarettes produced by the non-settling tobacco companies, the Minnesota Legislature imposes a fee on cigarettes manufactured by the non-settling companies. The amended law has increased this fee from 35 cents to 50 cents per pack.

### **Tax in Lieu of a Retail Sales Tax on Cigarettes:**

Instead of applying a retail tax on consumers of cigarettes at the point of sale, Minnesota law imposes a cigarette tax on distributors *before* retail sales – in lieu of a retail sales tax. This tax was previously set at 6.5% of the weighted average retail price. As amended, it is now equal to the combined tax rate under section 297A.62, multiplied by the weighted average retail price, which is determined annually. New rates are published by November 1 of each year, effective for sales made on or after January 1 of the following year.

### **Indexing:**

Annual adjustment (indexing) of the cigarette excise tax rate will take effect on July 1, 2014. The rate will be published each year by November 1, and the rate increase will apply to sales made on or after January 1 of the following year. This will likely result in a slight increase in the excise tax every year to match inflation.

### **Floor Stocks Tax:**

A one-time floor stocks tax has been imposed on distributors, subjobbers, and retailers of cigarettes, requiring them to pay tax on their existing inventory of cigarettes and unaffixed tax stamps to avoid stockpiling. The one-time tax is equal to the difference between the old and the new tax rate and must be paid by September 4, 2013.

### **Repeal of the Health Impact Fee:**

In 2005, the Minnesota Legislature imposed a “health impact fee” on cigarettes and tobacco products. The new law has repealed Minnesota’s health impact fee on cigarettes and tobacco products. The equivalent amounts are now encompassed within the excise tax rate on cigarettes and tobacco products. The Health Impact Fund has been repealed as well. Effective July 1, 2013, all cigarette and tobacco product tax revenue (other than interim revenue) will go to the general fund.

### **Tax Reform Study:**

The Commissioner of Revenue is required to conduct a study to explore ways to improve compliance with the state’s tobacco tax collection system and to prepare a report for the 2014 Legislature.

The report must include recommendations and guidance for improvements to deliver a unified system for collecting the highest possible reasonable excise tax rates on cigarette and other tobacco products, discourage tax evasion, and prevent illegal sales (which may encourage youth access). The Legislature has distributed \$100,000 from the general fund for the study and the resulting report, which is due February 15, 2014. Changes to the tax system are expected to be implemented by January of 2015.



---

*The Public Health Law Center provides information and technical assistance on issues related to public health, but does not provide legal representation or advice. This fact sheet should not be considered legal advice or a substitute for obtaining legal advice from an attorney. If you have specific legal questions, we recommend that you consult with an attorney familiar with the laws of your jurisdiction.*