

112TH CONGRESS
1ST SESSION

S. 1706

To amend the Internal Revenue Code of 1986 to reduce tobacco smuggling,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 13, 2011

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

A BILL

To amend the Internal Revenue Code of 1986 to reduce
tobacco smuggling, and for other purposes.

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. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Smuggled Tobacco Prevention Act of 2011” or the
6 “STOP Act”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

- Sec. 101. Amendment of 1986 code.
 Sec. 102. Machines used to manufacture or package tobacco products or processed tobacco.
 Sec. 103. Improved marking and labeling.
 Sec. 104. Wholesalers and manufacturers, importers, and sellers of tobacco production machines required to have permit.
 Sec. 105. Conditions of permit.
 Sec. 106. Records to be maintained.
 Sec. 107. Reports.
 Sec. 108. Fraudulent offenses.
 Sec. 109. Penalties.
 Sec. 110. Coordination with other government officials.
 Sec. 111. Definitions.
 Sec. 112. Conforming amendments.
 Sec. 113. Effective date.

TITLE II—IMPORT FRAUD

- Sec. 201. Maximum penalty for importation of tobacco products and cigarette papers and tubes by fraudulent means.

TITLE III—EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS

- Sec. 301. Exclusions regarding Indian Tribes and Tribal matters.

1 **TITLE I—AMENDMENTS TO IN-**
 2 **TERNAL REVENUE CODE OF**
 3 **1986**

4 **SEC. 101. AMENDMENT OF 1986 CODE.**

5 Except as otherwise expressly provided, whenever in
 6 this title an amendment or repeal is expressed in terms
 7 of an amendment to, or repeal of, a section or other provi-
 8 sion, the reference shall be considered to be made to a
 9 section or other provision of the Internal Revenue Code
 10 of 1986.

11 **SEC. 102. MACHINES USED TO MANUFACTURE OR PACKAGE**
 12 **TOBACCO PRODUCTS OR PROCESSED TO-**
 13 **BACCO.**

14 (a) IN GENERAL.—Section 5762 is amended—

1 (1) by redesignating subsection (b) as sub-
2 section (c), and

3 (2) by inserting after subsection (a) the fol-
4 lowing new subsection:

5 “(b) MACHINES USED TO MANUFACTURE OR PACK-
6 AGE TOBACCO PRODUCTS OR PROCESSED TOBACCO.—

7 “(1) TRANSFER OF MANUFACTURING MACHINES
8 TO LICENSED PERSONS.—Any tobacco production
9 machine may be sold, leased, imported, exported, de-
10 livered, or otherwise made available only to per-
11 sons—

12 “(A) lawfully engaged in—

13 “(i) the sale, lease, importation, ex-
14 portation, or delivery of such machines,

15 “(ii) the manufacture or packaging of
16 tobacco products or processed tobacco, or

17 “(iii) the application of unique identi-
18 fication markings onto tobacco product or
19 processed tobacco packages pursuant to
20 section 5723, and

21 “(B) that have all Federal, State, local,
22 and Indian tribal government permits, registra-
23 tions, and licenses required to engage in such
24 activities.

1 “(2) TRANSFER OF MACHINES TO PERSONS EN-
2 GAGED IN ILLEGAL MANUFACTURE OF CONTRA-
3 BAND.—No tobacco production machine shall know-
4 ingly be manufactured for or be (directly or indi-
5 rectly) sold, leased, imported, exported, delivered, or
6 otherwise made available to any person engaged in
7 the illegal manufacture, distribution, or sale of coun-
8 terfeit or contraband tobacco products or processed
9 tobacco, unique identification markings, or other
10 tax-payment indicia.

11 “(3) RENDERING UNUSED MACHINES INOPER-
12 ABLE.—Any tobacco production machine that is no
13 longer being used as such shall be made irreparably
14 inoperable for such use before being disposed of or
15 put to any other use. This paragraph shall not apply
16 to any such machines being kept solely for display
17 or for historical purposes.

18 “(4) RECORDS.—

19 “(A) IN GENERAL.—Any person selling,
20 leasing, importing, exporting, delivering, or oth-
21 erwise making available a tobacco production
22 machine shall maintain and keep records relat-
23 ing to any transfers of the machine, including
24 the name, address, other contact information,
25 and any permit, registration, or license number

1 of the person receiving delivery of the machine,
2 or to whom the machine is otherwise trans-
3 ferred, as the case may be.

4 “(B) 5-YEAR HOLDING PERIOD FOR
5 RECORDS.—Any record required to be main-
6 tained and kept under subparagraph (A) shall
7 be kept for the 5-year period beginning on the
8 first date such record is required to be so main-
9 tained and kept.

10 “(C) AVAILABILITY OF RECORDS.—Such
11 records shall be available for inspection by any
12 internal revenue officer during business hours.

13 “(D) SAFE HARBOR.—An ordinary com-
14 mercial record or invoice shall satisfy the re-
15 quirements of this paragraph if such record or
16 invoice contains all of the information required
17 under subparagraph (A).

18 “(5) VIOLATIONS.—

19 “(A) IN GENERAL.—Whoever knowingly
20 violates paragraph (1), (2), or (3) shall, for
21 each offense, be fined not more than \$10,000 or
22 an amount equal to 3 times the fair market
23 value of the tobacco product machine involved
24 (whichever is greater), or imprisoned not more
25 than five years, or both.

1 “(B) RECORD-KEEPING.—Whoever know-
 2 ingly violates paragraph (4) shall, for each of-
 3 fense, be fined not more than \$10,000.”.

4 (b) TOBACCO PRODUCTION MACHINE.—Section 5702
 5 is amended by adding at the end the following new sub-
 6 section:

7 “(q) TOBACCO PRODUCTION MACHINE.—The term
 8 ‘tobacco production machine’ means any machine (or com-
 9 ponent integral to the operation of such a machine) used
 10 to manufacture or package tobacco products or processed
 11 tobacco or to apply unique identification markings or
 12 other tax-payment indicia to packages of tobacco products
 13 or processed tobacco. Such term includes any machine
 14 used to produce tobacco products for compensation, lease,
 15 or hire, or otherwise used in a commercial setting.”.

16 (c) CONFORMING AMENDMENT.—Subsection (c) of
 17 section 5762 (as so redesignated) is amended by striking
 18 “subsection (a)” and inserting “subsections (a) and (b)”.

19 (d) EFFECTIVE DATE.—The amendment made by
 20 this section shall apply to transfers more than 6 months
 21 after the date of the enactment of this Act.

22 **SEC. 103. IMPROVED MARKING AND LABELING.**

23 (a) IN GENERAL.—Subsection (b) of section 5723 is
 24 amended to read as follows:

25 “(b) MARKS, LABELS, AND NOTICES.—

1 “(1) IN GENERAL.—Subject to paragraphs (2),
2 (3), and (4), every package of tobacco products,
3 processed tobacco, or cigarette papers or tubes shall,
4 before removal, bear the marks, labels, and notices
5 that the Secretary by regulation prescribes.

6 “(2) MARKING REQUIREMENTS FOR DOMESTIC
7 MARKET.—

8 “(A) IN GENERAL.—Each person who is a
9 manufacturer or importer of tobacco products
10 or processed tobacco shall (in accordance with
11 regulations prescribed by the Secretary) ensure
12 that, before any product intended for sale or
13 distribution within the United States is re-
14 moved, a unique identification marking is af-
15 fixed to or forms part of each package of to-
16 bacco product or processed tobacco manufac-
17 tured or imported by such person for sale or
18 distribution.

19 “(B) MARKINGS ON INDIVIDUAL PACK-
20 AGES.—Any markings required to be placed on
21 a tobacco product or processed tobacco package
22 by this subsection shall be placed on the inner-
23 most sealed container visible from the outside
24 of the individual package. For any tobacco
25 product or processed tobacco package that con-

1 tains multiple smaller packages of tobacco prod-
2 ucts or processed tobacco, any markings re-
3 quired to be so placed on tobacco product or
4 processed tobacco packages shall be placed on
5 all the individual tobacco product or processed
6 tobacco packages.

7 “(C) MARKINGS ON AGGREGATE PACKING
8 MODES.—To facilitate efficient tracking and
9 tracing of tobacco products or processed to-
10 bacco through the distribution system, all man-
11 ufacturers or importers of tobacco products or
12 processed tobacco shall, in addition to such
13 unique identification marking, also, in accord-
14 ance with regulations prescribed by the Sec-
15 retary, ensure that unique identification mark-
16 ings are affixed to or form part of aggregate
17 packing modes (such as cartons, cases, and
18 master cases for cigarettes). The Secretary
19 shall determine the size, location, and methods
20 for such markings. The Secretary shall estab-
21 lish regulations requiring that all persons with-
22 in the distribution chain, up to but not includ-
23 ing the ultimate retailer, utilize the unique
24 identification markings on aggregate packing
25 modes to facilitate the tracking and tracing of

1 tobacco products or processed tobacco through
2 the distribution system.

3 “(3) MARKING REQUIREMENTS FOR EX-
4 PORTS.—A unique identification marking shall be af-
5 fixed to or form part of each package of tobacco
6 product or processed tobacco that is exported, or
7 sold for export, that distinguishes it from those
8 products or processed tobacco intended for sale or
9 distribution within the United States. The Secretary
10 shall by regulation prescribe the size, location, and
11 other characteristics of such marking, and it may
12 contain a serial number that is assigned to the coun-
13 try of export, except that no such serial number
14 shall be required on tobacco products or processed
15 tobacco sold at retail to consumers by duty free
16 stores for consumption beyond the jurisdiction of the
17 internal revenue laws of the United States. Such to-
18 bacco products or processed tobacco shall instead
19 bear markings indicating the tobacco product or
20 processed tobacco is only for duty-free sale to con-
21 sumers, as prescribed through regulation by the Sec-
22 retary, before the product or processed tobacco is re-
23 moved.

24 “(4) AUTHORIZATION OF FEDERAL UNIQUE
25 IDENTIFICATION MARKING.—Not later than 3 years

1 after the date of the enactment of the Smuggled To-
2 bacco Prevention Act of 2011, the Secretary shall by
3 regulation require the use of a unique identification
4 marking on all products subject to tax under this
5 chapter.”.

6 (b) UNIQUE IDENTIFICATION MARKING.—Section
7 5723 is amended by adding at the end the following new
8 subsection:

9 “(f) UNIQUE IDENTIFICATION MARKING.—

10 “(1) IN GENERAL.—No tobacco product or
11 processed tobacco may be sold, offered for sale, dis-
12 tributed, mailed, or otherwise delivered for final sale
13 to any consumer in the United States unless the
14 unique identification marking that meets the re-
15 quirements of this section (and any regulations pre-
16 scribed thereunder) is affixed to or forms part of the
17 package in which it is contained.

18 “(2) SYSTEM SPECIFICATIONS.—

19 “(A) The Secretary shall design such sys-
20 tem to coordinate and avoid interference with
21 State, local, and Indian tribal tax stamps and
22 markings, facilitate collection of the tax im-
23 posed by this chapter, impede contraband to-
24 bacco trafficking, minimize counterfeit marking,
25 allow for more effective tracking and tracing of

1 tobacco products and processed tobacco, facili-
2 tate the enforcement of related Federal laws,
3 and utilize such available technology as may
4 promote the purposes of this chapter.

5 “(B) The Secretary shall prescribe the
6 method and manner in which such unique iden-
7 tification markings are to be distributed, pur-
8 chased, and applied to or made part of tobacco
9 product and processed tobacco packages, and
10 may provide for the cancellation of such mark-
11 ings.

12 “(C) The unique identification marking
13 must provide the following information:

14 “(i) The denominated value of the
15 marking.

16 “(ii) A unique serial number or track-
17 ing code for each tobacco product or proc-
18 essed tobacco package or aggregate pack-
19 age.

20 “(iii) The name and address of the
21 person purchasing the marking (and, if dif-
22 ferent, of the person ensuring the marking
23 is affixed to or made part of the package).

1 “(iv) The date the marking was pur-
2 chased and when it was affixed to or made
3 part of the package.

4 “(v) The name and address of the
5 first unrelated person purchasing or other-
6 wise receiving the tobacco product or proc-
7 essed tobacco from the person who ensures
8 the marking is affixed to or made part of
9 the package and the date of such purchase
10 or receipt.

11 “(vi) Such other information as the
12 Secretary may prescribe to carry out the
13 purposes of this chapter.

14 “(D) The information described in sub-
15 paragraph (C) shall, to the extent practicable—

16 “(i) be cryptographically encrypted,
17 and

18 “(ii)(I) be readable by a portable
19 scanning device (or similar device) to be
20 utilized by regulatory and law enforcement
21 officials at the time and place of inspec-
22 tion, or

23 “(II) be otherwise accessible re-
24 motely at such time and place.

1 “(3) UNRELATED PERSON.—For purposes of
2 this subsection, the term ‘unrelated person’ means a
3 person other than a related person within the mean-
4 ing of section 267(b) or 707(b)(1).”.

5 (c) DEFINITIONS.—Section 5723, as amended by
6 subsection (b), is amended by adding at the end the fol-
7 lowing new subsections:

8 “(g) PACKAGE DEFINED.—For purposes of this sec-
9 tion, the term ‘package’ means a pack, box, carton, or con-
10 tainer of any kind or, if no other container, any wrapping
11 (including cellophane), in which a tobacco product or proc-
12 essed tobacco is sold, offered for sale, distributed, or oth-
13 erwise delivered for final sale to any consumer.

14 “(h) UNIQUE IDENTIFICATION MARKING DE-
15 FINED.—For purposes of this section, the term ‘unique
16 identification marking’ means a device in such design and
17 denomination as the Secretary authorizes by regulation
18 that is affixed to or made part of a package of a tobacco
19 product or processed tobacco. Such markings shall contain
20 overt security features for public authentication and covert
21 security features embedding a unique, secure, encrypted
22 identifier onto the marking, enabling law enforcement au-
23 thentication, production control, and tracking and tracing
24 of the product or processed tobacco bearing the marking.”.

1 (d) REGULATIONS.—The Secretary of the Treasury
 2 shall consult with the Secretary of Health and Human
 3 Services as may be appropriate to carry out the purposes
 4 of subsection (f), and paragraphs (2), (3), and (4) of sub-
 5 section (b), of section 5723 of the Internal Revenue Code
 6 of 1986 (as added by this section).

7 **SEC. 104. WHOLESALERS AND MANUFACTURERS, IMPORT-**
 8 **ERS, AND SELLERS OF TOBACCO PRODUC-**
 9 **TION MACHINES REQUIRED TO HAVE PER-**
 10 **MIT.**

11 (a) WHOLESALERS.—Section 5712 is amended by in-
 12 serting “, wholesaler,” after “manufacturer”.

13 (b) MANUFACTURERS, IMPORTERS, AND SELLERS OF
 14 TOBACCO PRODUCTION MACHINES.—Section 5712 is
 15 amended by striking “or as an export warehouse propri-
 16 etor” and inserting “, as an export warehouse proprietor,
 17 or as a manufacturer, seller, or importer of tobacco pro-
 18 duction machines”.

19 **SEC. 105. CONDITIONS OF PERMIT.**

20 (a) ISSUANCE.—Subsection (a) of section 5713 is
 21 amended to read as follows:

22 “(a) ISSUANCE.—

23 “(1) IN GENERAL.—A person shall not engage
 24 in business as a manufacturer, wholesaler, or im-
 25 porter of tobacco products or processed tobacco, as

1 an export warehouse proprietor, or as a manufac-
2 turer, seller, or importer of tobacco production ma-
3 chines without a permit to engage in such business.
4 Such permit, conditioned upon compliance with this
5 chapter and regulations issued thereunder, shall be
6 issued in such form and in such manner as the Sec-
7 retary shall by regulation prescribe, to every person
8 properly qualified under sections 5711 and 5712.
9 Any entity granted such a permit is not eligible to
10 provide any services the Secretary may elect to pro-
11 cure to facilitate the purposes of section 5723. Per-
12 mit holders shall automatically count output and
13 register, record, and transmit the quantities meas-
14 ured, in the form, conditions, and time limits estab-
15 lished by the Secretary. A new permit may be re-
16 quired at such other time as the Secretary shall by
17 regulation prescribe.

18 “(2) CONDITIONS.—The Secretary shall not
19 issue a permit under this section unless—

20 “(A) the applicant is in compliance with
21 the requirements of—

22 “(i) this chapter,

23 “(ii) chapter 114 of title 18, United
24 States Code,

1 “(iii) the Act of October 19, 1949 (15
2 U.S.C. 375 et seq.; commonly referred to
3 as the ‘Jenkins Act’),

4 “(iv) the Fair and Equitable Tobacco
5 Reform Act of 2004, and any amendments
6 made thereby,

7 “(v) the Family Smoking Prevention
8 and Tobacco Control Act, and any amend-
9 ments made thereby,

10 “(vi) the Prevent All Cigarette Traf-
11 ficking Act of 2009, and any amendments
12 made thereby, and

13 “(vii) any related regulations there-
14 under,

15 as in effect on the date of the issuance of the
16 permit,

17 “(B) the applicant certifies that the appli-
18 cant is in compliance with all other Federal,
19 State, local, and Indian tribal laws relating to
20 the taxation, manufacture, importation, expor-
21 tation, distribution, marketing, sale, or trans-
22 portation of tobacco products, processed to-
23 bacco, or tobacco production machines, as in ef-
24 fect on the date of the issuance of the permit,
25 and

1 “(C) the applicant identifies in the applica-
2 tion any violation of a law described in subpara-
3 graph (A) or (B) by the applicant resulting in
4 a penalty under any such law during the 5-year
5 period ending on the date of the application.”.

6 (b) **SUSPENSION OR REVOCATION.**—Subparagraph
7 (A) of section 5713(b)(1) is amended by inserting “or any
8 other law described in subparagraph (A) or (B) of sub-
9 section (a)(2)” after “this chapter”.

10 **SEC. 106. RECORDS TO BE MAINTAINED.**

11 (a) **IN GENERAL.**—Section 5741 is amended—

12 (1) by inserting “(a) **IN GENERAL.**—” before
13 “Every manufacturer”,

14 (2) by inserting “every wholesaler,” after
15 “every importer,”,

16 (3) by striking “such records” and inserting
17 “records concerning the chain of custody of the to-
18 bacco products and processed tobacco (including the
19 foreign country of final destination for packages
20 marked for export) and the serial numbers, marks,
21 labels, and notices required under section 5723, and
22 such other records”, and

23 (4) by adding at the end the following new sub-
24 sections:

1 “(b) RETAILERS.—Retailers shall maintain records
2 of receipt, and any non-retail sale or delivery, of tobacco
3 products and processed tobacco. Such records shall be
4 available to the Secretary for inspection and audit. An or-
5 dinary commercial record or invoice shall satisfy the re-
6 quirements of this subsection if such record shows the date
7 of receipt, from whom tobacco products or processed to-
8 bacco were received, and the quantity of tobacco products
9 or processed tobacco received (or, in the case of non-retail
10 sale or delivery, the date of sale or delivery, to whom the
11 tobacco products or processed tobacco were sold or deliv-
12 ered, and the quantity of the tobacco products or proc-
13 essed tobacco sold or delivered). To the extent the Sec-
14 retary determines that the records maintained by retail
15 entities licensed pursuant to section 555(b) of the Tariff
16 Act of 1930 (19 U.S.C. 1555(b)) satisfy the recordkeeping
17 requirements of this section, no additional records shall
18 be required for such entities under this section. The pre-
19 ceding provisions of this subsection shall not be construed
20 to limit or preclude other recordkeeping requirements im-
21 posed on any retailer.

22 “(c) RECORDS CONCERNING MARKS AND CHAIN OF
23 CUSTODY.—Records concerning the chain of custody and
24 the marks, labels, and notices required under section 5723

1 shall be available for inspection by any internal revenue
2 officer during business hours.”.

3 (b) CONSULTATION WITH HEALTH AND HUMAN
4 SERVICES.—The Secretary of the Treasury shall consult
5 with the Secretary of Health and Human Services as may
6 be appropriate to carry out the purposes of section 5741
7 of the Internal Revenue Code of 1986.

8 **SEC. 107. REPORTS.**

9 Section 5722 is amended—

10 (1) by inserting “(a) IN GENERAL.—” before
11 “Every manufacturer”, and

12 (2) by adding at the end the following new sub-
13 section:

14 “(b) REPORTS BY EXPORT WAREHOUSE PROPRI-
15 ETORS.—Prior to exportation of tobacco products or proc-
16 essed tobacco from the United States, the export ware-
17 house proprietor shall submit a report (in such manner
18 and form as the Secretary may by regulation prescribe)
19 to enable the Secretary to identify the shipment and as-
20 sure that it reaches its intended destination.”.

21 **SEC. 108. FRAUDULENT OFFENSES.**

22 (a) IN GENERAL.—Subsection (a) of section 5762 is
23 amended—

1 (1) by striking paragraph (1) and redesignating
2 paragraphs (2) through (6) as paragraphs (1)
3 through (5), respectively, and

4 (2) by striking “not more than \$10,000” and
5 inserting “not more than \$10,000 or an amount
6 equal to 3 times the amount of the tax imposed
7 under this chapter on the tobacco product involved
8 (whichever is greater)”.

9 (b) OFFENSES RELATING TO DISTRIBUTION OF TO-
10 BACCO PRODUCTS, ETC.—

11 (1) IN GENERAL.—Section 5762 (as amended
12 by section 102 of this Act) is amended—

13 (A) by redesignating subsection (c) as sub-
14 section (d), and

15 (B) by inserting after subsection (b) the
16 following new subsection:

17 “(c) OFFENSES RELATING TO DISTRIBUTION OF TO-
18 BACCO PRODUCTS, ETC.—It shall be unlawful—

19 “(1) for any person to engage in business as a
20 manufacturer or importer of tobacco products, proc-
21 essed tobacco, or cigarette papers and tubes, as a
22 wholesaler or an export warehouse proprietor, or as
23 a manufacturer, seller, or importer of tobacco pro-
24 duction machines without filing the bond and obtain-

1 ing the permit where required by this chapter or
2 regulations thereunder,

3 “(2) for a manufacturer, importer, or whole-
4 saler to knowingly ship, transport, deliver, or receive
5 any tobacco products or processed tobacco from or
6 to any person other than a person who has obtained
7 the permit required by this chapter, a retailer, or a
8 person handling such products or processed tobacco
9 solely for purposes of shipment or delivery; except
10 that an importer who has obtained the permit re-
11 quired by this chapter may receive, from a foreign
12 manufacturer or a foreign distributor, foreign to-
13 bacco products or processed tobacco that have not
14 previously entered the United States,

15 “(3) for a manufacturer of processed tobacco to
16 knowingly ship, transport, sell, or deliver processed
17 tobacco to any person other than a manufacturer of
18 processed tobacco, a manufacturer of tobacco prod-
19 ucts, or an export warehouse proprietor,

20 “(4) for any person (other than the original
21 manufacturer of such tobacco products or processed
22 tobacco or an export warehouse proprietor author-
23 ized to receive any tobacco products or processed to-
24 bacco that have previously been exported and re-
25 turned to the United States) to knowingly receive

1 any tobacco products or processed tobacco that have
2 previously been exported and returned to the United
3 States,

4 “(5) for any export warehouse proprietor to
5 knowingly ship, transport, sell, or deliver for sale
6 any tobacco products or processed tobacco to any
7 person other than the original manufacturer of such
8 tobacco products or processed tobacco, another ex-
9 port warehouse proprietor, a duty free store, or a
10 foreign purchaser,

11 “(6) for any person (other than a manufac-
12 turer, wholesaler, or an export warehouse proprietor
13 permitted under this chapter) to knowingly ship,
14 transport, receive, or possess, for purposes of resale,
15 any tobacco product or processed tobacco in pack-
16 ages marked pursuant to regulations issued under
17 section 5723, other than for direct return to a man-
18 ufacturer for repacking or for re-exportation or to
19 an export warehouse proprietor for re-exportation,

20 “(7) for any manufacturer, importer, export
21 warehouse proprietor, or wholesaler permitted under
22 this chapter to make any false entry in, to fail to
23 make an entry in, or to knowingly fail to maintain
24 properly any record or report required by this chap-

1 ter or the regulations promulgated thereunder with
2 the intent to defraud the United States,

3 “(8) for any person, with the intent to defraud
4 the United States, to alter, mutilate, destroy, oblit-
5 erate, or remove any mark or label required under
6 this chapter upon a tobacco product or processed to-
7 bacco held for sale, or to create, possess, or apply
8 on any tobacco product or processed tobacco or its
9 packaging any counterfeit versions of any such
10 marks or labels, and

11 “(9) for any person to sell at retail more than
12 3,000 cigarettes in any single transaction (or series
13 of related transactions), or, in the case of other to-
14 bacco products, an equivalent quantity as deter-
15 mined by regulation.

16 Any person violating any of the provisions of this sub-
17 section shall, upon conviction, be fined as provided in sec-
18 tion 3571 of title 18, United States Code, or imprisoned
19 for not more than 5 years, or both.”.

20 (2) CONFORMING AMENDMENT.—Section
21 5762(d) (as so redesignated) is amended by striking
22 “and (b)” inserting “, (b), and (c)”.

23 (c) OTHER OFFENSES.—Subsection (d) of section
24 5762 (as so redesignated) is amended by striking “not
25 more than \$1,000” and inserting “not more than \$2,500

1 or an amount equal to the tax imposed under this chapter
2 on the tobacco product or processed tobacco involved
3 (whichever is greater)”.

4 **SEC. 109. PENALTIES.**

5 (a) IN GENERAL.—

6 (1) Subsection (a) of section 5761 is amend-
7 ed—

8 (A) by striking “willfully” and inserting
9 “knowingly”, and

10 (B) by striking “\$1,000” and inserting
11 “\$10,000”.

12 (2) Subsection (b) of section 5761 is amended
13 by striking “5 percent” and inserting “10 percent”.

14 (b) PENALTY AMOUNTS ADJUSTED FOR INFLA-
15 TION.—Section 5761 is amended by redesignating sub-
16 section (f) as subsection (g) and inserting after subsection
17 (e) the following new subsection:

18 “(f) INFLATION ADJUSTMENT.—

19 “(1) IN GENERAL.—In the case of a calendar
20 year beginning after 2011, the penalty dollar
21 amounts provided under this chapter shall each be
22 increased by an amount equal to—

23 “(A) such dollar amount, multiplied by

24 “(B) the cost-of-living adjustment deter-
25 mined under section 1(f)(3) for the calendar

1 year, determined by substituting ‘calendar year
2 2010’ for ‘calendar year 1992’ in subparagraph
3 (B) thereof.

4 “(2) ROUNDING.—If any amount as adjusted
5 under paragraph (1) is not a multiple of \$10, such
6 amount shall be rounded to the next highest multiple
7 of \$10.”.

8 **SEC. 110. COORDINATION WITH OTHER GOVERNMENT OF-**
9 **FICIALS.**

10 (a) IN GENERAL.—Subchapter F of chapter 52 is
11 amended by adding at the end the following new section:

12 **“SEC. 5755. COORDINATION WITH OTHER GOVERNMENT OF-**
13 **FICIALS.**

14 “The Secretary shall make reasonable efforts to co-
15 ordinate with other Federal agencies and with officials of
16 foreign, State, local, Indian tribal, and other governments
17 to promote the purposes of this chapter, to prevent and
18 reduce tobacco tax evasion and contraband trafficking in
19 tobacco products and processed tobacco, to enforce settle-
20 ment agreements between tobacco companies and State or
21 other governments and related laws, or for other law en-
22 forcement or administration purposes.”.

23 (b) INFORMATION SHARING.—

1 (1) IN GENERAL.—Paragraph (1) of section
2 6103(o) is amended by adding at the end the fol-
3 lowing new subparagraph:

4 “(C) INFORMATION SHARING FOR TO-
5 BACCO PRODUCT LAW ADMINISTRATION AND
6 ENFORCEMENT PURPOSES.—

7 “(i) FEDERAL, STATE, LOCAL, AND
8 TRIBAL GOVERNMENTS.—Returns and re-
9 turn information with respect to taxes im-
10 posed by chapter 52 may be open to in-
11 spection by or disclosure to officers and
12 employees of any Federal agency, the State
13 Tax Administrators, or any other agency
14 of any State, local, or Indian tribal govern-
15 ment responsible for the administration
16 and enforcement of laws and regulations
17 relating to tobacco products and processed
18 tobacco, or their legal representative, solely
19 for use in such administration and enforce-
20 ment, unless the Secretary determines that
21 such disclosure would seriously impair
22 Federal tax administration.

23 “(ii) FOREIGN GOVERNMENTS AND
24 ORGANIZATIONS.—The Secretary shall,
25 upon written request, disclose returns and

1 return information with respect to taxes
2 imposed by chapter 52 to officers and em-
3 ployees of any agency of any foreign gov-
4 ernment, OLAF (European Anti-Fraud
5 Office), EUROPOL, INTERPOL, or the
6 World Customs Organization responsible
7 for the administration and enforcement of
8 laws and regulations relating to tobacco
9 products and processed tobacco, or their
10 legal representative, solely for use in such
11 administration and enforcement, if the
12 Secretary obtains written assurances from
13 such government or organization that the
14 information will be held in confidence and
15 used only for such use. No return or re-
16 turn information shall be disclosed under
17 this clause if the Secretary determines that
18 such disclosure would seriously impair
19 Federal tax administration.

20 “(iii) PUBLIC INFORMATION.—The
21 identity and business address of those per-
22 sons that have a valid permit, pursuant to
23 chapter 52, to engage in business as a
24 manufacturer, wholesaler, or importer of
25 tobacco products or processed tobacco, as

1 an export warehouse proprietor, or as a
2 manufacturer, seller, or importer of to-
3 bacco production machines (as defined in
4 section 5702(q)) shall be made publicly
5 available at such time and in such manner
6 as the Secretary may prescribe.”.

7 (2) CONFORMING AMENDMENTS.—

8 (A) Subsection (a) of section 6103 is
9 amended—

10 (i) by striking “or any local” in para-
11 graph (2) and inserting “any local”,

12 (ii) by inserting “, or any agency de-
13 scribed in subsection (o)(1)(C)(i)” after
14 “subsection (l)(7)(D)” in paragraph (2),

15 (iii) by striking “or subsection (n)” in
16 paragraph (3) and inserting “subsection
17 (n), or subsection (o)(1)(C)(i)”.

18 (B) Paragraph (4) of section 6103(p) is
19 amended—

20 (i) by striking “(o)(1)(A)” both places
21 it appears and inserting “(o)(1)(A) or
22 (C)(i)”, and

23 (ii) by striking “(15), or (16),” and
24 inserting “(15), or (16), or (o)(1)(C)(i),”.

1 (C) Paragraph (2) of section 7213(a) is
2 amended—

3 (i) by striking “(21) or” and inserting
4 “(21),”, and
5 (ii) by striking “or (7)” and inserting
6 “or (7), or (o)(1)(C)(i)”.

7 (c) CLERICAL AMENDMENT.—The table of sections
8 for subchapter F of chapter 52 is amended by adding at
9 the end the following new item:

“Sec. 5755. Coordination with other government officials.”.

10 **SEC. 111. DEFINITIONS.**

11 (a) EXPORT WAREHOUSE PROPRIETOR.—Subsection
12 (i) of section 5702 is amended by inserting before the pe-
13 riod the following: “or any person engaged in the business
14 of exporting tobacco products from the United States for
15 purposes of sale or distribution. Any duty free store that
16 sells, offers for sale, or otherwise distributes to any person
17 in any single transaction (or series of related transactions)
18 more than 3,000 cigarettes, or an equivalent quantity of
19 other tobacco products as the Secretary shall by regulation
20 prescribe, shall be deemed an export warehouse proprietor
21 under this chapter”.

22 (b) RETAILER; WHOLESALER.—Section 5702, as
23 amended by this Act, is amended by adding at the end
24 the following new subsections:

1 “(r) RETAILER.—The term ‘retailer’ means any per-
2 son who sells, or offers for sale, any tobacco product at
3 retail. The term ‘retailer’ includes any duty free store that
4 sells, offers for sale, or otherwise distributes at retail in
5 any single transaction (or series of related transactions)
6 not more than 3,000 cigarettes, or not more than an
7 equivalent quantity of other tobacco products as the Sec-
8 retary shall by regulation prescribe.

9 “(s) WHOLESALER.—The term ‘wholesaler’ means
10 any person engaged in the business of purchasing tobacco
11 products for resale at wholesale, or any person acting as
12 an agent or broker for any person engaged in the business
13 of purchasing tobacco products for resale at wholesale.”.

14 **SEC. 112. CONFORMING AMENDMENTS.**

15 (a) Paragraph (2)(C) of section 2341 of title 18,
16 United States Code is amended by inserting “in regard
17 to State, local, or Indian tribal government taxes,” before
18 “a person”.

19 (b) Sections 2314 and 2315 of title 18, United States
20 Code, are each amended—

21 (1) by striking “**STATE**” in the heading there-
22 of; and

23 (2) by striking “tax stamps” each place it ap-
24 pears and inserting “tax stamps or markings”.

1 (c) The headings for subchapters B, C, and E of
 2 chapter 52 are each amended by inserting “, **Processed**
 3 **Tobacco,**” after “**Products**”.

4 (d) The items relating to subchapters B, C, and E
 5 in the table of subchapters for chapter 52 are each amend-
 6 ed by inserting “, processed tobacco,” after “products”.

7 (e) The heading for chapter 52 is amended by insert-
 8 ing “, **PROCESSED TOBACCO,**” after “**PROD-**
 9 **UCTS**”.

10 (f) The item relating to chapter 52 in the table of
 11 chapters for subtitle E is amended by inserting “, proc-
 12 essed tobacco,” after “products”.

13 **SEC. 113. EFFECTIVE DATE.**

14 Except as otherwise provided in this title, the amend-
 15 ments made by this title shall take effect 1 year after the
 16 date of the enactment of this Act.

17 **TITLE II—IMPORT FRAUD**

18 **SEC. 201. MAXIMUM PENALTY FOR IMPORTATION OF TO-**
 19 **BACCO PRODUCTS AND CIGARETTE PAPERS**
 20 **AND TUBES BY FRAUDULENT MEANS.**

21 (a) **MAXIMUM PENALTY.**—Section 592(c)(1) of the
 22 Tariff Act of 1930 (19 U.S.C. 1592(c)(1)) is amended—

23 (1) by striking “A fraudulent violation of sub-
 24 section (a)” and inserting the following:

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), a fraudulent violation of
3 subsection (a)”;

4 (2) by adding at the end the following:

5 “(B) TOBACCO PRODUCTS AND CIGARETTE
6 PAPERS AND TUBES.—In the case of importa-
7 tion of tobacco products and cigarette papers
8 and tubes subject to tax under chapter 52 of
9 the Internal Revenue Code of 1986, a fraudu-
10 lent violation of subsection (a) is punishable by
11 a civil penalty in an amount not to exceed the
12 sum of—

13 “(i) the domestic value of the mer-
14 chandise, and

15 “(ii) four times the amount of Federal
16 excise tax that could be imposed on the
17 merchandise, if applicable.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 subsection (a) shall take effect on the date which is 90
20 days after the date of the enactment of this Act, and shall
21 apply with respect to violations of section 592 of the Tariff
22 Act of 1930 (as so amended) that occur on or after that
23 date.

1 **TITLE III—EXCLUSIONS RE-**
2 **GARDING INDIAN TRIBES AND**
3 **TRIBAL MATTERS**

4 **SEC. 301. EXCLUSIONS REGARDING INDIAN TRIBES AND**
5 **TRIBAL MATTERS.**

6 (a) IN GENERAL.—Nothing in this Act or the amend-
7 ments made by this Act shall be construed to amend, mod-
8 ify, or otherwise affect—

9 (1) any agreements, compacts, or other inter-
10 governmental arrangements between any State or
11 local government and any government of an Indian
12 tribe relating to the collection of taxes on tobacco
13 products sold in Indian country;

14 (2) any State laws that authorize or otherwise
15 pertain to any such intergovernmental arrangements
16 or create special rules or procedures for the collec-
17 tion of State, local, or tribal taxes on tobacco prod-
18 ucts sold in Indian country;

19 (3) any limitations under Federal or State law,
20 including Federal common law and treaties, on
21 State, local, and tribal tax and regulatory authority
22 with respect to the sale, use, or distribution of to-
23 bacco products or processed tobacco by or to Indian
24 tribes, tribal members, tribal enterprises, or in In-
25 dian country;

1 (4) any Federal law, including Federal common
2 law and treaties, regarding State jurisdiction, or
3 lack thereof, over any Indian tribe, tribal member,
4 tribal enterprise, Indian reservations, or other land
5 held by the United States in trust for one or more
6 Indian tribes; or

7 (5) any State or local government authority to
8 bring enforcement actions against persons located in
9 Indian country.

10 (b) COORDINATION OF LAW ENFORCEMENT.—Noth-
11 ing in this Act or the amendments made by this Act (other
12 than the amendments relating to section 6103 of the In-
13 ternal Revenue Code of 1986) shall be construed to inhibit
14 or otherwise affect any coordinated law enforcement effort
15 by 1 or more States or other jurisdictions, including In-
16 dian tribes, through interstate compact or otherwise,
17 that—

18 (1) provides for the administration of tobacco
19 product laws or laws pertaining to interstate sales or
20 other sales of tobacco products or processed tobacco;

21 (2) provides for the seizure of tobacco products,
22 processed tobacco, or other property related to a vio-
23 lation of such laws; or

24 (3) establishes cooperative programs for the ad-
25 ministration of such laws.

1 (c) TREATMENT OF STATE AND LOCAL GOVERN-
2 MENTS.—Nothing in this Act or the amendments made
3 by this Act shall be construed to authorize, deputize, or
4 commission States or local governments as instrumental-
5 ities of the United States.

6 (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—
7 Nothing in this Act or the amendments made by this Act
8 shall prohibit, limit, or restrict enforcement by the Attor-
9 ney General of the United States of this Act or an amend-
10 ment made by this Act within Indian country.

11 (e) AMBIGUITY.—Any ambiguity between the lan-
12 guage of this section or its application and any other pro-
13 vision of this Act shall be resolved in favor of this section.

14 (f) DEFINITIONS.—In this section—

15 (1) the term “Indian country” has the meaning
16 given that term in section 1151 of title 18, United
17 States Code;

18 (2) the term “tribal enterprise” means any
19 business enterprise, regardless of whether incor-
20 porated or unincorporated under Federal or tribal
21 law, of an Indian tribe or group of Indian tribes;

22 (3) the term “Indian reservation” has the
23 meaning given that term in section 168(j)(6) of the
24 Internal Revenue Code of 1986;

1 (4) the term “Indian tribe” has the meaning
2 given that term in section 4(e) of the Indian Self-
3 Determination and Education Assistance Act (25
4 U.S.C. 450b(e)); and

5 (5) the terms “tobacco products” and “proc-
6 essed tobacco” have the meanings given such terms
7 by section 5702 of the Internal Revenue Code of
8 1986.

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