

117TH CONGRESS
1ST SESSION

S. 1314

To amend the Internal Revenue Code of 1986 to provide tax rate parity among all tobacco products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 2021

Mr. DURBIN (for himself, Mr. WYDEN, Mrs. MURRAY, Mr. BROWN, Mr. REED, Mr. MERKLEY, Mr. BLUMENTHAL, Mr. MARKEY, and Ms. HIRONO) 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 provide tax rate parity among all tobacco products, 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.**

4 This Act may be cited as the “Tobacco Tax Equity
5 Act of 2021”.

1 **SEC. 2. INCREASING EXCISE TAXES ON CIGARETTES AND**
 2 **ESTABLISHING EXCISE TAX EQUITY AMONG**
 3 **ALL TOBACCO PRODUCT TAX RATES.**

4 (a) TAX PARITY FOR ROLL-YOUR-OWN TOBACCO.—
 5 Section 5701(g) of the Internal Revenue Code of 1986 is
 6 amended by striking “\$24.78” and inserting “\$49.56”.

7 (b) TAX PARITY FOR PIPE TOBACCO.—Section
 8 5701(f) of the Internal Revenue Code of 1986 is amended
 9 by striking “\$2.8311 cents” and inserting “\$49.56”.

10 (c) TAX PARITY FOR SMOKELESS TOBACCO.—

11 (1) Section 5701(e) of the Internal Revenue
 12 Code of 1986 is amended—

13 (A) in paragraph (1), by striking “\$1.51”
 14 and inserting “\$26.84”;

15 (B) in paragraph (2), by striking “50.33
 16 cents” and inserting “\$10.74”; and

17 (C) by adding at the end the following:

18 “(3) SMOKELESS TOBACCO SOLD IN DISCRETE
 19 SINGLE-USE UNITS.—On discrete single-use units,
 20 \$100.66 per thousand.”.

21 (2) Section 5702(m) of such Code is amend-
 22 ed—

23 (A) in paragraph (1), by striking “or chew-
 24 ing tobacco” and inserting “, chewing tobacco,
 25 or discrete single-use unit”;

1 (B) in paragraphs (2) and (3), by inserting
 2 “that is not a discrete single-use unit” before
 3 the period in each such paragraph; and

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

5 “(4) DISCRETE SINGLE-USE UNIT.—The term
 6 ‘discrete single-use unit’ means any product con-
 7 taining, made from, or derived from tobacco or nico-
 8 tine that—

9 “(A) is not intended to be smoked; and

10 “(B) is in the form of a lozenge, tablet,
 11 pill, pouch, dissolvable strip, or other discrete
 12 single-use or single-dose unit.”.

13 (d) TAX PARITY FOR SMALL CIGARS.—Paragraph
 14 (1) of section 5701(a) of the Internal Revenue Code of
 15 1986 is amended by striking “\$50.33” and inserting
 16 “\$100.66”.

17 (e) TAX PARITY FOR LARGE CIGARS.—

18 (1) IN GENERAL.—Paragraph (2) of section
 19 5701(a) of the Internal Revenue Code of 1986 is
 20 amended by striking “52.75 percent” and all that
 21 follows through the period and inserting the fol-
 22 lowing: “\$49.56 per pound and a proportionate tax
 23 at the like rate on all fractional parts of a pound but
 24 not less than 10.066 cents per cigar.”.

1 (2) GUIDANCE.—The Secretary of the Treas-
 2 ury, or the Secretary’s delegate, may issue guidance
 3 regarding the appropriate method for determining
 4 the weight of large cigars for purposes of calculating
 5 the applicable tax under section 5701(a)(2) of the
 6 Internal Revenue Code of 1986.

7 (f) TAX PARITY FOR ROLL-YOUR-OWN TOBACCO
 8 AND CERTAIN PROCESSED TOBACCO.—Subsection (o) of
 9 section 5702 of the Internal Revenue Code of 1986 is
 10 amended by inserting “, and includes processed tobacco
 11 that is removed for delivery or delivered to a person other
 12 than a person with a permit provided under section 5713,
 13 but does not include removals of processed tobacco for ex-
 14 portation” after “wrappers thereof”.

15 (g) CLARIFYING TAX RATE FOR OTHER TOBACCO
 16 PRODUCTS.—

17 (1) IN GENERAL.—Section 5701 of the Internal
 18 Revenue Code of 1986 is amended by adding at the
 19 end the following new subsection:

20 “(i) OTHER TOBACCO PRODUCTS.—Any product not
 21 otherwise described under this section that has been deter-
 22 mined to be a tobacco product by the Food and Drug Ad-
 23 ministration through its authorities under the Family
 24 Smoking Prevention and Tobacco Control Act shall be
 25 taxed at a level of tax equivalent to the tax rate for ciga-

1 rettes on an estimated per use basis as determined by the
 2 Secretary.”.

3 (2) ESTABLISHING PER USE BASIS.—For pur-
 4 poses of section 5701(i) of the Internal Revenue
 5 Code of 1986, not later than 12 months after the
 6 later of the date of the enactment of this Act or the
 7 date that a product has been determined to be a to-
 8 bacco product by the Food and Drug Administra-
 9 tion, the Secretary of the Treasury (or the Secretary
 10 of the Treasury’s delegate) shall issue final regula-
 11 tions establishing the level of tax for such product
 12 that is equivalent to the tax rate for cigarettes on
 13 an estimated per use basis.

14 (h) CLARIFYING DEFINITION OF TOBACCO PROD-
 15 UCTS.—

16 (1) IN GENERAL.—Subsection (c) of section
 17 5702 of the Internal Revenue Code of 1986 is
 18 amended to read as follows:

19 “(c) TOBACCO PRODUCTS.—The term ‘tobacco prod-
 20 ucts’ means—

21 “(1) cigars, cigarettes, smokeless tobacco, pipe
 22 tobacco, and roll-your-own tobacco, and

23 “(2) any other product subject to tax pursuant
 24 to section 5701(i).”.

1 (2) CONFORMING AMENDMENTS.—Subsection
 2 (d) of section 5702 of such Code is amended by
 3 striking “cigars, cigarettes, smokeless tobacco, pipe
 4 tobacco, or roll-your-own tobacco” each place it ap-
 5 pears and inserting “tobacco products”.

6 (i) INCREASING TAX ON CIGARETTES.—

7 (1) SMALL CIGARETTES.—Section 5701(b)(1)
 8 of such Code is amended by striking “\$50.33” and
 9 inserting “\$100.66”.

10 (2) LARGE CIGARETTES.—Section 5701(b)(2)
 11 of such Code is amended by striking “\$105.69” and
 12 inserting “\$211.38”.

13 (j) TAX RATES ADJUSTED FOR INFLATION.—Section
 14 5701 of such Code, as amended by subsection (g), is
 15 amended by adding at the end the following new sub-
 16 section:

17 “(j) INFLATION ADJUSTMENT.—

18 “(1) IN GENERAL.—In the case of any calendar
 19 year beginning after 2021, the dollar amounts pro-
 20 vided under this chapter shall each be increased by
 21 an amount equal to—

22 “(A) such dollar amount, multiplied by

23 “(B) the cost-of-living adjustment deter-
 24 mined under section 1(f)(3) for the calendar
 25 year, determined by substituting ‘calendar year

1 2020’ for ‘calendar year 2016’ in subparagraph
2 (A)(ii) thereof.

3 “(2) ROUNDING.—If any amount as adjusted
4 under paragraph (1) is not a multiple of \$0.01, such
5 amount shall be rounded to the next highest multiple
6 of \$0.01.”.

7 (k) FLOOR STOCKS TAXES.—

8 (1) IMPOSITION OF TAX.—On tobacco products
9 manufactured in or imported into the United States
10 which are removed before any tax increase date and
11 held on such date for sale by any person, there is
12 hereby imposed a tax in an amount equal to the ex-
13 cess of—

14 (A) the tax which would be imposed under
15 section 5701 of the Internal Revenue Code of
16 1986 on the article if the article had been re-
17 moved on such date, over

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

20 (2) CREDIT AGAINST TAX.—Each person shall
21 be allowed as a credit against the taxes imposed by
22 paragraph (1) an amount equal to \$500. Such credit
23 shall not exceed the amount of taxes imposed by
24 paragraph (1) on such date for which such person
25 is liable.

1 (3) LIABILITY FOR TAX AND METHOD OF PAY-
2 MENT.—

3 (A) LIABILITY FOR TAX.—A person hold-
4 ing tobacco products on any tax increase date
5 to which any tax imposed by paragraph (1) ap-
6 plies shall be liable for such tax.

7 (B) METHOD OF PAYMENT.—The tax im-
8 posed by paragraph (1) shall be paid in such
9 manner as the Secretary shall prescribe by reg-
10 ulations.

11 (C) TIME FOR PAYMENT.—The tax im-
12 posed by paragraph (1) shall be paid on or be-
13 fore the date that is 120 days after the effective
14 date of the tax rate increase.

15 (4) ARTICLES IN FOREIGN TRADE ZONES.—
16 Notwithstanding the Act of June 18, 1934 (com-
17 monly known as the Foreign Trade Zone Act, 48
18 Stat. 998, 19 U.S.C. 81a et seq.), or any other pro-
19 vision of law, any article which is located in a for-
20 eign trade zone on any tax increase date shall be
21 subject to the tax imposed by paragraph (1) if—

22 (A) internal revenue taxes have been deter-
23 mined, or customs duties liquidated, with re-
24 spect to such article before such date pursuant

1 to a request made under the first proviso of
2 section 3(a) of such Act, or

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

8 (5) DEFINITIONS.—For purposes of this sub-
9 section—

10 (A) IN GENERAL.—Any term used in this
11 subsection which is also used in section 5702 of
12 such Code shall have the same meaning as such
13 term has in such section.

14 (B) TAX INCREASE DATE.—The term “tax
15 increase date” means the effective date of any
16 increase in any tobacco product excise tax rate
17 pursuant to the amendments made by this sec-
18 tion (other than subsection (j) thereof).

19 (C) SECRETARY.—The term “Secretary”
20 means the Secretary of the Treasury or the
21 Secretary’s delegate.

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

1 (7) OTHER LAWS APPLICABLE.—All provisions
 2 of law, including penalties, applicable with respect to
 3 the taxes imposed by section 5701 of such Code
 4 shall, insofar as applicable and not inconsistent with
 5 the provisions of this subsection, apply to the floor
 6 stocks taxes imposed by paragraph (1), to the same
 7 extent as if such taxes were imposed by such section
 8 5701. The Secretary may treat any person who bore
 9 the ultimate burden of the tax imposed by para-
 10 graph (1) as the person to whom a credit or refund
 11 under such provisions may be allowed or made.

12 (1) EFFECTIVE DATES.—

13 (1) IN GENERAL.—Except as provided in para-
 14 graphs (2) through (4), the amendments made by
 15 this section shall apply to articles removed (as de-
 16 fined in section 5702(j) of the Internal Revenue
 17 Code of 1986) after the last day of the month which
 18 includes the date of the enactment of this Act.

19 (2) DISCRETE SINGLE-USE UNITS AND PROC-
 20 ESSED TOBACCO.—The amendments made by sub-
 21 sections (c)(1)(C), (c)(2), and (f) shall apply to arti-
 22 cles removed (as defined in section 5702(j) of the
 23 Internal Revenue Code of 1986) after the date that
 24 is 6 months after the date of the enactment of this
 25 Act.

1 (3) LARGE CIGARS.—The amendments made by
2 subsection (e) shall apply to articles removed after
3 December 31, 2021.

4 (4) OTHER TOBACCO PRODUCTS.—The amend-
5 ments made by subsection (g)(1) shall apply to prod-
6 ucts removed after the last day of the month which
7 includes the date that the Secretary of the Treasury
8 (or the Secretary of the Treasury’s delegate) issues
9 final regulations establishing the level of tax for
10 such product.

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