



ROLL-YOUR-OWN TOBACCO

Intro to the Issue

Since 2009, there has been a wide disparity between the taxes on cigarettes and “roll your own” cigarette tobacco (\$24.83/lbs), and “pipe” tobacco (\$2.83/lbs). Many entrepreneurs have found a way to take advantage of this tax disparity by purchasing so-called “roll-your-own” (RYO) machines, which they then “rent” to customers, who “manufacture” cigarettes out of cheaper pipe tobacco. The Wall Street Journal recently reported that there were more than 150 RYO tobacco outlets in some 20 states. The retailer then sells the resulting cigarettes to consumers at a price far lower than that charged for traditionally packaged cigarettes.

In response to these developments, the Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) issued Ruling 2010-4 on September 30, 2010, which deemed the proprietors of retail establishments that “rent” RYO machines to consumers in the manner described above to be “manufacturers” of cigarettes. As “manufacturers” of cigarettes, such proprietors are required to comply with TTBs various permit and licensing regulations, including certain recordkeeping, reporting, and inventory requirements. Non-compliance subjects violators to forfeiture and civil and criminal penalties. Without Ruling 2010-4, TTB asserts its ability to assess and collect taxes on cigarettes is curtailed.

Late last year, a federal district court in Ohio issued a temporary restraining order (TRO) enjoining TTB from enforcing this policy. That ruling is currently on appeal to the Sixth Circuit Court of Appeals.

Why You Should Care

If TTB is unable to enforce Ruling 2010-4, a growing number of tobacco consumers and retailers will exploit it. Over time, this lack of tax parity will dramatically alter the retail tobacco space, permitting consumers to purchase large quantities of RYO cigarettes using pipe tobacco for a substantially lower price than traditional packaged cigarettes. In addition, it undermines the intent of federal law and will deprive the federal government of much needed tax revenue.

Facts

- According to TTB, since the 2009 tax increase, the volume of pipe tobacco sold in the United States has more than tripled to 21 million pounds while traditional rolling-tobacco sales volumes, in contrast, fell roughly 60%.
- Because of the tax disparity, consumers pay roughly 50 – 70% less for a carton of cigarettes when purchased through a RYO outlet using pipe tobacco than when purchasing through traditional law abiding outlets.
- This loophole cost the United States government more than \$345 million in the first 15 months since the tax increase according to the Oregon Public Health Division.

NACS Position

Congress should require, as of a date certain, that all production of RYO products made with pipe tobacco be taxed at equal rates as traditionally packaged cigarettes (and RYO products made with cigarette tobacco). To avoid unfairly penalizing businessmen who invested in RYO machines, there should be no retroactive taxes on product previously produced and sold (as there was no clear guidance in place). Because the lawsuit traveling through the Sixth Circuit will take many months—if not years—before reaching a conclusion, Congress has the opportunity to provide market certainty while simultaneously reducing the budget deficit and decreasing the attractiveness of smoking.

Latest Developments

NACS is working with several members of the Ways and Means committee along with Members of the Debt Super Committee pushing legislation that will quickly codify the ruling the ruling which favored the TTB in the 6th circuit. This legislation will bring market certainty to all NACS members.

The Association for Convenience & Fuel Retailing