

By: Otto, Kolthorst, Turner of Harris,
Howard, Zerwas, et al.

H.B. No. 3536

A BILL TO BE ENTITLED

1 AN ACT
2 relating to imposing a fee on the sale of cigarettes and cigarette
3 tobacco products manufactured by certain companies; providing
4 penalties; changing the rate of the tax on chewing tobacco.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 161, Health and Safety Code, is amended
7 by adding Subchapter V to read as follows:

8 SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS

9 MANUFACTURED BY CERTAIN COMPANIES

10 Sec. 161.601. PURPOSE. The purpose of this subchapter is
11 to:

12 (1) recover health care costs to the state imposed by
13 non-settling manufacturers;

14 (2) prevent non-settling manufacturers from
15 undermining this state's policy of reducing underage smoking by
16 offering cigarettes and cigarette tobacco products at prices that
17 are substantially below the prices of cigarettes and cigarette
18 tobacco products of other manufacturers;

19 (3) protect the tobacco settlement agreement and
20 funding, which has been reduced because of the growth of sales of
21 non-settling manufacturer cigarettes and cigarette tobacco
22 products, for programs that are funded wholly or partly by payments
23 to this state under the tobacco settlement agreement and recoup for
24 this state settlement payment revenue lost because of sales of

1 non-settling manufacturer cigarettes and cigarette tobacco
2 products;

3 (4) ensure evenhanded treatment of manufacturers and
4 further protect the tobacco settlement agreement and funding by
5 imposing a partial payment obligation on non-settling
6 manufacturers that already make payments on Texas sales under the
7 master settlement agreement until a credit amendment to that
8 agreement that will provide those manufacturers with a credit for
9 payments to Texas is effective; and

10 (5) provide funding for any purpose the legislature
11 determines.

12 Sec. 161.602. DEFINITIONS. In this subchapter:

13 (1) "Brand family" means each style of cigarettes or
14 cigarette tobacco products sold under the same trademark. The term
15 includes any style of cigarettes or cigarette tobacco products that
16 have a brand name, trademark, logo, symbol, motto, selling message,
17 recognizable pattern of colors, or other indication of product
18 identification that is identical to, similar to, or identifiable
19 with a previously known brand of cigarettes or cigarette tobacco
20 products.

21 (2) "Cigarette" means a roll for smoking that is:

22 (A) made of tobacco or tobacco mixed with another
23 ingredient and wrapped or covered with a material other than
24 tobacco; and

25 (B) not a cigar.

26 (3) "Cigarette tobacco product" means roll-your-own
27 tobacco or tobacco that, because of the tobacco's appearance, type,

1 packaging, or labeling, is suitable for use in making cigarettes
2 and is likely to be offered to or purchased by a consumer for that
3 purpose.

4 (4) "Credit amendment" means an amendment to the
5 master settlement agreement that offers a credit to subsequent
6 participating manufacturers for fees paid under this subchapter
7 with respect to their products in a form agreed on by settling
8 states, as defined in the master settlement agreement, with
9 aggregate allocable shares, as defined in the master settlement
10 agreement, equal to at least 99.937049 percent; by the original
11 participating manufacturers, as defined in the master settlement
12 agreement; and by subsequent participating manufacturers whose
13 aggregate market share, expressed as a percentage of the total
14 number of individual cigarettes sold in the United States, the
15 District of Columbia, and Puerto Rico during the calendar year at
16 issue, as measured by excise taxes collected by the federal
17 government, and in the case of cigarettes sold in Puerto Rico, by
18 arbitrios de cigarillos collected by the Puerto Rico taxing
19 authority, is greater than 2.5 percent. For purposes of the
20 calculation of subsequent participating manufacturer market share
21 under this subchapter, 0.09 ounces of roll-your-own tobacco
22 constitutes one cigarette.

23 (5) "Distributor" has the meaning assigned by Section
24 154.001 or 155.001, Tax Code, as appropriate.

25 (6) "Fee" or "monthly fee" means the fee imposed under
26 Section 161.603.

27 (7) "Manufacturer" means a person that manufactures,

1 fabricates, or assembles cigarettes or cigarette tobacco products,
2 or causes or arranges for the manufacture, fabrication, or assembly
3 of cigarettes or cigarette tobacco products for sale or
4 distribution. For purposes of this subchapter, the term includes a
5 person that is the first importer into the United States of
6 cigarettes or cigarette tobacco products manufactured, fabricated,
7 or assembled outside the United States.

8 (8) "Master settlement agreement" means the
9 settlement agreement entered into on November 23, 1998, by 46
10 states and leading United States tobacco manufacturers, as amended
11 as of September 1, 2013.

12 (9) "Non-settling manufacturer" means a manufacturer
13 of cigarettes or cigarette tobacco products that did not sign a
14 tobacco settlement agreement described by Subdivision (15).

15 (10) "Non-settling manufacturer cigarettes" means
16 cigarettes of a non-settling manufacturer.

17 (11) "Non-settling manufacturer cigarette tobacco
18 products" means cigarette tobacco products of a non-settling
19 manufacturer.

20 (12) "Released claim" means:

21 (A) "released claims" as that term is defined in
22 the agreement described by Subdivision (15)(A); and

23 (B) all claims encompassed in Paragraph 7 of the
24 agreement described by Subdivision (15)(B).

25 (13) "Settling manufacturer" means a manufacturer of
26 cigarettes or cigarette tobacco products that signed a tobacco
27 settlement agreement described by Subdivision (15).

1 (14) "Subsequent participating manufacturer" has the
2 same meaning provided for that term in the master settlement
3 agreement, except that the term excludes any settling manufacturer
4 under the tobacco settlement agreement described by Subdivision
5 (15)(B). A manufacturer may not be treated as a subsequent
6 participating manufacturer for purposes of Section 161.604(c)
7 unless it has provided to the comptroller notice and proof, in the
8 form and manner the comptroller may prescribe, that it is a
9 subsequent participating manufacturer.

10 (15) "Tobacco settlement agreement" means either:

11 (A) the Comprehensive Settlement Agreement and
12 Release filed on January 16, 1998, in the United States District
13 Court, Eastern District of Texas, in the case styled The State of
14 Texas v. The American Tobacco Co., et al., No. 5-96CV-91, and all
15 subsequent amendments; or

16 (B) the settlement agreement entered into on
17 March 20, 1997, regarding the matter described in Paragraph (A),
18 but only as to companies that signed that agreement on that date.

19 Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the
20 sale, use, consumption, or distribution in this state of:

21 (1) non-settling manufacturer cigarettes if a stamp is
22 required to be affixed to a package of those cigarettes under
23 Section 154.041, Tax Code;

24 (2) non-settling manufacturer cigarettes that are
25 sold, purchased, or distributed in this state but that are not
26 required to have a stamp affixed to a package of those cigarettes
27 under Chapter 154, Tax Code;

1 (3) non-settling manufacturer cigarette tobacco
2 products that are subject to the tax imposed by Section 155.0211,
3 Tax Code; and

4 (4) non-settling manufacturer cigarette tobacco
5 products that are sold, purchased, or distributed in this state but
6 that are not subject to the tax imposed by Section 155.0211, Tax
7 Code.

8 (b) The fee imposed by this section does not apply to
9 cigarettes or cigarette tobacco products that a settling
10 manufacturer claims as its own, and that are included in computing
11 payments to be made by that settling manufacturer, under the
12 tobacco settlement agreement described by Section 161.602(15)(A).

13 (c) The fee imposed by this section does not apply to
14 cigarettes or cigarette tobacco products that are sold into another
15 state for resale to consumers outside of this state, provided that
16 the sale is reported to the state into which the cigarettes are sold
17 under 15 U.S.C. Section 376.

18 (d) The fee imposed by this section is in addition to any
19 other privilege, license, fee, or tax required or imposed by state
20 law.

21 (e) Except as otherwise provided by this subchapter, the fee
22 imposed by this section is imposed, collected, paid, administered,
23 and enforced in the same manner as the taxes imposed by Chapter 154
24 or 155, Tax Code, as appropriate.

25 (f) The fee imposed by this section shall be collected only
26 once on each cigarette or cigarette tobacco product on which it is
27 due.

1 Sec. 161.604. RATE OF FEE. (a) For cigarettes or cigarette
2 tobacco products sold, used, consumed, or distributed in this
3 state, as provided by Section 161.603, during the 2013 calendar
4 year, the fee is imposed at the rate of 2.75 cents for:

5 (1) each non-settling manufacturer cigarette; and

6 (2) each 0.09 ounces of non-settling manufacturer
7 cigarette tobacco product described by Section 161.602(3).

8 (b) Beginning in January 2014, and in January of each
9 subsequent year, the comptroller shall compute the rate of the fee
10 applicable during that calendar year by increasing the rate for the
11 preceding calendar year by the greater of:

12 (1) three percent; or

13 (2) the actual total percentage change in the Consumer
14 Price Index for All Urban Consumers (CPI-U), as published by the
15 Bureau of Labor Statistics of the United States Department of
16 Labor, during the preceding calendar year, calculated by comparing
17 the CPI-U for December of the preceding calendar year with the CPI-U
18 for December a year earlier.

19 (c) Notwithstanding Subsection (a), the rate of the fee on
20 the cigarettes and cigarette tobacco products of a subsequent
21 participating manufacturer shall, for calendar months beginning
22 before the effective date of a credit amendment, be calculated by
23 substituting 0.75 cents for 2.75 cents in Subsection (a). For
24 calendar months beginning on or after the effective date of a credit
25 amendment, the rate of the fee on the cigarettes and cigarette
26 tobacco products of subsequent participating manufacturers shall
27 be the same as the rate that applies for those months to the

1 cigarettes of non-settling manufacturers who are not subsequent
2 participating manufacturers.

3 Sec. 161.605. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY
4 FEE. (a) A distributor required to file a report under Section
5 154.210 or 155.111, Tax Code, shall, in addition to the information
6 required by those sections, include in that required report, as
7 appropriate:

8 (1) the number and denominations of stamps affixed to
9 individual packages of non-settling manufacturer cigarettes during
10 the preceding month;

11 (2) the amount of non-settling manufacturer cigarette
12 tobacco products subject to the tax imposed by Section 155.0211,
13 Tax Code, during the preceding month;

14 (3) the number of individual packages of non-settling
15 manufacturer cigarettes and the amount of non-settling
16 manufacturer cigarette tobacco products not subject to the tax
17 imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code,
18 sold or purchased in this state or otherwise distributed in this
19 state for sale in the United States;

20 (4) a calculation of the monthly fee required to be
21 paid by the distributor; and

22 (5) any other information the comptroller considers
23 necessary or appropriate to determine the amount of the fee imposed
24 by this subchapter or to enforce this subchapter.

25 (b) A distributor shall include with the report required
26 under this section the fee imposed under Section 161.603 based on
27 the non-settling manufacturer cigarettes and cigarette tobacco

1 products required to be included in the distributor's report under
2 this section and calculated using the rate under Section 161.604.

3 (c) The information required by Subsections (a)(1), (2),
4 and (3) must be itemized for each place of business and by
5 manufacturer and brand family.

6 (d) The requirement to report information under this
7 section shall be enforced in the same manner as the requirement to
8 deliver to or file with the comptroller a report required under
9 Section 154.210 or 155.111, Tax Code, as appropriate.

10 (e) Notwithstanding any other law, a distributor that
11 remits a monthly fee under this section is, subject to Section
12 154.051, Tax Code, entitled to a stamping allowance of three
13 percent of the face value of all stamps purchased under Section
14 154.041, Tax Code, for providing the service of affixing stamps to
15 cigarette packages.

16 (f) Information obtained from a report provided under
17 Subsection (a) regarding cigarettes or cigarette tobacco products
18 sold, purchased, or otherwise distributed by a non-settling
19 manufacturer may be disclosed by the comptroller to the
20 manufacturer or to the authorized representative of the
21 manufacturer.

22 (g) The comptroller shall, for the purpose of assisting
23 distributors in calculating the monthly fee, publish and maintain
24 on the comptroller's Internet website:

25 (1) a list of the names and brand families of settling
26 manufacturers;

27 (2) a list of each non-settling manufacturer showing

1 whether that manufacturer:

2 (A) is a subsequent participating manufacturer;

3 or

4 (B) is not a subsequent participating
5 manufacturer; and

6 (3) the effective date of any credit amendment.

7 Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING
8 NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS
9 FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or
10 cigarette tobacco products of a non-settling manufacturer were not
11 offered for sale or distribution in this state on September 1, 2013,
12 the non-settling manufacturer shall, before the date the cigarettes
13 or cigarette tobacco products are offered for sale or distribution
14 in this state, provide to the attorney general on a form prescribed
15 by the attorney general:

16 (1) the non-settling manufacturer's complete name,
17 address, and telephone number;

18 (2) the date that the non-settling manufacturer will
19 begin offering cigarettes or cigarette tobacco products for sale or
20 distribution in this state;

21 (3) the names of the brand families of the cigarettes
22 or cigarette tobacco products that the non-settling manufacturer
23 will offer for sale or distribution in this state;

24 (4) a statement that the non-settling manufacturer
25 intends to comply with this subchapter; and

26 (5) the name, address, telephone number, and signature
27 of an officer of the non-settling manufacturer attesting to all of

1 the included information.

2 (b) The attorney general shall make the information
3 provided under this section available to the comptroller.

4 Sec. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and
5 cigarette tobacco products of a non-settling manufacturer that are
6 sold, used, consumed, or distributed in this state in violation of
7 this subchapter, including cigarettes and cigarette tobacco
8 products for which full payment of the fee imposed under Section
9 161.603 is not made, shall be treated as cigarettes or cigarette
10 tobacco products for which the tax assessed by Chapter 154 or 155,
11 Tax Code, as appropriate, has not been paid, and the distributor or
12 non-settling manufacturer is subject to all penalties imposed by
13 those chapters for violations of those chapters.

14 Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.
15 A non-settling manufacturer shall appoint and engage a resident
16 agent for service of process.

17 Sec. 161.609. AUDIT OR INSPECTION. The comptroller or
18 attorney general is entitled to conduct reasonable periodic audits
19 or inspections of the financial records of a non-settling
20 manufacturer and its distributors to ensure compliance with this
21 subchapter.

22 Sec. 161.610. COMPTROLLER INFORMATION SHARING. On request,
23 the comptroller shall report annually to the independent auditor or
24 other entities responsible for making calculations or other
25 determinations under a tobacco settlement agreement or the master
26 settlement agreement, as the master settlement agreement may be
27 amended or supplemented by some or all of the parties thereto, the

1 volume of cigarettes on which the fee required under Section
2 161.603 is paid, itemized by cigarette manufacturer and brand
3 family.

4 Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND.
5 The revenue from the fees imposed by this subchapter shall be
6 deposited in the state treasury to the credit of the general revenue
7 fund.

8 Sec. 161.612. RELEASED CLAIMS. All fees paid by a
9 manufacturer under this subchapter shall apply on a dollar for
10 dollar basis to reduce any judgment or settlement on a released
11 claim brought against the manufacturer that made the payment.

12 Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This
13 subchapter applies without regard to Section 154.022, Tax Code, or
14 any other law that might be read to create an exemption for
15 interstate sales.

16 (b) This subchapter does not apply to a tobacco product
17 described by Section 155.001(15)(C), Tax Code.

18 Sec. 161.614. RULES. The comptroller and attorney general
19 may issue rules and regulations as necessary to carry out or enforce
20 this subchapter.

21 SECTION 2. Section 155.0211(b), Tax Code, is amended to
22 read as follows:

23 (b) Except as provided by Subsection (c), the tax rate for:

24 (1) each can or package of a tobacco product other than
25 cigars, chewing tobacco, or smoking tobacco is \$1.22 per ounce and a
26 proportionate rate on all fractional parts of an ounce; and

27 (2) chewing tobacco or smoking tobacco is 80 cents per

1 ounce and a proportionate rate on all fractional parts of an ounce.

2 SECTION 3. (a) Not later than September 30, 2013, a
3 non-settling manufacturer, as that term is defined by Section
4 161.602, Health and Safety Code, as added by this Act, that is
5 offering cigarettes or cigarette tobacco products for sale or
6 distribution in this state on September 1, 2013, shall provide to
7 the attorney general on a form prescribed by the attorney general:

8 (1) the non-settling manufacturer's complete name,
9 address, and telephone number;

10 (2) the date that the non-settling manufacturer began
11 offering cigarettes or cigarette tobacco products for sale or
12 distribution in this state;

13 (3) the names of the brand families of the cigarettes
14 or cigarette tobacco products that the non-settling manufacturer
15 offers for sale or distribution in this state;

16 (4) a statement that the non-settling manufacturer
17 intends to comply with Subchapter V, Chapter 161, Health and Safety
18 Code, as added by this Act; and

19 (5) the name, address, telephone number, and signature
20 of an officer of the non-settling manufacturer attesting to all of
21 the included information.

22 (b) The attorney general shall make the information
23 provided under Subsection (a) of this section available to the
24 comptroller.

25 SECTION 4. The change in law made by this Act to Section
26 155.0211, Tax Code, does not affect tax liability accruing before
27 the effective date of this Act. That liability continues in effect

1 as if this Act had not been enacted, and the former law is continued
2 in effect for the collection of taxes due and for civil and criminal
3 enforcement of the liability for those taxes.

4 SECTION 5. This Act takes effect September 1, 2013.