

**DESCRIPTION OF TITLE X OF H.R. 3162, THE  
“CHILDREN’S HEALTH AND MEDICARE PROTECTION ACT OF 2007”**

Scheduled for Markup  
before the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on July 26, 2007

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



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## INTRODUCTION

The House Committee on Ways and Means has scheduled a markup on July 26, 2007. This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of Title X of H.R. 3162, the Children's Health and Medicare Protection Act of 2007.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of Title X of H.R. 3162, the "Children's Health and Medicare Protection Act of 2007"* (JCX-54-07), July 25, 2007. This document can also be found on the web at [www.house.gov/jct](http://www.house.gov/jct).

## I. INCREASE TOBACCO TAX RATES AND MODIFY CERTAIN DEFINITIONS

### A. Increase Excise Tax Rates on Tobacco Products and Cigarette Papers and Tubes

#### Present Law

#### Rates of excise tax on tobacco products and cigarette papers and tubes

Tobacco products and cigarette papers and tubes manufactured in the United States or imported into the United States are subject to Federal excise tax at the following rates:<sup>2</sup>

- Cigarettes weighing not more than three pounds per thousand (“small cigarettes”) are taxed at the rate of \$19.50 per thousand (\$0.39 per pack);
- Cigarettes weighing more than three pounds per thousand (“large cigarettes”) are taxed at the rate of \$40.95 per thousand, except that, if they measure more than six and one-half inches in length, they are taxed at the rate applicable to small cigarettes, counting each two and three-quarter inches (or fraction thereof) of the length of each as one cigarette;
- Cigars weighing not more than three pounds per thousand (“small cigars”) are taxed at the rate of \$1.828 per thousand;
- Cigars weighing more than three pounds per thousand (“large cigars”) are taxed at the rate equal to 20.719 percent of the manufacturer’s or importer’s sales price but not more than \$48.75 per thousand;
- Cigarette papers are taxed at the rate of \$0.0122 for each 50 papers or fractional part thereof, except that, if they measure more than six and one-half inches in length, they are taxable by counting each two and three-quarter inches (or fraction thereof) of the length of each as one cigarette paper;
- Cigarette tubes are taxed at the rate of \$0.0244 for each 50 tubes or fractional part thereof, except that, if they measure more than six and one-half inches in length, they are taxable by counting each two and three-quarter inches (or fraction thereof) of the length of each as one cigarette tube;
- Snuff is taxed at the rate of \$0.585 per pound, and proportionately at that rate on all fractional parts of a pound;
- Chewing tobacco is taxed at the rate of \$0.195 per pound, and proportionately at that rate on all fractional parts of a pound;

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<sup>2</sup> Sec. 5701. Except where otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

- Pipe tobacco is taxed at the rate of \$1.0969 per pound, and proportionately at that rate on all fractional parts of a pound; and
- Roll-your-own tobacco is taxed at the rate of \$1.0969 per pound, and proportionately at that rate on all fractional parts of a pound.

### **Floor stocks tax and foreign trade zones**

The Balanced Budget Act of 1997 increased excise taxes on tobacco products and cigarette papers and tubes.<sup>3</sup> That provision also imposed a tax (“floor stocks tax”) on any such items removed before the effective date of the tax increase and held on that date for sale by any person. The amount of the floor stocks tax was the excess of the amount of tax on such items at the increased rate over the amount of tax at the old rate. Each person was allowed a \$500 credit against the floor stocks tax.

Special tax and duty rules apply with respect to foreign trade zones. In general, merchandise may be brought into a foreign trade zone without being subject to the general customs laws of the United States. Such merchandise may be stored in a foreign trade zone or may be subjected to manufacturing or other processes there. The United States Customs and Border Protection agency of the Department of Homeland Security (“Customs”) may determine internal revenue taxes and liquidate duties imposed on foreign merchandise in such foreign trade zones. Articles on which such taxes and applicable duties have already been paid, or which have been admitted into the United States free of tax, that have been taken into a foreign trade zone from inside the United States, may be held under the supervision of a customs officer. Such articles may later be released back into the United States free of further taxes and duties.<sup>4</sup>

### **Description of Proposal**

#### **Rate increases**

Under the proposal, the rates of excise tax on tobacco products and cigarette papers and tubes are increased, generally in a proportionate manner. The special rules under present law relating to large cigarettes and cigarette papers and tubes longer than six and one-half inches remain the same. The rates under the proposal are as follows:

- Small cigarettes are taxed at the rate of \$42.00 per thousand (\$0.84 per pack);
- Large cigarettes are taxed at the rate of \$88.20 per thousand;
- Small cigars are taxed at the rate of \$42.00 per thousand (the same rate applied to small cigarettes);

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<sup>3</sup> Pub. L. No. 105-33, sec. 9302 (1997).

<sup>4</sup> 19 U.S.C. sec. 81c(a).

- Large cigars are taxed at the rate equal to 44.63 percent of the manufacturer's or importer's sales price but not more than \$1.00 per cigar;
- Cigarette papers are taxed at the rate of \$0.0263 for each 50 papers or fractional part thereof;
- Cigarette tubes are taxed at the rate of \$0.0526 for each 50 tubes or fractional part thereof;
- Snuff is taxed at the rate of \$1.26 per pound, and proportionately at that rate on all fractional parts of a pound;
- Chewing tobacco is taxed at the rate of \$0.42 per pound, and proportionately at that rate on all fractional parts of a pound;
- Pipe tobacco is taxed at the rate of \$2.36 per pound, and proportionately at that rate on all fractional parts of a pound; and
- Roll-your-own tobacco is taxed at the rate of \$7.4667 per pound, and proportionately at that rate on all fractional parts of a pound. The rate for roll-your-own tobacco is intended to approximate the rate for small cigarettes.

### **Floor stocks tax and foreign trade zone treatment**

The proposal also imposes a tax on floor stocks. Taxable articles (i.e., those articles listed above) manufactured in the United States or imported into the United States which are removed before January 1, 2008 and held on that date for sale by any person are subject to a floor stocks tax. The floor stocks tax is equal to the excess of the applicable tax under the new rates over the applicable tax at the present-law rates. The person holding the article on January 1, 2008 to which the floor stocks tax applies is liable for the tax. Such person is allowed a \$500 credit against the floor stocks tax. In addition, to the extent provided in regulations, no floor stocks tax is to be imposed on cigarettes held for retail sale on January 1, 2008 in a vending machine by any person. The Secretary may reduce a person's general \$500 credit by the amount of vending machine cigarette taxes exempted for that person.

Notwithstanding any other provision of law, the floor stocks tax applies to an article located in a foreign trade zone on January 1, 2008, provided that internal revenue taxes have been determined, or customs duties have been liquidated, with respect to such article before such date, or such article is held on a tax-and-duty-paid basis on such date under the supervision of a customs officer.

For purposes of determining the floor stocks tax, component members of a "controlled group" (as modified) are treated as one taxpayer.<sup>5</sup> "Controlled group" for these purposes means a parent-subsidiary, brother-sister, or combined corporate group with more than 50-percent

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<sup>5</sup> Controlled group is defined in section 1563.

ownership with respect to either combined voting power or total value. Under regulations, similar principles may apply to a group of persons under common control where one or more persons are not a corporation.

The proposal provides that the floor stocks tax shall be paid on or before April 14, 2008, in the manner prescribed by Treasury regulations. In general, all of the rules, including penalties, applicable with respect to taxes on tobacco products and cigarette papers and tubes apply to the floor stocks tax. The person who bore the ultimate burden of the floor stocks tax may be treated as the person entitled to a credit of refund of such tax.

#### **Effective Date**

The proposal applies to articles removed after December 31, 2007.

## **B. Modify Definition of Roll-Your-Own Tobacco**

### **Present Law**

Federal excise taxes are imposed upon tobacco products and cigarette papers and tubes.<sup>6</sup> Tobacco products are cigars, cigarettes, snuff, chewing tobacco, pipe tobacco, and roll-your-own tobacco. A “cigar” is any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco, other than any roll of tobacco which is a cigarette. A “cigarette” is (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (ii) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette. “Roll-your-own tobacco” is any tobacco, which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. “Cigarette paper” is paper, or any other material except tobacco, prepared for use as a cigarette wrapper. A “cigarette tube” is cigarette paper made into a hollow cylinder for use in making cigarettes.<sup>7</sup>

Wrappers containing tobacco are not within the definition of cigarette papers or tubes because they contain tobacco. They are also not generally within the definition of roll-your-own tobacco because they are usually used to make cigars, not cigarettes. For the same reason, loose tobacco suitable for making roll-your-own cigars is not considered to be roll-your-own tobacco.

### **Description of Proposal**

Under the proposal, roll-your-own tobacco also includes any tobacco, which because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigars, or for use as wrappers for making cigars.

### **Effective Date**

The proposal applies to articles removed after December 31, 2007.

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<sup>6</sup> Sec. 5701.

<sup>7</sup> Sec. 5702.



## **II. OTHER PROPOSALS**

### **A. Exemption from Fuel Excise Tax for Use in Ambulances**

#### **Present Law**

In general, Federal excise tax is imposed upon the removal of taxable fuel from a terminal or refinery, the entry of taxable fuel into the United States, and the sale of taxable fuel to, or use of taxable fuel by, any person unless tax was previously imposed.<sup>8</sup> Certain uses of fuel are exempt from tax. For example, fuel sold to a State or local government for the exclusive use of a State or local government is exempt. For another example, liquids sold for use in, or used in, helicopters or fixed wing aircraft for the purpose of providing emergency medical services are exempt.<sup>9</sup> The ultimate purchaser of fuel used for such exempt purposes is entitled to a payment without interest from the Secretary equal to the aggregate amount of the tax imposed on such fuel.<sup>10</sup> A claim for such payment must ordinarily be filed on an annual basis; however, a claim may be filed as often as quarterly if at the close of any quarter of the taxable year of a claimant, the aggregate amount of tax owing to the claimant with respect to fuel is at least \$750.<sup>11</sup>

#### **Description of Proposal**

Under the proposal, any liquid sold for use in, or used in, any ambulance for purposes of providing transportation for emergency medical services is exempt from Federal excise tax. The ultimate purchaser of fuel used for such exempt purpose is entitled to a payment without interest from the Secretary equal to the aggregate amount of the tax imposed on such fuel. A claim for such payment must ordinarily be filed on an annual basis; however, a claim may be filed as often as quarterly if at the close of any quarter of the taxable year of a claimant, the aggregate amount of tax owing to the claimant with respect to fuel is at least \$750.

The proposal does not apply to any liquid used after December 31, 2009.

#### **Effective Date**

The proposal applies to fuel used in transportation provided in calendar quarters beginning after the date of enactment.

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<sup>8</sup> Secs. 4041(a)(1) and 4081(a)(1).

<sup>9</sup> Secs. 4041(l) and 4261(g). Fixed-wing aircraft must be equipped for and fully dedicated on that flight to acute care emergency medical services.

<sup>10</sup> Sec. 6427(d).

<sup>11</sup> Sec. 6427(i).