

111TH CONGRESS
2D SESSION

H. R. 5178

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2010

Mr. DOGGETT (for himself, Mr. LEVIN, Mr. WAXMAN, Mr. WEINER, Mr. GEORGE MILLER of California, Mr. VAN HOLLEN, Mr. PASCRELL, Mr. LEWIS of Georgia, Mr. McDERMOTT, Mr. DAVIS of Illinois, Mr. KIND, Mr. BLUMENAUER, Ms. LINDA T. SÁNCHEZ of California, Mr. STARK, Ms. SCHWARTZ, Mr. THOMPSON of California, Ms. GINNY BROWN-WAITE of Florida, Ms. DELAURO, Ms. ESHOO, Mr. ISRAEL, Ms. JACKSON LEE of Texas, Ms. KILPATRICK of Michigan, Mr. LIPINSKI, Mrs. MCCARTHY of New York, Mr. SNYDER, Ms. SUTTON, Mr. WALZ, Mr. WELCH, Ms. WOOLSEY, Mr. NADLER of New York, Mr. BERMAN, Mr. LANGEVIN, Ms. DEGETTE, Mrs. MALONEY, Mr. GENE GREEN of Texas, Mr. HINCHEY, Ms. LEE of California, Mr. DEFazio, Mr. DELAHUNT, Mr. RUSH, Mr. MARKEY of Massachusetts, Mr. CUMMINGS, Mr. FILNER, Ms. ZOE LOFGREN of California, Ms. MATSUI, Mr. MEEKS of New York, Mr. PLATTS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. PIERLUISI, Mr. PALLONE, Mrs. CAPPS, Mr. HOLT, Mr. SMITH of New Jersey, Mr. WU, Mr. SHERMAN, Mr. BRALEY of Iowa, Mr. ELLISON, Mr. HARE, Mr. HINOJOSA, Mr. HONDA, Ms. CLARKE, Mr. KUCINICH, Mr. MATHESON, Ms. SLAUGHTER, Mr. TIERNEY, Mr. GRAYSON, Mr. SERRANO, Ms. WATERS, Mr. BISHOP of New York, Ms. KAPTUR, Ms. WATSON, Mrs. DAVIS of California, Mr. GRIJALVA, Mr. FARR, Ms. LORETTA SANCHEZ of California, Mr. CARNAHAN, Mr. COHEN, Mrs. NAPOLITANO, Mr. CONNOLLY of Virginia, Mr. GUTIERREZ, Mr. SIRES, Ms. BALDWIN, Mr. OLVER, Mr. PAYNE, Ms. RICHARDSON, Ms. ROYBAL-ALLARD, Mrs. LOWEY, Mr. McGOVERN, Ms. EDWARDS of Maryland, Mr. LOEBSACK, Ms. SCHAKOWSKY, Mr. FRANK of Massachusetts, Mr. ROTHMAN of New Jersey, Mr. ANDREWS, Mr. RYAN of Ohio, Ms. TSONGAS, Mr. ACKERMAN, Ms. HIRONO, Mr. OBERSTAR, Mr. CAPUANO, Mr. LYNCH, Mr. SARBANES, Ms. WASSERMAN SCHULTZ, Ms. NORTON, Mr. ARCURI, Mr. JACKSON of Illinois, Ms. KILROY, Mr. SESTAK, Mr. KENNEDY, Mr. HALL of New York, Mr. HIMES, Mr. TONKO, Mr. MORAN of Virginia, Mrs. DAHLKEMPER, Ms. HARMAN, Mr. MOORE of Kansas, Mr. BAIRD, Mr. SCHRADER, and Mr. GARAMENDI) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code 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 2010” 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 cigarettes or other tobacco products.

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. Definitions.

Sec. 111. Conforming amendments.

Sec. 112. Effective date.

TITLE II—IMPORT FRAUD

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

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 **CIGARETTES OR OTHER TOBACCO PROD-**
13 **UCTS.**

14 (a) IN GENERAL.—Section 5762 (relating to criminal
15 penalties) is amended—

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

18 (2) by inserting after subsection (a) the fol-
19 lowing new subsection:

20 “(b) MACHINES USED TO MANUFACTURE, PROCESS,
21 OR PACKAGE CIGARETTES OR OTHER TOBACCO PROD-
22 UCTS.—

23 “(1) SALE, LEASE, DELIVERY OF MANUFAC-
24 TURING MACHINES TO LICENSED PERSONS.—Any to-

1 tobacco production machine may be sold, leased, im-
2 ported, or delivered only to—

3 “(A) persons—

4 “(i) lawfully engaged in—

5 “(I) the sale, lease, or delivery of
6 such machines,

7 “(II) the manufacture or proc-
8 essing of tobacco products, or

9 “(III) the application of unique
10 identification markings onto tobacco
11 product packages pursuant to section
12 5723, and

13 “(ii) that have all Federal and State
14 permits, registrations, and licenses re-
15 quired to engage in such activities, or

16 “(B) in the case of a machine which is
17 meant and expected to be used by an individual
18 to make tobacco products for his or her own
19 personal use, such an individual.

20 “(2) SALE, LEASE, DELIVERY OF MACHINES TO
21 PERSONS ENGAGED IN ILLEGAL MANUFACTURE OF
22 CONTRABAND.—No tobacco production machine
23 shall knowingly be manufactured for or be (directly
24 or indirectly) sold, leased, delivered, imported, or
25 otherwise made available to any person engaged in

1 the illegal manufacture, distribution, or sale of coun-
2 terfeit or contraband tobacco products, unique iden-
3 tification markings, or other tax-payment indicia.

4 “(3) RENDERING UNUSED MACHINES INOPER-
5 ABLE.—Any tobacco production machine that is no
6 longer being used as such shall be made irreparably
7 inoperable for such use before being disposed of or
8 put to any other use. This paragraph shall not apply
9 to any such machines being kept solely for display
10 or for historical purposes.

11 “(4) RECORDS.—

12 “(A) IN GENERAL.—Any person leasing,
13 importing, exporting, or delivering a tobacco
14 production machine shall maintain and keep
15 records relating to any transfers or deliveries of
16 the machine, including the name, address, other
17 contact information, and any permit, registra-
18 tion, or license number of the person receiving
19 delivery of the machine, or to whom the ma-
20 chine is leased or otherwise transferred, as the
21 case may be.

22 “(B) 5-YEAR HOLDING PERIOD FOR
23 RECORDS.—Any record required to be main-
24 tained and kept under subparagraph (A) shall
25 be kept for the 5-year period beginning on the

1 first date such record is required to be so main-
2 tained and kept.

3 “(C) AVAILABILITY OF RECORDS.—Such
4 records shall be made available to the Secretary
5 and other Federal and State government law
6 enforcement officials for inspection and audit
7 upon request.

8 “(D) SAFE HARBOR.—An ordinary com-
9 mercial record or invoice shall satisfy the re-
10 quirements of this paragraph if such record de-
11 scribes the transaction and the related machine
12 and provides the date of the transaction and
13 the name, contact information, and any permit,
14 registration, or license number of all parties to
15 the transaction or acting as agents for those
16 parties in regard to the transaction.

17 “(5) TOBACCO PRODUCTION MACHINE.—For
18 purposes of this subsection, the term ‘tobacco pro-
19 duction machine’ means any machine (or component
20 integral to the operation of such a machine) used to
21 manufacture, process, or package tobacco products
22 or to apply unique identification markings to pack-
23 ages of tobacco products.

24 “(6) VIOLATIONS.—

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

8 “(B) RECORDKEEPING.—Whoever know-
 9 ingly violates paragraph (4) shall, for each of-
 10 fense, be fined not more than \$10,000.”.

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

14 (c) EFFECTIVE DATE.—The amendment made by
 15 this section shall apply to sales, leases, and transfers more
 16 than 6 months after the date of the enactment of this Act.

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

18 (a) IN GENERAL.—Section 5723 (relating to pack-
 19 ages, marks, labels, and notices) is amended—

20 (1) by striking “, if any,” in subsection (b),

21 (2) by adding at the end of subsection (b) the
 22 following: “Such marks, labels, and notices shall in-
 23 clude marks and notices relating to the following:

24 “(1) GENERAL REQUIREMENTS FOR DOMESTIC
 25 MARKET.—Each person who is a manufacturer or

1 importer of tobacco products shall (in accordance
2 with final regulations promulgated by the Secretary)
3 ensure that, before the product leaves the person's
4 custody, a unique identification marking is affixed to
5 or forms part of each package of tobacco product
6 manufactured or imported by such person for sale or
7 distribution. To facilitate efficient tracking and trac-
8 ing of tobacco products through the distribution sys-
9 tem, all manufacturers or importers of tobacco prod-
10 ucts shall, in addition to such unique identification
11 marking, also, in accordance with regulations pre-
12 scribed by the Secretary, ensure that unique identi-
13 fication markings are affixed to or form part of ag-
14 gregate packing modes (such as cartons, cases, and
15 master cases for cigarettes). The Secretary shall de-
16 termine the size, location, and methods for such
17 markings. The Secretary shall establish regulations
18 requiring that all persons within the distribution
19 chain, up to but not including the ultimate retailer,
20 utilize the unique identification markings on aggre-
21 gate packing modes to facilitate the tracking and
22 tracing of tobacco product through the distribution
23 system.

24 “(2) MARKING REQUIREMENTS FOR EX-
25 PORTS.—A unique identification marking shall be af-

1 fixed to or form part of each package of tobacco
2 product that is exported, or sold for export, that dis-
3 tinguishes it from those products intended for dis-
4 tribution or sale within the United States. The Sec-
5 retary shall by regulation prescribe the size, location,
6 and other characteristics of such marking, and it
7 may contain a serial number that is assigned to the
8 country of export.

9 “(3) AUTHORIZATION OF FEDERAL UNIQUE
10 IDENTIFICATION MARKING.—Not later than 1 year
11 after the date of the enactment of the Smuggled To-
12 bacco Prevention Act of 2010, the Secretary shall by
13 regulation require the use of a unique identification
14 marking on all products subject to tax under this
15 chapter.”, and

16 (3) by adding at the end the following new sub-
17 section:

18 “(f) UNIQUE IDENTIFICATION MARKING.—

19 “(1) IN GENERAL.—No tobacco product may be
20 sold, offered for sale, distributed, or otherwise deliv-
21 ered for final sale to any consumer in the United
22 States unless the unique identification marking that
23 meets the requirements of this section (and any reg-
24 ulations prescribed thereunder) is affixed to or forms
25 part of the package in which it is contained. No per-

1 son shall deliver or mail tobacco products unless the
2 tax imposed by this chapter with respect to such
3 product has been paid and the unique identification
4 marking required under this section is affixed to or
5 forms part of the package containing such product.

6 “(2) SYSTEM SPECIFICATIONS.—

7 “(A) The Secretary shall design such sys-
8 tem to coordinate and avoid interference with
9 State and local tax stamps and markings, facili-
10 tate collection of the tax imposed by this chap-
11 ter, impede contraband tobacco trafficking,
12 minimize counterfeit marking, allow for more
13 effective tracking and tracing of tobacco prod-
14 ucts, facilitate the enforcement of related Fed-
15 eral laws, and utilize such available technology
16 as may promote the purposes of this chapter.

17 “(B) The Secretary shall prescribe the
18 method and manner in which such unique iden-
19 tification markings are to be distributed, pur-
20 chased, and applied to or made part of tobacco
21 product packages, and may provide for the can-
22 cellation of such markings.

23 “(C) The unique identification marking
24 must provide the following information:

1 “(i) The denominated value of the
2 marking.

3 “(ii) A unique serial number or track-
4 ing code.

5 “(iii) The name and address of the
6 person purchasing the marking (and, if dif-
7 ferent, of the person ensuring the marking
8 is affixed to or made part of the package).

9 “(iv) The date the marking was pur-
10 chased and when it was affixed to or made
11 part of the package.

12 “(v) The name and address of the
13 first unrelated person purchasing or other-
14 wise receiving the tobacco product from
15 the person who ensures the marking is af-
16 fixed to or made part of the package and
17 the date of such purchase or transfer.

18 “(vi) Such other information as the
19 Secretary may prescribe to carry out the
20 purposes of this chapter.

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

23 “(i) be cryptographically encrypted,
24 and

1 “(ii)(I) be readable by a portable
2 scanning device (or similar device) to be
3 utilized by law enforcement officials at the
4 time and place of inspection, or

5 “(II) be otherwise accessible remotely
6 at such time and place.

7 “(E) Tax reporting information shall be
8 held on a secure government-controlled data-
9 base to monitor tobacco production and for
10 tracking and tracing the product from the point
11 of production through the supply chain to the
12 retailer.

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

17 (b) DEFINITIONS.—Section 5723, as amended by
18 subsection (a), is amended by adding at the end the fol-
19 lowing new subsections:

20 “(g) PACKAGE DEFINED.—For purposes of this sec-
21 tion, the term ‘package’ means the innermost sealed con-
22 tainer visible from the outside of the individual container
23 irrespective of the material from which such container is
24 made, in which a tobacco product is placed by the manu-

1 facturer and in which such tobacco product is offered for
2 sale to a member of the general public.

3 “(h) UNIQUE IDENTIFICATION MARKING DE-
4 FINED.—For purposes of this section, the term ‘unique
5 identification marking’ means a device in such design and
6 denomination as the Secretary authorizes by regulation
7 that is affixed to or made part of a package of tobacco
8 product as evidence that the tax imposed by this chapter
9 is paid. Such markings shall contain overt security fea-
10 tures for public authentication and covert security features
11 embedding a unique, secure, encrypted identifier onto the
12 marking, enabling law enforcement authentication, pro-
13 duction control, and tracking and tracing of the product
14 bearing the marking.”.

15 (c) REGULATIONS.—The Secretary of the Treasury
16 shall consult with the Secretary of Health and Human
17 Services as may be appropriate to carry out the purposes
18 of subsection (f), and paragraphs (1), (2), and (3) of sub-
19 section (b), of section 5723 of the Internal Revenue Code
20 of 1986.

1 **SEC. 104. WHOLESALERS AND MANUFACTURERS, IMPORT-**
2 **ERS, AND SELLERS OF TOBACCO PRODUC-**
3 **TION MACHINES REQUIRED TO HAVE PER-**
4 **MIT.**

5 (a) WHOLESALERS.—Section 5712 (relating to appli-
6 cation for permit) is amended by inserting “, wholesaler,”
7 after “manufacturer”.

8 (b) MANUFACTURERS, IMPORTERS, AND SELLERS OF
9 TOBACCO PRODUCTION MACHINES.—Section 5712 is
10 amended by striking “or as an export warehouse propri-
11 etor” and inserting “, as an export warehouse proprietor,
12 or as a manufacturer, seller, or importer of tobacco pro-
13 duction machines (as defined in section 5762(b)(5))”.

14 **SEC. 105. CONDITIONS OF PERMIT.**

15 Subsection (a) of section 5713 (relating to issuance
16 of permit) is amended to read as follows:

17 “(a) ISSUANCE.—

18 “(1) IN GENERAL.—A person shall not engage
19 in business as a manufacturer, wholesaler, or im-
20 porter of tobacco products or processed tobacco, as
21 an export warehouse proprietor, or as a manufac-
22 turer, seller, or importer of tobacco production ma-
23 chines (as defined in section 5762(b)(5)) without a
24 permit to engage in such business. Such permit, con-
25 ditioned upon compliance with this chapter and reg-
26 ulations issued thereunder, shall be issued in such

1 form and in such manner as the Secretary shall by
2 regulation prescribe, to every person properly quali-
3 fied under section 5711 and 5712. Any entity grant-
4 ed such a permit is not eligible to provide any serv-
5 ices the Secretary may elect to procure to facilitate
6 the purposes of section 5723. Permit holders shall
7 automatically count output and register, record, and
8 transmit the quantities measured, in the form, con-
9 ditions, and time limits established by the Secretary.
10 A new permit may be required at such other time
11 as the Secretary shall by regulation prescribe.

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

14 “(A) the applicant is in compliance with
15 the requirements of—

16 “(i) this chapter,

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

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

22 “(iv) the Fair and Equitable Tobacco
23 Reform Act of 2004, and any amendments
24 made thereby,

1 “(v) the Family Smoking Prevention
 2 and Tobacco Control Act, and any amend-
 3 ments made thereby, and

4 “(vi) any related regulations there-
 5 under, and

6 “(B) the applicant certifies that the appli-
 7 cant is in compliance with all other Federal and
 8 State laws relating to the taxation, manufac-
 9 ture, importation, exportation, distribution,
 10 marketing, sale, or transportation of tobacco
 11 products, processed tobacco, or tobacco produc-
 12 tion machines.

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

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

19 (a) IN GENERAL.—Section 5741 (relating to records
 20 to be maintained) is amended—

21 (1) by inserting “(a) IN GENERAL.—” before
 22 “Every manufacturer”,

23 (2) by inserting “every wholesaler,” after
 24 “every importer,”,

1 (3) by striking “such records” and inserting
2 “records concerning the chain of custody of the to-
3 bacco products (including the foreign country of
4 final destination for packages marked for export)
5 and the serial numbers, marks, labels, and notices
6 required under section 5723, and such other
7 records”, and

8 (4) by adding at the end the following new sub-
9 sections:

10 “(b) RETAILERS.—Retailers shall maintain records
11 of receipt, and any non-retail sale or delivery, of tobacco
12 products. Such records shall be available to the Secretary
13 for inspection and audit. An ordinary commercial record
14 or invoice shall satisfy the requirements of this subsection
15 if such record shows the date of receipt, from whom to-
16 bacco products were received, and the quantity of tobacco
17 products received (or, in the case of non-retail sale or de-
18 livery, the date of sale or delivery, to whom the tobacco
19 products were sold or delivered, and the quantity of the
20 tobacco products sold or delivered). The preceding provi-
21 sions of this subsection shall not be construed to limit or
22 preclude other recordkeeping requirements imposed on
23 any retailer.

24 “(c) RECORDS CONCERNING MARKS AND CHAIN OF
25 CUSTODY.—Records concerning the chain of custody and

1 the marks, labels, and notices required under section 5723
 2 shall be made available to Federal and State law enforce-
 3 ment officials for inspection and audit upon request.”.

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

9 **SEC. 107. REPORTS.**

10 Section 5722 (relating to reports) is amended—

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

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

15 “(b) REPORTS BY EXPORT WAREHOUSE PROPRI-
 16 ETORS.—

17 “(1) IN GENERAL.—Prior to exportation of to-
 18 bacco products from the United States, the export
 19 warehouse proprietor shall submit a report (in such
 20 manner and form as the Secretary may by regula-
 21 tion prescribe) to enable the Secretary to identify
 22 the shipment and assure that it reaches its intended
 23 destination.

24 “(2) AGREEMENTS WITH FOREIGN GOVERN-
 25 MENTS.—Notwithstanding section 6103 of this title,

1 the Secretary is authorized to enter into agreements
2 with foreign governments to exchange or share infor-
3 mation contained in reports received from export
4 warehouse proprietors of tobacco products if—

5 “(A) the Secretary believes that such
6 agreement will assist in—

7 “(i) ensuring compliance with the pro-
8 visions of this chapter or regulations pro-
9 mulgated thereunder, or

10 “(ii) preventing or detecting violations
11 of the provisions of this chapter or regula-
12 tions promulgated thereunder, and

13 “(B) the Secretary obtains written assur-
14 ances from such government that the informa-
15 tion will be held in confidence and used only for
16 the purposes specified in clauses (i) and (ii) of
17 subparagraph (A).

18 No information may be exchanged or shared with
19 any government that has violated such assurances.”.

20 **SEC. 108. FRAUDULENT OFFENSES.**

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

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

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

6 (b) OFFENSES RELATING TO DISTRIBUTION OF TO-
 7 BACCO PRODUCTS.—

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

10 (A) by redesignating subsection (c) as sub-
 11 section (d), and

12 (B) by inserting after subsection (b) the
 13 following new subsection:

14 “(c) OFFENSES RELATING TO DISTRIBUTION OF TO-
 15 BACCO PRODUCTS.—It shall be unlawful—

16 “(1) for any person to engage in business as a
 17 manufacturer or importer of tobacco products or cig-
 18 arette papers and tubes, as a wholesaler or an ex-
 19 port warehouse proprietor, or as a manufacturer,
 20 seller, or importer of tobacco production machines
 21 without filing the bond and obtaining the permit
 22 where required by this chapter or regulations there-
 23 under,

24 “(2) for a manufacturer, importer, or whole-
 25 saler to knowingly ship, transport, deliver, or receive

1 any tobacco products from or to any person other
2 than a person who has obtained the permit required
3 by this chapter, a retailer, or a person handling such
4 products solely for purposes of shipment or delivery;
5 except an importer who has obtained the permit re-
6 quired by this chapter may receive, from a foreign
7 manufacturer or a foreign distributor, foreign to-
8 bacco products that have not previously entered the
9 United States,

10 “(3) for a manufacturer of processed tobacco to
11 knowingly ship, transport, sell, or deliver processed
12 tobacco to any person other than a manufacturer of
13 processed tobacco, a manufacturer of tobacco prod-
14 ucts, or an export warehouse proprietor,

15 “(4) for any person (other than the original
16 manufacturer of such tobacco products or an export
17 warehouse proprietor authorized to receive any to-
18 bacco products that have previously been exported
19 and returned to the United States) to knowingly re-
20 ceive any tobacco products that have previously been
21 exported and returned to the United States,

22 “(5) for any export warehouse proprietor to
23 knowingly ship, transport, sell, or deliver for sale
24 any tobacco products to any person other than the
25 original manufacturer of such tobacco products, an-

1 other export warehouse proprietor, or a foreign pur-
2 chaser,

3 “(6) for any person (other than a manufacturer
4 or an export warehouse proprietor permitted under
5 this chapter) to knowingly ship, transport, receive,
6 or possess, for purposes of resale, any tobacco prod-
7 uct in packages marked pursuant to regulations
8 issued under section 5723, other than for direct re-
9 turn to a manufacturer for repacking or for re-ex-
10 portation or to an export warehouse proprietor for
11 re-exportation,

12 “(7) for any manufacturer, importer, export
13 warehouse proprietor, or wholesaler permitted under
14 this chapter to make any false entry in, to fail to
15 make an entry in, or to knowingly fail to maintain
16 properly any record or report required by this chap-
17 ter or the regulations promulgated thereunder with
18 the intent to defraud the United States,

19 “(8) for any person, with the intent to defraud
20 the United States, to alter, mutilate, destroy, oblit-
21 erate, or remove any mark or label required under
22 this chapter upon a tobacco product held for sale, or
23 to create, possess, or apply on any tobacco product
24 or its packaging any counterfeit versions of any such
25 marks or labels, and

1 “(9) for any person to sell at retail more than
 2 3,000 cigarettes in a single transaction or in a series
 3 of related transactions, or, in the case of other to-
 4 bacco products, an equivalent quantity as deter-
 5 mined by regulation.

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

10 (2) CONFORMING AMENDMENT.—Section
 11 5762(d) (as so redesignated) is amended by striking
 12 “and (b)” inserting “, (b), and (c)”.

13 (c) OTHER OFFENSES.—Subsection (d) of section
 14 5762 (as so redesignated) is amended by striking “not
 15 more than \$1,000” and inserting “not more than \$2,500
 16 or an amount equal to the tax imposed under this chapter
 17 on the tobacco product involved (whichever is greater)”.

18 **SEC. 109. PENALTIES.**

19 (a) IN GENERAL.—

20 (1) Subsection (a) of section 5761 (relating to
 21 civil penalties) is amended—

22 (A) by striking “willfully” and inserting
 23 “knowingly”, and

24 (B) by striking “\$1,000” and inserting
 25 “\$10,000”.

1 (2) Subsection (b) of section 5761 (relating to
2 failure to pay tax) is amended by striking “5 per-
3 cent” and inserting “10 percent”.

4 (b) **USE OF INCREASE IN PENALTIES AND FINES.**—
5 Subchapter G of chapter 52 is amended by adding at the
6 end the following new section:

7 **“SEC. 5764. USE OF CERTAIN PENALTIES AND FINES.**

8 “(a) **IN GENERAL.**—There is established a separate
9 account in the Treasury known as the ‘Anti-Contraband
10 Tobacco Trafficking Fund’. Amounts equivalent to 50 per-
11 cent of the increase in revenues from criminal and civil
12 penalties and fines collected under this chapter and attrib-
13 utable to title I of the Smuggled Tobacco Prevention Act
14 of 2010 (or the amendments made thereby) shall be trans-
15 ferred into the Anti-Contraband Tobacco Trafficking
16 Fund. Such amounts shall be available, as provided in ap-
17 propriations Acts, to the Secretary solely for the purpose
18 of expanding government efforts and available resources
19 to enforce this chapter and other laws relating to contra-
20 band or illegal tobacco products.

21 “(b) **ALLOCATION OF FUNDS.**—Of the respective
22 amounts available to the Secretary under subsection (a),
23 not less than 50 percent shall be allocated to the Federal
24 departments and agencies that are responsible for the en-
25 forcement actions (including underlying investigations and

1 administrative and judicial proceedings) in which such
 2 penalties and fines were imposed.”.

3 (c) PENALTY AMOUNTS ADJUSTED FOR INFLA-
 4 TION.—Section 5761 of such Code is amended by redesignig-
 5 nating subsection (f) as subsection (g) and inserting after
 6 subsection (e) the following new subsection:

7 “(f) INFLATION ADJUSTMENT.—

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

12 “(A) such dollar amount, multiplied by

13 “(B) the cost-of-living adjustment deter-
 14 mined under section 1(f)(3) for the calendar
 15 year, determined by substituting ‘calendar year
 16 2010’ for ‘calendar year 1992’ in subparagraph
 17 (B) thereof.

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

22 **SEC. 110. DEFINITIONS.**

23 (a) EXPORT WAREHOUSE PROPRIETOR.—Subsection
 24 (i) of section 5702 (relating to definition of export ware-
 25 house proprietor) is amended by inserting before the pe-

1 riod the following: “or any person engaged in the business
2 of exporting tobacco products from the United States for
3 purposes of sale or distribution. Any duty free store that
4 sells, offers for sale, or otherwise distributes to any person
5 in any single transaction (or series of related transactions)
6 more than 3,000 cigarettes, or an equivalent quantity of
7 other tobacco products as the Secretary shall by regulation
8 prescribe, shall be deemed an export warehouse proprietor
9 under this chapter”.

10 (b) RETAILER; WHOLESALER.—Section 5702 is
11 amended by adding at the end the following new sub-
12 sections:

13 “(p) RETAILER.—The term ‘retailer’ means any deal-
14 er who sells, or offers for sale, any tobacco product at re-
15 tail. The term ‘retailer’ includes any duty free store that
16 sells, offers for sale, or otherwise distributes at retail in
17 any single transaction (or series of related transactions)
18 3,000 or fewer of cigarettes, or an equivalent quantity of
19 other tobacco products as the Secretary shall by regulation
20 prescribe.

21 “(q) WHOLESALER.—The term ‘wholesaler’ means
22 any person engaged in the business of purchasing tobacco
23 products for resale at wholesale, or any person acting as
24 an agent or broker for any person engaged in the business
25 of purchasing tobacco products for resale at wholesale.”.

1 **SEC. 111. CONFORMING AMENDMENTS.**

2 (a) Section 2341 of title 18, United States Code is
3 amended—

4 (1) in paragraph (2), by inserting “Federal
5 taxes, wherever found, or” after “payment of appli-
6 cable”; and

7 (2) in paragraph (2)(C), by inserting “in regard
8 to State or local taxes,” before “a person”.

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

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

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

15 **SEC. 112. EFFECTIVE DATE.**

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

19 **TITLE II—IMPORT FRAUD**

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

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

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

1 “(A) IN GENERAL.—Except as provided in
 2 subparagraph (B), a fraudulent violation of
 3 subsection (a)”; and
 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 January 1, 2011, and
 20 shall apply with respect to violations of section 592 of the
 21 Tariff Act of 1930 (as so amended) that occur on or after
 22 that date.

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