

115TH CONGRESS  
1ST SESSION

# H. R. 729

To amend the Internal Revenue Code of 1986 to reform and enforce taxation  
of tobacco products.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2017

Mrs. LAWRENCE introduced the following bill; which was referred to the  
Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to reform  
and enforce taxation of tobacco products.

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       “Tobacco Excise Tax and Parity Act of 2017”.

6       (b) TABLE OF CONTENTS.—The table of contents of  
7       this Act is as follows:

Sec. 1. Short title and table of contents.

### TITLE I—TOBACCO EXCISE TAX AND PARITY

Sec. 101. Tobacco excise tax and parity.

### TITLE II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

- Sec. 201. Amendment of 1986 code.
- Sec. 202. Machines used to manufacture or package tobacco products or processed tobacco.
- Sec. 203. Improved marking and labeling.
- Sec. 204. Wholesalers and manufacturers, importers, and sellers of tobacco production machines required to have permit.
- Sec. 205. Conditions of permit.
- Sec. 206. Records to be maintained.
- Sec. 207. Reports.
- Sec. 208. Fraudulent offenses.
- Sec. 209. Penalties.
- Sec. 210. Coordination with other government officials.
- Sec. 211. Definitions.
- Sec. 212. Conforming amendments.
- Sec. 213. Effective date.

#### TITLE III—IMPORT FRAUD

- Sec. 301. Maximum penalty for importation of tobacco products and cigarette papers and tubes by fraudulent means.

#### TITLE IV—EXCLUSIONS REGARDING INDIAN TRIBES AND TRIBAL MATTERS

- Sec. 401. Exclusions regarding Indian tribes and tribal matters.

## 1   **TITLE I—TOBACCO EXCISE TAX** 2                                   **AND PARITY**

### 3   **SEC. 101. TOBACCO EXCISE TAX AND PARITY.**

4           (a) INCREASE IN EXCISE TAX ON SMALL CIGARS  
5 AND CIGARETTES.—

6                   (1) SMALL CIGARS.—Section 5701(a)(1) of the  
7 Internal Revenue Code of 1986 is amended by strik-  
8 ing “\$50.33” and inserting “\$97.65”.

9                   (2) CIGARETTES.—Section 5701(b) of such  
10 Code is amended—

11                           (A) by striking “\$50.33” in paragraph (1)  
12 and inserting “\$97.65”, and

13                           (B) by striking “\$105.69” in paragraph  
14 (2) and inserting “\$205.06”.

1 (b) TAX PARITY FOR PIPE TOBACCO AND ROLL-  
 2 YOUR-OWN TOBACCO.—

3 (1) PIPE TOBACCO.—Section 5701(f) of the In-  
 4 ternal Revenue Code of 1986 is amended by striking  
 5 “\$2.8311 cents” and inserting “\$48.08”.

6 (2) ROLL-YOUR-OWN TOBACCO.—Section  
 7 5701(g) of such Code is amended by striking  
 8 “\$24.78” and inserting “\$48.08”.

9 (c) TAX PARITY FOR LARGE CIGARS.—

10 (1) IN GENERAL.—Paragraph (2) of section  
 11 5701(a) of the Internal Revenue Code of 1986 is  
 12 amended by striking “52.75 percent” and all that  
 13 follows through the period and inserting “\$24.78 per  
 14 pound (and a proportionate tax at the like rate on  
 15 all fractional parts of a pound) but not less than  
 16 5.033 cents per cigar.”.

17 (2) GUIDANCE.—The Secretary of the Treasury  
 18 or the Secretary of the Treasury’s delegate may  
 19 issue guidance regarding the appropriate method for  
 20 determining the weight of large cigars for purposes  
 21 of calculating the applicable tax under section  
 22 5701(a)(2) of the Internal Revenue Code of 1986.

23 (d) TAX PARITY FOR ROLL-YOUR-OWN TOBACCO  
 24 AND CERTAIN PROCESSED TOBACCO.—Subsection (o) of

1 section 5702 of the Internal Revenue Code of 1986 is  
2 amended to read as follows:

3 “(o) ROLL-YOUR-OWN TOBACCO.—The term ‘roll-  
4 your-own tobacco’ means—

5 “(1) any tobacco which, because of its appear-  
6 ance, type, packaging, or labeling, is suitable for use  
7 and likely to be offered to, or purchased by, con-  
8 sumers as tobacco for making cigarettes or cigars,  
9 or for use as wrappers thereof, or

10 “(2) any processed tobacco which is—

11 “(A) not removed for exportation, and

12 “(B) removed or transferred to a person  
13 who has not been issued a permit pursuant to  
14 section 5713.”.

15 (e) TAX PARITY FOR SMOKELESS TOBACCO.—

16 (1) IN GENERAL.—Section 5701(e) of the Inter-  
17 nal Revenue Code of 1986 is amended—

18 (A) in paragraph (1), by striking “\$1.51”  
19 and inserting “\$26.04”;

20 (B) in paragraph (2), by striking “50.33  
21 cents” and inserting “\$10.42”; and

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

23 “(3) SMOKELESS TOBACCO SOLD IN DISCRETE  
24 SINGLE-USE UNITS.—On discrete single-use units,  
25 \$97.65 per each 1,000 single-use units.”.

1           (2) DISCRETE SINGLE-USE UNIT.—Section  
2       5702(m) of such Code is amended—

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

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

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

10       “(4) DISCRETE SINGLE-USE UNIT.—The term  
11       ‘discrete single-use unit’ means any product con-  
12       taining tobacco that—

13           “(A) is not intended to be smoked, and

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

17       (f) OTHER TOBACCO PRODUCTS.—

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

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

1 taxed at a level of tax equivalent to the tax rate for ciga-  
 2 rettes on an estimated per use basis as determined by the  
 3 Secretary.”.

4 (2) ESTABLISHING PER USE BASIS.—For pur-  
 5 poses of section 5701(i) of the Internal Revenue  
 6 Code of 1986, not later than 12 months after 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 (g) 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           (h) INFLATION ADJUSTMENT.—Section 5701 of the  
 7           Internal Revenue Code of 1986, as amended by subsection  
 8           (f), is amended by adding at the end the following new  
 9           subsection:

10          “(j) INFLATION ADJUSTMENT.—

11               “(1) IN GENERAL.—In the case of any calendar  
 12               year after 2017, each amount set forth in this sec-  
 13               tion shall be increased by an amount equal to—

14                       “(A) such amount, multiplied by

15                       “(B) the cost-of-living adjustment deter-  
 16                       mined under section 1(f)(3) for such calendar  
 17                       year by substituting ‘calendar year 2016’ for  
 18                       ‘calendar year 1992’ in subparagraph (B)  
 19                       thereof.

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

24           (i) FLOOR STOCKS TAXES.—

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

7                   (A) the tax which would be imposed under  
8                   section 5701 of the Internal Revenue Code of  
9                   1986 on the article if the article had been re-  
10                  moved on such date, over

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

13           (2) CREDIT AGAINST TAX.—Each person shall  
14           be allowed as a credit against the taxes imposed by  
15           paragraph (1) an amount equal to \$500. Such credit  
16           shall not exceed the amount of taxes imposed by  
17           paragraph (1) on such date for which such person  
18           is liable.

19           (3) LIABILITY FOR TAX AND METHOD OF PAY-  
20           MENT.—

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

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

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

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

16 (A) internal revenue taxes have been deter-  
17 mined, or customs duties liquidated, with re-  
18 spect to such article before such date pursuant  
19 to a request made under the 1st proviso of sec-  
20 tion 3(a) of such Act, or

21 (B) such article is held on such date under  
22 the supervision of an officer of the United  
23 States Customs and Border Protection of the  
24 Department of Homeland Security pursuant to  
25 the 2d proviso of such section 3(a).

1           (5) DEFINITIONS.—For purposes of this sub-  
2       section—

3           (A) IN GENERAL.—Any term used in this  
4       subsection which is also used in section 5702 of  
5       such Code shall have the same meaning as such  
6       term has in such section.

7           (B) TAX INCREASE DATE.—The term “tax  
8       increase date” means the effective date of any  
9       increase in any tobacco product excise tax rate  
10      pursuant to the amendments made by this sec-  
11      tion (other than subsection (g) thereof).

12          (C) SECRETARY.—The term “Secretary”  
13      means the Secretary of the Treasury or the  
14      Secretary’s delegate.

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

18          (7) OTHER LAWS APPLICABLE.—All provisions  
19      of law, including penalties, applicable with respect to  
20      the taxes imposed by section 5701 of such Code  
21      shall, insofar as applicable and not inconsistent with  
22      the provisions of this subsection, apply to the floor  
23      stocks taxes imposed by paragraph (1), to the same  
24      extent as if such taxes were imposed by such section  
25      5701. The Secretary may treat any person who bore

1 the ultimate burden of the tax imposed by para-  
2 graph (1) as the person to whom a credit or refund  
3 under such provisions may be allowed or made.

4 (j) EFFECTIVE DATE.—

5 (1) IN GENERAL.—Except as provided in para-  
6 graphs (2) through (4), the amendments made by  
7 this section shall apply to articles removed (as de-  
8 fined in section 5702(j) of the Internal Revenue  
9 Code of 1986) after the last day of the month which  
10 includes the date of the enactment of this Act.

11 (2) DISCRETE SINGLE-USE UNITS AND PROC-  
12 ESSED TOBACCO.—The amendments made by sub-  
13 sections (d), (e)(1)(C), and (e)(2) shall apply to arti-  
14 cles removed (as defined in section 5702(j) of the  
15 Internal Revenue Code of 1986) after the date that  
16 is 6 months after the date of the enactment of this  
17 Act.

18 (3) LARGE CIGARS.—The amendments made by  
19 subsection (c) shall apply to articles removed after  
20 December 31, 2017.

21 (4) OTHER TOBACCO PRODUCTS.—The amend-  
22 ments made by subsection (f)(1) shall apply to prod-  
23 ucts removed after the last day of the month which  
24 includes the date that the Secretary of the Treasury  
25 (or the Secretary of the Treasury's delegate) issues

1 final regulations establishing the level of tax for  
 2 such product.

3 **TITLE II—AMENDMENTS TO IN-**  
 4 **TERNAL REVENUE CODE OF**  
 5 **1986**

6 **SEC. 201. AMENDMENT OF 1986 CODE.**

7 Except as otherwise expressly provided, whenever in  
 8 this title an amendment or repeal is expressed in terms  
 9 of an amendment to, or repeal of, a section or other provi-  
 10 sion, the reference shall be considered to be made to a  
 11 section or other provision of the Internal Revenue Code  
 12 of 1986.

13 **SEC. 202. MACHINES USED TO MANUFACTURE OR PACKAGE**  
 14 **TOBACCO PRODUCTS OR PROCESSED TO-**  
 15 **BACCO.**

16 (a) IN GENERAL.—Section 5762 is amended—

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

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

21 “(b) MACHINES USED TO MANUFACTURE OR PACK-  
 22 AGE TOBACCO PRODUCTS OR PROCESSED TOBACCO.—

23 “(1) TRANSFER OF MANUFACTURING MACHINES  
 24 TO LICENSED PERSONS.—Any tobacco production  
 25 machine may be sold, leased, imported, exported, de-

1       livered, or otherwise made available only to per-  
2       sons—

3               “(A) lawfully engaged in—

4                       “(i) the sale, lease, importation, ex-  
5                       portation, or delivery of such machines,

6                       “(ii) the manufacture or packaging of  
7                       tobacco products or processed tobacco, or

8                       “(iii) the application of unique identi-  
9                       fication markings onto tobacco product or  
10                      processed tobacco packages pursuant to  
11                      section 5723, and

12               “(B) that have all Federal, State, local,  
13               and Indian tribal government permits, registra-  
14               tions, and licenses required to engage in such  
15               activities.

16               “(2) TRANSFER OF MACHINES TO PERSONS EN-  
17               GAGED IN ILLEGAL MANUFACTURE OF CONTRA-  
18               BAND.—No tobacco production machine shall know-  
19               ingly be manufactured for or be (directly or indi-  
20               rectly) sold, leased, imported, exported, delivered, or  
21               otherwise made available to any person engaged in  
22               the illegal manufacture, distribution, or sale of coun-  
23               terfeit or contraband tobacco products or processed  
24               tobacco, unique identification markings, or other  
25               tax-payment indicia.

1 “(3) REGISTRATION OF MACHINES.—

2 “(A) IN GENERAL.—Every person having  
3 possession or custody of, or having control over,  
4 the installation of any tobacco production ma-  
5 chine shall register such machine with the Sec-  
6 retary immediately on its being installed, by  
7 subscribing and filing with the Secretary a  
8 statement, in writing, setting forth the par-  
9 ticular place where such machine is installed,  
10 the kind of machine and its capacity, the owner  
11 thereof, the owner’s place of residence, and the  
12 purpose for which the machine has been or is  
13 intended to be used.

14 “(B) EXCEPTION.—Under regulations pre-  
15 scribed by the Secretary, this paragraph shall  
16 not apply to any tobacco production machine  
17 not used or intended to be used—

18 “(i) for the manufacture or produc-  
19 tion of cigarette or cigars, or to manufac-  
20 ture any other tobacco product or proc-  
21 essed tobacco,

22 “(ii) to package any tobacco product  
23 or processed tobacco, or

24 “(iii) to apply unique identification  
25 markings to any package.

1 “(4) RECORDS.—

2 “(A) IN GENERAL.—Any person selling,  
3 leasing, importing, exporting, delivering, or oth-  
4 erwise making available a tobacco production  
5 machine shall maintain and keep records, as the  
6 Secretary prescribes by regulation, relating to  
7 any transfers of the machine, including the  
8 name, address, other contact information, and  
9 any permit, registration, or license number of  
10 the person receiving delivery of the machine, or  
11 to whom the machine is otherwise transferred,  
12 as the case may be.

13 “(B) 5-YEAR HOLDING PERIOD FOR  
14 RECORDS.—Any record required to be main-  
15 tained and kept under subparagraph (A) shall  
16 be kept for the 5-year period beginning on the  
17 first date such record is required to be so main-  
18 tained and kept.

19 “(C) AVAILABILITY OF RECORDS.—Such  
20 records shall be available for inspection by any  
21 internal revenue officer during business hours.

22 “(D) SAFE HARBOR.—An ordinary com-  
23 mercial record or invoice shall satisfy the re-  
24 quirements of this paragraph if such record or

1 invoice contains all of the information required  
2 under subparagraph (A).

3 “(5) VIOLATIONS.—

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

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

14 (b) TOBACCO PRODUCTION MACHINE.—Section 5702  
15 is amended by adding at the end the following new sub-  
16 section:

17 “(q) TOBACCO PRODUCTION MACHINE.—The term  
18 ‘tobacco production machine’ means any machine (or com-  
19 ponent integral to the operation of such a machine) used  
20 to manufacture or package tobacco products or processed  
21 tobacco or to apply unique identification markings or  
22 other tax-payment indicia to packages of tobacco products  
23 or processed tobacco. Such term includes any machine  
24 used to produce tobacco products for compensation, lease,  
25 or hire, or otherwise used in a commercial setting.”.

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

4 (d) EFFECTIVE DATE.—The amendment made by  
 5 this section shall apply to transfers more than 6 months  
 6 after the date of the enactment of this Act.

7 **SEC. 203. IMPROVED MARKING AND LABELING.**

8 (a) IN GENERAL.—Subsection (b) of section 5723 is  
 9 amended to read as follows:

10 “(b) MARKS, LABELS, AND NOTICES.—

11 “(1) IN GENERAL.—Subject to paragraphs (2),  
 12 (3), and (4), every package of tobacco products,  
 13 processed tobacco, or cigarette papers or tubes shall,  
 14 before removal, bear the marks, labels, and notices  
 15 that the Secretary by regulation prescribes.

16 “(2) MARKING REQUIREMENTS FOR DOMESTIC  
 17 MARKET.—

18 “(A) IN GENERAL.—Each person who is a  
 19 manufacturer or importer of tobacco products  
 20 or processed tobacco shall (in accordance with  
 21 regulations prescribed by the Secretary) ensure  
 22 that, before any product intended for sale or  
 23 distribution within the United States is re-  
 24 moved, a unique identification marking is af-  
 25 fixed to or forms part of each package of to-

1           bacco product or processed tobacco manufac-  
2           tured or imported by such person for sale or  
3           distribution.

4           “(B) MARKINGS ON INDIVIDUAL PACK-  
5           AGES.—Any markings required to be placed on  
6           a tobacco product or processed tobacco package  
7           by this subsection shall be placed on the inner-  
8           most sealed container visible from the outside  
9           of the individual package. For any tobacco  
10          product or processed tobacco package that con-  
11          tains multiple smaller packages of tobacco prod-  
12          ucts or processed tobacco, any markings re-  
13          quired to be so placed on tobacco product or  
14          processed tobacco packages shall be placed on  
15          all the individual tobacco product or processed  
16          tobacco packages.

17          “(C) MARKINGS ON AGGREGATE PACKING  
18          MODES.—To facilitate efficient tracking and  
19          tracing of tobacco products or processed to-  
20          bacco through the distribution system, all man-  
21          ufacturers or importers of tobacco products or  
22          processed tobacco shall, in addition to such  
23          unique identification marking, also, in accord-  
24          ance with regulations prescribed by the Sec-  
25          retary, ensure that unique identification mark-

1           ings are affixed to or form part of aggregate  
2           packing modes (such as cartons, cases, and  
3           master cases for cigarettes). The Secretary  
4           shall determine the size, location, and methods  
5           for such markings. The Secretary shall estab-  
6           lish regulations requiring that all persons with-  
7           in the distribution chain, up to but not includ-  
8           ing the ultimate retailer, utilize the unique  
9           identification markings on aggregate packing  
10          modes to facilitate the tracking and tracing of  
11          tobacco products or processed tobacco through  
12          the distribution system.

13           “(3) MARKING REQUIREMENTS FOR EX-  
14          PORTS.—A unique identification marking shall be af-  
15          fixed to or form part of each package of tobacco  
16          product or processed tobacco that is exported, or  
17          sold for export, that distinguishes it from those  
18          products or processed tobacco intended for sale or  
19          distribution within the United States. The Secretary  
20          shall by regulation prescribe the size, location, and  
21          other characteristics of such marking, and it may  
22          contain a serial number that is assigned to the coun-  
23          try of export, except that no such serial number  
24          shall be required on tobacco products or processed  
25          tobacco sold at retail to consumers by duty free

1 stores for consumption beyond the jurisdiction of the  
2 internal revenue laws of the United States. Such to-  
3 bacco products or processed tobacco shall instead  
4 bear markings indicating the tobacco product or  
5 processed tobacco is only for duty-free sale to con-  
6 sumers, as prescribed through regulation by the Sec-  
7 retary, before the product or processed tobacco is re-  
8 moved.

9 “(4) AUTHORIZATION OF FEDERAL UNIQUE  
10 IDENTIFICATION MARKING.—Not later than 3 years  
11 after the date of the enactment of the Tobacco Ex-  
12 cise Tax and Parity Act of 2017, the Secretary shall  
13 by regulation require the use of a unique identifica-  
14 tion marking on all products subject to tax under  
15 this chapter.”.

16 (b) UNIQUE IDENTIFICATION MARKING.—Section  
17 5723 is amended by adding at the end the following new  
18 subsection:

19 “(f) UNIQUE IDENTIFICATION MARKING.—

20 “(1) IN GENERAL.—No tobacco product or  
21 processed tobacco may be sold, offered for sale, dis-  
22 tributed, mailed, or otherwise delivered for final sale  
23 to any consumer in the United States unless the  
24 unique identification marking that meets the re-  
25 quirements of this section (and any regulations pre-

scribed thereunder) is affixed to or forms part of the package in which it is contained.

“(2) SYSTEM SPECIFICATIONS.—

“(A) The Secretary shall design such system to coordinate and avoid interference with State, local, and Indian tribal tax stamps and markings, facilitate collection of the tax imposed by this chapter, impede contraband tobacco trafficking, minimize counterfeit marking, allow for more effective tracking and tracing of tobacco products and processed tobacco, facilitate the enforcement of related Federal laws, and utilize such available technology as may promote the purposes of this chapter.

“(B) The Secretary shall prescribe the method and manner in which such unique identification markings are to be distributed, purchased, and applied to or made part of tobacco product and processed tobacco packages, and may provide for the cancellation of such markings.

“(C) The unique identification marking must provide (through the marking or record associated with the marking) such information

1 as the Secretary by regulation prescribes, in-  
2 cluding:

3 “(i) A unique serial number or track-  
4 ing code for each tobacco product or proc-  
5 essed tobacco package or aggregate pack-  
6 age.

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

11 “(iii) The name and address of the  
12 first unrelated person purchasing or other-  
13 wise receiving the tobacco product or proc-  
14 essed tobacco from the person who ensures  
15 the marking is affixed to or made part of  
16 the package and the date of such purchase  
17 or receipt.

18 “(D) The information described in sub-  
19 paragraph (C) may be required to, to the extent  
20 practicable—

21 “(i) be cryptographically encrypted,  
22 and

23 “(ii)(I) be readable by a portable  
24 scanning device (or similar device) to be  
25 utilized by regulatory and law enforcement

1 officials at the time and place of inspec-  
2 tion, or

3 “(II) be otherwise accessible remotely  
4 at such time and place.

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

9 (c) DEFINITIONS.—Section 5723, as amended by  
10 subsection (b), is amended by adding at the end the fol-  
11 lowing new subsections:

12 “(g) PACKAGE DEFINED.—For purposes of this sec-  
13 tion, the term ‘package’ means a pack, box, carton, or con-  
14 tainer of any kind or, if no other container, any wrapping  
15 (including cellophane), in which a tobacco product or proc-  
16 essed tobacco is sold, offered for sale, distributed, or oth-  
17 erwise delivered for final sale to any consumer.

18 “(h) UNIQUE IDENTIFICATION MARKING DE-  
19 FINED.—For purposes of this section, the term ‘unique  
20 identification marking’ means a device in such design and  
21 denomination as the Secretary authorizes by regulation  
22 that is affixed to or made part of a package of a tobacco  
23 product or processed tobacco. Such markings shall contain  
24 overt security features for public authentication and covert  
25 security features embedding a unique, secure, encrypted

1 identifier onto the marking, enabling law enforcement au-  
 2 thentication, production control, and tracking and tracing  
 3 of the product or processed tobacco bearing the marking.”.

4 (d) REGULATIONS.—The Secretary of the Treasury  
 5 shall consult with the Secretary of Health and Human  
 6 Services as may be appropriate to carry out the purposes  
 7 of subsection (f), and paragraphs (2), (3), and (4) of sub-  
 8 section (b), of section 5723 of the Internal Revenue Code  
 9 of 1986 (as added by this section).

10 **SEC. 204. WHOLESALERS AND MANUFACTURERS, IMPORT-**  
 11 **ERS, AND SELLERS OF TOBACCO PRODUC-**  
 12 **TION MACHINES REQUIRED TO HAVE PER-**  
 13 **MIT.**

14 (a) WHOLESALERS.—Section 5712 is amended by in-  
 15 serting “, as a wholesaler,” after “or processed tobacco”.

16 (b) MANUFACTURERS, IMPORTERS, AND SELLERS OF  
 17 TOBACCO PRODUCTION MACHINES.—Section 5712 is  
 18 amended by striking “or as an export warehouse propri-  
 19 etor” and inserting “, as an export warehouse proprietor,  
 20 or as a manufacturer, seller, or importer of tobacco pro-  
 21 duction machines”.

22 **SEC. 205. CONDITIONS OF PERMIT.**

23 (a) ISSUANCE.—Subsection (a) of section 5713 is  
 24 amended to read as follows:

25 “(a) ISSUANCE.—

1           “(1) IN GENERAL.—A person shall not engage  
2           in business as a manufacturer or importer of tobacco  
3           products or processed tobacco, as a wholesaler, as an  
4           export warehouse proprietor, or as a manufacturer,  
5           seller, lessor, or importer of tobacco production ma-  
6           chines without a permit to engage in such business.  
7           Such permit, conditioned upon compliance with this  
8           chapter and regulations issued thereunder, shall be  
9           issued in such form and in such manner as the Sec-  
10          retary shall by regulation prescribe, to every person  
11          properly qualified under sections 5711 and 5712.  
12          Any entity granted such a permit is not eligible to  
13          provide any services the Secretary may elect to pro-  
14          cure to facilitate the purposes of section 5723. Per-  
15          mit holders shall automatically count output and  
16          register, record, and transmit the quantities meas-  
17          ured, in the form, conditions, and time limits estab-  
18          lished by the Secretary. A new permit may be re-  
19          quired at such other time as the Secretary shall by  
20          regulation prescribe.

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

23                       “(A) the applicant is in compliance with  
24                       the requirements of—

25                               “(i) this chapter,

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

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

6 “(iv) the Fair and Equitable Tobacco  
7 Reform Act of 2004, and any amendments  
8 made thereby,

9 “(v) the Family Smoking Prevention  
10 and Tobacco Control Act, and any amend-  
11 ments made thereby,

12 “(vi) the Prevent All Cigarette Traf-  
13 ficking Act of 2009, and any amendments  
14 made thereby, and

15 “(vii) any related regulations there-  
16 under,

17 as in effect on the date of the issuance of the  
18 permit,

19 “(B) the applicant certifies that the appli-  
20 cant is in compliance with all other Federal,  
21 State, local, and Indian tribal laws relating to  
22 the taxation, manufacture, importation, expor-  
23 tation, distribution, marketing, sale, or trans-  
24 portation of tobacco products, processed to-  
25 bacco, or tobacco production machines, as in ef-

1           fect on the date of the issuance of the permit,  
2           and

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

8           (b) **SUSPENSION OR REVOCATION.**—Subparagraph  
9   (A) of section 5713(b)(1) is amended by inserting “or any  
10   other law described in subparagraph (A) or (B) of sub-  
11   section (a)(2)” after “this chapter”.

12   **SEC. 206. RECORDS TO BE MAINTAINED.**

13           (a) **IN GENERAL.**—Section 5741 is amended—

14           (1) by inserting “(a) **IN GENERAL.**—” before  
15           “Every manufacturer”,

16           (2) by inserting “every wholesaler,” after  
17           “every importer,”,

18           (3) by striking “such records” and inserting  
19           “records concerning the chain of custody of the to-  
20           bacco products and processed tobacco (including the  
21           foreign country of final destination for packages  
22           marked for export) and the serial numbers, marks,  
23           labels, and notices required under section 5723, and  
24           such other records”, and

1           (4) by adding at the end the following new sub-  
2       sections:

3       “(b) RETAILERS.—Retailers shall maintain records  
4 of receipt, and any non-retail sale or delivery, of tobacco  
5 products and processed tobacco. Such records shall be  
6 available to the Secretary for inspection and audit. An or-  
7 dinary commercial record or invoice shall satisfy the re-  
8 quirements of this subsection if such record shows the date  
9 of receipt, from whom tobacco products or processed to-  
10 bacco were received, and the quantity of tobacco products  
11 or processed tobacco received (or, in the case of non-retail  
12 sale or delivery, the date of sale or delivery, to whom the  
13 tobacco products or processed tobacco were sold or deliv-  
14 ered, and the quantity of the tobacco products or proc-  
15 essed tobacco sold or delivered). To the extent the Sec-  
16 retary determines that the records maintained by retail  
17 entities licensed pursuant to section 555(b) of the Tariff  
18 Act of 1930 (19 U.S.C. 1555(b)) satisfy the recordkeeping  
19 requirements of this section, no additional records shall  
20 be required for such entities under this section. The pre-  
21 ceding provisions of this subsection shall not be construed  
22 to limit or preclude other recordkeeping requirements im-  
23 posed on 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 available for inspection by any internal revenue  
3 officer during business hours.”.

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. 207. REPORTS.**

10 Section 5722 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.—Prior to exportation of tobacco products or proc-  
17 essed tobacco from the United States, the export ware-  
18 house proprietor shall submit a report (in such manner  
19 and form as the Secretary may by regulation prescribe)  
20 to enable the Secretary to identify the shipment and as-  
21 sure that it reaches its intended destination.”.

22 **SEC. 208. FRAUDULENT OFFENSES.**

23 (a) IN GENERAL.—Subsection (a) of section 5762 is  
24 amended—

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

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

9           (b) OFFENSES RELATING TO DISTRIBUTION OF TO-  
10          BACCO PRODUCTS, ETC.—

11           (1) IN GENERAL.—Section 5762 (as amended  
12          by section 202 of this Act) is amended—

13                   (A) by redesignating subsection (c) as sub-  
14                   section (d), and

15                   (B) by inserting after subsection (b) the  
16                   following new subsection:

17           “(c) OFFENSES RELATING TO DISTRIBUTION OF TO-  
18          BACCO PRODUCTS, ETC.—It shall be unlawful—

19                   “(1) for any person to engage in business as a  
20                   manufacturer or importer of tobacco products, proc-  
21                   essed tobacco, or cigarette papers and tubes, as a  
22                   wholesaler, or an export warehouse proprietor, or as  
23                   a manufacturer, seller, or importer of tobacco pro-  
24                   duction machines without filing the bond and obtain-

1       ing the permit where required by this chapter or  
2       regulations thereunder,

3               “(2) for a manufacturer or importer of tobacco  
4       products, or wholesaler to knowingly ship, transport,  
5       deliver, or receive any tobacco products from or to  
6       any person other than a person who has obtained  
7       the permit required by this chapter, a retailer, or a  
8       person handling such products solely for purposes of  
9       shipment or delivery; except that an importer who  
10      has obtained the permit required by this chapter  
11      may receive, from a foreign manufacturer or a for-  
12      eign distributor, foreign tobacco products that have  
13      not previously entered the United States,

14              “(3) for a manufacturer or importer of proc-  
15      essed tobacco or a wholesaler to knowingly ship,  
16      transport, deliver, or receive any tobacco products or  
17      processed tobacco from or to any person other than  
18      a person who has obtained the permit required by  
19      this chapter,

20              “(4) for a manufacturer or importer of proc-  
21      essed tobacco to knowingly ship, transport, sell, or  
22      deliver processed tobacco to any person other than  
23      a manufacturer of processed tobacco, a manufac-  
24      turer of tobacco products, or an export warehouse  
25      proprietor,

1           “(5) for any person (other than the original  
2           manufacturer of such tobacco products or processed  
3           tobacco or an export warehouse proprietor author-  
4           ized to receive any tobacco products or processed to-  
5           bacco that have previously been exported and re-  
6           turned to the United States) to knowingly receive  
7           any tobacco products or processed tobacco that have  
8           previously been exported and returned to the United  
9           States,

10           “(6) for any export warehouse proprietor to  
11           knowingly ship, transport, sell, or deliver for sale  
12           any tobacco products or processed tobacco to any  
13           person other than the original manufacturer of such  
14           tobacco products or processed tobacco, another ex-  
15           port warehouse proprietor, a duty free store, or a  
16           foreign purchaser,

17           “(7) for any person (other than a manufac-  
18           turer, wholesaler, or an export warehouse proprietor  
19           permitted under this chapter) to knowingly ship,  
20           transport, receive, or possess, for purposes of resale,  
21           any tobacco product or processed tobacco not in  
22           packages marked pursuant to regulations issued  
23           under section 5723, other than for direct return to  
24           a manufacturer for repacking or for re-exportation

1 or to an export warehouse proprietor for re-export-  
2 tation,

3 “(8) for any manufacturer, importer, export  
4 warehouse proprietor, or wholesaler permitted under  
5 this chapter to make any false entry in, to fail to  
6 make an entry in, or to knowingly fail to maintain  
7 properly any record or report required by this chap-  
8 ter or the regulations promulgated thereunder with  
9 the intent to defraud the United States,

10 “(9) for any person, with the intent to defraud  
11 the United States, to alter, mutilate, destroy, oblit-  
12 erate, or remove any mark or label required under  
13 this chapter upon a tobacco product or processed to-  
14 bacco held for sale, or to create, possess, or apply  
15 on any tobacco product or processed tobacco or its  
16 packaging any counterfeit versions of any such  
17 marks or labels, and

18 “(10) for any person to sell at retail more than  
19 3,000 cigarettes in any single transaction (or series  
20 of related transactions), or, in the case of other to-  
21 bacco products, an equivalent quantity as deter-  
22 mined by regulation.

23 Any person violating any of the provisions of this sub-  
24 section shall, upon conviction, be fined as provided in sec-

tion 5761 of title 18, United States Code, or imprisoned for not more than 5 years, or both.”.

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

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

## SEC. 209. PENALTIES.

(a) IN GENERAL.—

(1) Subsection (a) of section 5761 is amended—

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

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

(2) Subsection (b) of section 5761 is amended by striking “5 percent” and inserting “10 percent”.

(b) PENALTY AMOUNTS ADJUSTED FOR INFLATION.—Section 5761 is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following new subsection:

1 “(f) INFLATION ADJUSTMENT.—

2 “(1) IN GENERAL.—In the case of a calendar  
3 year beginning after 2017, the penalty dollar  
4 amounts provided under this chapter shall each be  
5 increased by an amount equal to—

6 “(A) such dollar amount, multiplied by

7 “(B) the cost-of-living adjustment deter-  
8 mined under section 1(f)(3) for the calendar  
9 year, determined by substituting ‘calendar year  
10 2014’ for ‘calendar year 1992’ in subparagraph  
11 (B) thereof.

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

16 **SEC. 210. COORDINATION WITH OTHER GOVERNMENT OF-**  
17 **FICIALS.**

18 (a) IN GENERAL.—Subchapter F of chapter 52 is  
19 amended by adding at the end the following new section:

20 **“SEC. 5755. COORDINATION WITH OTHER GOVERNMENT OF-**  
21 **FICIALS.**

22 “The Secretary shall make reasonable efforts to co-  
23 ordinate with other Federal agencies and with officials of  
24 foreign, State, local, Indian tribal, and other governments  
25 to promote the purposes of this chapter, to prevent and

1 reduce tobacco tax evasion and contraband trafficking in  
 2 tobacco products and processed tobacco, to enforce settle-  
 3 ment agreements between tobacco companies and State or  
 4 other governments and related laws, or for other law en-  
 5 forcement or administration purposes.”.

6 (b) INFORMATION SHARING.—

7 (1) IN GENERAL.—Paragraph (1) of section  
 8 6103(o) is amended by adding at the end the fol-  
 9 lowing new subparagraph:

10 “(C) INFORMATION SHARING FOR TO-  
 11 BACCO PRODUCT LAW ADMINISTRATION AND  
 12 ENFORCEMENT PURPOSES.—

13 “(i) FEDERAL, STATE, LOCAL, AND  
 14 TRIBAL GOVERNMENTS.—Returns and re-  
 15 turn information with respect to taxes im-  
 16 posed by chapter 52 may be open to in-  
 17 spection by or disclosure to officers and  
 18 employees of any Federal agency, the State  
 19 Tax Administrators, or any other agency  
 20 of any State, local, or Indian tribal govern-  
 21 ment responsible for the administration  
 22 and enforcement of laws and regulations  
 23 relating to tobacco products and processed  
 24 tobacco, or their legal representative, solely  
 25 for use in such administration and enforce-

1           ment, unless the Secretary determines that  
2           such disclosure would seriously impair  
3           Federal tax administration.

4           “(ii) FOREIGN GOVERNMENTS AND  
5           ORGANIZATIONS.—The Secretary shall,  
6           upon written request, disclose returns and  
7           return information with respect to taxes  
8           imposed by chapter 52 to officers and em-  
9           ployees of any agency of any foreign gov-  
10          ernment, OLAF (European Anti-Fraud  
11          Office), EUROPOL, INTERPOL, or the  
12          World Customs Organization responsible  
13          for the administration and enforcement of  
14          laws and regulations relating to tobacco  
15          products and processed tobacco, or their  
16          legal representative, solely for use in such  
17          administration and enforcement, if the  
18          Secretary obtains written assurances from  
19          such government or organization that the  
20          information will be held in confidence and  
21          used only for such use. No return or re-  
22          turn information shall be disclosed under  
23          this clause if the Secretary determines that  
24          such disclosure would seriously impair  
25          Federal tax administration.

1                   “(iii) PUBLIC INFORMATION.—The  
 2                   identity and business address of those per-  
 3                   sons that have a valid permit, pursuant to  
 4                   chapter 52, to engage in business as a  
 5                   manufacturer, wholesaler, or importer of  
 6                   tobacco products or processed tobacco, as  
 7                   an export warehouse proprietor, or as a  
 8                   manufacturer, seller, or importer of to-  
 9                   bacco production machines (as defined in  
 10                  section 5702(q)) shall be made publicly  
 11                  available at such time and in such manner  
 12                  as the Secretary may prescribe.”.

13               (2) CONFORMING AMENDMENTS.—

14               (A) Subsection (a) of section 6103 is  
 15               amended—

16                   (i) by striking “or any local” in para-  
 17                   graph (2) and inserting “any local”,

18                   (ii) by inserting “, or any agency de-  
 19                   scribed in subsection (o)(1)(C)(i)” after  
 20                   “subsection (l)(7)(D)” in paragraph (2),  
 21                   and

22                   (iii) by striking “or subsection (n)” in  
 23                   paragraph (3) and inserting “subsection  
 24                   (n), or subsection (o)(1)(C)(i)”.

1 (B) Paragraph (4) of section 6103(p) is  
 2 amended—

3 (i) by striking “(o)(1)(A)” both places  
 4 it appears and inserting “(o)(1)(A) or  
 5 (C)(i)”, and

6 (ii) by striking “(15), or (16),” and  
 7 inserting “(15), or (16), or (o)(1)(C)(i),”.

8 (C) Paragraph (2) of section 7213(a) is  
 9 amended—

10 (i) by striking “(21) or” and inserting  
 11 “(21),”, and

12 (ii) by striking “or (7)” and inserting  
 13 “or (7), or (o)(1)(C)(i)”.

14 (c) CLERICAL AMENDMENT.—The table of sections  
 15 for subchapter F of chapter 52 is amended by adding at  
 16 the end the following new item:

“Sec. 5755. Coordination with other government officials.”.

17 **SEC. 211. DEFINITIONS.**

18 (a) EXPORT WAREHOUSE PROPRIETOR.—Subsection  
 19 (i) of section 5702 is amended by inserting before the pe-  
 20 riod the following: “or any person engaged in the business  
 21 of exporting tobacco products from the United States for  
 22 purposes of sale or distribution. Any duty free store that  
 23 sells, offers for sale, or otherwise distributes to any person  
 24 in any single transaction (or series of related transactions)  
 25 more than 3,000 cigarettes, or an equivalent quantity of

1 other tobacco products as the Secretary shall by regulation  
2 prescribe, shall be deemed an export warehouse proprietor  
3 under this chapter”.

4 (b) RETAILER; WHOLESALER.—Section 5702, as  
5 amended by this Act, is amended by adding at the end  
6 the following new subsections:

7 “(r) RETAILER.—The term ‘retailer’ means any per-  
8 son who sells, or offers for sale, any tobacco product at  
9 retail. The term ‘retailer’ includes any duty free store that  
10 sells, offers for sale, or otherwise distributes at retail in  
11 any single transaction (or series of related transactions)  
12 not more than 3,000 cigarettes, or not more than an  
13 equivalent quantity of other tobacco products as the Sec-  
14 retary shall by regulation prescribe.

15 “(s) WHOLESALER.—The term ‘wholesaler’ means  
16 any person engaged in the business of purchasing tobacco  
17 products for resale at wholesale, or any person acting as  
18 an agent or broker for any person engaged in the business  
19 of purchasing tobacco products for resale at wholesale.”.

20 **SEC. 212. CONFORMING AMENDMENTS.**

21 (a) Paragraph (2)(C) of section 2341 of title 18,  
22 United States Code, is amended by inserting “in regard  
23 to State, local, or Indian tribal government taxes,” before  
24 “a person”.

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

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

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

7 (c) The headings for subchapters B, C, and E of  
8 chapter 52 are each amended by inserting “, **Processed**  
9 **Tobacco,**” after “**Products**”.

10 (d) The items relating to subchapters B, C, and E  
11 in the table of subchapters for chapter 52 are each amend-  
12 ed by inserting “, processed tobacco,” after “products”.

13 (e) The heading for chapter 52 is amended by insert-  
14 ing “, **PROCESSED TOBACCO,**” after “**PROD-**  
15 **UCTS**”.

16 (f) The item relating to chapter 52 in the table of  
17 chapters for subtitle E is amended by inserting “, proc-  
18 essed tobacco,” after “products”.

19 **SEC. 213. EFFECTIVE DATE.**

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

# **TITLE III—IMPORT FRAUD**

## **SEC. 301. MAXIMUM PENALTY FOR IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES BY FRAUDULENT MEANS.**

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

(1) by striking “A fraudulent violation of subsection (a)” and inserting the following:

“(A) IN GENERAL.—Except as provided in subparagraph (B), a fraudulent violation of subsection (a)”;

(2) by adding at the end the following:

“(B) TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES.—In the case of importation of tobacco products and cigarette papers and tubes subject to tax under chapter 52 of the Internal Revenue Code of 1986, a fraudulent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed the sum of—

“(i) the domestic value of the merchandise, and

“(ii) four times the amount of Federal excise tax that could be imposed on the merchandise, if applicable.”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 subsection (a) shall take effect on the date which is 90  
3 days after the date of the enactment of this Act, and shall  
4 apply with respect to violations of section 592 of the Tariff  
5 Act of 1930 (as so amended) that occur on or after that  
6 date.

7 **TITLE IV—EXCLUSIONS REGARD-**  
8 **ING INDIAN TRIBES AND**  
9 **TRIBAL MATTERS**

10 **SEC. 401. EXCLUSIONS REGARDING INDIAN TRIBES AND**  
11 **TRIBAL MATTERS.**

12 (a) IN GENERAL.—Nothing in this Act or the amend-  
13 ments made by this Act shall be construed to amend, mod-  
14 ify, or otherwise affect—

15 (1) any agreements, compacts, or other inter-  
16 governmental arrangements between any State or  
17 local government and any government of an Indian  
18 tribe relating to the collection of taxes on tobacco  
19 products sold in Indian country;

20 (2) any State laws that authorize or otherwise  
21 pertain to any such intergovernmental arrangements  
22 or create special rules or procedures for the collec-  
23 tion of State, local, or tribal taxes on tobacco prod-  
24 ucts sold in Indian country;

1           (3) any limitations under Federal or State law,  
2           including Federal common law and treaties, on  
3           State, local, and tribal tax and regulatory authority  
4           with respect to the sale, use, or distribution of to-  
5           bacco products or processed tobacco by or to Indian  
6           tribes, tribal members, tribal enterprises, or in In-  
7           dian country;

8           (4) any Federal law, including Federal common  
9           law and treaties, regarding State jurisdiction, or  
10          lack thereof, over any Indian tribe, tribal member,  
11          tribal enterprise, Indian reservations, or other land  
12          held by the United States in trust for one or more  
13          Indian tribes; or

14          (5) any State or local government authority to  
15          bring enforcement actions against persons located in  
16          Indian country.

17          (b) COORDINATION OF LAW ENFORCEMENT.—Noth-  
18          ing in this Act or the amendments made by this Act (other  
19          than the amendments relating to section 6103 of the In-  
20          ternal Revenue Code of 1986) shall be construed to inhibit  
21          or otherwise affect any coordinated law enforcement effort  
22          by one or more States or other jurisdictions, including In-  
23          dian tribes, through interstate compact or otherwise,  
24          that—

1           (1) provides for the administration of tobacco  
2           product laws or laws pertaining to interstate sales or  
3           other sales of tobacco products or processed tobacco;

4           (2) provides for the seizure of tobacco products,  
5           processed tobacco, or other property related to a vio-  
6           lation of such laws; or

7           (3) establishes cooperative programs for the ad-  
8           ministration of such laws.

9           (c) TREATMENT OF STATE AND LOCAL GOVERN-  
10          MENTS.—Nothing in this Act or the amendments made  
11          by this Act shall be construed to authorize, deputize, or  
12          commission States or local governments as instrumental-  
13          ities of the United States.

14          (d) ENFORCEMENT WITHIN INDIAN COUNTRY.—  
15          Nothing in this Act or the amendments made by this Act  
16          shall prohibit, limit, or restrict enforcement by the Attor-  
17          ney General of the United States of this Act or an amend-  
18          ment made by this Act within Indian country.

19          (e) AMBIGUITY.—Any ambiguity between the lan-  
20          guage of this section or its application and any other pro-  
21          vision of this Act shall be resolved in favor of this section.

22          (f) DEFINITIONS.—In this section—

23                (1) the term “Indian country” has the meaning  
24                given that term in section 1151 of title 18, United  
25                States Code;

1           (2) the term “tribal enterprise” means any  
2       business enterprise, regardless of whether incor-  
3       porated or unincorporated under Federal or tribal  
4       law, of an Indian tribe or group of Indian tribes;

5           (3) the term “Indian reservation” has the  
6       meaning given that term in section 168(j)(6) of the  
7       Internal Revenue Code of 1986;

8           (4) the term “Indian tribe” has the meaning  
9       given that term in section 4(e) of the Indian Self-  
10      Determination and Education Assistance Act (25  
11      U.S.C. 450b(e)); and

12          (5) the terms “tobacco products” and “proc-  
13      essed tobacco” have the meanings given such terms  
14      by section 5702 of the Internal Revenue Code of  
15      1986.

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