

115TH CONGRESS  
1ST SESSION

# S. 1837

To amend the Internal Revenue Code of 1986 to provide tax rate parity among all tobacco products, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2017

Mr. DURBIN (for himself, Mr. BROWN, Mr. REED, Mr. BLUMENTHAL, Mr. MARKEY, and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on Finance

---

## A BILL

To amend the Internal Revenue Code of 1986 to provide tax rate parity among all tobacco products, 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.**

4 This Act may be cited as the “Tobacco Tax Equity  
5 Act of 2017”.

6 **SEC. 2. ESTABLISHING EXCISE TAX EQUITY AMONG ALL TO-**  
7 **BACCO PRODUCT TAX RATES.**

8 (a) TAX PARITY FOR PIPE TOBACCO AND ROLL-  
9 YOUR-OWN TOBACCO.—Section 5701(f) of the Internal

1 Revenue Code of 1986 is amended by striking “\$2.8311  
2 cents” and inserting “\$24.78”.

3 (b) TAX PARITY FOR SMOKELESS TOBACCO.—

4 (1) Section 5701(e) of the Internal Revenue  
5 Code of 1986 is amended—

6 (A) in paragraph (1), by striking “\$1.51”  
7 and inserting “\$13.42”;

8 (B) in paragraph (2), by striking “50.33  
9 cents” and inserting “\$5.37”; and

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

11 “(3) SMOKELESS TOBACCO SOLD IN DISCRETE  
12 SINGLE-USE UNITS.—On discrete single-use units,  
13 \$50.33 per thousand.”.

14 (2) Section 5702(m) of such Code is amend-  
15 ed—

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

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

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

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

1 “(A) is not intended to be smoked; and

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

5 (c) TAX PARITY FOR LARGE CIGARS.—

6 (1) IN GENERAL.—Paragraph (2) of section  
7 5701(a) of the Internal Revenue Code of 1986 is  
8 amended by striking “52.75 percent” and all that  
9 follows through the period and inserting the fol-  
10 lowing: “\$24.78 per pound and a proportionate tax  
11 at the like rate on all fractional parts of a pound but  
12 not less than 5.033 cents per cigar.”.

13 (2) GUIDANCE.—The Secretary of the Treas-  
14 ury, or the Secretary’s delegate, may issue guidance  
15 regarding the appropriate method for determining  
16 the weight of large cigars for purposes of calculating  
17 the applicable tax under section 5701(a)(2) of the  
18 Internal Revenue Code of 1986.

19 (d) TAX PARITY FOR ROLL-YOUR-OWN TOBACCO  
20 AND CERTAIN PROCESSED TOBACCO.—Subsection (o) of  
21 section 5702 of the Internal Revenue Code of 1986 is  
22 amended by inserting “, and includes processed tobacco  
23 that is removed for delivery or delivered to a person other  
24 than a person with a permit provided under section 5713,

1 but does not include removals of processed tobacco for ex-  
 2 portation” after “wrappers thereof”.

3 (e) CLARIFYING TAX RATE FOR OTHER TOBACCO  
 4 PRODUCTS.—

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

8 “(i) OTHER TOBACCO PRODUCTS.—Any product not  
 9 otherwise described under this section that has been deter-  
 10 mined to be a tobacco product by the Food and Drug Ad-  
 11 ministration through its authorities under the Family  
 12 Smoking Prevention and Tobacco Control Act shall be  
 13 taxed at a level of tax equivalent to the tax rate for ciga-  
 14 rettes on an estimated per use basis as determined by the  
 15 Secretary.”.

16 (2) ESTABLISHING PER USE BASIS.—For pur-  
 17 poses of section 5701(i) of the Internal Revenue  
 18 Code of 1986, not later than 12 months after the  
 19 later of the date of the enactment of this Act or the  
 20 date that a product has been determined to be a to-  
 21 bacco product by the Food and Drug Administra-  
 22 tion, the Secretary of the Treasury (or the Secretary  
 23 of the Treasury’s delegate) shall issue final regula-  
 24 tions establishing the level of tax for such product

1       that is equivalent to the tax rate for cigarettes on  
2       an estimated per use basis.

3       (f) CLARIFYING DEFINITION OF TOBACCO PROD-  
4 UCTS.—

5           (1) IN GENERAL.—Subsection (c) of section  
6       5702 of the Internal Revenue Code of 1986 is  
7       amended to read as follows:

8       “(c) TOBACCO PRODUCTS.—The term ‘tobacco prod-  
9 ucts’ means—

10           “(1) cigars, cigarettes, smokeless tobacco, pipe  
11       tobacco, and roll-your-own tobacco, and

12           “(2) any other product subject to tax pursuant  
13       to section 5701(i).”.

14           (2) CONFORMING AMENDMENTS.—Subsection  
15       (d) of section 5702 of such Code is amended by  
16       striking “cigars, cigarettes, smokeless tobacco, pipe  
17       tobacco, or roll-your-own tobacco” each place it ap-  
18       pears and inserting “tobacco products”.

19       (g) TAX RATES ADJUSTED FOR INFLATION.—Sec-  
20 tion 5701 of such Code, as amended by subsection (e),  
21 is amended by adding at the end the following new sub-  
22 section:

23       “(j) INFLATION ADJUSTMENT.—

24           “(1) IN GENERAL.—In the case of any calendar  
25       year beginning after 2017, the dollar amounts pro-

vided under this chapter shall each be increased by  
an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting ‘calendar year 2016’ for ‘calendar year 1992’ in subparagraph (B) thereof.

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

(h) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) through (4), the amendments made by this section shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after the last day of the month which includes the date of the enactment of this Act.

(2) DISCRETE SINGLE-USE UNITS AND PROCESSED TOBACCO.—The amendments made by subsections (b)(1)(C), (b)(2), and (d) shall apply to articles removed (as defined in section 5702(j) of the Internal Revenue Code of 1986) after the date that

1 is 6 months after the date of the enactment of this  
2 Act.

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

6 (4) OTHER TOBACCO PRODUCTS.—The amend-  
7 ments made by subsection (e)(1) shall apply to prod-  
8 ucts removed after the last day of the month which  
9 includes the date that the Secretary of the Treasury  
10 (or the Secretary of the Treasury’s delegate) issues  
11 final regulations establishing the level of tax for  
12 such product.

○