

118TH CONGRESS
1ST SESSION

H. R. 5715

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2023

Mr. KRISHNAMOORTHY introduced the following bill; which was referred to the
Committee on Ways and Means

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 2023”.

1 **SEC. 2. INCREASING EXCISE TAXES ON CIGARETTES AND**
 2 **ESTABLISHING EXCISE TAX EQUITY AMONG**
 3 **ALL TOBACCO PRODUCT TAX RATES.**

4 (a) TAX PARITY FOR ROLL-YOUR-OWN TOBACCO.—
 5 Section 5701(g) of the Internal Revenue Code of 1986 is
 6 amended by striking “\$24.78” and inserting “\$49.56”.

7 (b) TAX PARITY FOR PIPE TOBACCO.—Section
 8 5701(f) of the Internal Revenue Code of 1986 is amended
 9 by striking “\$2.8311 cents” and inserting “\$49.56”.

10 (c) TAX PARITY FOR SMOKELESS TOBACCO.—

11 (1) Section 5701(e) of the Internal Revenue
 12 Code of 1986 is amended—

13 (A) in paragraph (1), by striking “\$1.51”
 14 and inserting “\$26.84”;

15 (B) in paragraph (2), by striking “50.33
 16 cents” and inserting “\$10.74”; and

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

18 “(3) SMOKELESS TOBACCO SOLD IN DISCRETE
 19 SINGLE-USE UNITS.—On discrete single-use units,
 20 \$100.66 per thousand.”.

21 (2) Section 5702(m) of such Code is amend-
 22 ed—

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

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

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

5 “(4) DISCRETE SINGLE-USE UNIT.—The term
6 ‘discrete single-use unit’ means any product con-
7 taining, made from, or derived from tobacco or nico-
8 tine that—

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

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

13 (d) TAX PARITY FOR SMALL CIGARS.—Paragraph
14 (1) of section 5701(a) of the Internal Revenue Code of
15 1986 is amended by striking “\$50.33” and inserting
16 “\$100.66”.

17 (e) TAX PARITY FOR LARGE CIGARS.—

18 (1) IN GENERAL.—Paragraph (2) of section
19 5701(a) of the Internal Revenue Code of 1986 is
20 amended by striking “52.75 percent” and all that
21 follows through the period and inserting the fol-
22 lowing: “\$49.56 per pound and a proportionate tax
23 at the like rate on all fractional parts of a pound but
24 not less than 10.066 cents per cigar.”.

1 (2) GUIDANCE.—The Secretary of the Treas-
2 ury, or the Secretary’s delegate, may issue guidance
3 regarding the appropriate method for determining
4 the weight of large cigars for purposes of calculating
5 the applicable tax under section 5701(a)(2) of the
6 Internal Revenue Code of 1986.

7 (3) CONFORMING AMENDMENT.—Section 5702
8 of such Code is amended by striking subsection (l).

9 (f) TAX PARITY FOR ROLL-YOUR-OWN TOBACCO
10 AND CERTAIN PROCESSED TOBACCO.—Subsection (o) of
11 section 5702 of the Internal Revenue Code of 1986 is
12 amended by inserting “, and includes processed tobacco
13 that is removed for delivery or delivered to a person other
14 than a person with a permit provided under section 5713,
15 but does not include removals of processed tobacco for ex-
16 portation” after “wrappers thereof”.

17 (g) IMPOSITION OF TAX ON NICOTINE FOR USE IN
18 VAPING, ETC.—

19 (1) IN GENERAL.—Section 5701 of the Internal
20 Revenue Code of 1986 is amended by redesignating
21 subsection (h) as subsection (i) and by inserting
22 after subsection (g) the following new subsection:

23 “(h) NICOTINE.—On taxable nicotine, manufactured
24 in or imported into the United States, there shall be im-
25 posed a tax equal to the dollar amount specified in section

1 5701(b)(1) per 1,810 milligrams of nicotine (and a pro-
 2 portionate tax at the like rate on any fractional part there-
 3 of).”.

4 (2) TAXABLE NICOTINE.—Section 5702 of such
 5 Code is amended by adding at the end the following
 6 new subsection:

7 “(q) TAXABLE NICOTINE.—

8 “(1) IN GENERAL.—Except as otherwise pro-
 9 vided in this subsection, the term ‘taxable nicotine’
 10 means any nicotine which has been extracted, con-
 11 centrated, or synthesized.

12 “(2) EXCEPTION FOR PRODUCTS APPROVED BY
 13 FOOD AND DRUG ADMINISTRATION.—Such term
 14 shall not include any nicotine if the manufacturer or
 15 importer thereof demonstrates to the satisfaction of
 16 the Secretary of Health and Human Services that
 17 such nicotine will be used in—

18 “(A) a drug—

19 “(i) that is approved under section
 20 505 of the Federal Food, Drug, and Cos-
 21 metic Act or licensed under section 351 of
 22 the Public Health Service Act; or

23 “(ii) for which an investigational use
 24 exemption has been authorized under sec-
 25 tion 505(i) of the Federal Food, Drug, and

1 Cosmetic Act or under section 351(a) of
2 the Public Health Service Act; or

3 “(B) a combination product (as described
4 in section 503(g) of the Federal Food, Drug,
5 and Cosmetic Act), the constituent parts of
6 which were approved or cleared under section
7 505, 510(k), or 515 of such Act.

8 “(3) COORDINATION WITH TAXATION OF OTHER
9 TOBACCO PRODUCTS.—Tobacco products meeting
10 the definition of cigars, cigarettes, smokeless to-
11 bacco, pipe tobacco, and roll-your-own tobacco in
12 this section shall be classified and taxed as such de-
13 spite any concentration of the nicotine inherent in
14 those products or any addition of nicotine to those
15 products during the manufacturing process.

16 “(4) REGULATIONS.—The Secretary shall pre-
17 scribe such regulations or other guidance as is nec-
18 essary or appropriate to carry out the purposes of
19 this subsection, including regulations or other guid-
20 ance for coordinating the taxation of tobacco prod-
21 ucts and taxable nicotine to protect revenue and pre-
22 vent double taxation.”.

23 (3) TAXABLE NICOTINE TREATED AS A TO-
24 BACCO PRODUCT.—Section 5702(c) of such Code is
25 amended by striking “and roll-your-own tobacco”

1 and inserting “roll-your-own tobacco, and taxable
2 nicotine”.

3 (4) MANUFACTURER OF TAXABLE NICOTINE.—
4 Section 5702 of such Code, as amended by para-
5 graph (2), is amended by adding at the end the fol-
6 lowing new subsection:

7 “(r) MANUFACTURER OF TAXABLE NICOTINE.—

8 “(1) IN GENERAL.—Any person who extracts,
9 concentrates, or synthesizes nicotine shall be treated
10 as a manufacturer of taxable nicotine (and as manu-
11 facturing such taxable nicotine).

12 “(2) APPLICATION OF RULES RELATED TO
13 MANUFACTURERS OF TOBACCO PRODUCTS.—Any
14 reference to a manufacturer of tobacco products, or
15 to manufacturing tobacco products, shall be treated
16 as including a reference to a manufacturer of tax-
17 able nicotine, or to manufacturing taxable nicotine,
18 respectively.”.

19 (h) INCREASING TAX ON CIGARETTES.—

20 (1) SMALL CIGARETTES.—Section 5701(b)(1)
21 of such Code is amended by striking “\$50.33” and
22 inserting “\$100.66”.

23 (2) LARGE CIGARETTES.—Section 5701(b)(2)
24 of such Code is amended by striking “\$105.69” and
25 inserting “\$211.38”.

1 (i) TAX RATES ADJUSTED FOR INFLATION.—Section
2 5701 of such Code, as amended by subsection (g), is
3 amended by adding at the end the following new sub-
4 section:

5 “(j) INFLATION ADJUSTMENT.—

6 “(1) IN GENERAL.—In the case of any calendar
7 year beginning after 2023, the dollar amounts pro-
8 vided under this chapter shall each be increased by
9 an amount equal to—

10 “(A) such dollar amount, multiplied by

11 “(B) the cost-of-living adjustment deter-
12 mined under section 1(f)(3) for the calendar
13 year, determined by substituting ‘calendar year
14 2022’ for ‘calendar year 2016’ in subparagraph
15 (A)(ii) thereof.

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

20 (j) FLOOR STOCKS TAXES.—

21 (1) IMPOSITION OF TAX.—On tobacco products
22 manufactured in or imported into the United States
23 which are removed before any tax increase date and
24 held on such date for sale by any person, there is

1 hereby imposed a tax in an amount equal to the ex-
2 cess of—

3 (A) the tax which would be imposed under
4 section 5701 of the Internal Revenue Code of
5 1986 on the article if the article had been re-
6 moved on such date, over

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

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

15 (3) LIABILITY FOR TAX AND METHOD OF PAY-
16 MENT.—

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

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

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

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

12 (A) internal revenue taxes have been deter-
13 mined, or customs duties liquidated, with re-
14 spect to such article before such date pursuant
15 to a request made under the first proviso of
16 section 3(a) of such Act, or

17 (B) such article is held on such date under
18 the supervision of an officer of the United
19 States Customs and Border Protection of the
20 Department of Homeland Security pursuant to
21 the second proviso of such section 3(a).

22 (5) DEFINITIONS.—For purposes of this sub-
23 section—

24 (A) IN GENERAL.—Any term used in this
25 subsection which is also used in section 5702 of

1 such Code shall have the same meaning as such
2 term has in such section.

3 (B) TAX INCREASE DATE.—The term “tax
4 increase date” means the effective date of any
5 increase in any tobacco product excise tax rate
6 pursuant to the amendments made by this sec-
7 tion (other than subsection (j) thereof).

8 (C) SECRETARY.—The term “Secretary”
9 means the Secretary of the Treasury or the
10 Secretary’s delegate.

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

14 (7) OTHER LAWS APPLICABLE.—All provisions
15 of law, including penalties, applicable with respect to
16 the taxes imposed by section 5701 of such Code
17 shall, insofar as applicable and not inconsistent with
18 the provisions of this subsection, apply to the floor
19 stocks taxes imposed by paragraph (1), to the same
20 extent as if such taxes were imposed by such section
21 5701. The Secretary may treat any person who bore
22 the ultimate burden of the tax imposed by para-
23 graph (1) as the person to whom a credit or refund
24 under such provisions may be allowed or made.

25 (k) EFFECTIVE DATES.—

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

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

14 (3) LARGE CIGARS.—The amendments made by
15 subsection (e) shall apply to articles removed after
16 December 31, 2023.

17 (4) TAXABLE NICOTINE.—The amendments
18 made by subsection (g) shall apply to articles re-
19 moved in calendar quarters beginning after the date
20 which is 180 days after the date of the enactment
21 of this Act.

22 (l) TRANSITION RULE FOR PERMIT AND BOND RE-
23 QUIREMENTS.—A person which is lawfully engaged in
24 business as a manufacturer or importer of taxable nicotine
25 (within the meaning of subchapter A of chapter 52 of the

1 Internal Revenue Code of 1986, as amended by this sec-
2 tion) on the date of the enactment of this Act, first be-
3 comes subject to the requirements of subchapter B of
4 chapter 52 of such Code by reason of the amendments
5 made by this section, and submits an application under
6 such subchapter B to engage in such business not later
7 than 90 days after the date of the enactment of this Act,
8 shall not be denied the right to carry on such business
9 by reason of such requirements before final action on such
10 application.

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