
A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the definition of
2 "premium cigar", once proposed by the United States Food and
3 Drug Administration, as discussed in *Cigar Ass'n of Am. v. U.S.*
4 *Food & Drug Admin.*, 480 F.Supp.3d 256 (D.D.C. 2020), and used in
5 *Cigar Ass'n of Am. v. U.S. Food & Drug Admin.*, No. 16-cv-01460
6 (APM), (D.D.C. Aug. 9, 2023), distinguishes premium cigars from
7 other tobacco products.

8 The legislature further finds that local premium cigar
9 sellers whose products are made for adult consumers, including
10 cigars produced with Hawaii-grown tobacco, are unfairly burdened
11 by being subject to a non-differentiated state percentage tax
12 that is generally passed on to customers. As a result, cigar
13 retailers are put at a competitive disadvantage as lower priced
14 premium cigars can be purchased from the mainland United States
15 or through the black market at a significantly lower cost.

16 The legislature finds that it is necessary to ease the
17 unfair burden on the local premium cigar industry that has been



1 at a competitive disadvantage due to the percentage tax, which
2 can also help the State collect more tax revenue as in-state
3 premium cigar sales should increase when prices become more
4 competitive with the other states.

5 Accordingly, the purpose of this Act is to:

- 6 (1) Establish a definition for "premium cigar" that is
7 distinct from a "large cigar";
- 8 (2) Exclude premium cigars from percentage excise tax; and
- 9 (3) Establish an excise tax on premium cigars at a rate of
10 50 cents per premium cigar.

11 SECTION 2. Section 245-1, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding two new definitions to be appropriately
14 inserted and to read:

15 "Characterizing flavor" means a distinguishable taste or
16 aroma of candy, chocolate, vanilla, fruit, berry, nut, herb,
17 spice, honey, or an alcoholic drink that is imparted to tobacco
18 or tobacco smoke either before or during consumption. Tobacco
19 products are deemed to have a "characterizing flavor" if the
20 product is advertised or marketed as having or producing the
21 taste or aroma of candy, chocolate, vanilla, fruit, berry, nut,



1 herb, spice, honey, or an alcoholic drink. "Characterizing
2 flavor" does not include a taste or aroma from tobacco.

3 "Premium cigar" means any roll for smoking that:

- 4 (1) Is wrapped in whole tobacco leaf;
- 5 (2) Contains a one hundred per cent leaf tobacco binder;
- 6 (3) Contains at least fifty per cent (of the filler by
7 weight) long filler tobacco;
- 8 (4) Is handmade or hand rolled;
- 9 (5) Has no filter, non-tobacco tip, or non-tobacco
10 mouthpiece;
- 11 (6) Does not have a characterizing flavor other than
12 tobacco;
- 13 (7) Contains only tobacco, water, and vegetable gum with
14 no other ingredients or additives; and
- 15 (8) Weighs more than six pounds per thousand units."

16 2. By amending the definition of "tobacco products" to
17 read:

18 "Tobacco products" means:

- 19 (1) Tobacco in any form, other than cigarettes or little
20 cigars, that is prepared or intended for consumption
21 or for personal use by humans, including large cigars,



1 premium cigars, and any substitutes thereof other than
2 cigarettes that bear the semblance thereof, snuff,
3 chewing or smokeless tobacco, and smoking or pipe
4 tobacco; or

5 (2) Electronic smoking devices; or

6 (3) E-liquid."

7 SECTION 3. Section 245-3, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) Every wholesaler or dealer, in addition to any other
10 taxes provided by law, shall pay, for the privilege of
11 conducting business and other activities in the State, an excise
12 tax equal to:

13 (1) 5.00 cents for each cigarette sold, used, or possessed
14 by a wholesaler or dealer after June 30, 1998, whether
15 or not sold at wholesale, or if not sold, then at the
16 same rate upon the use by the wholesaler or dealer;

17 (2) 6.00 cents for each cigarette sold, used, or possessed
18 by a wholesaler or dealer after September 30, 2002,
19 whether or not sold at wholesale, or if not sold, then
20 at the same rate upon the use by the wholesaler or
21 dealer;



- 1 (3) 6.50 cents for each cigarette sold, used, or possessed
2 by a wholesaler or dealer after June 30, 2003, whether
3 or not sold at wholesale, or if not sold, then at the
4 same rate upon the use by the wholesaler or dealer;
- 5 (4) 7.00 cents for each cigarette sold, used, or possessed
6 by a wholesaler or dealer after June 30, 2004, whether
7 or not sold at wholesale, or if not sold, then at the
8 same rate upon the use by the wholesaler or dealer;
- 9 (5) 8.00 cents for each cigarette sold, used, or possessed
10 by a wholesaler or dealer on and after September 30,
11 2006, whether or not sold at wholesale, or if not
12 sold, then at the same rate upon the use by the
13 wholesaler or dealer;
- 14 (6) 9.00 cents for each cigarette sold, used, or possessed
15 by a wholesaler or dealer on and after September 30,
16 2007, whether or not sold at wholesale, or if not
17 sold, then at the same rate upon the use by the
18 wholesaler or dealer;
- 19 (7) 10.00 cents for each cigarette sold, used, or
20 possessed by a wholesaler or dealer on and after
21 September 30, 2008, whether or not sold at wholesale,



1 or if not sold, then at the same rate upon the use by
2 the wholesaler or dealer;

3 (8) 13.00 cents for each cigarette sold, used, or
4 possessed by a wholesaler or dealer on and after
5 July 1, 2009, whether or not sold at wholesale, or if
6 not sold, then at the same rate upon the use by the
7 wholesaler or dealer;

8 (9) 11.00 cents for each little cigar sold, used, or
9 possessed by a wholesaler or dealer on and after
10 October 1, 2009, whether or not sold at wholesale, or
11 if not sold, then at the same rate upon the use by the
12 wholesaler or dealer;

13 (10) 15.00 cents for each cigarette or little cigar sold,
14 used, or possessed by a wholesaler or dealer on and
15 after July 1, 2010, whether or not sold at wholesale,
16 or if not sold, then at the same rate upon the use by
17 the wholesaler or dealer;

18 (11) 16.00 cents for each cigarette or little cigar sold,
19 used, or possessed by a wholesaler or dealer on and
20 after July 1, 2011, whether or not sold at wholesale,



1 or if not sold, then at the same rate upon the use by
2 the wholesaler or dealer;

3 (12) 50.00 cents for each premium cigar of any length sold,
4 used, or possessed by a wholesaler or dealer on or
5 after January 1, 2025, whether or not sold at
6 wholesale, or if not sold, then at the same rate upon
7 the use by the wholesaler or dealer;

8 [~~(12)~~] (13) Seventy per cent of the wholesale price of each
9 article or item of tobacco products, other than large
10 cigars, premium cigars, electronic smoking devices,
11 and e-liquids, sold by the wholesaler or dealer on and
12 after September 30, 2009, whether or not sold at
13 wholesale, or if not sold, then at the same rate upon
14 the use by the wholesaler or dealer;

15 [~~(13)~~] (14) Fifty per cent of the wholesale price of each
16 large cigar of any length sold, used, or possessed by
17 a wholesaler or dealer on and after September 30,
18 2009, whether or not sold at wholesale, or if not
19 sold, then at the same rate upon the use by the
20 wholesaler or dealer; and



1 [~~(14)~~] (15) Seventy per cent of the wholesale price of each
2 electronic smoking device or e-liquid sold, used, or
3 possessed by a wholesaler or dealer on and after
4 January 1, 2024, whether or not sold at wholesale, or
5 if not sold, then at the same rate upon the use by the
6 wholesaler or dealer.

7 Where the tax imposed has been paid on cigarettes, little
8 cigars, or tobacco products that thereafter become the subject
9 of a casualty loss deduction allowable under chapter 235, the
10 tax paid shall be refunded or credited to the account of the
11 wholesaler or dealer. The tax shall be applied to cigarettes
12 through the use of stamps."

13 SECTION 4. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 2024.

16

INTRODUCED BY: *Nadine K. Parker OR*

JAN 24 2024



H.B. NO. 2741

Report Title:

Tobacco Products; Premium Cigars; Definition; Excise Tax

Description:

Establishes a definition for "premium cigar" that is distinct from a "large cigar" and adds a definition for "characterizing flavor" in the Cigarette Tax and Tobacco Tax Law. Excludes premium cigars from percentage excise tax. Establishes an excise tax at a rate of 50 cents per premium cigar.

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