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DAILY NEWS CLIPS

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STATE LOSES IN ROUND ONE OF CIGARETTE TAX CASE – AND OFFERS A STRANGE ARGUMENT ABOUT LEGISLATURE'S 2/3 TAX RULE

By Erik Smith
Washington State Wire
June 26, 2012

While State Defends Supermajority Initiative in One Lawsuit, it Argues in Franklin County That Legislature Can Ignore Initiatives – Constitution Says it's Not So Simple

The state of Washington lost Round One Monday in a high-profile cigarette-tax case that has everything to do with the Legislature's controversial two-thirds-for-taxes rule. But that's not the part that has people scratching their heads. It's a curious legal argument the state is making, one that contradicts everything it has been saying for years.

In fact, if the attorney general's office were to take the argument all the way and win, it would be the practical end of a rule that has changed the way the Legislature does business and which has prevented big tax increases in the middle of a recession. It also might be the death knell for any initiative. The state appears to be arguing that the Legislature can pass a bill that overrides an initiative at any time, with a simple majority vote – even though the state constitution says otherwise.

What happened Monday was that Franklin County Judge Bruce Spanner granted an injunction to a manufacturer of "roll your own" cigarette-stuffing machines. That places on hold a new tax that was to have taken effect on Sunday, and which most likely would have caused 65 smokeshops across the state to close their doors.

What's at stake here is the rule that allowed the judge to do it – the supermajority rule that requires a two-thirds vote of the House and Senate for the Legislature to pass a tax increase. Voters have imposed it four times since 1993. In the case of the cigarette tax, the Legislature this year passed the bill a few votes shy of a supermajority, yet declared it passed anyway. Spanner ruled that the tax violated Initiative 1053, the latest version of the rule. In all the years the rule has been effect, off and on, it is the first time a perfect set of facts has been established that might send the case to the highest level and prompt the Supreme Court to decide once and for all whether the rule is constitutional.

Three times the court has shot down challenges from lawmakers and special-interest groups for procedural reasons. A new such challenge is making its way through the courts right now, and there's no telling whether that one will fare differently. But in every single one of those cases, the attorney general's office has argued that not only is the rule constitutional, the Legislature actually has to follow it. In those cases the attorney general's office has been defending the initiative. In the cigarette case, the state is defending the state Department of Revenue. Here the state is arguing that lawmakers can ignore the rule at any time.

The argument stuns Mike Reitz, among others, attorney for the right-leaning Freedom Foundation. "It is crazy," he said. "We should all be afraid if the Legislature believes that it is not subject to the constitution and that it is not subject to properly enacted initatives. For them to say we are not violating it, we're just ignoring it, is just astounding."

A Smokin' Lawsuit

All of which goes to show, once again, that the cigarette-tax case is one to watch – and that it is one of the trickiest cases in some time. It has to do with a new leap in technology, a high-tech cigarette-making machine that has been installed in 65 stores statewide by Ohio-based RYO Machine LLC. Customers pour loose pipe tobacco into the machine, fill a drawer with cigarette-paper tubes, press a button – and out come finished cigarettes. It's one way to beat the high cost of smoking. The machines use loose pipe tobacco, which is taxed at a much lower federal rate than loose cigarette tobacco. The shopkeepers don't pay the state's high cigarette taxes, either. So what it means is that a carton's worth of smokes runs a little over $30 most places, sometimes as low as $19.99. And that beats the $70 or so that a carton of prepackaged cigarettes would cost at the supermarket.

Lawmakers looked askance this session and passed a bill that declared the shops to be cigarette manufacturers. Starting July 1, the shopkeepers were supposed to start paying an additional $30.25 in state tax for every 200 cigs. Though the bill supposedly increased tax revenue by $12 million a year, more likely it will shut down the stores – a point lawmakers said wouldn't bother them deeply. Gov. Christine Gregoire, signing the bill, said she was more concerned with health issues than with making cigarettes available cheaply.

Here's the hitch. The bill got a two-thirds vote in the House, 66-32, but not in the Senate, where it passed 27-19. Lt. Gov. Brad Owen ruled that the bill passed anyway. It wasn't a new tax, he said, but the extension of an existing tax to a new technology.

And in Franklin County Superior Court Monday, Judge Spanner wasn't buying. In his oral ruling, Spanner said the new tax really was a new tax. That made it a violation of I-1053. Spanner said the suit's chances seemed good enough for him to issue an order blocking the tax from taking effect, while the case works its way through the courts. He didn't issue a final ruling in the case – that comes later – though his sentiment appeared rather clear.

The company and its attorneys could celebrate at least a temporary victory. "It is gratifying to see the Washington courts have stepped in to protect the constitutional rights of small business owners and consumers," said RYO attorney Chris Weiss of the Seattle law firm Stoel Rives. "This case, while it is important to those involved in the R.Y.O. tobacco industry, has far-reaching effects on all Washingtonians. Judge Spanner made a hard decision, but I believe the right decision."

The case was filed in Franklin County, one of the more conservative areas of the state, with Franklin County smoker Dana Henne as lead plaintiff; also named in the suit is ½ Price Smokes of Kennewick, an RYO store. The attorney general's office has not yet announced whether it will appeal the decision.

A Curious Argument

The state's central argument is a new one – not a mention was made of it when the bill was being considered by the Legislature this year. It contends that the new tax isn't a new tax because cigarette buyers should have been paying it all along. Every time they bought a carton's worth of smokes, the brief says they were supposed to send a check to the Department of Revenue for $30.25, the same way that Washington residents who buy big-screen TVs in Oregon to beat the sales tax are supposed to send a check to the state for an equivalent amount. So all the bill really did, the state says, is to collect the money in a different way, by making shopkeepers pay. The brief says the "ongoing evasion of taxes" costs the state $150,000 a day.

If the argument ended there, it probably wouldn't raise an eyebrow. But the brief goes on to make several more, including the biggie – the idea that the Legislature can simply pass bills that override initiatives at any time. "Even if this court were to conclude that the cigarette machine legislation raises taxes, the statutory two-thirds requirement cannot, by itself, invalidate the cigarette machine legislation," it says. "The Washington Supreme Court has explained that one enactment, even an enactment by an initiative, cannot bind future legislatures."

Here's the problem. The state constitution gives initiatives the same status as laws passed by the Legislature, meaning that they certainly can be repealed. After two years have elapsed, all it takes a simple majority vote. But the constitution also gives initiatives a special status during the first two years after passage. During the first two years, it takes a two-thirds vote to amend or repeal a law passed by initiative. That certainly didn't happen here, and I-1053 had only been on the books for 16 months.

To back up its argument, the state refers to a 2007 decision in a case brought by the Washington State Farm Bureau, in which the Supreme Court allowed a law to stand even though it countered an initiative. But in that case, the initiative had been on the books for 12 years. The brief doesn't mention that. All matters of law aside, the argument here does appear to flout every other argument the state has made in four successive challenges to the supermajority rule. In those cases, the state has argued that Legislature has to follow the rule.

A Puzzling Contradiction

It's a strange case indeed, and you might say it hearkens back to the fact that the state attorney general's office is obliged to defend state agencies at the same time that it defends initiatives. Sometimes it finds itself representing both sides of a case, as in Grays Harbor County, in a suit involving judges who contend the state has provided inadequate security at the county courthouse. And in one notable case from 2010, the state Supreme Court ruled that the attorney general's office had to provide legal support to Lands Commissioner Peter Goldmark, even though its attorneys maintained Goldmark's legal arguments were absurd and put the state at serious jeopardy in other cases.

"We are obligated to defend laws passed by the Legislature and by the people, and to provide every possible defense," said spokesman Dan Sytman. "So we are doing it in the roll-your-own case and we're doing that in our defense of Initiative 1053 as well."

Yet the argument in the cigarette case is wild beyond belief, Reitz says – doubly so when you consider that it is one of the most closely watched tax cases of recent years. The state may not be contradicting itself by arguing that the supermajority rule is unconstitutional. But it is saying any initiative can be overridden by the Legislature simply by passing a bill with a simple majority. So that means the Legislature is free to ignore any initiative at any time, and the two-thirds-for-taxes rule has no teeth. “It is so bizarre,” he said. “While one side of the agency is defending the constitutionality of the law, the other side of the agency is basically arguing to invalidate it, without actually coming out and saying that.”

You have to wonder where the legal argument got started, he says. Did it originate with a state agency? That’s a matter of attorney-client privilege, and we may never know, but it does remind one of the Goldmark case.

“I don’t know where this turns into a sort of larger criticism of agency representation, but at what point does the attorney general’s office say to the client, you don’t have a case and we’re not going to make ridiculous arguments and embarrass ourselves before the court simply to defend you? If you want to go out and hire private representation, go forward, but we are not going to defend an indefensible position.”

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JUDGE BLOCKS TAX ON ROLL YOUR OWN CIGARETTES

By Lesley McClurg
Northwest Public Radio (WA)
June 26, 2012

Currently you can walk out of a tobacco shop with a pack of roll-your-own cigarettes for about $5.50. A pack of Marlboros will put you back almost twice that much. That’s because tobacco shops don’t charge the same tax on roll-your-own cigarettes as they would for pre-packaged cigarettes.

David Harkins from the Attorney General’s Office says that’s not fair.

Harkins: "The definition of a cigarette is any roll for smoking made wholly, or in part, of tobacco with a wrapper or a cover made of paper. So consumers that go in and buy these cigarettes from a cigarette making machine, they’re already libel for the tax. They should be paying the cigarette tax."

Earlier this year the legislature passed a law that would have taxed roll-your-own cigarettes just like retail cigarettes. But opponents say the new law is unconstitutional because it’s charging a new tax.

Weiss: "It was an entirely new scheme that was created to reach this area that was previously not taxed and not regulated by the state."

That’s Chris Weiss. He’s the lead attorney representing tobacco shops that sell your roll-your own products. They argue that the new law would be bad for business because it would raise the price of a pack of roll-your-own cigarettes by three dollars.

Weiss says the new law should have been subject to the required two-thirds majority vote that’s necessary in Washington to pass any new tax. The new law did not pass the senate with a 2/3 vote.

The court agreed with Weiss. The price of roll-your-own cigarettes was supposed to rise on July 1st. But, for now – the price will stay the same. The state is considering appealing the decision.

Originally published with audio here: http://www.nwpr.org/post/judge-blocks-tax-roll-your-own-cigarettes

JUDGE OVERRULES STATE’S ROLL-YOUR-OWN CIGARETTE TAX

Q13 Fox News Washington
June 25, 2012

Tax would have closed a loophole making taxes lower on self-rolled cigarettes

A Franklin County judge overruled the Washington law imposing a tax on roll-your-own cigarettes, reports the Tri-City Herald. The 15-cent tax was supposed to go into effect on Sunday.

The judge, Bruce Spanner, ruled that the tax violates the Tim Eyman-backed Initiative 1023, which requires a 2/3 majority on all new taxes in Olympia.

The cigarette tax passed by 2/3 majority in the House, but not in the Senate. Gov. Christine Gregoire signed it anyway. Gregoire and other supporters argued that this was not a new tax; rather it was an extension of a pre-existing tax. They were simply bringing taxes for self-rolled cigarettes in line with those for pre-packaged cigarettes.

The state argued that the Franklin County Superior Court did not have the authority to rule on the constitutionality of the law. However, the plaintiffs, led by Seattle-based attorney Chris Weiss, won the day.

Weiss said he expects the state to appeal the ruling.

Originally published here: http://q13fox.com/news/politics/CRsTake/kcpq-judge-overrules-states-rollyourown-cigarette-tax-20120626,0,2096404.story

JUDGE REVERSES CIGARETTE TAX

By Kristi Paulus
KVEW TV Washington
June 26, 2012

Smokers who save a lot of money rolling their own cigarettes are praising a Franklin County judge for striking down a new tax.

Starting Sunday, "roll your own cigarette" stores were going to start collecting a new tax of 15-cents per cigarette.

The legislature approved the tax earlier this year, but it did not pass by the two-thirds majority requred by a voter approved initiative.

A Franklin County judge ruled the new tax violates that initiative and ordered a temporary injunction.

Customers at "Half Price Cigarettes" in Kennewick say this is a big win for smokers and businesses.

The 15-cent per cigarette tax would have raised about 12-million dollars over the next year to help balance the state budget.

There are 65 roll your own stores statewide -- with a new one set to open in Pasco next month.

Originally published here: http://www.kvewtv.com/article/2012/jun/26/judge-reverses-cigarette-tax/

NOT SO FAST: STATE'S ROLL-YOUR-OWN CIGARETTE TAX BLOCKED BY FRANKLIN COUNTY JUDGE

By Matt Driscoll
Seattle Weekly
June 26, 2012

Somewhere Tim Eyman is probably doing that annoying Superman pose of his. That's because yesterday Franklin County Superior Court Judge Bruce Spanner granted a request for a preliminary injunction against the state's roll-your-own cigarette tax, passed by the Legislature earlier this year and intended to have retailers start collecting the tax July 1.

Now that plan has been put on hold while state officials decide whether to appeal the decision. Yesterday's ruling prevents enforcement of the roll-your-own cigarette tax during the legal challenges that will follow.

Spanner concluded that the tax was, indeed, a new tax, and thus in violation of Eyman's much-debated Initiative 1053, passed by voters in 2010 and requiring a two-thirds vote from the Legislature to raise taxes. While there's a definite victory for Eyman-ites and anti-tax zealots in the decision, it also likely sets the stage for further showdowns on I-1053, and possibly even an ultimate decision from the state supreme court on the constitutionality of the initiative's supermajority requirement.

"We are very pleased that Judge Spanner has granted our request for an injunction while our legal challenges are heard in court," said Phil Accordino, CEO of RYO Machine, in a prepared statement distributed to the media. "We look forward to making our case that HB 2565 is an invalid piece of legislation because it violates Initiative 1053, which would have required a 2/3 vote from both houses of the state legislature in order to raise taxes on our small, independent tobacco stores across the state."

"It is gratifying to see that the Washington courts have stepped in to protect the constitutional rights of small business owners and customers," adds Chris Weiss, lead attorney for RYO from Stoel Rives, in the same statement. "While this case is very important to the RYO tobacco industry, it has a far reaching effect on all Washingtonians. Judge Spanner made a hard decision, and I believe the right decision."

Filed June 14 by a resident of Washington, a Benton County tobacco retailer and the Ohio-based RYO Machine LLC, the lawsuit that led to yesterday's decision argues that the roll-your-own cigarette tax should have been subject to the required two-thirds majority vote to pass as laid out by I-1053.

Proponents of the new tax say it simply closes a loophole in the existing law. Of course, it's also estimated that the roll-your-own cigarette tax would bring in $12 million this coming year, helping to fill the state's reported $1 billion budget gap, making it all the more appealing to lawmakers.

RYO's Beau Cribbs says 12 states have signed roll-your-own cigarette tax bills similar to Washington's, while 24 states have proposed similar bills that ultimately didn't pass their respective state legislatures. Thanks in part to the restrictions set forth by I-1053, Cribbs says Washington is the first state RYO has filed a lawsuit against to block a roll-your-own cigarette tax.

Originally published here:
http://blogs.seattleweekly.com/dailyweekly/2012/06/not_so_fast_states_roll-your-o.php

JUDGE BLOCKS RYO TAXES IN WASHINGTON

NACS Online
June 27, 2012

Days after a bill to increase the tax collected on roll-your-own (RYO) cigarettes failed to gain ground in New York, a Washington state judge blocked the collection of taxes on RYO cigarettes, The Seattle Times reports.

Citing an initiative that makes it difficult for lawmakers to raise taxes, a Franklin County Superior Judge granted a preliminary injunction, ruling the upcoming tax (July 1) violated a voter-approved initiative that requires two-thirds of lawmakers to support a tax increase.

Earlier this year, the Washington Legislature voted for RYO cigarette stores to collect a 15-cents-per-cigarette tax, the same tax levied on packaged cigarettes. Explaining their vote, lawmakers said they were enforcing an existing tax (that the stores were trying to avoid taxes) and not creating a new one.

While two-thirds of state House members approved the increase, only 27 of 49 senators approved the change — far short of the two-thirds requirement.

“It is gratifying to see that the Washington courts have stepped in to protect the constitutional rights of small business owners and customers," said Chris Weiss, lead attorney for RYO Machine.

State officials said they are considering appealing the decision.

Originally published here: http://www.nacsonline.com/NACS/News/Daily/Pages/ND0627123.aspx

JUDGE: “YOU’RE TELLING ME A COURT IN THIS STATE HAS NO RIGHT TO LOOK INTO WHETHER THE LEGISLATURE FOLLOWED THE LAW?”

By James Mercier, Director, Center for Government Reform
Washington Policy Center
June 26, 2012

If the fact a Judge had to ask this question is troubling to you, the response by the state won't make you feel any better. As reported by the Tri-City Herald on yesterday's roll-your-own cigarette tax hearing (emphasis added):

“Roll-your-own cigarettes won't be hit with a 15-cent tax in Washington when the new law takes effect Sunday, ruled Franklin County Superior Court Judge Bruce Spanner.
The judge granted a preliminary injunction Monday after a hearing in Pasco where plaintiffs claimed the tax violated state law.

Spanner disagreed with state attorney David Hankins, who argued that the court had no right to question why the new tax didn't have two-thirds approval of the Legislature.

The injunction will take effect when a $200,000 bond or security is posted, Spanner said.

Seattle attorney Chris Weiss said he expects the security will be posted before July . . .

Weiss noted that HB2565 was in response to the Department of Revenue's position that it did not have the authority to tax roll-your-own cigarettes under the existing law.

Hankins argued it wasn't a new tax because the tax rate on cigarettes remains the same, and that prepackaged and roll-your-own cigarettes look the same. He held up examples to show the court.

Hankins said the judge had no authority to examine the procedures of the Legislature in approving the cigarette tax, even if it was a work-around on the two-thirds majority requirement.

'You're telling me a court in this state has no right to look into whether the Legislature followed the law?' Spanner asked.

'Yes, if it is a procedural issue,' Hankins replied.

Weiss said the governor's strong support for the tax did not give her 'the right to override 1053.'

Spanner said he has the right to scrutinize what the Legislature has signed off on.

'It's what we're doing here,' the judge said."

In its brief defending HB 2565 the Attorney General's Office appeared to argue that even if the roll-your-own cigarette tax was indeed a new tax the supermajority requirement wasn't binding on the Legislature:

"Even if this Court were to conclude that the Cigarette Machine Legislation raises taxes for purposes of RCW 43.135.034, the statutory two-thirds vote requirement cannot, by itself, invalidate the Cigarette Machine Legislation . . .

The Court's holding in Farm Bureau was explicit: a prior statute (whether enacted by the Legislature or by initiative) cannot prospectively invalidate a later statute. Therefore, RCW 43.135.034 cannot itself prospectively invalidate the Cigarette Machine Legislation."

Here is an official statement by the Attorney General's Office in response to yesterday's court action:

"Today in Benton County Superior Court, Judge Bruce Spanner granted the plaintiffs a preliminary injunction, while this case moves forward, to stop the Department of Revenue from collecting taxes on cigarettes produced by cigarette-making machines. The judge believes that the Legislature would have had to comply with the two-thirds majority requirement for tax increases in order to enforce and collect taxes from 'roll your own' cigarette machines. We argue that the cigarette machine legislation did not impose a new tax but rather provided a new method of collecting an existing cigarette tax previously uncollected because the state lacked an effective means of collecting it. The law would have taken effect on July 1, allowing the state to more effectively collect approximately $137,000 a day in cigarette taxes due. Regarding a potential appeal, we will speak to our clients about our options."

At this time it is unclear what the next steps will be for this case. Meanwhile the state is requesting the Supreme Court stay an earlier King County Superior Court decision on the constitutionality of the 2/3 requirement:

"The State is seeking direct review by the Washington Supreme Court and has filed a motion seeking a stay of the superior court ruling. The Supreme Court Commissioner denied the State's motion for a stay but referred the motion to the full Court which will consider the motion on July 11."

Ultimately voters should be provided the final say on whether 18 years of state policy and repeated voter support of the requirement to secure a supermajority vote to raise taxes should remain on the books. This is why lawmakers should provide voters the opportunity to consider a constitutional amendment to help end this debate once and for all.

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6-26-12 – NEWSLINE PM - 1:00

By Ken Schram
KOMO New Radio (WA)
June 26, 2012

Ken looks into why Roll Your Own taxes on cigarettes are coming to an end July 1st. There is a showdown in Congress over student loans. Seattle is looking at expanding construction around South Lake Union.

Listen to audio here: http://www.komonews.com/radio/listen/ken-schram-newsline/160436945.html

WHERE DID THE SENATE GET THE EXTRA MONEY TO PAY FOR ITS BILL?

By Tanya Snyder
DC Streets Blog
June 26, 2012

Congressional leaders announced opaquely last week that they'd "moved forward" on a deal on the highway section of the transportation bill. That means transit, rail, and safety programs are still being negotiated. And it means the financing of the bill hasn't yet gotten the seal of approval from the House.

Still, both houses of Congress have agreed to spend more on the transportation bill than the Highway Trust Fund itself can bear. (The House gave its green light a couple weeks ago when it nixed the Broun motion to keep transportation spending to HTF receipt levels.) To overspend the HTF but still plausibly deny that they're deficit-spending, the Senate Finance Committee has done some pretty fancy footwork to offset the expenditures with other savings.

Chair Max Baucus (D-MT) squeezed blood from the stone of the U.S. budget, and many of his colleagues have lauded him as a miracle worker. But Taxpayers for Common Sense – and lots of other people with common sense – say the numbers don't really add up. The information below comes from TCS's report, released last week, on the Senate pay-fors.

Stick with me here – this is all a little convoluted, but understanding the funding is a key part of the process. While the Senate transportation bill may be a good stop-gap compared to the option of even shorter extensions, a look at the funding shows why it provides no long-term answers to the question of how to pay for transportation.

The sources of new Highway Trust Fund revenue Baucus et al came up with are:

A transfer from the general fund: $4.97 billion. This is the most obvious example of deficit spending – just taking money from the Treasury to pay for transportation. That's on top of $34.5 billion the Treasury has already coughed up in the last four years to bail out the Highway Trust Fund – something no one wanted to repeat.

Dedication of imported car tariffs to the Highway Trust Fund: $4.52 billion. This revenue would no longer go to the general fund.

A transfer from the Leaking Underground Storage Tank Trust Fund: $3.685 billion. TCS approves of this use of funds, since they come from the gas tax and are underspent at a three-to-one ratio. This transfer just eliminates most of the backlogged surplus.

Dedication of the gas guzzler tax to the Highway Trust Fund: $0.697 billion. The government levies a fee on vehicles whose combined city and highway fuel economy is worse than 22.5 mpg (with exemptions, of course, for some of the worst offenders, like SUVs and minivans). It's transportation-related, but the tax revenues have always gone into the general fund, so this functions as another transfer from the Treasury.

Total new HTF revenues: 13.872 billion.

So, since the Senate proposes to take from the general fund to plug the Highway Trust Fund, they have to pay back the Treasury somehow. That's known on Capitol Hill as an "offset," to avoid deficit spending.

The principal new source of revenue to replenish the general fund is a pension stabilization provision, expected to yield $9.394 billion. By reducing the amount companies have to contribute to employees' pensions — which are tax-free — that money will become taxable income. Even skeptics seem to agree that $9.394 billion is probably a reasonable amount to expect from this change. But TCS notes that the Pension Benefit Guaranty Corporation (PBGC), which guarantees pension benefits when a company goes bankrupt, has a $23 billion deficit, which they say would be a better fit for this chunk of money.

There are 10 more offsets, most of them good for a negligible amount of money, but put them all together (with the pension change) and they total $17 billion. They include changes to arcane tax code provisions, increased enforcement of tax payment on Medicare providers and passport holders, and even a new tax on "roll-your-own" cigarette machines.

So that's enough to pay the general fund back for what the Highway Trust Fund took. But TCS says some of these represent bogus savings. For example, the government is planning to "save" $3.627 billion by further delaying a tax change that hasn't even taken effect yet. The Senate bill would spend ten years' worth of this "savings" in little more than a year.

But that's not all! The bill also includes extraneous spending on things that don't have anything to do with transportation. Most of the non-transportation items have their own funding built in, but TCS wonders why they're included in the bill at all. They include $3.627 billion for Gulf states' coastal restoration, paid for out of fines from the BP oil spill; $1.4 billion for reauthorization of the land and water conservation fund, funded with oil drilling money; a change in the definition of a "small-issuer" bond, which is tax-exempt, and therefore forfeiting $0.761 billion in taxes; elimination of the cap on water and sewer bonds; and relief from the alternative minimum tax for investors in private activity bonds (which are often used for infrastructure).

The final item under "new spending" does, in fact, deal with transportation. In fact, it's a key priority for transportation reformers: bringing the transit tax benefit up to the level of the parking benefit for commuters. Currently, the limit is $125 a month for transit and $240 for parking.

Putting transit commuters on a level playing field with drivers is a significant transportation goal for this bill to achieve. TCS grumbles that the way to handle the imbalance is to lower the parking subsidy, which is fair enough. But if that's not going to happen, the $0.139 billion it will cost to raise the transit benefit to achieve parity is well worth it.

All together, whew, that's a lot of complicated math just to avoid raising the gas tax.

Originally published here: http://dc.streetsblog.org/2012/06/26/where-did-the-senate-get-the-extra-money-to-pay-for-its-bill/

ROLL-YOUR-OWN CIGARETTES WIN STATE TAX FIGHT

By Associated Press
Times Union (NY)
June 25, 2012

Company hired ex-GOP senator at $10,000 a month to fight bill

A new and savvy player dealing in loose tobacco rolled and packaged in retail stores but taxed far less than cigarettes has beaten New York's governor and Legislature again, as well as an unlikely alliance of cigarette makers and the American Cancer Society.

A bill to tax loose tobacco rolled in stores at the same level as cigarettes passed the Democrat-led Assembly in the regular session that ended Thursday but never made it to the floor of the Republican-led Senate. Customers are supposed to use the large machines the size of a dryer at a self-service laundry to roll their own while at the store, avoiding the taxes manufacturers pay if they rolled the cigarettes.

"It's impossible for us to know everything that happened, but apparently one company with a $10,000-a-month lobbyist was able to block a bill that would stop tax evasion, prevent residential fires and encourage smokers to quit," said Russ Sciandra, state director of advocacy for the American Cancer Society.

State records show that lobbyist was former Republican Sen. Alfonse M. D'Amato.

D'Amato's Park Strategies firm was hired by the biggest player, RYO Filling Station — also known as Roll Your Own Machine of Girard, Ohio — at a fee of $10,000 a month. D'Amato met privately with Gov. Andrew Cuomo on Feb. 20, according to Cuomo's public schedule.

The bill to make these roll-your-own cigarettes at stores subject to cigarette taxes died in a Senate committee. But the company is still lobbying because the bill might come up in a special session in November.

"We're breathing a little easier, but by no means is the fight over," said Bea Gonzalez, spokeswoman for the RYO company.

The Legislature often returns to session in the fall for some bills or, like this year, after the elections to act on bills.

"We had been working diligently with the governor's office," she said Friday. "We hired Park early. We have been trying to educate legislators. ... They have just been extremely effective."

A Park Strategies spokeswoman declined to comment.

The state Senate's Republican majority has opposed the measure as a tax increase. Senate majority spokesman Scott Reif had no immediate comment on the measure.

So far this year, more than two dozen states have introduced bills to restrict the machines by reclassifying the stores as manufacturers or by otherwise increasing tax revenue from the growing industry.

For the Liu family, immigrants from China over a decade ago, their store is their livelihood, and they're about to open another.

"We're doing a pretty business," said Renia Liu, who works at her father's store, Tobacco Roll in Clifton Park. It opened in February. "Here, customers save like half. And we have returning customers a lot. Business is going well."

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RYO LEGISLATION FAILS TO MOVE IN NEW YORK STATE

Convenience Store News
June 26, 2012

A move to tax roll-your-own (RYO) retailers has failed to make it pass the New York State legislature.

A bill to tax loose tobacco used in RYO machines at the same level as traditional cigarettes passed the state Assembly during the legislative session, but failed to make it to the state Senate floor, according to the Associated Press. The legislative session ended Thursday, June 21.

The New York Association of Convenience Stores (NYACS) made one final push for legislation classifying RYO businesses as manufacturers, which are subject to higher taxes, the week before the legislators left town for the summer. NYACS issued a statement on Friday, June 15, explaining that there is a "desperate need" for New York to regulate commercial RYO machines, as CSNews Online reported.

To date, officials at the state level and at local levels -- specifically New York City -- have initiated lawsuits against RYO establishments alleging the stores violate law and regulatory statutes. However, New York State does not have legislation in place.

According to the Associated Press report, RYO Filling Station, also known as Roll Your Own Machine of Girard, Ohio, hired lobbyist firm Park Strategies for $10,000 month. Former Sen. Alphonse D'Amato (R-N.Y.) is a lobbyist with the firm and he reportedly met with Gov. Andrew Cuomo in late February.

The bill to make these roll-your-own cigarettes at stores subject to cigarette taxes died in a Senate committee; the state Senate is controlled by Republicans. But the company is still lobbying because the bill might come up in a special session in November, the report added.

"We had been working diligently with the governor's office," Bea Gonzalez, spokeswoman for the RYO company, said. "We hired Park early. We have been trying to educate legislators ... they have just been extremely effective."

A Park Strategies spokeswoman declined to comment for the report.

The state Senate's Republican majority has opposed the measure as a tax increase. Senate majority spokesman Scott Reif had no immediate comment on this measure, according to the Associated Press.

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RYO BILL FAILS IN NEW YORK

By Melissa Vonder Haar
CSP.net
June 26, 2012

Proponents of taxing roll-your-own cigarettes at the same level as all cigarettes were outraged when a bill supported by New York Governor Andrew Cuomo and passed by the New York State Assembly died in a Senate committee. The bill's failure to make it to the Senate floor has many pondering what -- or who -- is responsible for its demise.

"It's impossible for us to know everything that happened, but apparently one company with a $10,000-a-month lobbyist was able to block a bill that would stop tax evasion, prevent residential fires and encourage smokers to quit," said Russ Sciandra, state director of advocacy for the American Cancer Society.

According to state records, that pricey lobbyist would be former Republican Sen. Alfonse D'Amato's Park Strategies firm, hired by roll-your-own power player RYO Filling Station of Girard, Ohio. Despite this recent victory, Park Strategies will continue its lobbying effort, because the bill could be resuscitated during a special session in November.

"We're breathing a little easier, but by no means is the fight over," Bea Gonzalez, a spokeswoman for the RYO company, told the Associated Press. "We had been working diligently with the governor's office. We hired Park early. ... They have just been extremely effective."

More than two dozen states have introduced RYO bills in 2012 alone. The tax inequality extremely affects tobacco sales in New York – where a carton of 200 roll-your-own cigarettes can cost as little as $37.99, as opposed to the $108 the same amount of cigarettes would cost in a convenience store. It's a discrepancy groups such as the New York Association of Convenience Stores (NYACS) have been battling for some time.

"We were please the assembly passed the bill, and disappointed the Senate did not, but this quest is far from over," NYACS president Jim Calvin told Tobacco E-News and CSP Daily News. "We are committed to ensuring that RYO shops become subject to the same cigarette taxation and regulation that retailers of prepackaged cigarettes do."

With Gov. Cuomo, NYACS, cigarette manufacturers and The American Cancer Society all supporting a crackdown on RYO tobacco, it's likely the battle will continue in New York, high-powered lobbyists or not.

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AREA SMOKE SHOPS REACT TO STATE TOBACCO TAX HIKE

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Richard Hayes has operated Foremost Liquors in the Indian Oaks Plaza in Bolingbrook for 25 years, and has sold thousands upon thousands of packs of cigarettes to his regular customers.

That may change with the recently enacted $1-a-pack state tax that took effect Sunday.

"I'm considering discontinuing the sale of cigarettes," Hayes said. "I only sell individual packs as a convenience to my customers, so it doesn't really bring in a lot of revenue for me. I'd rather have people buy other products here, so I really don't feel strongly one way or the other."

Illinois lawmakers recently approved the tax hike, which means taxes on cigarettes are now raised by $1-a-pack, more than doubling the state's previous cigarette tax, which was 98 cents. The state now also taxes small cigars at the same rate as cigarettes.

Gov. Pat Quinn signed the bill June 14, and the increase applies to all tobacco products, including roll-your-own cigarettes, chewing tobacco and pipe tobacco.

The legislature hopes the increased tax will bring in $350 million. The plan is part of Quinn and lawmakers' efforts to come up with $2.7 billion through cuts and new revenue for the state's struggling Medicaid program. The measure also allows Illinois to gain another $350 million from a federal government match to pay for taxpayer-subsidized health care for the poor.

Pankag Shah, manager at Tobacco Outlet 675 N. Cass Ave., Westmont, thinks most customers were aware of the tax, and because of it, they "stocked up" over the past week or so.

"It may take two or three weeks before we really start to see the hit because customers stocked up before the new tax," Shah said. "We will take a hit, but not until those people run out of what they bought before the tax."

Shah does believe that long term, it will have an effect on business, as many people will go to Indiana or other states to purchase large quantities of tobacco products to avoid the tax, he said.

While Shah knew about the tax, one smoker was caught off-guard.

Heather Barnes, a customer outside of Westmont Tobacco, 840 E. Ogden Ave., said Monday she was unaware of the tax increase until she went to purchase cigarettes.

“I heard there would be a new tax, but wasn’t sure when it would start,” Barnes said. “It’s ridiculous all these taxes.”

But she said it may give her a reason to cut back on smoking in an effort to save money, and may even try to quit.

“I tried to quit before, now I have another reason to do so. It costs too much,” Barnes said.

Danny McGoldrick, vice president of research for national Campaign for Tobacco-Free Kids, said his organization reviews tax increases after they go into effect and the numbers indicate that even though less tobacco is purchased, more revenue is brought in, which each state uses differently based on its financial need.

“We’ve looked over 100 tax increases and every state sees a decrease in tobacco sales and consumption and an increase in revenue,” he said.

McGoldrick conceded that some reduction in the number of packs sold in states that significantly increased its taxes was caused by interstate smuggling, and from smokers going to other lower-tax states to buy cigarettes, but said that the reduced consumption is more from smokers quitting and cutting back.

If a local smoker goes to Indiana, they can expect to pay between $5.50 and $6 a pack, depending on the pack and the store, while in Wisconsin, it’ll cost $8 after taxes. Cook County may be known for its higher prices, but don’t bet on Chicago where a pack of smokes will cost between $11 and $13, compared with $8 and $10 in the near western suburbs.

Current taxes, local and state, on a pack of cigarettes in the city of Chicago are $3.66. Illinois was ranked as 32nd-highest among the states and the District of Columbia with its cigarette taxes.
With the new tax, the state will rank as 16th-highest in the country. Neighboring Missouri has the lowest tobacco tax in the country, at 17 cents a pack. However, that could change as Missouri will put a 73-cent tax increase on the ballot within the next year.

The revenue the tax is estimated to bring in is only part of the benefit of the tax, McGoldrick said. Campaign for Tobacco-Free Kids estimates that the tax will prevent 70,000 Illinois children from smoking as well as make 50,000 Illinois adults quit their habit.

“Not to mention it’ll reduce long-term health care by $2 billion,” McGoldrick said.

Originally published here: http://www.mysuburbanlife.com/westmont/topstories/x1915461722/Area-smoke-shops-react-to-state-tobacco-tax-hike

MU REPORT: MISSOURI AVERAGE IN HEALTH, EDUCATION, COMPARED TO OTHER STATES

By Jerett Rion
Rolla Daily News (MO)
June 26, 2012

According to a new report released by the University of Missouri Truman School of Public Affairs, the state of Missouri has one of the highest rates of adult smokers and the lowest cigarette tax per pack in the United States. David Valentine, a research associate professor at MU, believes that the two have a correlation.

“We have quite high tobacco use and I believe that can be correlated to Missouri’s low tobacco tax,” Valentine said. “However, Missouri has always been a low-tax state and I think that most Missourians prefer it that way.”

The Truman School’s report, which compares various statistics from all 50 states and Washington D.C., reveals that while Missouri has the lowest tobacco tax in the country, the state is fairly average in most other categories. For example, Missouri ranks 35th in household income, 22nd in unemployment rate, and 22nd in the percentage of the population living in poverty. Valentine believes these stats translate positively for the state.

“The report casts Missouri as an average state and I believe that most Missourians are perfectly content with that,” Valentine said. “The last few years have shown less than sterling economic conditions for the state, but the same can be said for the country as a whole. Some states are more affected by the economy than others, and Missouri is one of those. The states are all swimming together in this bad economy, and because we all swim together, Missouri could improve on any one of these measures in the upcoming years, but it wouldn’t necessarily show in the rankings because everyone may improve.”

The report shows Missouri’s fairly average economy is in line with other categories, including education and health. For example, the state ranks 16th in the percentage of population that is overweight or obese, 27th in the percentage of population without health insurance, 26th in ACT scores, 18th in high school dropout rate and 34th in the percentage of population 25 years and older with a bachelor’s degree. For Missouri to become a top-tier state, Valentine says that big changes need to be made.

“In order to not be average in any of these categories, Missouri would have to make some significant adjustments,” Valentine said. “Whether the changes are in education or health, we would have to make substantial investments in certain areas and, since Missouri is a low-tax state that doesn’t seem likely in the short term.”

The report will be sent to Missouri legislative candidates after the primaries in August.

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