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STORE OWNER MAY FACE HURDLES ON “ROLL YOUR OWN” CIGARETTE MACHINES

The Herald News (Fall River, MA)

By Michael Holtzman

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Charlie Saliby and his family, who own Guimond Farms in Fall River, are fighting a cigarette war of sorts — one that hasn't officially started in Massachusetts but is hovering on the horizon.

“My parents opened this store about 16 years ago, and I got my college education so I could run the family business,” Saliby said during an interview last week.

Saliby, the son of immigrants, talked about finishing at the very top of his class at B.M.C. Durfee High School and at the University of Massachusetts Dartmouth as a business major.

He said he has a motto for success at the South End variety store at Rhode Island and Plymouth avenues, one that follows one principle: “I listen to my customers to see what they want.”

When his parents, Sami and Nouhad Saliby, his sister, Nicole, and he began struggling to make do with the store's sales six years ago, Guimond Farms expanded its offering by obtaining a beer and wine license. Two years ago, the store added a full alcohol license.

The store — an established mom-and-pop store previously run by the Guimond family for about 30 years — has expanded in other ways, too. Next to its large wine display, it has a large selection of ice cream. The family also owns a laundromat next door.

One of its largest investments came recently in the form of two “roll-your-own” high-tech cigarette machines that allow smokers essentially to buy less-expensive pipe tobacco and cigarette rolling papers, and rent the machine.

Two months ago, the family bought one machine, the size of a heating boiler. Two weeks ago, they bought a second one. The investment cost \$32,500 for each machine, Saliby said.

The reason for the expansion goes back to listening to customers.

A decade ago, cigarette smokers found the price of cigarettes — then approaching \$4 a pack — was becoming prohibitive.

With federal and state governments tacking on significantly higher taxes the past few years, established brands now can cost about \$7 to \$8 a pack.

In the past few years, federal taxes on cigarettes increased from 39 cents to \$1.01 a pack and taxes on cigarette-rolling tobacco also increased significantly. Massachusetts taxes jumped \$1 to \$2.51 in 2009, making it one of the highest-taxing states.

“When the price of cigarette packs went up,” Saliby said, “customers started buying loose tobacco rolling tubes and rolling their own cigarettes at home.”

The 8-ounce packages of pipe tobacco are taxed at a fraction of cigarette tobacco packs the past two years, according to published reports.

Saliby sells those products, including machines that roll individual cigarettes for \$40 to \$50.

For the person needing to roll a pack or two daily, that can take a long time, typically upwards of two hours to roll the 10 packs that come in a carton. In such instances, roll-your-own machines can come in very handy.

Roll Your Own Machine LLC, based in Girard, Ohio, with a distributor in Massachusetts, makes many of the machines.

Using the RYO machines that are available at 1,700 retail outlets and 40 states across the nation, a customer can produce 200 machine-rolled cigarettes — the equivalent of a carton — in 10 to 15 minutes, Saliby said.

Saliby said he learned about the opportunity from colleagues running convenience stores in Taunton, Brockton, New Bedford and elsewhere who bought them over the past year or so.

The process is simple and quick, Saliby said.

A customer empties an 8-ounce bag of pipe tobacco into a small hopper on the RYO machine. A

box of 200 filtered paper tubes is loaded into another compartment. Then, the calibration, or packing level, is set and the machine is turned on.

Instructions come in a half-dozen languages, including English, Portuguese, Spanish, Russian and others.

Customers must be 18 or older to use the machines.

“We don’t do it for customers; they do it for themselves,” Saliby said. The exception is if there’s a glitch with the machinery.

After each cigarette runs through the machine, it drops into a plastic bin.

The cost is \$29.73 total, including tax. At about \$3 for 20 cigarettes, the number in a pack, it’s less than half of what most manufactured cigarettes cost, Saliby said.

The price breakdown includes \$12.99 for various pipe tobacco brands taxed at 6.25 percent, just a fraction of cigarette tobacco taxes; \$2.99 for the rollers; and \$12.76 to rent the machine.

Still, Saliby has reason to fear the word “manufacture,” based upon what regulators are doing in other states, overtures from the Massachusetts attorney general’s office and federal initiatives.

“They’re trying to say people using the machines are manufacturers,” Saliby said. He emphasized that customers operate the store’s RYO machine as they would at home using smaller, personal, roll-your-own machines.

Retailers like him and marketers and lawyers involved with the RYO machines have been gearing up for battle over the past couple of years.

According to RYO Machines attorney Bryan Haynes in Richmond, Va., the U.S. Tobacco Tax and Trade Bureau of the Treasury Department issued a significant ruling on Sept. 30, 2010.

“They said any business offering these machines in a retail store for consumers to produce their own cigarettes, they have to obtain a permit ... in order to allow consumers to rent the machines,” Haynes said.

It would be the same costly permit a Philip Morris or R.J. Reynolds needs to obtain.

In late 2010, lawyers for RYO machine obtained a temporary restraining order, then an injunction, in Girard, Ohio, stopping the federal mandate, Haynes said.

But Haynes said that, during the past three months, the office of Massachusetts Attorney General Martha Coakley has issued to some storeowners what's called "Civil Investigative Demands," or CIDs.

He declined to provide a CID example, even redacted, that was issued to one of the company's clients. In general, he said, a CID is a demand for information about how the business operates — one step in the investigatory process.

Haynes said there have been court cases in a half-dozen states, one in New Hampshire that went to the Supreme Court and favored the state being able to collect cigarette taxes on an RYO machine owner.

There was another completed case in Alaska, one on appeal in West Virginia and cases pending in Connecticut, Wisconsin and Michigan, Haynes said.

The lawyer said they'd have "potential for concern" in Massachusetts because of attempted prosecution in other states.

Coakley's office last week would not confirm any ongoing investigation into roll-your-own machines other than to say the office takes steps to investigate perceived illegal activity and breaking of any laws in general.

Saliby said he's known of the state issuing CIDs to retailers, but his operation is new and he's not received such a letter.

Within a "fact" list about RYO, the machine manufacturer said their 1,700 RYO filling machines nationwide have created 4,500 jobs; that retailers like Guimond receive territorial contracts and that "people have been rolling their own cigarettes for centuries."

"The machines are becoming more and more popular," Saliby said.

He said at their store, open seven days a week, they have 25 to 35 customers daily, more on weekends. He's added a couple of employees, bolstered by increased tobacco and other sales, he said.

"I got these machines to give my customers an alternative to rolling their own cigarettes at home," he said.

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<http://www.heraldnews.com/news/x1980200878/Store-owner-may-face-hurdles-on-roll-your-own-cigarette-machines#ixzz1hkQLTMbu>

ROLL-YOUR-OWN BUSINESS CHOOSES TO CLOSE IN FACE OF LEGAL FIGHT

Convenience Store News

By Staff

December 22, 2011

Island Smokes is throwing in the towel rather than get into a legal battle over roll-your-own cigarettes. As *CSNews Online* reported last month, the New York City legal department initiated a lawsuit against the owners of Island Smokes for tax evasion.

However, the owners of Island Smokes decided to shutter the business as of Feb. 1 rather than fight. Jonathan Behrins, the lawyer for Island Smokes, said the store's owners agreed to settle because they wouldn't have been able to afford a legal battle that would likely have carried a six-figure price tag, according to *The Staten Island Advance*.

"We were really twisting in the wind. We were the only one being sued," he said. "We do not have the money to fight City Hall.... We're literally fighting City Hall because the mayor is vehemently opposed to smoking."

At Island Smokes, customers pay \$30 for a carton's worth of tobacco and paper tubes, then use one of the small rolling machines in the store to make their own cigarettes. The problem, however, stemmed from the fact that customers do not pay cigarette taxes.

According to the city's lawsuit, the store takes advantage of a tax loophole and charges taxes at the rate set for loose tobacco, which is much smaller than a manufactured cigarette pack. Loose tobacco is taxed by the federal government at \$2.80 per pound, compared with \$25 per pound for tobacco made exclusively for cigarettes, as *CSNews Online* reported.

Also, shops such as Island Smokes do not have to put any funds toward the cigarette manufacturer trust fund, which finances health programs for treating smoking-related illnesses. In addition, RYO shops sell tobacco packs without local tax stamps, which in New York carry a \$1.50 city tax and a \$4.35 state tax.

Now a consent order signed by the owners of the store and the city late last week calls for Island Smokes to "wind down" its business, liquidate its inventory, and "cease all business operations" under its current trade name, as the *The Staten Island Advance* reported.

According to the order, the owners agree to stop "manufacturing, possessing, advertising, offering for sale, selling, and/or distributing cigarettes that do not bear New York State and City tax stamps or which are not certified as fire-safe as required by New York law, including, but not limited to, by selling loose tobacco and pre-formed cigarette paper tubes and providing customers with access to machines that produce finished cigarettes."

The store and the city's attorney signed the order on Thursday, and U.S. District Judge Katherine B. Forrest signed off on Friday.

Island Smokes attorney told the newspaper that money was at the heart of the city's action against Island Smokes. "The real deal is, they want their tax money. They want their revenue," Behrins said.

Behrins added he doubts the issue of roll-your-own stores in New York City will go away any time soon, especially if similar stores facing potential civil lawsuits or cease-and-desist letters band together and pool their resources.

He is also keeping an eye on a legal battle between one of the makers of RYO machines and the U.S. Department of Treasury. That case is pending in the U.S. Sixth Circuit Court of Appeals.

http://www.csnews.com/top-story-roll_your_own_business_chooses_to_close_in_face_of_legal_fight-60161.html

MARTIN'S KEEPS ON SMOKIN'

News Times (Danbury, CT)

By Brittany Lyte

December 22, 2011

The owner of Martin's Smoke Shop and Convenience Store gave three longtime employees an early Christmas gift this year.

Variety store owner Ray Martin Jr. called his workers into a meeting last month and told them he would be giving them the store.

"It's a family business and these guys are like family to me," said Martin. "Quite frankly, they've been loyal for so long and it was the right time in my life to let go of the business and giving it to them seemed like the right thing to do."

Ownership of the 68-year-old Barnum Avenue shop will officially be handed down to Stratford residents Kris Kuchta, Chris Mierzejewski and Ken Siksay on Jan. 1, the soon-to-be business owners said this week.

"We're happy about it," said Kuchta, 47, who started working at the store upon graduating high school at age 18. "I've been here 30 years. I know the customers. I've seen kids become adults here."

"This is my home away from home," he added.

Mierzejewski, 33, also started working at the store at 18.

"My parents used to come in here for their (lottery) numbers all the time and I needed a job, so (Martin) hired me," he said.

Mierzejewski never thought he'd own a business, but said he's prepared for the challenge.

"I've been given extra responsibilities little by little," he said, noting that he, Kuchta and Siksay have been running the store for Martin since 2006.

Martin's was established in 1943. What started as a corner store for cigarettes and lottery tickets diversified over the years into a variety shop with groceries and bill-paying services.

The smoke shop became a landmark in the 1990s as the largest cigarette retailer in Connecticut.

"The cigarettes used to be big business for us, but when the cigarette tax started, the big thing became rolling your own tobacco," Kuchta said. "We have a cigarette making machine coming in so the customers can come in and roll their own right here."

The trio said they are looking into getting a Red Box movie rental dispenser and a scratch lottery ticket vending machine in the near future. They'll also start accepting food stamps in early 2012.

But for the most part, the store will remain the same.

"Basically, we try to have a little bit of everything," Kuchta said. "We're the place that knows your name."

<http://www.ctpost.com/news/article/Martin-s-keeps-on-smokin-2421379.php#ixzz1hkRA0w3S>