

HB 490-FN-A – AS INTRODUCED

2013 SESSION

13-0542
09/10

HOUSE BILL ***490-FN-A***

AN ACT relative to the tax on tobacco products other than cigarettes and establishing a tobacco use prevention and cessation program fund.

SPONSORS: Rep. Butynski, Ches 1; Rep. J. Tilton, Merr 3; Rep. J. MacKay, Merr 14; Rep. Levesque, Hills 26

COMMITTEE: Ways and Means

ANALYSIS

This bill changes the tax rate on tobacco products other than cigarettes to a percentage of the wholesale sales price which is equivalent to the tax rate on cigarettes. The bill also establishes a tobacco use prevention and cessation program fund which is funded by certain revenues from the tax on tobacco products other than cigarettes.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to the tax on tobacco products other than cigarettes and establishing a tobacco use prevention and cessation program fund.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Tobacco Products Other Than Cigarettes; Tax Rate Increased. Amend RSA 78:7-c to read as
2 follows:

3 78:7-c Tax Imposed on Tobacco Products Other Than Cigarettes. A tax upon the retail consumer
4 is hereby imposed on tobacco products other than cigarettes at a [~~rate of 48 percent~~] **percentage**
5 **rate** of the wholesale sales price, **which is equivalent to the rate of tax on cigarettes under**
6 **RSA 78:7**. The tax under this section [~~may~~] **shall** be rounded **up** to the nearest **whole** cent if the
7 commissioner determines that the amount of tax would not thereby be made materially
8 disproportionate. No such tax is imposed on any transactions, the taxation of which by this state is
9 prohibited by the Constitution of the United States. No such tax shall be imposed on premium
10 cigars. **The commissioner shall determine the amount of revenue produced by any tax rate**
11 **imposed under this section which is over 48 percent and shall certify ½ of such amount to**
12 **the state treasurer for deposit in the tobacco use prevention and cessation program fund**
13 **established under RSA 126-K:15, II.**

14 2 Tobacco Use Prevention and Cessation Program; Fund. Amend RSA 126-K:15 to read as
15 follows:

16 126-K:15 Tobacco Use Prevention and Cessation Program.

17 **I.** There is hereby established in the department of health and human services the tobacco
18 use prevention and cessation program, which shall be administered with funds appropriated to the
19 department for such purpose, and which shall include but not be limited to:

20 [~~I.~~](a) Tobacco use prevention community programs and grants.

21 [~~II.~~](b) Tobacco use prevention school programs and grants.

22 [~~III.~~](c) Tobacco use prevention state-wide programs and grants.

23 [~~IV.~~](d) Tobacco use cessation programs.

24 [~~V.~~](e) Tobacco use prevention and cessation counter marketing.

25 [~~VI.~~](f) Evaluation of tobacco control initiatives.

26 [~~VII.~~](g) Administration and enforcement.

27 **II.** **There is hereby established in the office of the state treasurer the tobacco use**
28 **prevention and cessation program fund which shall be nonlapsing and continually**
29 **appropriated to the department of health and human services for the purposes of**

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1 *paragraph I. Moneys certified by the commissioner under RSA 78:7-c shall be deposited in*
2 *the tobacco use prevention and cessation program fund.*

3 3 New Subparagraph; Special Fund Established. Amend RSA 6:12, I(b) by inserting after
4 subparagraph (310) the following new subparagraph:

5 (311) Moneys deposited in the tobacco use prevention and cessation program fund
6 established under RSA 126-K:15, II.

7 4 Repeal. 2011, 224:379 through 224:381, relative to contingent tax rate increases of the tobacco
8 tax on cigarettes and other tobacco products based on reporting of tobacco tax revenues, are
9 repealed.

10 5 Effective Date. This act shall take effect July 1, 2013.

HB 490 FISCAL NOTE

AN ACT relative to the tax on tobacco products other than cigarettes and establishing a tobacco use prevention and cessation program fund.

FISCAL IMPACT:

The Department of Revenue Administration states this bill, **as introduced**, will have an indeterminable impact on state revenues in FY 2014 and each year thereafter. The Department of Health and Human Services states this bill may increase state restricted revenue and expenditures by an indeterminable amount in FY 2014 and each year thereafter. This bill will have no fiscal impact on county and local revenue and expenditures.

METHODOLOGY:

The Department of Revenue Administration states section 1 of this bill would change the rate on tobacco products other than cigarettes (OTP) from a set rate of 48% to a percentage rate of the wholesale sales price, which is equivalent to the rate of tax on cigarettes under RSA 78:7, which is currently \$1.68 per pack. The Department states in order to calculate a percentage rate of the wholesale price for OTP that is equivalent to the rate of tax on cigarettes, the average wholesale price of cigarettes is divided by the rate of tax to arrive at a percentage. The average wholesale price of cigarettes can be determined using the most recent price list from R.J. Reynolds (135 cigarettes) as of November 29, 2012 which was \$40.80, or \$4.08 per pack. The tax as a percentage of the wholesale sales price is 41.2% ($\$1.68/\4.08), which is less than the current 48% in statute. Assuming total OTP sales of \$15M, the proposed bill would decrease OTP tobacco tax revenue from \$7.2M to \$6.2M, a decrease of approximately \$1M for FY 2014. The impact in FY 2015 and beyond cannot be calculated since the rate would fluctuate based on changes to the average cigarette wholesale price and would also change with changes in demand.

The Department of Health and Human Services states this bill establishes the tobacco use prevention and cessation program fund which shall be nonlapsing and continually appropriated to the Department for the purposes of the program. The Department states to the extent this bill generates additional tobacco tax revenue, they would use it for some of the following activities – fully-funding the NH Tobacco Helpline; providing funding to develop local health departments to expand local efforts on tobacco prevention and cessation initiatives; developing

and placing approved multi-media campaigns; and enhancing surveillance efforts. The total increase in state restricted revenue and expenditures is indeterminable at this time.

The Department of Revenue Administrative states section 4 of the bill would repeal the prospective increase in the tobacco tax pursuant to Chapter 224:379 through 381, Laws of 2011. The Department states the fiscal impact cannot be determined since while there is a potential for additional revenue in FY 2014 and thereafter based on the rate increase, the rate increase is not guaranteed. In addition, the amount of additional revenue is not equal to the percentage increase in the rate because of a relatively inelastic demand between the tax rate and quantity of tobacco products sold.