

HB 550-FN - VERSION ADOPTED BY BOTH BODIES

04/30/2015 1321s
06/04/2015 1984s
24June2015... 2288CofC
24June2015... 2347EBA

2015 SESSION

15-0238
09/10

HOUSE BILL ***550-FN***

AN ACT relative to administration of the tobacco tax and relative to the sale or exchange of an interest in a business organization under the business profits tax.

SPONSORS: Rep. R. Ober, Hills 37; Sen. D'Allesandro, Dist 20; Sen. Boutin, Dist 16

COMMITTEE: Ways and Means

AMENDED ANALYSIS

This bill makes a variety of changes to the tobacco tax laws, including changing and adding certain definitions and removing references to metering machines. This bill clarifies activities which constitute unauthorized sales of tobacco products. The bill also adds records of tobacco stamps sold and tobacco products distributed to required taxpayer records.

This bill also limits the inclusion in the business profits tax of the net increase due to certain sales or exchanges of an interest or beneficial interest in a business organization.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to administration of the tobacco tax and relative to the sale or exchange of an interest in a business organization under the business profits tax.

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

1 1 Definitions. Amend RSA 78:1 to read as follows:

2 78:1 Definitions. Whenever used in this chapter the following words shall have the meanings
3 set opposite them below:

4 I. "Commissioner", the commissioner of revenue administration.

5 II. "Person," any individual, firm, fiduciary, partnership, corporation, trust, or association,
6 however formed.

7 III. "Manufacturer" means any person engaged in the business of importing, exporting,
8 producing, or manufacturing tobacco products.

9 III-a. "Wholesale sales price" means the established price for which a manufacturer sells
10 tobacco products other than cigarettes to a wholesaler, exclusive of any discount or other reduction.

11 IV. "Licensed manufacturer," a manufacturer licensed hereunder.

12 V. "Wholesaler" means any person ~~[doing]~~ **engaged in the** business ~~[in this state who shall~~
13 ~~purchase all of his unstamped tobacco products directly from a licensed manufacturer, and who shall~~
14 ~~sell all of his products to licensed wholesalers, sub-jobbers, vending machine operators, retailers,~~
15 ~~and] of receiving, storing, purchasing and selling tobacco products from a manufacturer or~~
16 **wholesaler for distribution to other wholesalers, sub-jobbers, vending machine operators or**
17 **retailers, but not directly to the consumer, except** those persons exempted from the tobacco tax
18 under RSA 78:7-b.

19 VI. "Licensed wholesaler," a wholesaler licensed hereunder.

20 VII. "Sub-jobber" means any person ~~[doing]~~ **engaged in the** business ~~[in this state who buys~~
21 ~~stamped] of purchasing~~ tobacco products from a ~~[licensed]~~ wholesaler and ~~[who sells all of his]~~
22 **selling** tobacco products to other ~~[licensed]~~ sub-jobbers, vending machine operators, and retailers.

23 VIII. "Licensed sub-jobber," a sub-jobber licensed hereunder.

24 IX. "Vending machine operator" means any person operating one or more tobacco product
25 vending machines on property or premises other than his own.

26 X. "Licensed vending machine operator," a vending machine operator licensed ~~[hereunder]~~
27 **under RSA 178.**

HB 550-FN - VERSION ADOPTED BY BOTH BODIES

- Page 2 -

1 XI. "Retailer" means any person who sells tobacco products to consumers, and any vending
2 machine in which tobacco products are sold.

3 XII. "Licensed retailer," a retailer licensed [~~hereunder~~] ***under RSA 178.***

4 XIII. "Sale" or "sell," any transfer, whether by bargain, gift, exchange, barter or otherwise.

5 XIV. "Tobacco products" means cigarettes, loose tobacco, smokeless tobacco, [~~snuff,~~] and
6 cigars, but shall not include premium cigars.

7 XIV-a. [Repealed.]

8 XV. [Repealed.]

9 XVI. [Repealed.]

10 XVII.(a) In conformity with RSA 541-C:2, IV, "cigarette" means any product that contains
11 nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or
12 contains:

13 (1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

14 or

15 (2) Tobacco, in any form, that is functional in the product, which, because of its
16 appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered
17 to, or purchased by, consumers as a cigarette; or

18 (3) Any roll of tobacco wrapped in any substance containing tobacco which, because
19 of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be
20 offered to, or purchased by, consumers as a cigarette described in subparagraph (a)(1).

21 (b) The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its
22 appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased
23 by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09
24 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

25 XVIII. "Licensee" means the person in whose name the license is issued.

26 XIX. "Sampler" means any person who distributes free tobacco products to consumers for
27 promotional purposes.

28 XX. "Vending machine" means any self-service device which, upon insertion of money,
29 tokens, or any other form of payment, dispenses tobacco, cigarettes, or any other tobacco product.

30 XXI. "Premium cigars" means cigars which [~~are made entirely by hand of all natural tobacco~~
31 ~~leaf, hand constructed and hand wrapped, wholesaling for \$2 or more, and weighing more than 3~~
32 ~~pounds per 1000 cigars. These cigars shall be kept in a humidor at the proper humidity.]:~~

33 (a) ***Are made entirely by hand of all natural tobacco leaf;***

34 (b) ***Are hand constructed and hand wrapped;***

35 (c) ***Weigh more than 3 pounds per 1,000 cigars; and***

36 (d) ***Are kept in a humidor.***

37 XXII. "***Humidor***" means a container or room specifically designed to store and age

1 *cigars within the optimal humidity range of 65 percent to 72 percent at room temperature,*
2 *containing a humidification device or system designed to add or remove moisture from its*
3 *interior space to maintain the desired level of humidity.*

4 **XXIII. "Consumer" means a person who purchases, imports, receives, or otherwise**
5 **acquires any tobacco products subject to the tax imposed by this chapter for his or her own**
6 **use.**

7 **XXIV. "Licensed sampler" means a sampler licensed under RSA 178.**

8 2 Denial of License Application. Amend the introductory paragraph of RSA 78:6-a, I to read as
9 follows:

10 I. The commissioner shall deny a license application for tobacco manufacturer, wholesaler,
11 ~~or sub-jobber, vending machine operator, retailer, or sampler~~ for any one of the following reasons:

12 3 Nature of Tax. Amend RSA 78:7-a to read as follows:

13 78:7-a Nature of Tax. All taxes upon tobacco products under this chapter are declared to be a
14 direct tax upon the consumer at retail and shall conclusively be presumed to be pre-collected for the
15 purpose of convenience and facility only **by the affixing of tax stamps for cigarettes and the**
16 **filing of returns and payment of tax for other tobacco products under RSA 78:12.**
17 Accordingly, the commissioner may collect the tax directly from consumers who purchase
18 ~~unstamped~~ tobacco products **without documentation to evidence tax paid.**

19 4 New Section; Consumer Reporting and Payment. Amend RSA 78 by inserting after section 7-c
20 the following new section:

21 78:7-d Consumer Reporting and Payment.

22 I. A consumer who purchases, imports, receives, or otherwise acquires tobacco products from
23 other than a licensed retailer or licensed vending machine operator and without documentation to
24 evidence tax paid under this chapter shall file, on or before the last day of the month following each
25 month in which such tobacco products were acquired, a return on a form prescribed by the
26 commissioner together with payment of the tax imposed by this chapter at the rate provided in
27 RSA 78:7 and RSA 78:7-c. The return shall report the number of tobacco products purchased,
28 imported, received, or otherwise acquired during the previous calendar month and any additional
29 information the commissioner may require.

30 II. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the form of such
31 return and the data which it must contain for the correct computation of tobacco tax attributable to
32 this state. All returns shall be signed by the consumer subject to the pains and penalties of perjury.

33 III. Any consumer who fails to pay any amount owing to the purchase of tobacco products
34 within the time required shall pay, in addition to the amount, interest as prescribed in RSA 21-J:28
35 and a penalty as prescribed in RSA 21-J:33.

36 IV. Any consumer who fails to timely file a return when required shall pay a penalty as
37 prescribed in RSA 21-J:31.

HB 550-FN - VERSION ADOPTED BY BOTH BODIES

- Page 4 -

1 5 Stamps. Amend RSA 78:9, II to read as follows:

2 II. Any wholesaler who fails to pay any amount owing to the purchase of stamps [~~or meter-~~
3 ~~registered settings~~] within the time required shall pay, in addition to the amount, interest as
4 prescribed in RSA 21-J:28.

5 6 Resale of Stamps; Redemption. Amend RSA 78:10 to read as follows:

6 78:10 Resale of Stamps; Redemption. No wholesaler shall sell or transfer any stamps issued
7 under RSA 78:9. The commissioner shall redeem any unused, uncanceled stamps presented by any
8 licensed wholesaler at a price equal to the amount paid by such licensee. In case such stamps are
9 destroyed before they are affixed, the commissioner shall refund the purchase price upon
10 presentation of evidence of such destruction satisfactory to the commissioner. The commissioner
11 shall refund the purchase price for stamps [~~and metered impressions~~] which are destroyed after
12 affixing to outdated, damaged, or unsaleable tobacco products. The commissioner also shall refund
13 or provide a credit for future tax payments on outdated, damaged, or unsaleable tobacco products
14 exempted from bearing stamps by the commissioner under rules adopted under RSA 541-A. The
15 state treasurer shall provide, out of money collected under this chapter, the funds necessary for
16 redemption or refund.

17 7 Unauthorized Sales. Amend RSA 78:12-a to read as follows:

18 78:12-a Unauthorized Sales.

19 I. Manufacturers, wholesalers, [~~and~~] sub-jobbers, **and retailers** shall not sell tobacco
20 products **in this state** to any [~~licensee~~] **manufacturer, wholesaler, sub-jobber, vending**
21 **machine operator, sampler, or retailer** who does not possess a valid or current license issued by
22 the commissioner **under this chapter** or issued by the liquor commission under RSA 178. [~~Any~~
23 ~~person who violates the provisions of this section shall be subject to the penalty provisions of RSA 21-~~
24 ~~J:39.~~]

25 II. **Manufacturers shall only sell tobacco products, without documentation to**
26 **evidence tax paid under this chapter into this state to licensed wholesalers.**

27 III. **Wholesalers shall only purchase tobacco products without documentation to**
28 **evidence tax paid under this chapter from licensed manufacturers, and shall only sell**
29 **tobacco products with documentation to evidence tax paid under this chapter to other**
30 **licensed wholesalers, licensed sub-jobbers, licensed vending machine operators, licensed**
31 **retailers, and those persons exempted from the tobacco tax under RSA 78:7-b.**

32 IV. **Sub-jobbers shall only purchase tobacco products with documentation to**
33 **evidence tax paid under this chapter from licensed wholesalers and other licensed sob-**
34 **jobbers, and shall only sell tobacco products with documentation to evidence tax paid**
35 **under this chapter to other licensed sub-jobbers, licensed vending machine operators,**
36 **licensed retailers, and those persons exempted from the tobacco tax under RSA 78:7-b.**

37 V. **Retailers shall only purchase tobacco products with documentation to evidence**

1 *tax paid from a licensed wholesaler or licensed sub-jobber, and shall only sell in this state*
2 *tobacco products with documentation to evidence tax paid to consumers.*

3 *VI. Any person who violates the provisions of this section shall be subject to the*
4 *penalty provisions of RSA 21-J:39.*

5 8 Authorization to Affix Stamps. Amend RSA 78:13 to read as follows:

6 78:13 Authorization to Affix Stamps [~~or Use Metering Machine~~]. The commissioner may adopt
7 rules, pursuant to RSA 541-A, relative to authorizing any person resident or located outside this
8 state and engaged in a business which would make such person if he carried it on in this state a
9 wholesaler as defined in this chapter, to affix the stamps required by this chapter on behalf of the
10 purchasers of such tobacco products. The commissioner may sell stamps to such person [~~or the~~
11 ~~commissioner may authorize the use of a metering machine as provided in this chapter~~]. No stamps
12 shall be sold or no such authorization shall issue, however, until such nonresident person shall have
13 appointed the secretary of state his attorney for the service of process in this state in the same
14 manner as provided in RSA 300. Service shall be made on the secretary of state as agent of such
15 person in the same manner as is provided in RSA 300. The commissioner may adopt rules pursuant
16 to RSA 541-A relative to the conditions which must be met upon a grant of authorization to a
17 nonresident to affix stamps. Such conditions shall include the right to inspect the books of the
18 nonresident and the posting of a bond by the nonresident conditioned upon the payment of all taxes
19 imposed under this chapter.

20 9 Required Taxpayer Records. Amend RSA 78:18, I to read as follows:

21 I. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the form for
22 records of ***tobacco stamps and of*** all tobacco products manufactured, produced, purchased,
23 ***distributed***, and sold. Each manufacturer, wholesaler, sub-jobber, vending machine operator, and
24 retailer shall keep complete and accurate records of all ***tobacco stamps and all*** such tobacco
25 products ***manufactured, produced, distributed, and sold***. Such records shall be safely
26 preserved for 3 years in such manner as to insure permanency and accessibility for inspection by the
27 commissioner and the commissioner's authorized agents. Retailers of tobacco products exempt from
28 the requirement of affixing stamps in RSA 78:12, II shall keep such records with such exempt
29 tobacco products, as determined by the commissioner, that document the tax imposed by this chapter
30 on the tobacco products has been paid in full.

31 10 Additions to Tax. Amend RSA 78:18-a to read as follows:

32 78:18-a Additions to Tax. If after any examination as provided in RSA 78:18, the commissioner
33 or his agent determines that there is a deficiency with respect to the [~~purchase of~~] tax [~~indicia~~] ***due***
34 ***under this chapter***, the commissioner shall assess the tax and all applicable additions due the
35 state. At the time such additional assessment is made, the commissioner shall give notice of the
36 assessment to the person liable and make demand upon him for immediate payment.

37 11 New Paragraph; Liquor Commission; Definitions. Amend RSA 175:1 by inserting after

HB 550-FN - VERSION ADOPTED BY BOTH BODIES

- Page 6 -

1 paragraph XXXVII the following new paragraph:

2 XXXVII-a. "Humidor" means a container or room specifically designed to store and age
3 cigars within the optimal humidity range of 65 percent to 72 percent at room temperature,
4 containing a humidification device or system designed to add or remove moisture from its interior
5 space to maintain the desired level of humidity.

6 12 Repeal. RSA 78:11, relative to metering machines, is repealed.

7 13 Sale or Exchange of an Interest in a Business Organization. RSA 77-A:4, XIV is repealed
8 and reenacted to read as follows:

9 XIV.(a) In the case of a business organization where an interest or beneficial interest
10 in the business organization has been sold or exchanged, an addition to gross business profits
11 of an amount equal to the net increase in the basis of all underlying assets transferred or sold
12 through the sale or exchange of the interest. The increase in the basis of the assets shall be
13 calculated in accordance with the provisions of the Internal Revenue Code as defined by
14 RSA 77-A:1, XX but shall apply to the business organization.

15 (b) A business organization may, for a particular sale or exchange, make an irrevocable
16 election on a timely filed return, to not recognize the basis increase required under subparagraph (a).
17 A business organization that so elects shall not be required to make an addition to gross business
18 profits under subparagraph (a). It also shall not be allowed a deduction against gross business
19 profits in any subsequent period for depreciation or amortization on the increased basis in the assets
20 nor an increase in the basis of the assets upon disposition of the assets in a subsequent period.

21 14 Applicability. This act shall take effect for sales or exchanges of interests in business
22 organizations that occur on and after July 1, 2015.

23 15 Effective Date. This act shall take effect July 1, 2015.

HB 550-FN FISCAL NOTE

AN ACT relative to administration of the tobacco tax and relative to the sale or exchange of an interest in a business organization under the business profits tax.

FISCAL IMPACT:

The Department of Revenue Administration states this bill, **as amended by the Senate (Amendment #2015-1984s)**, will decrease state revenue by an indeterminable amount in FY 2016 and each year thereafter. There will be no fiscal impact on state, county, and local expenditures, or county and local revenue.

METHODOLOGY:

The Department of Revenue Administration (DRA) states this bill makes a number of technical and clarifying changes to RSA 78, Tobacco Tax laws, which include amending and adding definitions, removing references to “metering machines,” clarifying activities constituting unauthorized sales of tobacco products, providing for consumer reporting and payment, and adding records of tobacco stamps sold and tobacco products distributed to required taxpayer records. Additionally, this bill amends RSA 77-A:4, XIV to exclude the taxability of a net increase in the basis of a business organization resulting from the sale or exchange of an interest or a beneficial interest in the business organization related to the exchange of securities of its affiliated publically traded company.

Except for the change in the definition of “premium cigar,” there is no applicable fiscal impact related to sections 1 through 12 of this bill as it only provides technical corrections to existing law to provide further clarifications for the Department or Revenue Administration, manufacturers, wholesalers, retailers, subjobbers, vending machines operators, samplers and consumers. In Section 1 of the bill the definition of “premium cigar” is amended and removes the dollar criterion of \$2.00 or more. Because the dollar criterion is removed from the definition of a premium cigar, there could be a fiscal impact reducing state revenue by an indeterminable amount. Cigars that meet all the criterion within the definition of premium cigar except that they wholesale for less than \$2.00 are currently taxable under RSA 78. Under this bill, those cigars would now meet the definition of premium cigar and would be exempt from taxation under RSA 78. The Department, however, has no specific cigar data in order to estimate the fiscal impact of this change. The Department states in FY 2014 the tax from tobacco products other than cigarettes (OTP), which includes taxable non-premium cigars, was approximately

\$9.6 million. Of that \$9.6 million, approximately \$2.0 million was revenue from taxable non-premium cigars. If the dollar criterion is removed from the definition of premium cigar some taxable non-premium cigars might now meet the definition of premium cigar and, therefore, be exempt from taxation under RSA 78. The Department cannot estimate how many taxable non-premium cigars would be exempt from taxation.

The exclusion of the taxability of a net increase in the basis of a business organization resulting from the sale or exchange of an interest in the business organization related to the exchange of securities of its affiliated publically traded company in section 13 of this bill will also decrease state revenues by an indeterminable amount in FY 2016 and each fiscal year thereafter. Whereas this exclusion is relative to events that occur outside of the regular course of operations of business organizations, the Department is unable to estimate to what extent passage of the proposed legislation will decrease state revenues. However, the Department states if the proposed legislation had been in effect over the previous five tax years, state revenues would have been decreased as follows:

Tax Year 2010	\$ 1.9 million
Tax Year 2011	\$ 0.9 million
Tax Year 2012	\$13.2 million
Tax Year 2013	\$ 4.3 million
Tax Year 2014	\$ 1.4 million (note; incomplete tax year)