Oregon

Department of Revenue
955 Center St NE
Salem, OR 97301-2555
www.oregon.gov/dor

HB 2489 – Cigarette Stamp Expiry

Background

Two cigarette tax increases (Jan. 1, 2016 and Jan. 1, 2018) of one cent were implemented by HB 3601 in the 2013 Special Session. HB 3601 also set the existing tax stamp to expire on January 31 following each increase. Thus, distributors and retailers cannot lawfully possess or sell cigarettes with the expired tax stamps that are remaining in inventory on or after that date. Product with the expired stamps will be considered contraband subject to seizure if discovered. Creation of a new tax stamp and increased seizures resulting from expired tax stamps will result in increased administrative costs to the department following each increase.

Industry feedback indicates there will also be a hardship and expense to distributors and retailers. Cigarettes themselves don't normally expire, but will with an expired tax stamp. Distributors and retailers will have cigarettes they will need to sell before the expiry date or risk seizure. They could lose not only the cost of the expired tax stamp on the pack, but also the cost of the cigarettes and any federal taxes associated with the cigarettes.

Historically, the legislature has implemented a "floor tax" to reconcile the cigarette tax increase. A "floor tax" is where every retailer and distributor takes an inventory of cigarettes and stamps in possession on the day the new tax rate is effective and calculates the additional tax on those stamps due to the increase. They then file a return paying the additional tax. This "floor tax' prevents retailers or sellers of cigarettes from "front-loading" their inventory with product that has the lower tax rate on it. However because the rate changes in 2016 and 2018 were only one cent each, the legislature addressed the issue of front loading by requiring the stamps to expire rather than require the burden and expense of a floor tax.

The potential solution to manage sales in the months preceding the increases. This solution addresses the front loading issue while at the same time giving deference to the prior legislation by minimizing the burden of compliance with the tax increases for all stakeholders (i.e. no floor tax).

Stakeholders outreach

We received feedback from the Tax Section of the Oregon State Bar and less than 10 percent of distributors. However the feedback we did receive was critical and informative to our process.

After submission of our concept through the agency development process, we learned of another option that is preferred by distributors and retailers. That option would be to impose a *de minimus* filing requirement for a floor tax. This option places the burden of the floor tax on distributors and retailers with a larger inventory; however, no analysis has been done to determine the appropriate *de minimus* level.

At this time, the department would ask for your support of our concept.

Agency Contact: Deanna Mack, Legislative Liaison 503-947-2082