Governor’s FY 2021 Budget: Articles

Staff Presentation to the House Finance Committee
February 12, 2020
Introduction – Article 21

- **Regulatory**
  - Min purchase age from 18 -21 to match Feds
  - Ban on some vape products
  - E-liquid regulatory authority transfer to Taxation
  - Expands other regulatory authority

- **Tax Changes**
  - Raises cigarette tax by $0.35 per pack
  - Applies excise tax to e-liquid products
  - Raises cigar tax cap by $0.30 per cigar
  - Raises licensing fees and fines
Incorporates federal increase in minimum purchase age for tobacco products & electronic delivery systems from 18 to 21

- Budget assumes revenue loss of $3.7 million
- Federal law passed December 20, 2019
  - USFDA has 6 months to amend policies
  - Once that occurs, increase is within 90 days
  - Effective date assumed to be July 1, 2020
### Article 21 – Fines

- Increases current fines

<table>
<thead>
<tr>
<th>Type</th>
<th>Current</th>
<th>Article 21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failure to display proper signage</td>
<td>$35</td>
<td>$100</td>
</tr>
<tr>
<td>Selling in improper packaging</td>
<td>$500</td>
<td>$1,000</td>
</tr>
<tr>
<td>Selling to underage person:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1(^{st}) offense w/in 36 month pd.</td>
<td>$250</td>
<td>$500</td>
</tr>
<tr>
<td>2(^{nd}) offense</td>
<td>$500</td>
<td>$1,000</td>
</tr>
<tr>
<td>3(^{rd}) violation =14 day suspension</td>
<td>$1,000</td>
<td>$2,000</td>
</tr>
<tr>
<td>&gt;3 violations = 90 day suspension</td>
<td>$1,500</td>
<td>$3,000</td>
</tr>
</tbody>
</table>
Governor’s Sept. 25 executive order
- Dept. of Health to promulgate emergency regulations to prohibit sale of flavored electronic nicotine delivery systems (ENDS)
- State Police to investigate sale & distribution of ENDS
- Other agencies tasked w/ developing recommendations
  - Reducing availability
  - Establishing standards for disclosures & uniform packaging
Article 21- Flavored ENDS

- DOH emergency regulations effective October 4
  - Bans manufacturing, distribution, sale of flavored ENDS in RI
    - Compassion centers & licensed cultivators exempt
  - Was renewed for another 60 days
    - Current order will expire on April 1, 2020
Article 21 - Flavored ENDS

- DOH proposed permanent ban
  - Issued proposal 12/27/19
  - Public hearing on 1/7/20
  - Public comment period ended 1/26/20
    - Final rules must be filed within 180 days

- USFDA finalized partial ban on 1/2/20
  - Ban on fruit or mint flavors
**Article 21 - Regulatory**

- **Article 21**
  - Bans flavored e-cigarette products (ENDS)
    - Tastes or aromas imparted prior to or during consumption:
      - Fruit, mint, menthol, wintergreen, spice, etc.
      - Same language as DOH regulations
  - Bans products with > 35 milligrams per milliliter of nicotine content
    - Not part of prior ban/regulations
  - Authorizes DOH and Taxation to set rules on testing, ingredients and labeling
Article 21 - Regulatory

- Current law prohibits distribution of free products, coupons or vouchers to anyone under 18
  - Article 21 extends that to any age and includes “discounted” products
- BHDDH currently distributes signs relating to cigarette age enforcement
  - Article adds OTP to this
Article 21 - Regulatory

- Article 21 would allow municipalities to “regulate the use and sale of” Cigarettes, OTP, and ENDS
  - Effectively establishes the authority for a town or city council to ban sale of these items
Article 21 – Cigarette Tax

- Current law – tax on all cigarettes sold or held for sale in the state
  - Tax evidenced by stamps
  - Currently $4.25 per pack of 20
    - Raised from $3.75 in 2017
- Article 21 increases cigarette tax by $0.35 to $4.60 per pack of 20
  - Effective August 1, 2020
  - Last year’s proposal was for $0.25 increase
Article 21 – Cigarette Tax

- FY 2021 budget includes $4.3 million
  - Cigarette tax - $3.3 million
  - Floor Tax - $1.0 million
    - Tax on existing inventory – difference between the two tax rates
- Estimate assumes 3.09% demand drop
  - Reduces sales tax collections $13,938
# Article 21 – Cigarette Tax

## Recent Annual Collections

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase</td>
<td>$ -</td>
<td>$ 0.50</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ 0.35</td>
</tr>
<tr>
<td>Per pack Tax</td>
<td>$ 3.75</td>
<td>$ 4.25</td>
<td>$ 4.25</td>
<td>$ 4.25</td>
<td>$ 4.25</td>
<td>$ 4.60</td>
</tr>
<tr>
<td>Total</td>
<td>$ 134.4</td>
<td>$137.8</td>
<td>$129.0</td>
<td>$127.0</td>
<td>$122.8</td>
<td>$125.3</td>
</tr>
<tr>
<td>Change to Prior</td>
<td>$(3.9)</td>
<td>$ 3.4</td>
<td>$(8.8)</td>
<td>$(2.0)</td>
<td>$(4.2)</td>
<td>$(1.7)*</td>
</tr>
</tbody>
</table>

*$ in millions  *Change to 2020 REC
Each state/territory has own tax

- Highest – D.C. $4.50/pack
  - Increased $2.00 October 1, 2018
- CT & NY 2nd at $4.35/pack
- Lowest – Missouri, $0.17/pack

<table>
<thead>
<tr>
<th>States &amp; DC</th>
<th>Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>At or over $1.00</td>
</tr>
<tr>
<td>13</td>
<td>At or over $2.00</td>
</tr>
<tr>
<td>9</td>
<td>Over $3.00</td>
</tr>
</tbody>
</table>
Rhode Island would have the highest state tax nationwide

<table>
<thead>
<tr>
<th>New England States</th>
<th>Tax</th>
<th>U.S. Rank</th>
<th>N.E. Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Connecticut</td>
<td>$ 4.35</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>$ 4.25</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>$ 3.51</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>Vermont</td>
<td>$ 3.08</td>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>Maine</td>
<td>$ 2.00</td>
<td>17</td>
<td>5</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>$ 1.78</td>
<td>24</td>
<td>6</td>
</tr>
</tbody>
</table>

Source: Campaign for Tobacco-Free Kids, January 14, 2020
State cigarette tax not only factor in final price

Federal tax - $1.01 since 2009

Local cigarette taxes in addition to state tax

- Highest Chicago - $1.18 local tax, $3.00 county tax – Total $7.16
- New York City - $1.50 local tax – Total $5.85

RI total cigarette tax burden rank: 17
- Would move to 10th with proposed change
Article 21 – Cigarette Tax

- **Base price of product**
  - Product use/popularity

- **Minimum markup – retail and wholesale**
  - Lowest price at which product can be sold
  - To prevent sales below cost or unfair pricing
  - 1939 Assembly enacted initial minimum markup laws
Article 21 – Cigarette Tax

**Manufacturer**
- Sets the product base price
- Includes federal tax

**Distributors (Wholesalers)**
- Pay cigarette tax
- Must include wholesale minimum markup in price to dealers

**Dealers (Retailers)**
- Must include retail minimum markup in price to consumers

**Consumer – Pays retail price plus sales tax**
# Article 21 – Cigarette Tax

<table>
<thead>
<tr>
<th>Current Prices</th>
<th>RI</th>
<th>CT</th>
<th>MA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Base price/pack of 20 (incl. fed. excise tax)</td>
<td>$4.33</td>
<td>$4.14</td>
<td>$4.14</td>
</tr>
<tr>
<td>State Cigarette Tax</td>
<td>4.25</td>
<td>4.35</td>
<td>3.51</td>
</tr>
<tr>
<td><strong>Total Base Price/pack of 20</strong></td>
<td><strong>$8.58</strong></td>
<td><strong>$8.49</strong></td>
<td><strong>$7.65</strong></td>
</tr>
<tr>
<td>Minimum Markup – Wholesaler</td>
<td>2.75%</td>
<td>6.50%</td>
<td>2.75%</td>
</tr>
<tr>
<td>Minimum Markup – Retailer</td>
<td>6.00%</td>
<td>8.00%</td>
<td>25.00%</td>
</tr>
<tr>
<td><strong>Total Markup/pack of 20</strong></td>
<td><strong>8.93%</strong></td>
<td><strong>15.02%</strong></td>
<td><strong>28.44%</strong></td>
</tr>
<tr>
<td><strong>Post Markup Price/pack of 20</strong></td>
<td><strong>$9.35</strong></td>
<td><strong>$9.76</strong></td>
<td><strong>$9.82</strong></td>
</tr>
<tr>
<td>Sales Tax Rate</td>
<td>7.0%</td>
<td>6.35%</td>
<td>6.25%</td>
</tr>
<tr>
<td><strong>Final Minimum Retail Price</strong></td>
<td><strong>$10.00</strong></td>
<td><strong>$10.38</strong></td>
<td><strong>$10.43</strong></td>
</tr>
</tbody>
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Article 21 – Cigarette Tax
## Article 21 – Cigarette Tax

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<th></th>
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<td>3.51</td>
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<td>$8.93</td>
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</tr>
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</tr>
<tr>
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<td>$9.73</td>
<td>$9.76</td>
<td>$9.82</td>
</tr>
<tr>
<td>Sales Tax Rate</td>
<td>7.0%</td>
<td>6.35%</td>
<td>6.25%</td>
</tr>
<tr>
<td><strong>Final Minimum Retail Price</strong></td>
<td>$10.41</td>
<td>$10.38</td>
<td>$10.43</td>
</tr>
</tbody>
</table>
Article 21 – Other Tobacco Products

- Other Tobacco Products – “OTP”
  - Taxed at 80% of wholesale cost
    - Includes cigars, little cigars, cheroots, stogies, smoking tobacco, chewing tobacco, hookah, shisha, mu’assal, tobacco & snuff
    - Cigar tax capped at $0.50 per cigar
  - Does not currently apply to e-liquid products
    - Only sales tax
- OTP and cigarettes subject to both excise tax & sales tax
Expands products subject to 80% OTP tax

- E-liquid products
  - Liquid used in an electronic nicotine delivery system with nicotine or a derivative
    - Device only included if sold with liquid
  - Effective September 1, 2020

- Last year’s proposal was for 40% tax

Budget assumes revenues of $0.3 million
- $0.2 million to implementation and compliance staff
21 states and D.C. have excise taxes on e-Cigarettes

- 13 new states since July 2019
- Two taxation methodologies
  - Percentage of wholesale cost of taxed product
  - Flat amount on volume sold (per milliliter)
- 4 states apply both
  - 1 method for closed system, 1 method for open
    - Refers to the way e-liquid is delivered to the heating mechanism
Estimated collections based on Minnesota experience

- First state to institute the tax, best data
- Assumes use will be about 7.6% of estimated OTP collections
- Vapor products already subject to 7.0% sales tax
Taxes at 95% of wholesale cost
- Wholesale is distributor’s purchase price
- One-time use e-cigarettes & cartridges containing nicotine
  - Not refillable devices or cartridges w/o nicotine

Entities’ Responsibilities
- Distributors pay tax on product purchases
- Retailers collect and remit sales tax
- Consumers pay use tax on out-of-state purchases, including online sales
Article 21 – OTP Cigar Cap Increase

- Other Tobacco Products
  - Rate & cigar cap changes

<table>
<thead>
<tr>
<th>Assembly</th>
<th>Rate</th>
<th>Per Cigar Cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>30%</td>
<td>n/a</td>
</tr>
<tr>
<td>2005</td>
<td>40%</td>
<td>n/a</td>
</tr>
<tr>
<td>2006</td>
<td>40%</td>
<td>$0.50</td>
</tr>
<tr>
<td>2009</td>
<td>80%</td>
<td>$0.50</td>
</tr>
</tbody>
</table>

- Massachusetts
  - 40% of wholesale – not capped

- Connecticut
  - 50% of wholesale with $0.50 cap
Article 21 – OTP Cigar Cap Increase

- Article 21 raises the tax cap on cigars from 50 cents to 80 cents
  - Currently approximately 3.3 million cigars costing 63 cents or more are taxed at cap
  - Also proposed for FY 2019 & FY 2020 Budget
- FY 2021 budget includes $0.7 million of revenue
  - Assumes 70% or 2.4 million cigars reach cap
    - Cigars costing more than $1
    - No adjustment for consumer behavior change
Article 21 – Licensing

- Article 21 increases license fees
  - There are different fees depending on the role in the market
    - Applies to all product types
    - Increases application, license, & renewal
- Fees for importers & distributors who affix tax stamps unchanged at $1,000
  - Manufacturers are added as being required to pay this fee and be licensed
Article 21 – Licensing

- Article 21
  - Subjects e-liquid product manufacturers, distributors & retailers to tobacco licensing standards
  - ENDS, cigarettes, & OTP merged into one license instead of two
    - Many retailers sell all products
  - Transfers regulatory authority over electronic nicotine systems to Division of Taxation
    - Currently licensed through the Dept. of Health
Article 21 – OTP Licensing Standards

- Current law requires cigarette & OTP dealers & distributors to be licensed
  - Also current law: 44-20-13.2(b) allows retailers to purchase from unlicensed dealers and self report within 5 days
    - Undercuts compliance
  - This is unchanged in Article 21 – contradicts intent
Article 21 – Licensing

- Budget assumes $0.4 million of revenues
  - Similar to last year’s proposal
## Article 21 – Fiscal Impact

### Estimated annual fiscal impact

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>2021</th>
<th>2022</th>
<th>2023</th>
<th>2024</th>
<th>2025</th>
</tr>
</thead>
<tbody>
<tr>
<td>E-liquid &amp; products</td>
<td>$0.3</td>
<td>$0.3</td>
<td>$0.3</td>
<td>$0.4</td>
<td>$0.4</td>
</tr>
<tr>
<td>Licensing</td>
<td>0.4</td>
<td>0.4</td>
<td>0.4</td>
<td>0.4</td>
<td>0.4</td>
</tr>
<tr>
<td>Cigar cap</td>
<td>0.7</td>
<td>0.8</td>
<td>0.9</td>
<td>1.0</td>
<td>1.0</td>
</tr>
<tr>
<td>Cigarette taxes</td>
<td>4.3</td>
<td>3.5</td>
<td>3.4</td>
<td>3.3</td>
<td>3.2</td>
</tr>
<tr>
<td>Min. Purchase Age</td>
<td>(3.7)</td>
<td>(3.7)</td>
<td>(3.7)</td>
<td>(3.7)</td>
<td>(3.8)</td>
</tr>
<tr>
<td><strong>Total Revenues</strong></td>
<td>$2.0</td>
<td>$1.3</td>
<td>$1.3</td>
<td>$1.4</td>
<td>$1.2</td>
</tr>
<tr>
<td><strong>Expenses</strong></td>
<td>(0.2)</td>
<td>(0.2)</td>
<td>(0.2)</td>
<td>(0.2)</td>
<td>(0.2)</td>
</tr>
<tr>
<td><strong>Net Impact</strong></td>
<td>$1.8</td>
<td>$1.1</td>
<td>$1.3</td>
<td>$1.2</td>
<td>$1.0</td>
</tr>
</tbody>
</table>

$ in millions
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