

Governor's FY 2018 Budget: Articles

Staff Presentation to the House Finance Committee
March 22, 2017

Introduction

- Article 8 – Taxes and Revenues
 - Section 1 Gas Tax
 - Section 2 & 3 Cigarette Tax
 - Section 8 Other Tobacco Products
 - Sections 4 & 7 Taxation Enforcement
 - Section 5 Corporate Tax Withholding
 - Section 6 Sales Tax Exemption
- Article 9 – Remote Sellers

Article 8, Section 1 - Gas Tax

- Current law – DHS receives 1 cent of the gas tax for paratransit services - \$4.4 million
 - Elderly/disabled transportation
 - Contracts with RIPTA for some services
- Current contract:
 - DHS keeps 21% - \$0.9 million
 - Non Medicaid paratransit services
 - RIPTA receives 79% - \$3.5 million

Article 8, Section 1 - Gas Tax

- RIPTA \$3.5 million:
 - \$2.5 million to subsidize elderly/disabled bus services
 - \$1.0 million for match on paratransit vehicles purchases plus, maintenance, inspection, wheelchair lifts
 - Billed monthly
 - May not get first payment until January
 - EOHHS has administrative oversight
 - Legislative solution for administrative problem?

Article 8, Sections 2-3 - Cigarette Tax

- Current law – Tax on all cigarettes sold or held for sale in the state
 - Tax evidenced by stamps
 - Current state tax is \$3.75 per pack of 20 (effective August 1, 2015)
- FY 2018 Proposal - Increase cigarette tax by \$0.50 to \$4.25 per pack of 20
 - Effective 12:01 am, August 1, 2017

Article 8, Sections 2-3 - Cigarette Tax

- FY 2018 Budget includes \$8.7 million
 - Cigarette tax - \$6.5 million
 - Sales tax - \$1.1 million
 - Floor Tax - \$1.0 million
 - Tax on existing inventory – difference between the two tax rate
- Estimate includes 5.3% demand drop
 - FY 2017 estimate for \$0.25 increase included 0.7% demand drop

Article 8, Sections 2-3 - Cigarette Tax

- 2015 Assembly increased tax from \$3.50 to \$3.75

Fiscal Year	2014	2015	2016	2017	2018 REC	2018 Gov.
Per pack Tax	\$3.50	\$3.50	\$3.75	\$3.75	\$3.75	\$4.25
Total (millions)	\$134.6	\$132.7	\$136.6	\$130.4	\$126.1	\$133.7

Article 8, Sections 2-3 - Cigarette Tax

- Each state/territory has own tax
 - Highest – New York, \$4.35/pack
 - CT is 2nd highest at \$3.90/pack
 - RI is 3rd highest at \$3.75/pack
 - Lowest – Missouri, \$0.17/pack
- 36 states & DC have tax of >\$1.00
- 18 states & DC have tax of \geq \$2.00
- 8 states have tax of \$3.00 or more

Article 8, Sections 2-3 - Cigarette Tax

New England States	Tax	U.S. Rank
Connecticut	\$ 3.90	2
Maine	\$ 2.00	14
Massachusetts	\$ 3.51	4
New Hampshire	\$ 1.78	21
Rhode Island	\$ 3.75	3
Vermont	\$ 3.08	6

Source: Campaign for Tobacco-Free Kids, Jan. 3, 2017

Article 8, Sections 2-3 - Cigarette Tax

- State cigarette tax not only factor in final price
- Federal tax - \$1.01 since 2009
- State sales tax
- Some states allow local cigarette tax options in addition to state tax
 - New York City - \$1.50 local tax
 - Chicago - \$1.18 local tax, \$3.00 county tax

Article 8, Sections 2-3 - 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 8, Sections 2-3 - Cigarette Tax

Manufacturer

Sets the product base price



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

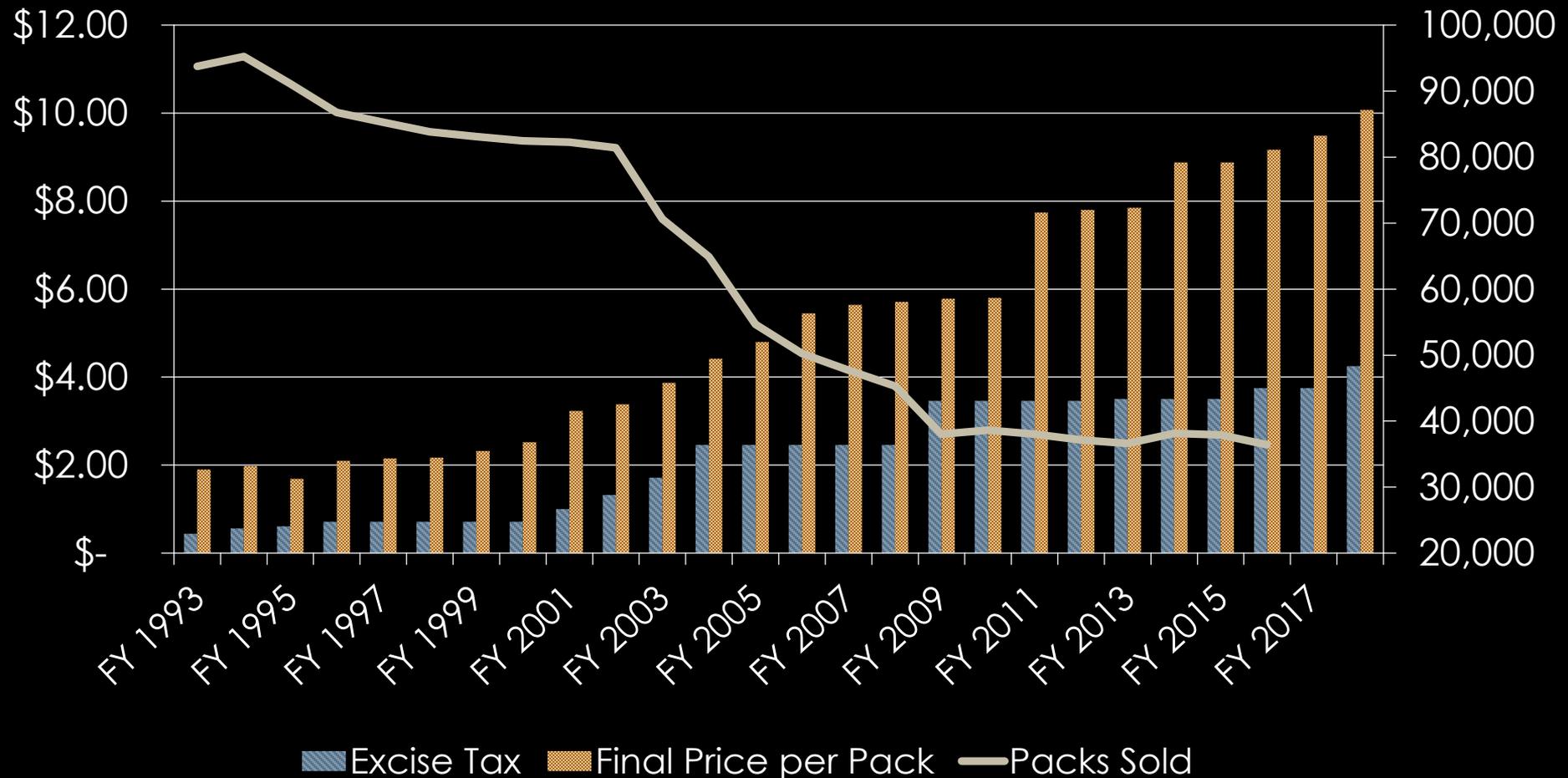


Consumer – Pays retail price plus sales tax

Article 8, Sections 2-3 - Cigarette Tax

Current Prices	RI	CT	MA
Base price/pack of 20 (<i>incl. fed. excise tax</i>)	\$ 4.39	\$ 4.39	\$ 4.03
State Cigarette Tax	3.75	3.90	3.51
Total Base Price/pack of 20	\$ 8.14	\$ 8.29	\$ 7.54
Minimum Markup – Wholesaler	2.75%	6.50%	2.75%
Minimum Markup – Retailer	6.00%	8.00%	25.00%
Total Markup/pack of 20	8.93%	15.02%	28.44%
Post Markup Price/pack of 20	\$ 8.87	\$ 9.54	\$ 9.69
Sales Tax Rate	7.0%	6.35%	6.25%
Final Retail Price	\$ 9.49	\$ 10.14	\$ 10.29

Article 8, Sections 2-3 - Cigarette Tax



Article 8, Sections 2-3 - Cigarette Tax

Current Prices	RI (Art. 8)	CT	MA
Base price/pack of 20	\$ 4.39	\$ 4.39	\$ 4.03
State Cigarette Tax	4.25	3.90	3.51
Total Base Price/pack of 20	\$ 8.64	\$ 8.29	\$ 7.54
Minimum Markup – Wholesaler	2.75%	6.50%	2.75%
Minimum Markup – Retailer	6.00%	8.00%	25.00%
Total Markup/pack of 20	8.93%	15.02%	28.44%
Post Markup Price/pack of 20	\$ 9.41	\$ 9.54	\$ 9.69
Sales Tax Rate	7.0%	6.35%	6.25%
Final Retail Price	\$ 10.07	\$ 10.14	\$ 10.29

Article 8, Section 8 – Other Tobacco Products

- Other Tobacco Products– Tax on products sold or held for sale, except cigarettes
 - Tax evidenced by stamps
 - Current tax is 80% of wholesale
- Technical changes to be consistent with enacted law
- No revenue assumed from changes

Article 8, Sections 4 & 7 – Tax Enforcement

- Authorizes Tax Administrator
 - Certain punitive powers
 - Designed to improve collections
 - Jeopardy determination
 - Letter of good standing request prior to transfer or sale of a business
 - Recovery of legal fees
- Increased penalties for failure to remit taxes collected

Article 8, Sections 4 & 7 – Tax Enforcement

- 2013 Assembly criminalized use of software or other technology that allows the modification of point-of-sale records or transaction data
- Article 8 adds remote manipulation to prohibition
 - Persons may not knowingly send or receive data for purposes of manipulation

Article 8, Section 5 – Corporate Tax Withholding

- 2016 Assembly lowered minimum C corporation withholding from 9.0% to 7.0%
- Established a \$400 Minimum withholding
- Corrects withholding rate for pass-through entities to 7.0 percent
 - Includes S corporations, Partnerships, LLCs, LLPs, Trusts

Article 8, Section 6 – Sales Tax Exemption

- Limits tax exemption certificates for charitable organizations to be valid for 4 years
 - Retroactive for all certificates effective July 1, 2017
- Maintains current fee of \$25

Article 9, Remote Sellers Tax Collection

- Purchases made out of state or from remote sellers who do not collect RI sales tax are subject to use tax
 - If no sales tax was charged, 7% is owed
 - If sales tax less than 7% is charged, difference is owed
 - Auto purchased in Massachusetts

Article 9, Remote Sellers Tax Collection

- Compelling collection from out of state sellers has been seen as an impediment to interstate commerce
- Two Supreme Court rulings set standard for nexus as “physical presence”
 - National Bell v. Hess (1967)
 - Quill v. North Dakota (1992)

Article 9, Remote Sellers Tax Collection

- Rhode Island has taken several measures over the years to facilitate collection of use taxes owed on remote transactions
 - Streamlined Sales and Use Tax Agreement and Membership - 2007
 - “Amazon” Law - 2009
 - Use Tax Look-Up Table - 2014

Article 9, Remote Sellers Tax Collection

- Streamlined Sales and Use Agreement
 - Collective effort by states to simplify and modernize sales and use tax administration
 - Substantially reduce burden of tax compliance
 - Participating retailers volunteer to collect taxes for member states
 - Rhode Island became a full member in 2007
 - Recent annual collections \$2.7 million

Article 9, Remote Sellers Tax Collection

- “Amazon Law” – 2009
 - Added companies that *contract with RI companies* and sell over the internet to the definition “retailer”
 - Certain sites dropped RI affiliates rather than comply/challenge
 - In January 2017, Amazon announced it had agreed to begin collecting sales tax from its RI customers
 - Doing so for 41 states and DC now

Article 9, Remote Sellers Tax Collection

- Use Tax Tool - 2014
 - Assembly authorized Tax Administrator to develop tool for personal income tax forms to simplify use tax collection
 - 0.08% of federal adjusted gross income
 - Additional itemized tax owed on purchases of \$1,000 or more
 - Proper use of tool is “safe harbor” for all use tax owed
 - Budget assumed \$2.2 million in additional revenues, about half has been realized

Article 9, Remote Sellers Tax Collection

- Recent Colorado case ruling opened door to additional option
 - National Marketing Association v. Brohl (2016)
 - Physical presence still standard for collection but notification & reporting acceptable
- Remote Sellers likely opt for collection rather than reporting requirements

Article 9, Remote Sellers Tax Collection

- Article 9 establishes requirements for certain entities engaged in transaction activities within RI
 - Collect and remit taxes, or
 - Provide notice to buyers of their tax liability
- Applies to those with revenues of \$100,000 or 200 transactions
 - Marketplace providers, remote sellers or referrers

Article 9, Remote Sellers Tax Collection

- Notices
 - To buyers: tax liability notice on website, at purchase, and via email within 48 hours of purchase
 - Annual tax document mailing by Jan. 31
 - To retailers from referrers with \$10,000 in referral fees that transaction may be subject to tax
- Penalties
 - \$5 per notice not sent; minimum \$20,000

Article 9, Remote Sellers Tax Collection

- Budget assumes \$34.7 million in revenues
 - Uses national sales data scaled to RI
 - Assumes a full year of collections and full compliance
 - Out of sync with drafting on compliance date
 - Amendment submitted to change dates
 - Does not account for current use tax collections
 - SSUTA voluntary collections - \$2.7 million
 - Lookup table - possible revision needed?

Article 9, Remote Sellers Tax Collection

Revenue Estimation Methodology	
U.S. E-Commerce Sales 2010	\$1,790.0
Avg. Annual Growth 2010-2014	15.0%
Total Est. Sales 2018	\$3,122.0
Est. Rhode Island Share	0.27%
Est. RI E-Commerce Sales	\$835.0
Est. Non-Nexus Sales	59.4%
Est. Sales Subject to Collection	\$495.9
RI State Sales Tax	7.0%
Est. FY 2018 Revenue	\$34.7
\$ in millions	

Article 9, Remote Sellers Tax Collection

- Requested amendments on compliance
 - Directs compliance w/in 2 weeks of passage
 - Consistent with revenue estimate
 - Non-collectors must file reporting compliance notification by Feb. 15 annually
 - Alters language on referrers' notice to 90 days consistent with streamlined tax agreement

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