

115TH CONGRESS
1ST SESSION

S. 1837

To amend the Internal Revenue Code of 1986 to provide tax rate parity among all tobacco products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 19, 2017

Mr. DURBIN (for himself, Mr. BROWN, Mr. REED, Mr. BLUMENTHAL, Mr. MARKEY, and Mr. FRANKEN) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide tax rate parity among all tobacco products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tobacco Tax Equity
5 Act of 2017”.

6 **SEC. 2. ESTABLISHING EXCISE TAX EQUITY AMONG ALL TO-**
7 **BACCO PRODUCT TAX RATES.**

8 (a) TAX PARITY FOR PIPE TOBACCO AND ROLL-
9 YOUR-OWN TOBACCO.—Section 5701(f) of the Internal

1 Revenue Code of 1986 is amended by striking “\$2.8311
2 cents” and inserting “\$24.78”.

3 (b) TAX PARITY FOR SMOKELESS TOBACCO.—

4 (1) Section 5701(e) of the Internal Revenue
5 Code of 1986 is amended—

6 (A) in paragraph (1), by striking “\$1.51”
7 and inserting “\$13.42”;

8 (B) in paragraph (2), by striking “50.33
9 cents” and inserting “\$5.37”; and

10 (C) by adding at the end the following:

11 “(3) SMOKELESS TOBACCO SOLD IN DISCRETE
12 SINGLE-USE UNITS.—On discrete single-use units,
13 \$50.33 per thousand.”.

14 (2) Section 5702(m) of such Code is amend-
15 ed—

16 (A) in paragraph (1), by striking “or chew-
17 ing tobacco” and inserting “, chewing tobacco,
18 or discrete single-use unit”;

19 (B) in paragraphs (2) and (3), by inserting
20 “that is not a discrete single-use unit” before
21 the period in each such paragraph; and

22 (C) by adding at the end the following:

23 “(4) DISCRETE SINGLE-USE UNIT.—The term
24 ‘discrete single-use unit’ means any product con-
25 taining tobacco that—

1 “(A) is not intended to be smoked; and

2 “(B) is in the form of a lozenge, tablet,
3 pill, pouch, dissolvable strip, or other discrete
4 single-use or single-dose unit.”.

5 (c) TAX PARITY FOR LARGE CIGARS.—

6 (1) IN GENERAL.—Paragraph (2) of section
7 5701(a) of the Internal Revenue Code of 1986 is
8 amended by striking “52.75 percent” and all that
9 follows through the period and inserting the fol-
10 lowing: “\$24.78 per pound and a proportionate tax
11 at the like rate on all fractional parts of a pound but
12 not less than 5.033 cents per cigar.”.

13 (2) GUIDANCE.—The Secretary of the Treas-
14 ury, or the Secretary’s delegate, may issue guidance
15 regarding the appropriate method for determining
16 the weight of large cigars for purposes of calculating
17 the applicable tax under section 5701(a)(2) of the
18 Internal Revenue Code of 1986.

19 (d) TAX PARITY FOR ROLL-YOUR-OWN TOBACCO
20 AND CERTAIN PROCESSED TOBACCO.—Subsection (o) of
21 section 5702 of the Internal Revenue Code of 1986 is
22 amended by inserting “, and includes processed tobacco
23 that is removed for delivery or delivered to a person other
24 than a person with a permit provided under section 5713,

1 but does not include removals of processed tobacco for ex-
2 portation” after “wrappers thereof”.

3 (e) CLARIFYING TAX RATE FOR OTHER TOBACCO
4 PRODUCTS.—

5 (1) IN GENERAL.—Section 5701 of the Internal
6 Revenue Code of 1986 is amended by adding at the
7 end the following new subsection:

8 “(i) OTHER TOBACCO PRODUCTS.—Any product not
9 otherwise described under this section that has been deter-
10 mined to be a tobacco product by the Food and Drug Ad-
11 ministration through its authorities under the Family
12 Smoking Prevention and Tobacco Control Act shall be
13 taxed at a level of tax equivalent to the tax rate for ciga-
14 rettes on an estimated per use basis as determined by the
15 Secretary.”.

16 (2) ESTABLISHING PER USE BASIS.—For pur-
17 poses of section 5701(i) of the Internal Revenue
18 Code of 1986, not later than 12 months after the
19 later of the date of the enactment of this Act or the
20 date that a product has been determined to be a to-
21 bacco product by the Food and Drug Administra-
22 tion, the Secretary of the Treasury (or the Secretary
23 of the Treasury’s delegate) shall issue final regula-
24 tions establishing the level of tax for such product

1 that is equivalent to the tax rate for cigarettes on
2 an estimated per use basis.

3 (f) CLARIFYING DEFINITION OF TOBACCO PROD-
4 UCTS.—

5 (1) IN GENERAL.—Subsection (c) of section
6 5702 of the Internal Revenue Code of 1986 is
7 amended to read as follows:

8 “(c) TOBACCO PRODUCTS.—The term ‘tobacco prod-
9 ucts’ means—

10 “(1) cigars, cigarettes, smokeless tobacco, pipe
11 tobacco, and roll-your-own tobacco, and

12 “(2) any other product subject to tax pursuant
13 to section 5701(i).”.

14 (2) CONFORMING AMENDMENTS.—Subsection
15 (d) of section 5702 of such Code is amended by
16 striking “cigars, cigarettes, smokeless tobacco, pipe
17 tobacco, or roll-your-own tobacco” each place it ap-
18 pears and inserting “tobacco products”.

19 (g) TAX RATES ADJUSTED FOR INFLATION.—Sec-
20 tion 5701 of such Code, as amended by subsection (e),
21 is amended by adding at the end the following new sub-
22 section:

23 “(j) INFLATION ADJUSTMENT.—

24 “(1) IN GENERAL.—In the case of any calendar
25 year beginning after 2017, the dollar amounts pro-

1 vided under this chapter shall each be increased by
 2 an amount equal to—

3 “(A) such dollar amount, multiplied by

4 “(B) the cost-of-living adjustment deter-
 5 mined under section 1(f)(3) for the calendar
 6 year, determined by substituting ‘calendar year
 7 2016’ for ‘calendar year 1992’ in subparagraph
 8 (B) thereof.

9 “(2) ROUNDING.—If any amount as adjusted
 10 under paragraph (1) is not a multiple of \$0.01, such
 11 amount shall be rounded to the next highest multiple
 12 of \$0.01.”.

13 (h) EFFECTIVE DATES.—

14 (1) IN GENERAL.—Except as provided in para-
 15 graphs (2) through (4), the amendments made by
 16 this section shall apply to articles removed (as de-
 17 fined in section 5702(j) of the Internal Revenue
 18 Code of 1986) after the last day of the month which
 19 includes the date of the enactment of this Act.

20 (2) DISCRETE SINGLE-USE UNITS AND PROC-
 21 ESSED TOBACCO.—The amendments made by sub-
 22 sections (b)(1)(C), (b)(2), and (d) shall apply to ar-
 23 ticles removed (as defined in section 5702(j) of the
 24 Internal Revenue Code of 1986) after the date that

1 is 6 months after the date of the enactment of this
2 Act.

3 (3) LARGE CIGARS.—The amendments made by
4 subsection (c) shall apply to articles removed after
5 December 31, 2017.

6 (4) OTHER TOBACCO PRODUCTS.—The amend-
7 ments made by subsection (e)(1) shall apply to prod-
8 ucts removed after the last day of the month which
9 includes the date that the Secretary of the Treasury
10 (or the Secretary of the Treasury’s delegate) issues
11 final regulations establishing the level of tax for
12 such product.

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