

HB438 INTRODUCED



1 HB438
2 NQ4LTTT-1
3 By Representative Hollis
4 RFD: County and Municipal Government
5 First Read: 09-Apr-24



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SYNOPSIS:

This bill would define "heated tobacco product" and establish a new levy on these products.

A BILL
TO BE ENTITLED
AN ACT

Relating to the tobacco tax; to amend Section 40-25-1 and 40-25-2, Code of Alabama 1975; to define "heated tobacco products"; and to establish a new levy on heated tobacco products.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 40-25-1 and 40-25-2, Code of Alabama 1975, are amended to read as follows:

"§40-25-1

For the purposes of this article, the following terms shall have the respective meanings ascribed by this section:

(1) WHOLESale DEALER AND JOBBER. Persons, firms, or corporations who buy tobacco products direct from the manufacturer or an affiliate of the manufacturer and sell at wholesale only, any one or more of the articles taxed herein to licensed wholesale dealers, jobbers, semijobbers, and retail dealers for the purpose of resale only.



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29 (2) ~~RETAILER~~RETAIL DEALER. Every person, firm, or
30 corporation, other than a wholesale dealer or jobber, who
31 shall sell or offer for sale any one or more of the articles
32 taxed herein, irrespective of quantity or amount, or the
33 number of sales; and all persons operating under a retail
34 dealer's license.

35 (3) SEMIJOBBER. Persons, firms, or corporations who buy
36 tobacco products from permitted wholesalers or obtain tobacco
37 from any other source and sell at wholesale any one or more of
38 the articles taxed herein to licensed retail dealers for the
39 purpose of resale only.

40 (4) STAMPS. The stamp or stamps by the use of which the
41 tax levied under this article is paid and shall be designated
42 Alabama Revenue Stamps.

43 (5) CIGARS, CHERROOTS, STOGIES, ETC. A roll for smoking
44 that is of any size or shape and that is made wholly or in
45 part of tobacco or any substitute therefor, irrespective of
46 whether the tobacco is pure or flavored, adulterated or mixed
47 with any other ingredient, if the roll has a wrapper made
48 wholly or in part of tobacco.

49 (6) HEATED TOBACCO PRODUCT. A product containing
50 tobacco that produces an inhalable aerosol by heating the
51 tobacco by means of a device without combustion of the tobacco
52 or by heat generated from a combustion source that only or
53 primarily heats rather than burns the tobacco. It does not
54 include cigarettes or smoking tobacco."

55 "§40-25-2

56 (a) In addition to all other taxes of every kind now



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57 imposed by law, every person, firm, corporation, club, or
58 association, within the State of Alabama, who sells or stores
59 or receives for the purpose of distribution to any person,
60 firm, corporation, club, or association within the State of
61 Alabama, cigars, cheroots, stogies, cigarettes, smoking
62 tobacco, chewing tobacco, snuff, heated tobacco products, or
63 any substitute therefor, either or all, shall pay to the State
64 of Alabama for state purposes only a license or privilege tax
65 which shall be measured by and graduated in accordance with
66 the volume of sales of such person, firm, corporation, club,
67 or association in Alabama. There is hereby levied license or
68 privilege taxes on articles containing tobacco enumerated in
69 this article in the following amounts:

70 (1) LITTLE CIGARS. Upon cigars of all descriptions,
71 including filtered cigars, made of tobacco, or any substitute
72 therefor, and weighing not more than three pounds per 1,000,
73 \$.04 for each ten cigars, or fractional part thereof.

74 (2) FILTERED CIGARS. Upon filtered cigars that have a
75 cellulose acetate or similar integrated filter, made of
76 tobacco, or any substitute therefor, and weighing more than
77 three pounds per 1,000, \$0.015 for each filtered cigar.

78 (3) CHEROOTS, STOGIES, CIGARS, ETC. Upon all other
79 cigars of any descriptions made of tobacco, or any substitute
80 therefor, \$40.50 per thousand cigars, or \$0.0405 each.

81 (4) CIGARETTES. Upon all cigarettes made of tobacco, or
82 any substitute therefor, 33.75 mills on each such cigarette.

83 (5) SMOKING TOBACCO. Upon all smoking tobacco,
84 including granulated, plug cut, crimp cut, ready rubbed, and



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85 other kinds and forms of tobacco prepared in such manner as to
86 be suitable for smoking in a pipe or cigarette, upon each
87 package: Weighing not more than one and one-eighth ounces, tax
88 \$.04; over one and one-eighth ounces, not exceeding two
89 ounces, tax \$.10; over two ounces, not exceeding three ounces,
90 tax \$.16; over three ounces, not exceeding four ounces, tax
91 \$.21; \$.06 additional tax for each ounce or fractional part
92 thereof over four ounces.

93 (6) CHEWING TOBACCO. Upon all chewing tobacco prepared
94 in such manner as to be suitable for chewing only and not
95 suitable for smoking as described and taxed in subdivision (9)
96 of this subsection: \$.015 per ounce or fractional part
97 thereof.

98 (7) SNUFF. Upon each can or package of snuff weighing
99 not more than five-eighths ounces, one cent tax; over
100 five-eighths ounces and not exceeding one and five-eighths
101 ounces, \$.02 tax; over one and five-eighths ounces and not
102 exceeding two and one-half ounces, \$.04 tax; over two and
103 one-half ounces and not exceeding five ounces (cans, packages,
104 gullets), \$.06 tax; over three ounces and not exceeding five
105 ounces (glasses, tumblers, bottles), seven cents tax; over
106 five ounces and not exceeding six ounces, \$.08 tax; weighing
107 over six ounces, an additional \$.12 for each ounce or
108 fractional part thereof.

109 (8) HEATED TOBACCO PRODUCTS. Beginning October 1, 2024,
110 and ending September 30, 2027, upon all heated tobacco
111 products, the tax on a single-use consumable unit shall be
112 \$.17. Beginning October 1, 2027, and ending September 30,



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113 2029, the tax upon a single-use consumable unit shall be
114 \$0.0085 per single-use consumable unit. Beginning October 1,
115 2029, the tax upon a single-use consumable unit shall be
116 \$0.005 per single-use consumable unit.

117 (b) Whenever in this article reference is made to any
118 manufactured tobacco products on which the tax is based on
119 weight, the weight as shown by the manufacturer or the federal
120 internal revenue stamp shall apply.

121 (c) When any articles or commodities subject to tax in
122 this article are given as prizes on punch boards, shooting
123 galleries, premiums, etc., the tax shall be based on the tax
124 rates in subsection (a) of such articles.

125 (d) The tax herein levied, except for the taxes levied
126 by subdivision (a)(8) and subsections (i) and (j), shall be
127 paid to the state through the use of stamps as herein
128 provided. However, every wholesaler, distributor, jobber,
129 semijobber, or retail dealer shall add the amount of the tax
130 levied herein to the price of the tobacco or tobacco products
131 sold, it being the purpose and intent of this provision that
132 the tax levied is in fact a levy on the ultimate consumer or
133 user with the wholesaler, distributor, jobber, semijobber, or
134 retail dealer acting merely as an agent of the state for the
135 collection and payment of the tax to the state. Therefore,
136 notwithstanding any exemptions from taxes which any such
137 seller may now or hereafter enjoy under the Constitution or
138 laws of this or any other state, or of the United States, he
139 or she shall collect the tax imposed hereunder from the
140 purchaser or consumer, and the amount of the tax shall



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141 constitute a debt from the purchaser or consumer to the seller
142 until paid. It shall be unlawful for any person, firm,
143 corporation, association, or copartnership to fail or refuse
144 to add to the sales price and collect from the purchaser the
145 amount of the tax to be added to the sales price and collected
146 from the purchaser hereunder. Stamps in denominations to the
147 amount of the tax or in denominations specified pursuant to
148 subsection (e) of this section shall be affixed to the box or
149 other container from or in which tobacco products taxed by
150 this section are normally sold at retail. The stamps shall be
151 affixed in such a manner that their removal will require
152 continued application of water, steam, or heat; and in case of
153 cigars, cheroots, chewing tobacco and like manufactured
154 tobacco products, where sales are made from the original
155 container, the stamps shall be affixed to the box or container
156 in such a way that the stamps shall be torn in two or
157 mutilated when such containers or boxes are opened for the
158 sale of the tobacco products. In the case of cigarettes,
159 smoking tobacco, snuff, heated tobacco products, and like
160 products sold at retail in packages, the required amount of
161 stamps to cover the tax shall be affixed to each individual
162 package or container. All taxable tobaccos herein enumerated,
163 when offered for sale, either at wholesale or retail, without
164 having stamps affixed in the manner set out by this article,
165 or without payment of the tax by return by the wholesaler,
166 jobber, semijobber, or registered retailer, shall be subject
167 to confiscation, in the manner provided for contraband goods
168 as set out in this article.



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169 (e) The Commissioner of Revenue shall prepare and issue
170 stamps in denominations for the amount of the tax imposed by
171 this article provided that if the commissioner determines that
172 it is not economical for the state to have a stamp prepared
173 and issued for one or more particular types of packages of
174 tobacco products, then the commissioner may by regulation
175 prescribe the use of a stamp in a denomination other than for
176 the amount of the tax imposed with the difference between the
177 amount of tax actually imposed and the amount of tax
178 denominated by the stamp paid with the use of a monthly
179 report; or may require a monthly report without use of a stamp
180 to report the amount of taxes due.

181 (f) The increases levied by this section shall be
182 exclusive and shall be in lieu of any other or additional
183 local taxes and/or license fees, county or municipal, imposed
184 on the sale or use of cigarettes and/or other tobacco
185 products. Notwithstanding the foregoing, an act of the
186 Legislature or an ordinance or resolution by a taxing
187 authority passed or enacted on or before May 18, 2004,
188 imposing a local tax and/or license fee shall remain
189 operative, but no additional local tax and/or license fee may
190 thereafter be levied on the sale of cigarettes and/or other
191 tobacco products.

192 (g) Local taxes and/or license fees, county or
193 municipal, imposed on the sale or use of cigarettes shall be
194 paid to the local government through the use of stamps affixed
195 to the product as provided herein for the state tax. Provided,
196 however, this requirement shall not be interpreted to require



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197 the Department of Revenue to prepare all stamps or to collect
198 all local taxes. Local governments may contract with another
199 entity to collect their local cigarette tax but all local
200 taxes must be collected as provided herein.

201 (h) Notwithstanding any other provision of this
202 chapter, revenue from the additional tax in subsection (a)(4)
203 imposed by Act 2015-535 shall be deposited into the State
204 General Fund for the Medicaid Program.

205 (i) In the counties that have a local tobacco tax,
206 there is hereby levied an additional county license or
207 privilege tax on heated tobacco products, which shall equal
208 half of the state tax rate provided in subdivision (a)(8) and
209 shall be paid to the county in which the heated tobacco
210 products were sold to the purchaser. Notwithstanding any other
211 provision of this chapter, the taxes imposed by subdivision
212 (a)(8) and this subsection shall be collected by the
213 wholesaler, jobber, semijobber, or registered retailer from
214 the purchaser at the time of purchase.

215 (j) In the municipalities that have a local tobacco
216 tax, there is hereby levied an additional municipal license or
217 privilege tax on heated tobacco products, which shall equal
218 half of the local municipal tax or license fee as applied to
219 the sale of cigarettes and shall be paid to the municipality
220 in which the heated tobacco products were sold to the
221 purchaser. Notwithstanding any other provision of this
222 chapter, the taxes imposed by subdivision (a)(8) and this
223 subsection shall be collected by the wholesaler, jobber,
224 semijobber, or registered retailer from the purchaser at the



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225 [time of purchase.](#)"

226 Section 2. This act shall become effective on October

227 1, 2024.