

111TH CONGRESS
2D SESSION

S. 3288

To amend the Internal Revenue Code to reduce tobacco smuggling, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 29, 2010

Mr. LAUTENBERG (for himself and Mr. DURBIN) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code to reduce tobacco
smuggling, 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 AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Smuggled Tobacco Prevention Act of 2010” or the
6 “STOP Act”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

Sec. 101. Amendment of 1986 code.

- Sec. 102. Machines used to manufacture or package cigarettes or other tobacco products.
- Sec. 103. Improved marking and labeling.
- Sec. 104. Wholesalers and manufacturers, importers, and sellers of tobacco production machines required to have permit.
- Sec. 105. Conditions of permit.
- Sec. 106. Records to be maintained.
- Sec. 107. Reports.
- Sec. 108. Fraudulent offenses.
- Sec. 109. Penalties.
- Sec. 110. Definitions.
- Sec. 111. Conforming amendments.
- Sec. 112. Effective date.

TITLE II—IMPORT FRAUD

- Sec. 201. Maximum penalty for importation of tobacco products and cigarette papers and tubes by fraudulent means.

1 **TITLE I—AMENDMENTS TO IN-** 2 **TERNAL REVENUE CODE OF** 3 **1986**

4 **SEC. 101. AMENDMENT OF 1986 CODE.**

5 Except as otherwise expressly provided, whenever in
 6 this title an amendment or repeal is expressed in terms
 7 of an amendment to, or repeal of, a section or other provi-
 8 sion, the reference shall be considered to be made to a
 9 section or other provision of the Internal Revenue Code
 10 of 1986.

11 **SEC. 102. MACHINES USED TO MANUFACTURE OR PACKAGE** 12 **CIGARETTES OR OTHER TOBACCO PROD-** 13 **UCTS.**

14 (a) IN GENERAL.—Section 5762 (relating to criminal
 15 penalties) is amended—

16 (1) by redesignating subsection (b) as sub-
 17 section (c), and

1 (2) by inserting after subsection (a) the fol-
 2 lowing new subsection:

3 “(b) MACHINES USED TO MANUFACTURE, PROCESS,
 4 OR PACKAGE CIGARETTES OR OTHER TOBACCO PROD-
 5 UCTS.—

6 “(1) SALE, LEASE, DELIVERY OF MANUFAC-
 7 TURING MACHINES TO LICENSED PERSONS.—Any to-
 8 bacco production machine may be sold, leased, im-
 9 ported, or delivered only to—

10 “(A) persons—

11 “(i) lawfully engaged in—

12 “(I) the sale, lease, or delivery of
 13 such machines,

14 “(II) the manufacture or proc-
 15 essing of tobacco products, or

16 “(III) the application of unique
 17 identification markings onto tobacco
 18 product packages pursuant to section
 19 5723, and

20 “(ii) that have all Federal and State
 21 permits, registrations, and licenses re-
 22 quired to engage in such activities, or

23 “(B) in the case of a machine which is
 24 meant and expected to be used by an individual

1 to make tobacco products for his or her own
2 personal use, such an individual.

3 “(2) SALE, LEASE, DELIVERY OF MACHINES TO
4 PERSONS ENGAGED IN ILLEGAL MANUFACTURE OF
5 CONTRABAND.—No tobacco production machine
6 shall knowingly be manufactured for or be (directly
7 or indirectly) sold, leased, delivered, imported, or
8 otherwise made available to any person engaged in
9 the illegal manufacture, distribution, or sale of coun-
10 terfeit or contraband tobacco products, unique iden-
11 tification markings, or other tax-payment indicia.

12 “(3) RENDERING UNUSED MACHINES INOPER-
13 ABLE.—Any tobacco production machine that is no
14 longer being used as such shall be made irreparably
15 inoperable for such use before being disposed of or
16 put to any other use. This paragraph shall not apply
17 to any such machines being kept solely for display
18 or for historical purposes.

19 “(4) RECORDS.—

20 “(A) IN GENERAL.—Any person leasing,
21 importing, exporting, or delivering a tobacco
22 production machine shall maintain and keep
23 records relating to any transfers or deliveries of
24 the machine, including the name, address, other
25 contact information, and any permit, registra-

1 tion, or license number of the person receiving
2 delivery of the machine, or to whom the ma-
3 chine is leased or otherwise transferred, as the
4 case may be.

5 “(B) 5-YEAR HOLDING PERIOD FOR
6 RECORDS.—Any record required to be main-
7 tained and kept under subparagraph (A) shall
8 be kept for the 5-year period beginning on the
9 first date such record is required to be so main-
10 tained and kept.

11 “(C) AVAILABILITY OF RECORDS.—Such
12 records shall be made available to the Secretary
13 and other Federal and State government law
14 enforcement officials for inspection and audit
15 upon request.

16 “(D) SAFE HARBOR.—An ordinary com-
17 mercial record or invoice shall satisfy the re-
18 quirements of this paragraph if such record de-
19 scribes the transaction and the related machine
20 and provides the date of the transaction and
21 the name, contact information, and any permit,
22 registration, or license number of all parties to
23 the transaction or acting as agents for those
24 parties in regard to the transaction.

1 “(5) TOBACCO PRODUCTION MACHINE.—For
 2 purposes of this subsection, the term ‘tobacco pro-
 3 duction machine’ means any machine (or component
 4 integral to the operation of such a machine) used to
 5 manufacture, process, or package tobacco products
 6 or to apply unique identification markings to pack-
 7 ages of tobacco products.

8 “(6) VIOLATIONS.—

9 “(A) IN GENERAL.—Whoever knowingly
 10 violates paragraph (1), (2), or (3) shall, for
 11 each offense, be fined not more than \$10,000 or
 12 an amount equal to 3 times the fair market
 13 value of the tobacco product machine involved
 14 (whichever is greater), or imprisoned not more
 15 than five years, or both.

16 “(B) RECORDKEEPING.—Whoever know-
 17 ingly violates paragraph (4) shall, for each of-
 18 fense, be fined not more than \$10,000.”.

19 (b) CONFORMING AMENDMENT.—Subsection (c) of
 20 section 5762 (as so redesignated) is amended by striking
 21 “subsection (a)” and inserting “subsections (a) and (b)”.

22 (c) EFFECTIVE DATE.—The amendment made by
 23 this section shall apply to sales, leases, and transfers more
 24 than 6 months after the date of the enactment of this Act.

1 **SEC. 103. IMPROVED MARKING AND LABELING.**

2 (a) IN GENERAL.—Section 5723 (relating to pack-
3 ages, marks, labels, and notices) is amended—

4 (1) by striking “, if any,” in subsection (b),

5 (2) by adding at the end of subsection (b) the
6 following: “Such marks, labels, and notices shall in-
7 clude marks and notices relating to the following:

8 “(1) GENERAL REQUIREMENTS FOR DOMESTIC
9 MARKET.—Each person who is a manufacturer or
10 importer of tobacco products shall (in accordance
11 with final regulations promulgated by the Secretary)
12 ensure that, before the product leaves the person’s
13 custody, a unique identification marking is affixed to
14 or forms part of each package of tobacco product
15 manufactured or imported by such person for sale or
16 distribution. To facilitate efficient tracking and trac-
17 ing of tobacco products through the distribution sys-
18 tem, all manufacturers or importers of tobacco prod-
19 ucts shall, in addition to such unique identification
20 marking, also, in accordance with regulations pre-
21 scribed by the Secretary, ensure that unique identi-
22 fication markings are affixed to or form part of ag-
23 gregate packing modes (such as cartons, cases, and
24 master cases for cigarettes). The Secretary shall de-
25 termine the size, location, and methods for such
26 markings. The Secretary shall establish regulations

1 requiring that all persons within the distribution
2 chain, up to but not including the ultimate retailer,
3 utilize the unique identification markings on aggregate
4 packing modes to facilitate the tracking and
5 tracing of tobacco product through the distribution
6 system.

7 “(2) MARKING REQUIREMENTS FOR EXPORTS.—A unique identification marking shall be af-
8 fixed to or form part of each package of tobacco
9 product that is exported, or sold for export, that dis-
10 tinguishes it from those products intended for dis-
11 tribution or sale within the United States. The Sec-
12 retary shall by regulation prescribe the size, location,
13 and other characteristics of such marking, and it
14 may contain a serial number that is assigned to the
15 country of export.
16

17 “(3) AUTHORIZATION OF FEDERAL UNIQUE
18 IDENTIFICATION MARKING.—Not later than 1 year
19 after the date of the enactment of the Smuggled To-
20 bacco Prevention Act of 2010, the Secretary shall by
21 regulation require the use of a unique identification
22 marking on all products subject to tax under this
23 chapter.”, and

24 (3) by adding at the end the following new sub-
25 section:

1 “(f) UNIQUE IDENTIFICATION MARKING.—

2 “(1) IN GENERAL.—No tobacco product may be
3 sold, offered for sale, distributed, or otherwise deliv-
4 ered for final sale to any consumer in the United
5 States unless the unique identification marking that
6 meets the requirements of this section (and any reg-
7 ulations prescribed thereunder) is affixed to or forms
8 part of the package in which it is contained. No per-
9 son shall deliver or mail tobacco products unless the
10 tax imposed by this chapter with respect to such
11 product has been paid and the unique identification
12 marking required under this section is affixed to or
13 forms part of the package containing such product.

14 “(2) SYSTEM SPECIFICATIONS.—

15 “(A) The Secretary shall design such sys-
16 tem to coordinate and avoid interference with
17 State and local tax stamps and markings, facili-
18 tate collection of the tax imposed by this chap-
19 ter, impede contraband tobacco trafficking,
20 minimize counterfeit marking, allow for more
21 effective tracking and tracing of tobacco prod-
22 ucts, facilitate the enforcement of related Fed-
23 eral laws, and utilize such available technology
24 as may promote the purposes of this chapter.

1 “(B) The Secretary shall prescribe the
2 method and manner in which such unique iden-
3 tification markings are to be distributed, pur-
4 chased, and applied to or made part of tobacco
5 product packages, and may provide for the can-
6 cellation of such markings.

7 “(C) The unique identification marking
8 must provide the following information:

9 “(i) The denominated value of the
10 marking.

11 “(ii) A unique serial number or track-
12 ing code.

13 “(iii) The name and address of the
14 person purchasing the marking (and, if dif-
15 ferent, of the person ensuring the marking
16 is affixed to or made part of the package).

17 “(iv) The date the marking was pur-
18 chased and when it was affixed to or made
19 part of the package.

20 “(v) The name and address of the
21 first unrelated person purchasing or other-
22 wise receiving the tobacco product from
23 the person who ensures the marking is af-
24 fixed to or made part of the package and
25 the date of such purchase or transfer.

1 “(vi) Such other information as the
2 Secretary may prescribe to carry out the
3 purposes of this chapter.

4 “(D) The information described in sub-
5 paragraph (C) shall, to the extent practicable—

6 “(i) be cryptographically encrypted,
7 and

8 “(ii)(I) be readable by a portable
9 scanning device (or similar device) to be
10 utilized by law enforcement officials at the
11 time and place of inspection, or

12 “(II) be otherwise accessible remotely
13 at such time and place.

14 “(E) Tax reporting information shall be
15 held on a secure government-controlled data-
16 base to monitor tobacco production and for
17 tracking and tracing the product from the point
18 of production through the supply chain to the
19 retailer.

20 “(3) UNRELATED PERSON.—For purposes of
21 this subsection, the term ‘unrelated person’ means a
22 person other than a related person within the mean-
23 ing of section 267(b) or 707(b)(1).”.

1 (b) DEFINITIONS.—Section 5723, as amended by
2 subsection (a), is amended by adding at the end the fol-
3 lowing new subsections:

4 “(g) PACKAGE DEFINED.—For purposes of this sec-
5 tion, the term ‘package’ means the innermost sealed con-
6 tainer visible from the outside of the individual container
7 irrespective of the material from which such container is
8 made, in which a tobacco product is placed by the manu-
9 facturer and in which such tobacco product is offered for
10 sale to a member of the general public.

11 “(h) UNIQUE IDENTIFICATION MARKING DE-
12 FINED.—For purposes of this section, the term ‘unique
13 identification marking’ means a device in such design and
14 denomination as the Secretary authorizes by regulation
15 that is affixed to or made part of a package of tobacco
16 product as evidence that the tax imposed by this chapter
17 is paid. Such markings shall contain overt security fea-
18 tures for public authentication and covert security features
19 embedding a unique, secure, encrypted identifier onto the
20 marking, enabling law enforcement authentication, pro-
21 duction control, and tracking and tracing of the product
22 bearing the marking.”.

23 (c) REGULATIONS.—The Secretary of the Treasury
24 shall consult with the Secretary of Health and Human
25 Services as may be appropriate to carry out the purposes

1 of subsection (f), and paragraphs (1), (2), and (3) of sub-
 2 section (b), of section 5723 of the Internal Revenue Code
 3 of 1986.

4 **SEC. 104. WHOLESALERS AND MANUFACTURERS, IMPORT-**
 5 **ERS, AND SELLERS OF TOBACCO PRODUC-**
 6 **TION MACHINES REQUIRED TO HAVE PER-**
 7 **MIT.**

8 (a) WHOLESALERS.—Section 5712 (relating to appli-
 9 cation for permit) is amended by inserting “, wholesaler,”
 10 after “manufacturer”.

11 (b) MANUFACTURERS, IMPORTERS, AND SELLERS OF
 12 TOBACCO PRODUCTION MACHINES.—Section 5712 is
 13 amended by striking “or as an export warehouse propri-
 14 etor” and inserting “, as an export warehouse proprietor,
 15 or as a manufacturer, seller, or importer of tobacco pro-
 16 duction machines (as defined in section 5762(b)(5))”.

17 **SEC. 105. CONDITIONS OF PERMIT.**

18 Subsection (a) of section 5713 (relating to issuance
 19 of permit) is amended to read as follows:

20 “(a) ISSUANCE.—

21 “(1) IN GENERAL.—A person shall not engage
 22 in business as a manufacturer, wholesaler, or im-
 23 porter of tobacco products or processed tobacco, as
 24 an export warehouse proprietor, or as a manufac-
 25 turer, seller, or importer of tobacco production ma-

1 chines (as defined in section 5762(b)(5)) without a
2 permit to engage in such business. Such permit, con-
3 ditioned upon compliance with this chapter and reg-
4 ulations issued thereunder, shall be issued in such
5 form and in such manner as the Secretary shall by
6 regulation prescribe, to every person properly quali-
7 fied under section 5711 and 5712. Any entity grant-
8 ed such a permit is not eligible to provide any serv-
9 ices the Secretary may elect to procure to facilitate
10 the purposes of section 5723. Permit holders shall
11 automatically count output and register, record, and
12 transmit the quantities measured, in the form, con-
13 ditions, and time limits established by the Secretary.
14 A new permit may be required at such other time
15 as the Secretary shall by regulation prescribe.

16 “(2) CONDITIONS.—The Secretary shall not
17 issue a permit under this section unless—

18 “(A) the applicant is in compliance with
19 the requirements of—

20 “(i) this chapter,

21 “(ii) chapter 114 of title 18, United
22 States Code,

23 “(iii) the Act of October 19, 1949 (15
24 U.S.C. 375 et seq.; commonly referred to
25 as the ‘Jenkins Act’),

1 “(iv) the Fair and Equitable Tobacco
2 Reform Act of 2004, and any amendments
3 made thereby,

4 “(v) the Family Smoking Prevention
5 and Tobacco Control Act, and any amend-
6 ments made thereby, and

7 “(vi) any related regulations there-
8 under, and

9 “(B) the applicant certifies that the appli-
10 cant is in compliance with all other Federal and
11 State laws relating to the taxation, manufac-
12 ture, importation, exportation, distribution,
13 marketing, sale, or transportation of tobacco
14 products, processed tobacco, or tobacco produc-
15 tion machines.

16 “(C) the applicant identifies in the applica-
17 tion any violation of a law described in subpara-
18 graph (A) or (B) by the applicant resulting in
19 a penalty under any such law during the 5-year
20 period ending on the date of the application.”.

21 **SEC. 106. RECORDS TO BE MAINTAINED.**

22 (a) IN GENERAL.—Section 5741 (relating to records
23 to be maintained) is amended—

24 (1) by inserting “(a) IN GENERAL.—” before
25 “Every manufacturer”,

1 (2) by inserting “every wholesaler,” after
2 “every importer,”

3 (3) by striking “such records” and inserting
4 “records concerning the chain of custody of the to-
5 bacco products (including the foreign country of
6 final destination for packages marked for export)
7 and the serial numbers, marks, labels, and notices
8 required under section 5723, and such other
9 records”, and

10 (4) by adding at the end the following new sub-
11 sections:

12 “(b) RETAILERS.—Retailers shall maintain records
13 of receipt, and any non-retail sale or delivery, of tobacco
14 products. Such records shall be available to the Secretary
15 for inspection and audit. An ordinary commercial record
16 or invoice shall satisfy the requirements of this subsection
17 if such record shows the date of receipt, from whom to-
18 bacco products were received, and the quantity of tobacco
19 products received (or, in the case of non-retail sale or de-
20 livery, the date of sale or delivery, to whom the tobacco
21 products were sold or delivered, and the quantity of the
22 tobacco products sold or delivered). The preceding provi-
23 sions of this subsection shall not be construed to limit or
24 preclude other recordkeeping requirements imposed on
25 any retailer.

1 “(c) RECORDS CONCERNING MARKS AND CHAIN OF
2 CUSTODY.—Records concerning the chain of custody and
3 the marks, labels, and notices required under section 5723
4 shall be made available to Federal and State law enforce-
5 ment officials for inspection and audit upon request.”.

6 (b) CONSULTATION WITH HEALTH AND HUMAN
7 SERVICES.—The Secretary of the Treasury shall consult
8 with the Secretary of Health and Human Services as may
9 be appropriate to carry out the purposes of section 5741
10 of the Internal Revenue Code of 1986.

11 **SEC. 107. REPORTS.**

12 Section 5722 (relating to reports) is amended—

13 (1) by inserting “(a) IN GENERAL.—” before
14 “Every manufacturer”, and

15 (2) by adding at the end the following new sub-
16 section:

17 “(b) REPORTS BY EXPORT WAREHOUSE PROPRI-
18 ETORS.—

19 “(1) IN GENERAL.—Prior to exportation of to-
20 bacco products from the United States, the export
21 warehouse proprietor shall submit a report (in such
22 manner and form as the Secretary may by regula-
23 tion prescribe) to enable the Secretary to identify
24 the shipment and assure that it reaches its intended
25 destination.

1 “(2) AGREEMENTS WITH FOREIGN GOVERN-
2 MENTS.—Notwithstanding section 6103 of this title,
3 the Secretary is authorized to enter into agreements
4 with foreign governments to exchange or share infor-
5 mation contained in reports received from export
6 warehouse proprietors of tobacco products if—

7 “(A) the Secretary believes that such
8 agreement will assist in—

9 “(i) ensuring compliance with the pro-
10 visions of this chapter or regulations pro-
11 mulgated thereunder, or

12 “(ii) preventing or detecting violations
13 of the provisions of this chapter or regula-
14 tions promulgated thereunder, and

15 “(B) the Secretary obtains written assur-
16 ances from such government that the informa-
17 tion will be held in confidence and used only for
18 the purposes specified in clauses (i) and (ii) of
19 subparagraph (A).

20 No information may be exchanged or shared with
21 any government that has violated such assurances.”.

22 **SEC. 108. FRAUDULENT OFFENSES.**

23 (a) IN GENERAL.—Subsection (a) of section 5762 is
24 amended—

1 (1) by striking paragraph (1) and redesignating
2 paragraphs (2) through (6) as paragraphs (1)
3 through (5), respectively, and

4 (2) by striking “not more than \$10,000” and
5 inserting “not more than \$10,000 or an amount
6 equal to 3 times the amount of the tax imposed
7 under this chapter on the tobacco product involved
8 (whichever is greater)”.

9 (b) OFFENSES RELATING TO DISTRIBUTION OF TO-
10 BACCO PRODUCTS.—

11 (1) IN GENERAL.—Section 5762 (as amended
12 by section 102 of this Act) is amended—

13 (A) by redesignating subsection (c) as sub-
14 section (d), and

15 (B) by inserting after subsection (b) the
16 following new subsection:

17 “(c) OFFENSES RELATING TO DISTRIBUTION OF TO-
18 BACCO PRODUCTS.—It shall be unlawful—

19 “(1) for any person to engage in business as a
20 manufacturer or importer of tobacco products or cig-
21 arette papers and tubes, as a wholesaler or an ex-
22 port warehouse proprietor, or as a manufacturer,
23 seller, or importer of tobacco production machines
24 without filing the bond and obtaining the permit

1 where required by this chapter or regulations there-
2 under,

3 “(2) for a manufacturer, importer, or whole-
4 saler to knowingly ship, transport, deliver, or receive
5 any tobacco products from or to any person other
6 than a person who has obtained the permit required
7 by this chapter, a retailer, or a person handling such
8 products solely for purposes of shipment or delivery;
9 except an importer who has obtained the permit re-
10 quired by this chapter may receive, from a foreign
11 manufacturer or a foreign distributor, foreign to-
12 bacco products that have not previously entered the
13 United States,

14 “(3) for a manufacturer of processed tobacco to
15 knowingly ship, transport, sell, or deliver processed
16 tobacco to any person other than a manufacturer of
17 processed tobacco, a manufacturer of tobacco prod-
18 ucts, or an export warehouse proprietor,

19 “(4) for any person (other than the original
20 manufacturer of such tobacco products or an export
21 warehouse proprietor authorized to receive any to-
22 bacco products that have previously been exported
23 and returned to the United States) to knowingly re-
24 ceive any tobacco products that have previously been
25 exported and returned to the United States,

1 “(5) for any export warehouse proprietor to
2 knowingly ship, transport, sell, or deliver for sale
3 any tobacco products to any person other than the
4 original manufacturer of such tobacco products, an-
5 other export warehouse proprietor, or a foreign pur-
6 chaser,

7 “(6) for any person (other than a manufacturer
8 or an export warehouse proprietor permitted under
9 this chapter) to knowingly ship, transport, receive,
10 or possess, for purposes of resale, any tobacco prod-
11 uct in packages marked pursuant to regulations
12 issued under section 5723, other than for direct re-
13 turn to a manufacturer for repacking or for re-ex-
14 portation or to an export warehouse proprietor for
15 re-exportation,

16 “(7) for any manufacturer, importer, export
17 warehouse proprietor, or wholesaler permitted under
18 this chapter to make any false entry in, to fail to
19 make an entry in, or to knowingly fail to maintain
20 properly any record or report required by this chap-
21 ter or the regulations promulgated thereunder with
22 the intent to defraud the United States,

23 “(8) for any person, with the intent to defraud
24 the United States, to alter, mutilate, destroy, oblit-
25 erate, or remove any mark or label required under

1 this chapter upon a tobacco product held for sale, or
 2 to create, possess, or apply on any tobacco product
 3 or its packaging any counterfeit versions of any such
 4 marks or labels, and

5 “(9) for any person to sell at retail more than
 6 3,000 cigarettes in a single transaction or in a series
 7 of related transactions, or, in the case of other to-
 8 bacco products, an equivalent quantity as deter-
 9 mined by regulation.

10 Any person violating any of the provisions of this sub-
 11 section shall, upon conviction, be fined as provided in sec-
 12 tion 3571 of title 18, United States Code, or imprisoned
 13 for not more than 5 years, or both.”.

14 (2) CONFORMING AMENDMENT.—Section
 15 5762(d) (as so redesignated) is amended by striking
 16 “and (b)” inserting “, (b), and (c)”.

17 (c) OTHER OFFENSES.—Subsection (d) of section
 18 5762 (as so redesignated) is amended by striking “not
 19 more than \$1,000” and inserting “not more than \$2,500
 20 or an amount equal to the tax imposed under this chapter
 21 on the tobacco product involved (whichever is greater)”.

22 **SEC. 109. PENALTIES.**

23 (a) IN GENERAL.—

24 (1) Subsection (a) of section 5761 (relating to
 25 civil penalties) is amended—

1 (A) by striking “willfully” and inserting
2 “knowingly”, and

3 (B) by striking “\$1,000” and inserting
4 “\$10,000”.

5 (2) Subsection (b) of section 5761 (relating to
6 failure to pay tax) is amended by striking “5 per-
7 cent” and inserting “10 percent”.

8 (b) USE OF INCREASE IN PENALTIES AND FINES.—
9 Subchapter G of chapter 52 is amended by adding at the
10 end the following new section:

11 **“SEC. 5764. USE OF CERTAIN PENALTIES AND FINES.**

12 “(a) IN GENERAL.—There is established a separate
13 account in the Treasury known as the ‘Anti-Contraband
14 Tobacco Trafficking Fund’. Amounts equivalent to 50 per-
15 cent of the increase in revenues from criminal and civil
16 penalties and fines collected under this chapter and attrib-
17 utable to title I of the Smuggled Tobacco Prevention Act
18 of 2010 (or the amendments made thereby) shall be trans-
19 ferred into the Anti-Contraband Tobacco Trafficking
20 Fund. Such amounts shall be available, as provided in ap-
21 propriations Acts, to the Secretary solely for the purpose
22 of expanding government efforts and available resources
23 to enforce this chapter and other laws relating to contra-
24 band or illegal tobacco products.

1 “(b) ALLOCATION OF FUNDS.—Of the respective
 2 amounts available to the Secretary under subsection (a),
 3 not less than 50 percent shall be allocated to the Federal
 4 departments and agencies that are responsible for the en-
 5 forcement actions (including underlying investigations and
 6 administrative and judicial proceedings) in which such
 7 penalties and fines were imposed.”.

8 (c) PENALTY AMOUNTS ADJUSTED FOR INFLA-
 9 TION.—Section 5761 of such Code is amended by redesi-
 10 gnating subsection (f) as subsection (g) and inserting after
 11 subsection (e) the following new subsection:

12 “(f) INFLATION ADJUSTMENT.—

13 “(1) IN GENERAL.—In the case of a calendar
 14 year beginning after 2011, the penalty dollar
 15 amounts provided under this chapter shall each be
 16 increased by an amount equal to—

17 “(A) such dollar amount, multiplied by

18 “(B) the cost-of-living adjustment deter-
 19 mined under section 1(f)(3) for the calendar
 20 year, determined by substituting ‘calendar year
 21 2010’ for ‘calendar year 1992’ in subparagraph
 22 (B) thereof.

23 “(2) ROUNDING.—If any amount as adjusted
 24 under paragraph (1) is not a multiple of \$10, such

1 amount shall be rounded to the next highest multiple
2 of \$10.”.

3 **SEC. 110. DEFINITIONS.**

4 (a) EXPORT WAREHOUSE PROPRIETOR.—Subsection
5 (i) of section 5702 (relating to definition of export ware-
6 house proprietor) is amended by inserting before the pe-
7 riod the following: “or any person engaged in the business
8 of exporting tobacco products from the United States for
9 purposes of sale or distribution. Any duty free store that
10 sells, offers for sale, or otherwise distributes to any person
11 in any single transaction (or series of related transactions)
12 more than 3,000 cigarettes, or an equivalent quantity of
13 other tobacco products as the Secretary shall by regulation
14 prescribe, shall be deemed an export warehouse proprietor
15 under this chapter”.

16 (b) RETAILER; WHOLESALER.—Section 5702 is
17 amended by adding at the end the following new sub-
18 sections:

19 “(p) RETAILER.—The term ‘retailer’ means any deal-
20 er who sells, or offers for sale, any tobacco product at re-
21 tail. The term ‘retailer’ includes any duty free store that
22 sells, offers for sale, or otherwise distributes at retail in
23 any single transaction (or series of related transactions)
24 3,000 or fewer of cigarettes, or an equivalent quantity of

1 other tobacco products as the Secretary shall by regulation
2 prescribe.

3 “(q) WHOLESALER.—The term ‘wholesaler’ means
4 any person engaged in the business of purchasing tobacco
5 products for resale at wholesale, or any person acting as
6 an agent or broker for any person engaged in the business
7 of purchasing tobacco products for resale at wholesale.”.

8 **SEC. 111. CONFORMING AMENDMENTS.**

9 (a) Section 2341 of title 18, United States Code is
10 amended—

11 (1) in paragraph (2), by inserting “Federal
12 taxes, wherever found, or” after “payment of appli-
13 cable”; and

14 (2) in paragraph (2)(C), by inserting “in regard
15 to State or local taxes,” before “a person”.

16 (b) Sections 2314 and 2315 of title 18, United States
17 Code, are each amended—

18 (1) by striking “**STATE**” in the heading there-
19 of; and

20 (2) by striking “tax stamps” each place it ap-
21 pears and inserting “tax stamps or markings”.

22 **SEC. 112. EFFECTIVE DATE.**

23 Except as otherwise provided in this title, the amend-
24 ments made by this title shall take effect 1 year after the
25 date of the enactment of this Act.

TITLE II—IMPORT FRAUD

SEC. 201. MAXIMUM PENALTY FOR IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES BY FRAUDULENT MEANS.

(a) MAXIMUM PENALTY.—Section 592(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1592(c)(1)) is amended—

(1) by striking “A fraudulent violation of subsection (a)” and inserting the following:

“(A) IN GENERAL.—Except as provided in subparagraph (B), a fraudulent violation of subsection (a)”;

(2) by adding at the end the following:

“(B) TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES.—In the case of importation of tobacco products and cigarette papers and tubes subject to tax under chapter 52 of the Internal Revenue Code of 1986, a fraudulent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed the sum of—

“(i) the domestic value of the merchandise, and

“(ii) four times the amount of Federal excise tax that could be imposed on the merchandise, if applicable.”.

1 (b) **EFFECTIVE DATE.**—The amendments made by
2 subsection (a) shall take effect on January 1, 2011, and
3 shall apply with respect to violations of section 592 of the
4 Tariff Act of 1930 (as so amended) that occur on or after
5 that date.

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