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Governor Bill Walker
STATE OF ALASKA

February 5, 2016

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the taxes on cigarettes and tobacco products; and taxing electronic smoking devices.

Smoking technology has advanced beyond single use paper-rolled cigarettes to include multiple use electronic smoking devices. Therefore, our tobacco tax statutes (AS 43.50 Cigarette Tax Act) should be revised to include this new smoking device as taxable.

To further update our outdated tobacco tax structure, I propose to amend the additional tax levy on cigarettes – which has not been raised since 2007 – from 62 mills to 112 mills. I also propose increasing the tax rate on tobacco products (other than cigarettes) from 75 percent of the wholesale price to 100 percent of the wholesale price. These reasonable adjustments will bring our tax structure up to date and are expected to generate additional revenue of approximately \$29,000,000 annually.

To increase administrative efficiency for the Department of Revenue and state taxpayers, the bill would require the electronic submission of tax returns with an exemption available upon request.

The bill is an integral component of the New Sustainable Alaska Plan to provide a balanced and sustainable budget for Alaska's long-term fiscal stability.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in blue ink that reads "Bill Walker".

Bill Walker
Governor

Enclosure

HOUSE BILL NO. 304

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 2/8/16

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring the electronic submission of a tax return or report with the
2 Department of Revenue; relating to the taxes on cigarettes and tobacco products; taxing
3 electronic smoking products; adding a definition of 'electronic smoking product'; and
4 providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 43.05.220 is amended to add a new subsection to read:

7 (f) A penalty of \$25 or one percent of the total tax before any payment,
8 whichever is greater, shall be assessed against a taxpayer that fails to electronically
9 submit a return or report under AS 43.05.222, unless the taxpayer has received an
10 exemption under AS 43.05.222 or can show reasonable cause.

11 * **Sec. 2.** AS 43.05 is amended by adding a new section to read:

12 **Sec. 43.05.222. Electronic submission of return or report.** (a) A taxpayer
13 required to submit a return or report for a tax levied under AS 43 or any other tax
14 administered by the department shall submit the return or report electronically in a

1 format prescribed by the department. Unless the taxpayer has received an exemption
2 under (b) of this section or can show reasonable cause, a return or report not submitted
3 electronically is subject to a civil penalty under AS 43.05.220.

4 (b) A taxpayer may request an exemption from the requirement that a return or
5 report be submitted electronically. The taxpayer or taxpayer's representative shall
6 contact the department and request the exemption before the return or report is due
7 and shall submit evidence that the taxpayer does not have the capability to submit the
8 return or report electronically. An exemption granted under this subsection is valid for
9 two years after the first tax filing due date after the exemption is granted; after the two
10 year period, the taxpayer may apply for another exemption.

11 * **Sec. 3.** AS 43.50.150(c) is amended to read:

12 (c) The department may enter into an agreement with a municipality that
13 imposes a tax on cigarettes, electronic smoking products, or other tobacco products
14 for the purpose of jointly auditing a person liable for a tax under AS 43.50.010 -
15 43.50.390 and the municipal tax on cigarettes, electronic smoking products, or other
16 tobacco products.

17 * **Sec. 4.** AS 43.50.170 is amended by adding a new paragraph to read:

18 (13) "electronic smoking product" has the meaning given in
19 AS 43.50.390.

20 * **Sec. 5.** AS 43.50.190(a) is amended to read:

21 (a) There is levied an excise tax on each cigarette imported or acquired in this
22 state of 112 [,

23 (1) AFTER DECEMBER 31, 2004, BUT BEFORE JULY 1, 2006, 42
24 MILLS;

25 (2) AFTER JUNE 30, 2006, BUT BEFORE JULY 1, 2007, 52
26 MILLS;

27 (3) AFTER JUNE 30, 2007, 62] mills.

28 * **Sec. 6.** AS 43.50.300 is amended to read:

29 **Sec. 43.50.300. Excise tax levied.** An excise tax is levied on tobacco products
30 and electronic smoking products in the state at the rate of 100 [75] percent of the
31 wholesale price of the tobacco products or electronic smoking products. The tax is

1 levied when a person

2 (1) brings, or causes to be brought, a tobacco product **or electronic**
 3 **smoking product** into the state from outside the state for sale;

4 (2) makes, manufactures, or fabricates a tobacco product **or electronic**
 5 **smoking product** in the state for sale in the state; or

6 (3) ships or transports a tobacco product to a retailer in the state for
 7 sale by the retailer.

8 * **Sec. 7.** AS 43.50.310(b) is amended to read:

9 (b) The tax does not apply to a tobacco product **or electronic smoking**
 10 **product** if the United States Constitution or other federal laws prohibit the levying of
 11 the tax on the product by the state.

12 * **Sec. 8.** AS 43.50.320(a) is amended to read:

13 (a) Except as provided in (g) of this section, a person must be licensed by the
 14 department if the person engages in business as a distributor for a tobacco product **or**
 15 **electronic smoking product** that is subject to the tax.

16 * **Sec. 9.** AS 43.50.330(a) is amended to read:

17 (a) On or before the last day of each calendar month, a licensee shall file a
 18 return with the department. **The return must be submitted electronically to the**
 19 **department in a format prescribed by the department.** The return must state the
 20 number or amount of tobacco products **or electronic smoking products** sold by the
 21 licensee during the preceding calendar month, the selling price of the tobacco products
 22 **or electronic smoking products**, and the amount of tax imposed on the tobacco
 23 products **or electronic smoking products**.

24 * **Sec. 10.** AS 43.50.335 is amended to read:

25 **Sec. AS 43.50.335. Tax credits and refunds.** The department shall adopt
 26 procedures for a refund or credit to a licensee of the tax paid for tobacco products **or**
 27 **electronic smoking products** that have become unfit for sale, are destroyed, or are
 28 returned to the manufacturer for credit or replacement if the licensee provides proof
 29 acceptable to the department that the tobacco products **or electronic smoking**
 30 **products** have not been and will not be consumed in this state.

31 * **Sec. 11.** AS 43.50.340 is amended to read:

1 **Sec. 43.50.340. Records.** A licensee shall keep a complete and accurate record
 2 of all tobacco products **or electronic smoking products** of the licensee subject to the
 3 tax, including purchase prices, sales prices, the names and addresses of the sellers and
 4 the purchasers, the dates of delivery, the quantities of tobacco products **or electronic**
 5 **smoking products**, and the trade names and brands. Statements and records required
 6 by this section must be in the form prescribed by the department, preserved for three
 7 years, and available for inspection upon demand by the department.

8 * **Sec. 12.** AS 43.50.390(4) is amended to read:

9 (4) "tobacco product"

10 **(A)** means

11 **(i)** [(A)] a cigar;

12 **(ii)** [(B)] a cheroot;

13 **(iii)** [(C)] a stogie;

14 **(iv)** [(D)] a perique;

15 **(v)** [(E)] snuff and snuff flour;

16 **(vi)** [(F)] smoking tobacco, including granulated, plug-
 17 cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for
 18 smoking in a pipe or cigarette;

19 **(vii)** [(G)] chewing tobacco, including cavendish, twist,
 20 plug, scrap, and tobacco suitable for chewing; or

21 **(viii)** [(H)] an article or product made of tobacco or a
 22 tobacco substitute, but not including a cigarette as defined in
 23 AS 43.50.170;

24 **(B) does not include a product that has been approved by**
 25 **the United States Food and Drug Administration for sale as a smoking**
 26 **cessation product, tobacco dependence product, or modified risk tobacco**
 27 **product;**

28 * **Sec. 13.** AS 43.50.390(5) is amended to read:

29 (5) "wholesale price" means, **for a tobacco product or electronic**
 30 **smoking product**

31 (A) **acquired from a manufacturer,** the **gross invoice**

1 [ESTABLISHED] price, **including all federal excise taxes, at** [FOR] which
 2 **the** [A] manufacturer sells a tobacco product **or electronic smoking product**
 3 to **an unaffiliated** [A] distributor after a deduction of a **trade** discount or other
 4 reduction received by the distributor [FOR QUANTITY OR CASH IF THE
 5 MANUFACTURER'S ESTABLISHED PRICE IS ADEQUATELY
 6 SUPPORTED BY BONA FIDE ARM'S LENGTH SALES AS
 7 DETERMINED BY THE DEPARTMENT]; or

8 (B) **not acquired from a manufacturer**, the **gross invoice**
 9 price, **including all federal excise taxes, after a deduction of a trade**
 10 **discount or other reduction** [AS DETERMINED BY THE DEPARTMENT,
 11 FOR WHICH TOBACCO PRODUCTS OF COMPARABLE RETAIL PRICE
 12 ARE SOLD TO DISTRIBUTORS IN THE ORDINARY COURSE OF
 13 TRADE IF THE MANUFACTURER'S ESTABLISHED PRICE DOES NOT
 14 MEET THE STANDARDS OF (A) OF THIS PARAGRAPH].

15 * **Sec. 14.** AS 43.50.390 is amended by adding a new paragraph to read:

16 (6) "electronic smoking product"

17 (A) means a component, solution, vapor product, or other
 18 related product of an electronic cigarette, electronic cigar, electronic cigarillo,
 19 electronic pipe, or other similar product that is manufactured and sold for the
 20 purpose of being aerosolized to deliver nicotine or other substances to the
 21 person inhaling; if the product is sold as a disposable integrated unit containing
 22 a power source and delivery system, or as a kit containing a refillable
 23 electronic smoking system and power source, the entire unit shall be
 24 considered an electronic smoking product for the purposes of this definition;

25 (B) does not include a

26 (i) product that is subject to taxation under
 27 AS 43.61.010 - 43.61.030 that does not contain nicotine;

28 (ii) drug, product, or combination product approved for
 29 sale by the United States Food and Drug Administration, as those terms
 30 are defined in 21 U.S.C. 301-392 (Food, Drug, and Cosmetic Act); or

31 (iii) product that has been approved by the United

1 States Food and Drug Administration for sale as a smoking cessation
2 product, tobacco dependence product, or modified risk tobacco product.

3 * **Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 APPLICABILITY. (a) AS 43.50.190(a), as amended by sec. 5 of this Act, and
6 AS 43.50.300, as amended by sec. 9 of this Act, apply to tobacco products sold on or after the
7 effective date of this Act.

8 (b) AS 43.50.330(a), as amended by sec. 9 of this Act, applies to the first monthly
9 return submitted after the first full month after the effective date of this Act.

10 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 TRANSITIONAL PROVISION: REGULATIONS. The Department of Revenue may
13 adopt regulations necessary to implement the changes made by this Act. The regulations take
14 effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
15 law implemented by the regulation.

16 * **Sec. 17.** Section 16 of this Act takes effect immediately under AS 01.10.070(c).

17 * **Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2016.