

2020 South Dakota Legislature

House Bill 1231**AMENDMENT 1231A FOR THE INTRODUCED BILL**

1 **An Act to authorize premium cigars to be shipped and transported and ~~modify~~**
2 **subject premium cigars to a tax~~provisions pertaining to premium cigars cap.~~**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4

5 ~~Section 1. That a NEW SECTION be added:~~

6 ~~Tax on sale of premium cigars.~~

7 ~~In lieu of the tax levied by § 10-50-61, a tax of fifty cents per premium cigar sold is imposed~~
8 ~~and shall be added to the amount of tax otherwise imposed under § 10-45-2 on the sale of~~
9 ~~any premium cigar.~~

10 ~~For purposes of this section, the term, premium cigar, has the same meaning as provided in~~
11 ~~§ 10-50-1.~~

12 **Section 1.** That § 10-50-1 be AMENDED:

13 **10-50-1. Definition of terms.**

14 Terms used in this chapter mean:

- 15 (1) "Consumer," any individual who is not a retailer or a licensed distributor or
16 wholesaler pursuant to § 10-50-9;
- 17 (2) "Dealer," or "retailer," any person other than a distributor or wholesaler, as defined
18 herein, who is engaged in this state in the business of selling cigarettes or tobacco
19 products at retail;
- 20 (3) "Distributor," any person engaged in this state in the business of producing or
21 manufacturing cigarettes, or importing into the state cigarettes, at least seventy-
22 five percent of which are purchased directly from the manufacturers thereof;

- 1 (4) "Licensed distributor," or "licensed wholesaler," a distributor or wholesaler licensed
 2 under the provisions of this chapter;
- 3 (5) "Person," any individual, firm, fiduciary, partnership, limited liability company,
 4 corporation, trust, or association, however formed;
- 5 (6) "Premium cigar," a cigar that:
 6 (a) Is hand-constructed;
 7 (b) Is wrapped in one hundred percent leaf tobacco;
 8 (c) Is bunched with one hundred percent tobacco filler;
 9 (d) Has a one hundred percent leaf tobacco binder;
 10 (e) Contains no filter, tip or nontobacco mouthpiece; and
 11 (f) Weighs at least six pounds per one thousand count;
- 12 (7) "Sale" or "sell," shall include or apply to gifts, exchanges, and barter;
- 13 ~~(7)~~(8) "Secretary," the secretary of revenue;
- 14 ~~(8)~~(9) "Tobacco products," cigars, premium cigars, snuff, chewing tobacco, and any other
 15 products made up or composed of tobacco in whole or in part, except cigarettes.

16 **Section 2.** That § 10-50-61 be AMENDED:

17 **10-50-61. Wholesale tax on tobacco products--Tax cap on premium cigars--**
 18 **Credit for tax paid.**

19 In ~~addition to the tax imposed by § 10-50-3, there~~ A tax is imposed, whether or
 20 not a sale occurs, a tax upon all tobacco products in this state ~~and,~~ upon a dealer without
 21 a physical presence in this state who sells, ships, or transports a premium cigar to a
 22 consumer in this state, and upon any person engaged in business as a licensed distributor
 23 or licensed wholesaler ~~thereof, at the of tobacco products. The~~ rate of tax imposed under
 24 this section is thirty-five percent of the wholesale purchase price of ~~such the~~ tobacco
 25 products, except a premium cigar is subject to a cap of fifty cents per premium cigar.
 26 Such tax shall be imposed upon a dealer without a physical presence in this state at the
 27 time ~~the an order for a premium cigar is placed by or for a consumer in this state and~~
 28 upon a distributor or wholesaler at the time the distributor or wholesaler brings or causes
 29 to be brought into this state tobacco products for sale; makes, manufactures, or fabricates
 30 tobacco products in this state for sale in this state; or ships or transports tobacco products
 31 to dealers in this state to be sold by those dealers. For the purposes of this chapter,
 32 wholesale purchase price is the price for which a manufacturer sells tobacco products to
 33 a licensed distributor or licensed wholesaler exclusive of any discount or other reduction.

1 ~~Notwithstanding the provisions of this section, no tax is imposed under this section~~
2 ~~upon any premium cigar that is subject to sales tax pursuant to § 10-45-2.10 .~~

3 Any ~~dealer without a physical presence in this state,~~ licensed distributor, or licensed
4 wholesaler who has paid tax pursuant to this section and subsequently sells the tobacco
5 products to another licensed distributor or licensed wholesaler for resale, or sells the
6 tobacco products outside of this state, shall receive a credit for the tax paid pursuant to
7 this section on such tobacco products.

8 **Section 3.** That § 10-50-99 be AMENDED:

9 **10-50-99. Shipment or transportation of cigarettes and tobacco products to**
10 **consumers by sellers or distributors prohibited--Premium Cigars excepted.**

11 No person who is engaged in the business of selling or distributing cigarettes or
12 tobacco products may ship or transport, or cause to be shipped or transported, cigarettes
13 or tobacco products to any consumer in the state. This section does not apply to premium
14 cigars. This section applies regardless of whether the person engaged in the business of
15 selling or distributing cigarettes or tobacco products is located within or without the state.