



To: Members of the Senate Finance Committee
From: Jim Clark – President of Straus Tobacconist
Date: June 1, 2017

Re: Tax-Cap for Cigars & Increased Revenue for the State of Ohio

Straus Tobacconist Background Information:

My name is Jim Clark, and I am the president of Straus Tobacconist located in downtown Cincinnati. My shop dates back to 1880, and is the third oldest tobacco shop in the country. I am currently celebrating my 39th year with Straus having started as a staff accountant and working my way up to own the business. As the owner of a small business, I've faced many challenges to my store's 137 year history and continued success, but not as great as the possibility as being put out of business by out-of-state, non-tax paying competitors.

OTP Tax View:

Cigar store owners across the state, including myself, are against any increase to OTP tax. We all appreciate the legislature removing the proposed OTP tax increase language from the budget.

In addition to removing the OTP tax increase language, I would like to ask the members of the Senate to look at the current business environment I face as a small business owner here in the state of Ohio.

There is a giant lack of competition with cigar sales between Ohio's small businesses and online stores that face no sales tax and no OTP tax. My small businesses can't survive if we stay on this route. We will be forced to close due to a lack of competition.

Also, the state of Ohio is going to see less and less OTP revenue.

The OTP rate for cigars is currently at 17%, and while I appreciate the legislature not raising it, I am asking for your help with making our small businesses more competitive because the current 17% is big cost disadvantage.

Real Life Example:

Below please see a table of the cost of cigars from my Ohio store compared to an online store.

ROMEO Y JULIETA 1875 CHURCHILL - Manufacturer's list price for a box of 25 cigars is \$105.49.

Purchase Comparisons	My Store (Attachment 1)	Online (Attachment 2)
Add Ohio OTP Tax	\$17.93	\$0.00
Freight / Shipping Charged	\$2.10	\$6.99
Total Cost for Ohio Retailer	\$125.52	n/a
Store's Sale Price	\$200.25	\$109.99
Add Sales Tax	\$14.02	\$0.00
Total Price Paid by Consumer	\$214.27	\$116.98

As you can see, I sell the same product **but have to charge almost double.**

The current OTP tax rate on cigars drives almost ALL large purchases of cigars out of Ohio, out of my shop, and to the online stores, that pay no tax.

If you Senators were buying any product that you wanted, why would you ever go someplace that charges you almost double for the exact same product? I'm guessing you probably wouldn't.

Solution and Request:

I am asking you to consider **creating a \$0.40-\$0.50 OTP tax cap per cigar.** (See attachment 3 for language)

- Eight other states have passed a cigar OTP tax cap (**See attachment 4**)
 - Cigar tax-caps have led to increased sales for small business owners
 - **NOTE: Consequently, cigar tax-caps have led to increased revenue for the state via increased sales in state**
 - After implementing a tax-cap on cigars, **in Wisconsin, cigar tax revenues to the state nearly doubled in just two years!** (**See attachment 5 for Wisconsin OTP revenue – pre and post cigar tax**)
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Why Cigars Should be Taxed Differently:

The reason for having a different tax (or tax cap) applied to cigars is simply because the sales dynamics around cigars and the products themselves are different from the other products lumped into the OTP category.

Premium cigars are found mostly in premium cigar shops and are kept in climate-controlled humidors. All the other items in the OTP category (smokeless, dip, etc.) can be found in several types of stores – ranging from convenience stores to gas stations where profits can be made up on other items.

Also, cigars are allowed to be shipped across state lines from **online shops based in states where there are no OTP taxes.**

When competing with online stores in other states, small businesses like mine cannot compete with online retailers that ship from areas with no excise taxes (**no sales or OTP**) on cigars.

Currently, over 60% of cigars purchased by Ohioans are purchased out-of-state stores.

- The State of Ohio is missing out on all of that tax revenue to other states.
 - Shops like mine are losing all of those sales to online stores and are suffering
-

Conclusion:

By instituting a \$0.40-\$0.50 per-cigar tax cap on cigars, the state will accomplish 3 goals:

1. **Increased revenue to the State of Ohio**
2. Increased sales in Ohio small businesses
3. A more competitive environment for small business cigar stores in Ohio vs. online stores.

Thank you for your consideration. Please do not hesitate to contact me if you have any questions.

Jim Clark
straustobacconist@fuse.net

ATTACHMENT 1



Straus Tobacconist - Cincinnati

410 Walnut St.

Cincinnati OH 45202
www.e-straus.com
(513) 621-3388

Ticket # 10028507 User: JCLARK
2/1/2017 5:22:43 PM

Name: Jim Clark

Item	Qty	Price	Total
Description			
RyJ Churchill	25	8.90	222.50
Romeo y Julieta Churchill			
Discount (10% Box Discount)			-22.25

Subtotal			200.25
Tax			14.02

Total			214.27
			=====

Tender:
CASH 214.27

Number of line items purchased: 1

Thank you!

Remember to LIKE us on Facebook to
keep
up-to-date on what's happening!

**Total discount -
You saved 22.25**

ATTACHMENT 2



1911 Spillman Dr.
Dept #26
Bethlehem, PA 18015
1-888-244-2790

ORDER CONFIRMATION

Order Confirmation # CI009468854
February 1st, 2017

Bill To	Ship To	Shipping Preference	Payment Type
JIM CLARK 410 Walnut St CINCINNATI, OH 45202 (513) 702-1947	JIM CLARK 410 Walnut St CINCINNATI, OH 45202 (513) 702-1947	CI Saver Shipping \$6.99 Estimated delivery date for in-stock items is 2-6 Business Days.	Credit Card: ...3387 Expires: 07/2020 Amount: \$116.98

Cart Items	Item #	In Stock	Price	Qty	Total
Romeo y Julieta 1875 Churchill BOX OF 25	W6-170127-32	In Stock	\$109.99	1	\$109.99

Notes:

- Contact us via the [Customer Service Request Form](#) or call us toll-free at **1-888-244-2790**.
- Customer Service Hours:
 - Monday through Friday, 7:00am to 11:00pm ET
 - Saturday, 9:00am to 7:00pm ET
 - Sunday, 9:00am to 5:00pm ET
- All orders may be subject to authorization.
- Remittance of any taxes on orders shipped outside of Pennsylvania is the responsibility of the purchaser.
- **Any order changes/additions/cancellations can only be requested through telephone contact with our Customer Service Department no later than 11:00pm ET. Customer Service can be reached at 1-888-244-2790.**

Sub-Total	\$109.99
CI Saver Shipping	\$6.99
Sales Tax	\$0.00
Order Total	\$116.98

the tax has not or will not be paid by another distributor, 78
including a retail dealer that has filed a signed statement with a 79
manufacturer in which the retail dealer agrees to pay and be 80
liable for the tax that would otherwise be imposed on the 81
manufacturer by section 5743.51 of the Revised Code. 82

(L) "Taxpayer" means any person liable for the tax imposed by 83
section 5743.51, 5743.62, or 5743.63 of the Revised Code. 84

(M) "Seller" means any person located outside this state 85
engaged in the business of selling tobacco products to consumers 86
for storage, use, or other consumption in this state. 87

(N) "Manufacturer" means any person who manufactures and 88
sells cigarettes or tobacco products. 89

(O) "Importer" means any person that is authorized, under a 90
valid permit issued under Section 5713 of the Internal Revenue 91
Code, to import finished cigarettes into the United States, either 92
directly or indirectly. 93

(P) "Little cigar" means any roll for smoking, other than 94
cigarettes, made wholly or in part of tobacco that uses an 95
integrated cellulose acetate filter or other filter and is wrapped 96
in any substance containing tobacco, other than natural leaf 97
tobacco. 98

(Q) "Premium cigar" means any roll for smoking, other than 99
cigarettes and little cigars, that is made wholly or in part of 100
tobacco and that has all of the following characteristics: 101

(1) The binder and wrapper of the roll consist entirely of 102
leaf tobacco. 103

(2) The roll contains no filter or tip, nor any mouthpiece 104
consisting of a material other than tobacco. 105

ATTACHEMENT 3 continued

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(3) The weight of one thousand such rolls is at least six 106
pounds. 107

(R) "Maximum tax amount" means fifty cents plus the tax 108
adjustment factor computed under this division. 109

In April of each year beginning in 2016, the tax commissioner 110
shall compute a tax adjustment factor by multiplying fifty cents 111
by the cumulative percentage increase in the consumer price index 112
(all items, all urban consumers) prepared by the bureau of labor 113
statistics of the United States department of labor from January 114
1, 2015, to the last day of December of the preceding year and 115
rounding the resulting product to the nearest one cent; provided, 116
that the tax adjustment factor for any year shall not be less than 117
that for the immediately preceding year. The maximum tax amount 118
resulting from the computation of the tax adjustment factor 119
applies on and after the ensuing first day of July through the 120
thirtieth day of June thereafter." 121

In line 102424, after "cigars" insert "or premium cigars" 122

Between lines 102431 and 102432, insert: 123

"(3) For premium cigars received by a distributor or sold by 124
a manufacturer to a retail dealer located in this state, the 125
lesser of twenty-two and one-half per cent of the wholesale price 126
of such premium cigars or the maximum tax amount per each such 127
premium cigar." 128

In line 102459, after "cigars" insert "or premium cigars" 129

Between lines 102467 and 102468, insert: 130

"(3) For premium cigars, whenever the premium cigars are 131
delivered to a consumer in this state for the storage, use, or 132
other consumption of the premium cigars, the lesser of twenty-two 133
and one-half per cent of the wholesale price of such premium 134

cigars or the maximum tax amount per each such premium cigar." 135

In line 102508, after "cigars" insert "or premium cigars" 136

In line 102511, reinsert "thirty-seven"; delete "forty-nine" 137

Between lines 102512 and 102513, insert: 138

"(3) For premium cigars, the lesser of twenty-two and 139
one-half per cent of the wholesale price of the premium cigars or 140
the maximum tax amount per each premium cigar." 141

In line 110686, after "5741.23," insert "5743.01," 142

In line 126842, after "sections" insert "5743.01," 143

The motion was _____ agreed to.

SYNOPSIS

Tax on premium cigars 144

R.C. 5743.01, 5743.51, 5743.62, and 5743.63; Section 803.280 145

Places a ceiling on the amount of excise tax on "premium 146
cigars" of 50¢ per cigar, effective July 1, 2015. Under the 147
pending bill, the rate of tax on other tobacco products is 148
increased from 17% to 22.5% of the wholesale price of the product. 149
The same rate would apply to premium cigars, but the maximum tax 150
would be 50¢ per cigar. 151

Requires the Tax Commissioner to annually increase the 50¢ 152
rate at the same rate as an increase in the Consumer Price Index. 153

Defines a premium cigar as a roll of tobacco with (1) a 154
binder and wrapper consisting entirely of leaf tobacco, (2) no tip 155
or filter or mouthpiece that is not made of tobacco, and (3) a 156
weight of at least six pounds per 1,000 rolls. 157

ATTACHMENT 4

STATES WITH A PER CIGAR TAX:

1. Michigan

[http://www.legislature.mi.gov/\(S\(014da445znyjul55vuiasu3j\)\)/mileg.aspx?page=getObject&objectName=mcl-205-427](http://www.legislature.mi.gov/(S(014da445znyjul55vuiasu3j))/mileg.aspx?page=getObject&objectName=mcl-205-427)

(g) Beginning July 1, 2004, for cigars, non-cigarette smoking tobacco, and smokeless tobacco, 32% of the wholesale price. However, beginning November 1, 2012 and through October 31, 2016, the amount of tax levied under this subdivision on cigars shall not exceed 50 cents per individual cigar.

2. Connecticut

http://www.cga.ct.gov/current/pub/chap_214a.htm#sec_12-330a

(2) Notwithstanding the provisions of subdivision (1) of this subsection, in the case of cigars the tax shall not exceed fifty cents per cigar.

3. Washington

<http://app.leg.wa.gov/RCW/default.aspx?cite=82.26.020>

(1) There is levied and collected a tax upon the sale, handling, or distribution of all tobacco products in this state at the following rate:

(a) For cigars except little cigars, ninety-five percent of the taxable sales price of cigars, not to exceed sixty-five cents per cigar;

4. Oregon

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors323.html

(1) A tax is hereby imposed upon the distribution of all tobacco products in this state. The tax imposed by this section is intended to be a direct tax on the consumer, for which payment upon distribution is required to achieve convenience and facility in the collection and administration of the tax. The tax shall be imposed on a distributor at the time the distributor distributes tobacco products.

(2) The tax imposed under this section shall be imposed at the rate of:

(a) Sixty-five percent of the wholesale sales price of cigars, but not to exceed 50 cents per cigar;

5. Arkansas

<http://www.lexisnexis.com/hottopics/arcodes/Default.asp>

(B) (i) The total amount of the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, 26-57-805, and 26-57-807 on cigars shall not exceed fifty cents (50cent(s)) per cigar.

(ii) If the total amount of the excise or privilege taxes levied under §§ 26-57-208, 26-57-803, 26-57-805, and 26-57-807 on cigars would exceed fifty cents (50cent(s)) per cigar, the excise or privilege tax rates under §§ 26-57-208, 26-57-803, 26-57-805, and 26-57-807 shall be reduced proportionally.

6. Iowa

<https://research.legis.iowa.gov/document?name=453A&type=code&year=2014&docId=773503BF-47B2-44E2-B85C-C2650E464516&uniqueId=773503BF-47B2-44E2-B85C-C2650E464516%20#453A>

a. A tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-two percent of the wholesale sales price of the tobacco products, except little cigars and snuff as defined in section 453A.42.

b. In addition to the tax imposed under paragraph "a", a tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-eight percent of the wholesale sales price of the tobacco products, except little cigars and snuff as defined in section 453A.42.

c. Notwithstanding the rate of tax imposed pursuant to paragraphs "a" and "b", if the tobacco product is a cigar, the total amount of the tax imposed pursuant to paragraphs "a" and "b" combined shall not exceed fifty cents per cigar.

7. Rhode Island

<http://sos.ri.gov/documents/archives/regdocs/released/pdf/DOTAX/7784.pdf>

(b) Cigar Tax Rate. The tax rate for cigars is eighty (80%) of the Wholesale Cost, with a maximum tax of no more than fifty cents (\$0.50) per cigar. If the wholesale value of the cigar is \$0.63 or more, then the maximum tax due on that cigar is fifty cents (\$0.50).

ATTACHMENT 4 continued

8. Wisconsin

<https://docs.legis.wisconsin.gov/statutes/statutes/139/III/76>

(1) An excise tax is imposed upon the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale or other disposition for any purpose of tobacco products by any person engaged as a distributor of them at the rate, for tobacco products, not including moist snuff, of 71 percent of the manufacturer's established list price to distributors without diminution by volume or other discounts on domestic products and, for moist snuff, at the rate of 100 percent of the manufacturer's established list price to distributors without diminution by volume or other discounts on domestic products.

The tax imposed under this subsection on cigars shall not exceed an amount **equal to 50 cents for each cigar**. On products imported from another country, not including moist snuff, the rate of tax is 71 percent of the amount obtained by adding the manufacturer's list price to the federal tax, duties and transportation costs to the United States. On moist snuff imported from another country, the rate of the tax is 100 percent of the amount obtained by adding the manufacturer's list price to the federal tax, duties, and transportation costs to the United States.

ATTACHMENT 5

Wisconsin Tobacco Products

by return processed date							
Month	Year	Tobacco	Moist Snuff	Cigars	Totals	Cigar Share	
Received	Received						
2	2008	\$ 309,918.55	\$ 1,968,477.12	\$ 484,743.54	\$ 2,763,139.21	18%	
3	2008	\$ 221,751.83	\$ 1,799,862.95	\$ 524,425.12	\$ 2,546,039.90	21%	
4	2008	\$ 368,385.02	\$ 2,567,153.96	\$ 607,446.95	\$ 3,542,985.93	17%	
5	2008	\$ 465,057.46	\$ 2,244,635.33	\$ 698,947.60	\$ 3,408,640.39	21%	
6	2008	\$ 549,729.17	\$ 2,816,630.30	\$ 661,552.27	\$ 4,027,911.74	16%	
7	2008	\$ 503,508.22	\$ 2,472,650.45	\$ 877,723.82	\$ 3,853,882.49	23%	
8	2008	\$ 607,713.49	\$ 2,315,008.62	\$ 767,907.31	\$ 3,690,629.42	21%	
9	2008	\$ 401,495.78	\$ 2,232,400.96	\$ 853,059.57	\$ 3,486,956.31	24%	
10	2008	\$ 402,549.20	\$ 2,486,490.37	\$ 781,733.39	\$ 3,670,772.96	21%	
11	2008	\$ 651,958.04	\$ 2,049,894.00	\$ 462,815.22	\$ 3,164,667.26	15%	
12	2008	\$ 369,138.38	\$ 2,286,101.66	\$ 441,101.17	\$ 3,096,341.21	14%	
		\$ 4,851,205.14	\$ 25,239,305.72	\$ 7,161,455.96	\$ 37,251,966.82	19%	
1	2009	\$ 515,208.04	\$ 2,001,444.92	\$ 641,695.01	\$ 3,158,347.97	20%	
2	2009	\$ 471,716.89	\$ 2,553,218.69	\$ 549,997.97	\$ 3,574,933.55	15%	
3	2009	\$ 390,623.14	\$ 1,925,833.68	\$ 652,921.55	\$ 2,969,378.37	22%	
4	2009	\$ 98,669.29	\$ 1,881,041.84	\$ 583,624.97	\$ 2,563,336.10	23%	
5	2009	\$ 957,073.01	\$ 2,260,342.27	\$ 450,605.54	\$ 3,668,020.82	12%	
6	2009	\$ 759,203.88	\$ 2,318,009.95	\$ 888,484.56	\$ 3,965,698.39	22%	
7	2009	\$ 762,002.14	\$ 2,853,176.80	\$ 1,011,913.33	\$ 4,627,092.27	22%	
8	2009	\$ 751,216.84	\$ 2,276,379.86	\$ 1,218,665.11	\$ 4,246,261.81	29%	
9	2009	\$ 1,444,617.14	\$ 2,606,906.81	\$ 1,284,681.95	\$ 5,336,205.90	24%	
10	2009	\$ 651,828.60	\$ 2,647,730.63	\$ 1,176,820.02	\$ 4,476,379.25	26%	
11	2009	\$ 596,409.61	\$ 2,642,164.79	\$ 929,741.10	\$ 4,168,315.50	22%	
12	2009	\$ 574,905.96	\$ 1,934,496.00	\$ 651,386.02	\$ 3,160,787.98	21%	
		\$ 7,973,474.54	\$ 27,900,746.24	\$ 10,040,537.13	\$ 45,914,757.91	22%	
1	2010	\$ 323,751.01	\$ 893,634.00	\$ 364,512.91	\$ 1,581,897.92	23%	
2	2010	\$ 1,210,691.00	\$ 3,824,120.00	\$ 1,598,712.00	\$ 6,633,523.00	24%	
3	2010	\$ 983,639.00	\$ 4,254,735.48	\$ 1,710,067.00	\$ 6,948,441.48	25%	
4	2010	\$ 979,107.76	\$ 3,915,696.00	\$ 1,518,403.17	\$ 6,413,206.93	24%	
5	2010	\$ 684,452.00	\$ 2,513,901.00	\$ 1,372,060.00	\$ 4,570,413.00	30%	
6	2010	\$ 1,156,858.00	\$ 2,564,483.00	\$ 1,365,937.50	\$ 5,087,278.50	27%	
7	2010	\$ 835,628.00	\$ 3,505,263.00	\$ 1,775,626.00	\$ 6,116,517.00	29%	
8	2010	\$ 854,537.00	\$ 3,036,611.00	\$ 1,361,918.50	\$ 5,253,066.50	26%	
9	2010	\$ 588,999.00	\$ 2,923,259.00	\$ 1,548,785.00	\$ 5,061,043.00	31%	
10	2010	\$ 273,296.00	\$ 1,467.00	\$ 604.00	\$ 275,367.00	0%	
11	2010	\$ 250,030.00	\$ 551,044.00	\$ 220,144.00	\$ 1,021,218.00	22%	
12	2010	\$ 1,366,493.00	\$ 1,944,263.00	\$ 956,991.00	\$ 4,267,747.00	22%	
		\$ 9,507,481.77	\$ 29,928,476.48	\$ 13,793,781.08	\$ 53,228,719.33	26%	

2008
Cigar
Tax Cap
Adopted

2 Years
Later,
Cigar Tax
Revenue
Nearly
Doubled