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Wyden Statement on Tobacco Tax Avoidance and Evasion
As Prepared for Delivery

Today the Finance Committee will examine a classic case of tax evasion: How dozens of companies making tobacco products dodge taxes owed under current law by changing only a few words on packaging labels. This evasion fleeces taxpayers out of billions of dollars, and it means children and teens are more easily hooked on tobacco.

The tax evasion tale goes like this: In 2009, Congress renewed the Children's Health Insurance Program, which currently provides insurance coverage to more than eight million children each year. To pay for that coverage, Congress raised excise taxes on certain types of tobacco products, including cigarettes and loose, roll-your-own tobacco. The tax rates on tobacco for pipes and some large cigars, however, remained lower. So immediately after the law was enacted, companies pried open a big loophole. They started changing the labels on their packaging.

Products that would have been labeled "roll-your-own" tobacco one day were labeled "pipe" tobacco the next, and the tax bill on them plummeted. Companies also stuffed "small cigars" with a few extra grams of tobacco. That way, they'd be considered "large cigars" and be taxed at a lower rate.

The numbers show how big this loophole has become. Sales of pipe tobacco have skyrocketed -- more than tenfold in just five years. It seems implausible that so many more Americans would suddenly start smoking pipes.

Today, the Finance Committee will inquire as to why it's so easy to skirt the law. Clearly, there has been a lapse in good government. After five years, the Treasury Department's Alcohol and Tobacco Tax and Trade Bureau, or TTB, still has not drawn a meaningful distinction between tobacco products. Instead, they've ignored everything except for the words on the package: "roll-your-own" or "pipe."

All it takes to exploit this loophole is some ink on a label, and the committee will see it demonstrated today. No muss, no fuss, no teams of tax lawyers pouring over legal documents.

Unfortunately, the financial burden this loophole inflicts on America's taxpayers is enormous. The committee will hear today that the tobacco loophole has cost taxpayers more than \$2 billion over the last five years -- more than \$2 billion.

Furthermore, the loophole seriously undermines the effort to discourage smoking among America's children and teens. According to the Surgeon General, evidence shows that raising the cost of cigarettes stops kids from smoking. But when tobacco is cheap because of a blatant loophole, young people will buy it.

TTB has had ample time to solve this problem, but it hasn't followed through. Today we are going to ask why. Is it a lack of resources needed to mount an adequate effort at enforcement? After all, TTB has only four criminal agents to enforce the law for the entire country. Could it be that one hand doesn't know what the other is up to? When the Food and Drug Administration was dragged into the situation, it made matters worse by actively allowing companies to continue using the loophole. The FDA even sent letters to companies giving them the "OK."

My bottom line is that this loophole hurts taxpayers and kids, and it needs to be closed. As always, we will seek to address this important issue in a bipartisan manner.

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