



## Roll Your Own Tobacco Machines: An Overview

This fact sheet is designed to answer basic questions about “roll your own” (RYO) tobacco, its impact on public health, and some of the options communities might consider in regulating these products. The information contained in this document is not intended to constitute or replace legal advice.<sup>1</sup>

### Q: What are RYO machines?

**A:** Cigarette-making machines can best be divided into three categories: (1) machines capable of making a carton of cigarettes in under ten minutes; (2) machines capable of making a pack of cigarettes in under ten minutes; and (3) those machines intended for home use. This fact sheet does not address home-use RYO machines.

The other two types of machines have been in use since 2008, when some retailers began to lease or purchase machines capable of producing cigarettes in-house for retail sale. The customer purchases loose tobacco and empty cigarette tubes from the retailer who possesses the machine. The customer then uses these components to make the final RYO cigarette product – either a carton or a pack of cigarettes – following either written instructions or instructions provided by the machine.



The “RYO Filling Station” is the most common of the commercial cigarette carton producers. Information about this machine and its operation can be found at the company’s website at [www.ryofillingstation.com](http://www.ryofillingstation.com). Interested retailers can buy a machine for approximately \$30,000 to \$35,000. This manufacturer promises a retailer who purchases a machine that it will not sell a machine to a competitor within the retailer’s “territory,” and attests to having over 1,700 machines in forty states.

The “RYO Filling Station” is a sizeable, red box measuring about four feet tall and three feet wide. A hopper, where the loose tobacco is poured into the machine, is located on the top of the device. The box of empty cigarette tubes is loaded at a door located on the front of the machine. A small touch screen on the front of the machine prompts a customer through the steps necessary to produce the cigarettes. The finished cigarette is expelled from the machine through a chute. A carton of cigarettes (200 cigarettes) can be

produced in approximately ten minutes at a cost ranging from \$20 to \$30, depending on store location and state taxes. Some RYO retailers provide a chair in front of the machine so the customer can sit and remove the finished cigarettes from the machine and organize them into a box that holds a complete carton.

A smaller commercial cigarette pack producer is available online at [www.freshchoicetobacco.com](http://www.freshchoicetobacco.com). The “Fresh Choice Electric Cigarette System” table-top unit produces a pack of cigarettes in two minutes. Customers sit at a table with the machine in front of them. They load tobacco into the machine and then load each cigarette tube individually. This particular model costs \$499 and can be purchased on the company’s website for either commercial or home use. The website also sells loose tobacco, cigarette tubes, and other accessories to improve the cigarette quality.

Both these machines are purported to be self-service. Consequently, RYO retailers argue that they are not actually making the cigarettes for the customer. For example, the “RYO Filling Station” provides a touch screen to guide the customer. The company’s website also details the steps needed for a customer to make the cigarettes and offers both a video and a downloadable training manual. The “Fresh Choice Electric Cigarette System” provides directions on the company’s website and with the purchase of the machine.

**Q: How does this affect tax collected?**

**A:** Loose tobacco historically has made RYO cigarettes cheaper than manufactured ones. Effective April 1, 2009, the federal tobacco tax was increased on most tobacco products, cigarette papers, and cigarette tubes. Before the tax increase, the tax on both loose cigarette tobacco and loose pipe tobacco was \$1.0969 per pound. The loose cigarette tobacco tax then rose to \$24.78 per pound, representing an increase of more than 2,000% in taxation. However, the tax increase on pipe tobacco only rose to \$2.8311 per pound, a 158% tax increase.<sup>2</sup> Compounding this price discrepancy, most states’ tobacco taxes on all loose tobacco remain at a much lower taxation rate than for manufactured tobacco products.

The significantly smaller federal tax increase on pipe tobacco has led RYO users to switch to actual or mislabeled pipe tobacco in order to circumvent the higher federal tax on cigarette tobacco. In some cases, the loose cigarette tobacco simply has been relabeled to avoid the higher tax. In other cases, actual pipe tobacco is sold to make the cigarettes. Within a year of the tax increase, national loose cigarette tobacco sales fell by 61% while pipe tobacco sales increased 233%.<sup>3</sup> Enforcement to ensure that the correct tax is assessed to the appropriate type of RYO tobacco is extraordinarily difficult.

Regardless of which RYO tobacco type is used by the smoker, state sales tax revenues decrease when smokers switch from buying manufactured cigarettes to RYO cigarettes. The revenue reduction occurs because of lower tax rates on loose tobacco compared to manufactured cigarettes and sales tax reductions assessed on cheaper in-house, machine-produced cigarettes.

**Q: How does this affect public health?**

**A:** Cheap cigarettes, sometimes less than half the price of premium brand cigarettes, undercut the evidence-based public health benefit of keeping cigarette prices high in order to deter youth from smoking, reduce the number of cigarettes consumed by a smoker, and prompt smokers to quit where the cost of smoking is calculated into their decision to quit.

At this time it is not known whether these machine-produced RYO cigarettes specifically attract underage smokers. Youth are notoriously brand conscious,<sup>4</sup> but they are also likely to be attracted by the discounted price of these products and might find that self-service machines help them evade minimum-age laws. To get a better sense of the effect of these products on youth use, jurisdictions could ask youth in tobacco use surveys about RYO cigarettes manufactured in a retail store, and also conduct compliance checks with underage youth who are aiming to use these machines.

**Q: Could we classify retailers with machines as “manufacturers”?**

**A:** In July 2012, the new federal transportation reauthorization bill (known as “MAP-21”) became law. This bill included a provision that defined store owners who “rent” RYO tobacco machines to customers as tobacco manufacturers.<sup>5</sup> This means that roll-your-own retailers are now required to pay federal license fees and excise taxes, a change that will raise the price of RYO cigarettes and eliminate the tax loophole that allowed retailers to avoid the financial consequences of manufacturing cigarettes on their premises. This provision is likely to have a large national effect on RYO retailers nationwide and may result in many of them going out of business.

However, state and federal taxation and licensing schemes are legally distinct, so states may still pass their own laws imposing state licensing and tax requirements for manufacturers on RYO retailers. States may define “manufacturers” differently than federal law. Their existing laws may, or may not, be helpful in making state-level determinations that these RYO retailers are “manufacturers.” In the absence of sufficient state law to rely on, many legislative bills are being introduced to deem these RYO retailers “manufacturers.” To date, at least five states have issued regulations or laws classifying RYO retailers as manufacturers, resulting in lawsuits.<sup>6</sup> Litigation in state courts may be affected by the new federal law. First, many retailers may be less likely to resist state regulation in light of the expanded federal definition. Second, state court decisions could be indirectly affected if the broad federal definition makes it more likely that judges will construe state statutes broadly.

See the Consortium’s [The Effect of the Federal Transportation Reauthorization Bill on State and Local Regulation of RYO Retailers](#) publication for more details about these issues.

**Q: Could we require an annual fee to operate the machine?**

**A:** Yes. For example, the Governor of Massachusetts has included in his state budget proposal for fiscal year 2013 a \$25,000 annual license fee for RYO machines capable of producing “more than ten products per minute” and a \$5,000 annual license fee for machines capable of producing fewer products per minute. Licensed machines must be outfitted with an accurate counter that will provide, upon the Department of Revenue’s request, an accurate number of units produced.<sup>7</sup>

**Q: Could we prohibit the commercial use of RYO machines?**

**A:** Yes, a complete ban would eliminate the sale of deeply-discounted cigarettes. In Arkansas, a statewide restriction on retailer possession or use of RYO machines went into effect on January 1, 2012, based on the rationale that these machines exploit tax discrepancies between loose cigarette tobacco and loose pipe tobacco and that this “would hamper the [s]tate’s long-term public health efforts.”<sup>8</sup> Major cigarette manufacturers may support a ban to reduce competition. Carefully review any proposed language written or offered by the tobacco industry to ensure that unwanted elements have not been added to the policy.

**Q: Could we minimize the tax imbalance?**

**A:** Yes, states (and local jurisdictions with taxing powers) should consider raising taxes on all loose tobacco to minimize the tax discrepancy between RYO tobacco and finished cigarettes. Care should be taken to avoid the federal tax problem where the pipe tobacco tax increase was far less than that for loose cigarette tobacco, resulting in smokers switching from using loose cigarette tobacco to using pipe tobacco in these machines.

**Q: How does RYO relate to fire-safe cigarette laws?**

**A:** In-house machine-manufactured cigarettes probably violate fire-safe laws. All states and the District of Columbia<sup>9</sup> require that cigarettes be manufactured with special self-extinguishing paper. Fire departments support these laws to reduce fires caused by unattended, or carelessly disposed, cigarettes. The Massachusetts Department of Fire Services is investigating whether selling regular cigarette tubes to customers who then make their own cigarettes at the RYO retailer’s location violates the fire-safe cigarettes requirements of the state law,<sup>10</sup> and the City of New York has successfully sued RYO retailers for violating New York State’s fire-safe law.<sup>11</sup>

**Q: Are there any existing laws that might allow us to deal with RYO?**

**A:** Yes, the following existing state or local laws may help you regulate RYO machines:

1. **Self-Service Access:** Federal law prohibits self-service access to certain tobacco products in retail stores, except in those that are adult-only (18 years and older) establishments. If your state or local law restricts self-service access to tobacco

products in adult-only establishments, you might be able to require that any RYO retailer that permits customers to use these machines be an adult-only establishment at all times. If your state or local law completely prohibits self-service placement of tobacco products, you may be able to require that the RYO retailer either have employees operate the machines or remove them from their retail location. If you are crafting a new self-service definition, ensure that it includes machines that both vend and make cigarettes.

2. **Vending Machines:** Federal law prohibits certain tobacco products from being sold in vending machines, except when those vending machines are in adult-only establishments. State and local laws may already exist that ban traditional vending machines or limit where they can be located and how they can be operated. If a policy measure contains a broad definition for vending machine that includes cigarette-making machines, then they may be prohibited or conditions may be placed on them. If you are crafting a new vending machine definition, ensure that it includes machines that both vend and make cigarettes.
3. **Nuisance Laws/Sanitary Code:** Some RYO retailers may allow customers to handle loose tobacco from large bins for purchase. This contact with a product that is to be consumed may run afoul of local and state sanitary codes. Additionally, periodic inspections of the machines may be necessary to ensure the RYO retailers are maintaining them to meet safety and sanitary standards.
4. **Tax Stamps:** States that require each pack of cigarettes to bear their tax stamp may prohibit those in-house manufactured cigarettes that do not. For example, New York City has successfully argued that RYO retailers in the city are engaging in tax evasion and are violating both the Federal Contraband Cigarette Trafficking Act and the New York State Cigarette Marketing Standards Act.<sup>12</sup>

**Q: How can we deter retailers from placing RYO machines in their stores?**

**A:** As mentioned above, the federal government has now designated RYO retailers as manufacturers, putting RYO retailers on the same footing as large cigarette manufacturers and eliminating their ability to evade federal licensing fees and conventional cigarette excise taxes. It is important to recognize that the new federal law will likely make it easier for states and localities to regulate RYO retailers. If the expanded federal definition makes RYO machines prohibitively expensive or drives RYO retailers out of business, they are much less likely to invest resources in challenging state and local regulations. It remains to be seen how great an impact MAP-21 will have; were many RYO retailers to close, this could obviate the need for further state efforts to regulate them.

In the meantime, warning tobacco retailers about the possible types of policy options discussed in this fact sheet and in our guide for *Regulating Roll Your Own Tobacco Machines*, whether enacted or only proposed, may sufficiently deter them from purchasing these machines. Local and state tobacco control programs could blunt the

infiltration of these machines by simply and legitimately discouraging retailers from purchasing them.

State courts, the revenue departments, and/or fire marshals may make determinations that either prohibit the use of these machines completely or require such financial burdens, through additional tax payments, license fees, MSA payments, or significant staff time, that profitability will substantially decrease for the retailer who purchases an RYO machine.

Additionally, telling RYO retailers who have spent \$30,000-plus on machines that they must now remove them is politically difficult. If you are in a jurisdiction that does not have RYO machines, it would be easier, politically speaking, to prohibit these machines before they are in operation. Deterring retailers from purchasing these machines before and while policy efforts are underway will reduce political opposition. This is especially true if your policy efforts take several months, or even years, to achieve. The new federal law is also likely to discourage potential RYO retailers.

*Last Updated: October 2012*

## NOTES

<sup>1</sup> The information contained in this document is not intended to constitute or replace legal advice.

<sup>2</sup> *Federal Excise Tax Increase and Related Provisions*, U.S. Dep't of the Treasury, Alcohol & Tobacco Tax & Trade Bureau, [http://www.ttb.gov/main\\_pages/schip-summary.shtml](http://www.ttb.gov/main_pages/schip-summary.shtml) (last visited Feb. 27, 2012).

<sup>3</sup> See *The Problem with Roll-Your-Own (RYO) and Other Smoking Tobacco*, Campaign for Tobacco Free Kids, <http://www.tobaccofreekids.org/research/factsheets/pdf/0336.pdf> (last visited Feb. 27, 2012) (citing *Tobacco Statistics*, U.S. Dep't of the Treasury, Alcohol & Tobacco Tax & Trade Bureau, available at <http://www.ttb.gov/tobacco/tobacco-stats.shtml>).

<sup>4</sup> See *Best Practices for Comprehensive Tobacco Control Programs - 2007*, U.S. Ctrs. for Disease Control & Prevention, 32-33 (Oct. 2007), available at [http://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/pdfs/2007/BestPractices\\_Complete.pdf](http://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2007/BestPractices_Complete.pdf).

<sup>5</sup> Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) of 2012, Pub. L. No. 112-141 (codified as amended in scattered sections of 23 U.S.C.) § 100122.

<sup>6</sup> See, e.g., *State v. N. of the Border Tobacco, L.L.C.*, 32 A.3d 548 (N.H. 2011); Verified Complaint, *R.W. Petersen, L.L.C. v. Wis. Dep't of Revenue*, No. 11-CV-4431, (Wis. Cir. Ct. Oct. 4, 2011); *Connecticut v. Tracey's Smoke Shop and Tobacco, LLC*, CV-11-6024334S, slip op. (Conn. Super. Ct. Feb. 24, 2012).

<sup>7</sup> Mass. Office of the Governor, *House 2 - Outside Sections*, FY2013 Budget Recommendations, [http://www.mass.gov/bb/h1/fy13h1/os\\_13/hout.htm](http://www.mass.gov/bb/h1/fy13h1/os_13/hout.htm) (last visited Feb. 27, 2012).

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<sup>8</sup> *New Law Will Ban Commercial Cigarette Rolling Machines*, Arkansas Attorney General Dustin McDaniel, (Apr. 7, 2011), [http://ag.arkansas.gov/newsroom/index.php?do:newsDetail=1&news\\_id=402](http://ag.arkansas.gov/newsroom/index.php?do:newsDetail=1&news_id=402) (referring to Act 836 of 2011, effective July 1, 2012, amending ARK. CODE TIT. 26, ch. 57, subch. 2 to bar licensed tobacco retailers from operating a commercial “cigarette rolling machine.”)

<sup>9</sup> *States That Have Passed Fire-Safe Cigarette Laws*, National Fire Protection Association, <http://www.nfpa.org> (follow hyperlinks for “Safety Information,” “For consumers,” “Cause,” “Smoking,” and “Coalition for Fire-Safe Cigarettes”) (last visited Feb. 27, 2012).

<sup>10</sup> Mass. Ann. Laws ch. 64C, §§ 2A-2F (LexisNexis 2008 & Supp. 2011).

<sup>11</sup> *City of New York v. Island Smokes L.L.C.*, No. 11-CV-08189 (S.D.N.Y. Dec. 16, 2011).

<sup>12</sup> *See, e.g., State & City of New York v. BB’s Corner, Inc. et al.*, 12-CV-1828, slip op. (S.D.N.Y. Jun. 25, 2012); *City of New York v. Island Smokes L.L.C.*, No. 11-CV-08189 (S.D.N.Y. Dec. 16, 2011); Complaint at ¶ 71, *City of New York v. Island Smokes L.L.C.*, No. 11-CV-08189, (S.D.N.Y. Dec. 16, 2011), 2011 WL 6055289.