

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATIONThe meeting was called to order by Representative Jim Braden at
Chairperson9:00 a.m./~~p.m.~~ on March 24, 1983 in room 519S of the Capitol.All members were present ~~except~~

Committee staff present:

Wayne Morris, Research Department
Tom Severn, Research Department
Don Hayward, Revisor of Statutes' Office
Nancy Wolff, Secretary to the Committee

Conferees appearing before the committee:

Paul Coleman, Phillip Morris Company
Mike Murphy, Phillip Morris Company
Mark Beshears, Department of Revenue
Charles Josephs, Board of Tax Appeals
Lucky DeFries, Department of Revenue
Janice Marcum, Property Valuation Department

The meeting was called to order by the Chairman.

Paul Coleman, representing the Phillip Morris Tobacco Company, spoke in support of Senate Bill 183 which would allow cigarette manufacturers to sample cigarettes in the state of Kansas in packages that would contain less than 20 cigarettes without affixing tax stamps to the packages. The manufacturers would continue to pay the tax on these cigarettes at the rates prescribed by law directly to the Director of Taxation.

One of the committee members asked Mr. Coleman if these manufacturers are paying sales tax on something they are giving away. Mike Murphy, Manager of Cigarette Taxes for Phillip Morris, U.S.A., responded that the manufacturers compute and pay sales tax on sample cigarettes based on the wholesale cost factors. (Attachment I)

Mark Beshears, Department of Revenue, testified that the Department would concur with the Senate amendments to Senate Bill 183 and would support the legislation.

Charles Josephs, representing the Board of Tax Appeals, testified relative to Senate Bill 263 which would allow appeals from the Board of Tax Appeals to be referred directly to the Appeals Court rather than being appealed to the District Court before being referred to the Appeals Court. Mr. Josephs stated that during fiscal year 1982, the Board of Tax Appeals received 40 appeals from orders of the Director of Property Valuation and 15 from the Director of Taxation. (July 1, 1981 - June 30, 1982) In the first half of fiscal 1983, ten appeals were received from PVD orders and 8 appeals from taxation orders. From July 1, 1982 to December 31, 1982, two Property Valuation cases and 8 Director of Taxation cases were appealed from the Department of Property Valuation and Director of Taxation areas and approximately 14% of the Board orders in these matters (only those from PVD and Director of Taxation) have been appealed to the District Court.

Mr. Lucky DeFries, an attorney for the Department of Revenue, stated that the Department agrees with the testimony of the Board of Tax Appeals.

Janice Marcum, Property Valuation Department, testified with regard to Senate Bill 275 which would cause a statewide reappraisal of property. She stated that the Department intends to go to a consultant with a tried and proven computer program for processing and updating data on real property during and after the reappraisal. She stated that the computer system would compute value based on replacement cost, comparative market sales and, if necessary, based on an income approach. She also stated that one advantage of a computer system is that you have the ability to go through and select

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATION,
room 519S, Statehouse, at 9:00 a.m. ~~p.m.~~ on March 24, 1983

comparative figures in seconds where an individual would spend days and possibly never be able to make a comparison. The computer would enable local entities to all use the same program package and would therefore be using the same figures for the reappraisal.

Representative Rolfs made a motion to table Senate Bill 263. Representative Leach seconded the motion.

Representative King made a substitute motion to report Senate Bill 263 favorable for passage and Representative Vic Miller seconded the motion. The motion carried. Representative Wunsch voted "No".

Representative Rolfs made a motion that Senate Bill 383 be reported favorably and placed on the consent calendar. Senate Bill 383 would authorize the Department of Revenue to use a writ of mandamus to require taxpayers to file income tax returns if, after notification by the Director of Taxation, the taxpayer refuses or neglects to file a return within 20 days. Representative Aylward seconded the motion. The motion carried.

Representative Rolfs made a motion that Senate Bill 384 be reported favorably and placed on the consent calendar. Senate Bill 384 would authorize the Secretary of Revenue to contract with a private debt collection agency and enter into reciprocal agreements with other states for the collection of delinquent taxes. The maximum fee for private collection would be 50 percent of the delinquent taxes, penalty and interest collected, and the funds would have to be remitted to the Department within 45 days from collection. Agencies would have to post a bond of \$100,000. Certain confidentiality provisions of the sales, income, and inheritance tax law would be waived for purposes of collection of the delinquent amounts. Representative Roe seconded the motion.

Representative Lowther made a substitute conceptual motion that the Property Valuation Department be included under the provisions of Senate Bill 384. Representative Rolfs seconded the motion. The motion carried.

Representative Lowther made a motion that Senate Bill 384 be reported favorable for passage as amended and Representative Rolfs seconded the motion. The motion carried. Representative Erne passed on the vote.

The committee discussed Senate Bill 382 which would aid in the enforcement and collection of the Kansas retailers' sales tax by making individuals responsible for the collection and payment of the tax liable if they fail to collect or account for the tax, regardless of the form under which the retailer conducts business. The Department of Revenue requested this bill to close a potential loophole of claims that a particular individual was responsible only for the collection and not the payment of the tax, or that an officer is not liable for the sales tax debts of a corporation.

Representative Vice Miller made a motion that Senate Bill 382 be reported favorable for passage and Representative Leach seconded the motion. The motion carried.

The committee discussed Senate Bill 293 which amends a law pertaining to property that is exempt from property taxes. The bill would continue the exemption applicable to school district buildings and grounds when such property is leased by the school district to another political or taxing subdivision of the state or to any association, organization, or nonprofit corporation that is entitled to a tax exemption.

Representative Lowther made a motion that Senate Bill 293 be reported favorable for passage and Representative King seconded the motion. The motion carried.

The meeting was adjourned.

DATE: March 24, 1983

GUEST REGISTER

HOUSE

ASSESSMENT & TAXATION
COMMITTEE

NAME	ORGANIZATION	ADDRESS
Stacy DeFries	Dept. of Rev.	
M. Bedeans	" "	Topeka
BILL GARDNER	" "	" "
JANICE MARCUM	" "	" "
Ray Myers	Cap-Journal	Topeka
Jim Rysally	U.S.D # 512	Shawnee Mission
JOAN KOEPEL	K.A.S.B.	Topeka
John Meef	KLA	Topeka
Chip Wheeler	Leg. Policy Group	" "
WALTER DUNN	JEKOGA	" "
KARL COZAS	Board of Tax Appeals - Attorney	" "
Robert C. Hiney	Board of Tax Appeals - Member	" "
Salvatore Crable	Board of Tax Appeals - Member	" "
John Bennett	Bd of Tax Appeals Member	" "
Chas. Joseph	Bd of Tax App's - Chairman	" "
Ken Daches	KACI	TOPEKA
DAVID TURNAS	Chambee	Wichita
Kustan D. Thompson	Philip Morris Inc	NYC
Michael W. Murphy	Philip Morris Inc.	150 PARK AVE. NYC

To: THE HOUSE OF REPRESENTATIVES
ASSESSMENT AND TAXATION COMMITTEE

REASONS FOR SUPPORTING
SENATE BILL No. 183

Current state statute provides that the state excise tax rate on cigarettes shall be 11 cents per pack of 20 or fractional part thereof, and must bear a tax stamp. An exception is found in the case of free sample packs of five cigarettes or less, whereby the manufacturer pays the excise and sales tax directly to the Department of Revenue by invoice without the necessity of affixing tax stamps. This law has gone virtually unchanged since 1953. In the last 30 years, cigarette sampling practices have evolved.

There are over 300 brands, domestic and foreign, available to the public; obviously, therefore, the cigarette industry is highly competitive. In the years since the ban on cigarette advertising on television, sampling has become an increasingly important marketing practice.

When the current statute was enacted some 30 years ago, sample 4's were the norm. More recent market research, however, has shown that such samples are often insufficient to allow a consumer to give a brand a fair test. For this reason, sample 4's have been replaced, in large part, by 6's, 10's, 12's and full packs of 20.

When a manufacturer wants to use free samples in packs greater than 5 in this state, he must first find a licensed Kansas wholesaler to affix the tax stamps. This has become increasingly difficult as dealers get similar requests from several manufacturers, several times a year. The problem is compounded in cases of packs smaller than 20. The normal stamping process and machinery are geared to cartons of 10 packs of 20. The smaller packs must be stamped by hand, which further interrupts the distributor's normal business.

Besides the relief that passage of this bill would provide to the industry, it would also have benefits to the state. First, it would reduce the costs of collection of the applicable excise and sales taxes. Eliminating the need to affix tax stamps would obviously reduce the number and therefore the cost of actually printing the stamps. In addition, the current 3¼% allowance granted to the dealers who do the stamping would be eliminated on the samples. Direct payment of all sample taxes would ensure that Kansas would receive all revenue due, including sales tax, ten days after the end of the month in which such distributions occurred.

Additional revenues could also be realized by the state with increased sampling levels. The following table shows the number of free cigarettes distributed by Philip Morris alone in Kansas and its neighboring states in 1981 and 1982.

	<u>1981</u>	<u>1982</u>
KANSAS	1,398,100	2,671,500
COLORADO	4,402,360	7,938,660
MISSOURI	7,957,760	16,995,100
NEBRASKA	1,976,980	4,365,600
OKLAHOMA	3,075,340	8,548,900

Opponents of this bill have expressed certain reservations about its passage. The first notion is that sample cigarettes would somehow find their way into Kansas without the applicable excise and sales taxes being paid. Three of our four bordering states have higher tax rates than does Kansas. It would obviously not be to the manufacturers' economic advantage to use samples in Kansas for which the higher taxes of Missouri, for example, have been paid. Further, the companies maintain meticulous books, records and accounts which would withstand even the closest scrutiny by an auditor. So convinced is Philip Morris of the accuracy of their records, that they have invited the Director of Taxation to perform an audit. (copy attached) The Director's response is also attached, and says, "I am sure an audit would only confirm the accuracy of your client's books and records."

Cigarette sampling is an important marketing tool to the manufacturers, and they would certainly not do anything to jeopardize what they consider to be a privilege of sampling in Kansas. In addition, the bill contains its own penalty provision: the manufacturer could be barred from sampling for up to one year.

Another problem seems to be the fear that sample cigarettes will get into the hands of minors. The tobacco manufacturers adhere to a Code of Sampling Practices which provides in Article II, paragraph 1, "Persons who engage in sampling shall refuse to give a sample to any person whom they know to be under 21 years of age or who, without reasonable identification to the contrary, appears to be less than 21 years of age." Paragraph 2 of the same Article states, "Sampling shall not be conducted in any public place within two blocks of any centers of youth activities, such as playgrounds, schools, college campuses, or fraternity or sorority houses." Article III contains the compliance and enforcement provisions which require the contract between the manufacturer and the independent contractor doing the sampling to impose at least these standards. Persons doing the sampling must be monitored, and violations shall result in discharge.

Another point that has been raised is that sampling will induce people to smoke or increase consumption of those who are already smokers. There is no evidence to support this contention. Why, then, do the companies spend money on sampling if they do not think they will sell more cigarettes? The answer is that sampling is not intended to get people to smoke or to smoke more, but rather to try a different brand.

IT SHOULD BE NOTED THAT NONE OF THESE OBJECTIONS ARE GERMANE TO THE BILL UNDER CONSIDERATION. THEY PERTAIN ONLY TO THE PRACTICE OF CIGARETTE SAMPLING IN GENERAL.

There has been no indication that larger samples would be any more likely to go untaxed than would samples of five or less, which are already allowed under the existing law. Further, there is no greater danger of minors acquiring cigarettes just because larger sample packs are permitted or because they would not have to bear tax indicia. And finally, increasing the size of the sample packs and eliminating the need for them to be stamped would not increase consumption.

It is conceded that Kansas is generally regarded as having some of the best cigarette tax laws in the country; however, in order to keep them that way, we must be responsive to change. It would improve, rather than erode, Kansas tax laws to act favorably on Senate Bill No. 183, which would modernize a statute which has gone virtually unchanged for three decades.

The proposed legislation represents a reasonable and equitable approach to state tax collection in Kansas. The bill's provisions are not novel, but merely reflect a method of sample tax payment in place in the majority (37) of the states. Its intent is consistent with the long-standing recommendation of the National Tobacco Tax Association, of which Kansas is a member. That recommendation, reprinted in its entirety on the following page, is that manufacturers be permitted to distribute sample cigarettes, including packs of 20, without tax indicia directly to consumers and remit the taxes due on these distributions directly by report. This recommendation was most recently affirmed at NTTA's 1982 annual meeting.

RESOLUTION TWELVE

(Adopted unanimously by the National Tobacco Tax Association at its Fifty-sixth Annual Meeting, held in Chicago, Illinois, August 29 through September 1, 1982)

WHEREAS, some states prohibit cigarette manufacturers from distributing free sample cigarettes directly to consumers without tax indicia, and

WHEREAS, such a prohibition is an obstacle to the marketing of taxable tobacco products, and

WHEREAS, the direct payment and reporting by manufacturers of the tax due on sample cigarettes distributed directly to consumers is permitted by most states for the purposes of both collection and accountability, now, therefore, be it

Resolved, that, in the interests of uniformity, the National Tobacco Tax Association recommend that all states permit cigarette manufacturers to distribute sample cigarettes, including packs of twenty, without tax indicia directly to consumers, and to pay the tax on these distributions directly by report.

PAUL D. COLEMAN

ATTORNEY AT LAW

404 S. W. TOPEKA AVENUE • TOPEKA, KANSAS 66603
(913) 235-0400

March 4, 1983

Mr. Mark Beshears
Director of Taxation
State Office Building
Topeka, Kansas 66612

Re: Senate Bill No. 183

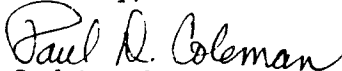
Dear Mr. Beshears:

On March 2, 1983, you appeared before the Senate Assessment and Taxation Committee. In your testimony, you expressed your concern that sample cigarettes could be brought into Kansas without the applicable excise and sales tax being paid. You will recall that at that time, Mr. Michael Murphy, Director - Tobacco Taxes of Philip Morris U.S.A., responded that Philip Morris maintains meticulous books, records and accounts that would withstand even the closest scrutiny by an auditor.

Philip Morris is convinced that these records are absolutely accurate, even to the point of underwriting the costs of an audit. To that end, I have been authorized by my principals at Philip Morris to extend an invitation to you and/or a field auditor to come to the company's offices for the purpose of conducting such an audit. Expenses will, of course, be paid by Philip Morris within the ethical and legal guidelines of Kansas.

We seriously hope that you will give this matter your consideration, and that you will accept this invitation. If you will let me know your decision, I will relay it to the company representatives.

Sincerely,


Paul D. Coleman

PDC:jm

cc: Mr. Michael Murphy



Kansas
DEPARTMENT OF REVENUE

State Office Building
TOPEKA, KANSAS 66625

(913) 296-3044

March 21, 1983

Mr. Paul D. Coleman
Attorney at Law
434 S.W. Topeka Avenue
Topeka, Kansas 66603

Re: Senate Bill 183

Dear Paul:

I am in receipt of your March 4, 1983 letter in which you expressed concern over my testimony regarding Senate Bill 183. It was not my intention to infer that your client or any other tobacco company would intentionally evade the cigarette tax laws of this state. I have no doubt that your client and all other like companies maintain accurate books and records. However, it has been the policy of this department to maintain a very tight control on all tobacco products coming into this state. This has been accomplished by excellent cooperation between the Department of Revenue and the tobacco industry. The department felt that passage of Senate Bill 183 as introduced, would be a retreat from this policy. I felt obligated to state the department's policy position in order that the tax committee could formulate its own opinion.

I wish to thank your client for their offer to have myself and/or a field auditor visit their offices for purpose of conducting an audit. I feel that such an audit is not necessary and would respectfully decline your offer. I am sure an audit would only confirm the accuracy of your client's books and records.

Again I wish to thank you and your client's cooperation in helping Kansas maintain a high standard of cigarette and tobacco tax administration and enforcement.

Sincerely,

A handwritten signature in cursive script that reads "Mark Beshears".

Mark Beshears
Director of Taxation

MB:jc