

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by Senator Paul "Bud" Burke at
Chairperson

11:00 a.m./p.m. on March 2, 1983 in room 526-S of the Capitol.

All members were present ~~XXXXX~~

Committee staff present: Tom Severn, Research Dept.
Wayne Morris, Research Dept.
Don Hayward, Revisor's Office

Conferees appearing before the committee:

Senator Ross Doyen
Paul Coleman, Phillip Morris
Mike Murphy, Phillip Morris
Mark Beshears, Dept. of Revenue
Sylvia Houglund, Dept. of Aging

The committee held a hearing on SB 183 which allows cigarette manufacturers to remit taxes on all sample cigarettes directly to the Kansas Department of Revenue, using a monthly report, and to allow larger sample packs. Senator Doyen, sponsor of the bill, explained the bill for the committee. (See Attachment #1)

Paul Coleman, representing Phillip Morris, spoke in support of this proposal. He outlined the reasons for supporting the bill. (Attachment #2) He said some of the problems they have now is with handstamping the free samples in packs. He said distributing unstamped sample packages of 20 cigarettes, aside from facilitating tax collection, could also help Kansas avoid some of the auditing problems that have arisen lately in other states where sample 20's have to be stamped.

Mark Beshears, Dept. of Revenue, spoke in opposition to this legislation. He said they have a philosophical problem with this bill. Without the tax on the package, there is a problem of tracing the samples that come into Kansas. Also, there is a problem of distribution of these cigarettes to minors by marketing agencies. He feels that Kansas has one of the best tax laws in the United States, even though we are in the minority.

Mike Murphy, Phillip Morris Co., said he would like to point out that Kansas might suffer in the matter of giving out cigarettes. He also feels that as to revenue laws, they are able to submit to any scrutiny with regard to taxes and have many reports which document every shipment of cigarettes shipped into the state. When it comes to the collection of sample cigarette tax, Kansas has no better ally than the cigarette manufacturer. He said they would be negligent to abuse the privilege in Kansas when it comes to sampling and he takes exception to the Revenue Dept. view. He said they should be more concerned about highjacking and other problems like that.

The committee considered SB 180 which provides income tax credit for mileage expense in delivering food. Senator Mulich, sponsor of this legislation, said he believes this is a good concept in delivering food to the elderly and the bill had been requested by the Area Agency on Aging.

Sylvia Houglund, Dept. of Aging, said the intent of the bill is to provide tax credit for home delivered meals. A great many older volunteers cannot continue to do this because of the high cost, and the tax credit will allow that kind of volunteer to continue. She does think the bill should be limited to older volunteers who deliver meals and groceries.

The committee considered SB 275, statewide reappraisal. The chairman commented that there seems to be an organized effort at this point to remove the centralized computer. He said some people believe this will lead to access to individual property records which could be abused for political purposes; for example, identifying legislators on the amount of personal property owned. Moving to eliminate the role of the county appraiser, he said, was one of many concerns we tried to alleviate by meeting with the Kansas County Appraisers Association members. He called the committee's attention to a memorandum from Gary Smith, President of KCAA (Attachment #3). He continued, saying that after many years, certainly at this late date in our consideration of this

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION,
room 526-S, Statehouse, at 11:00 a.m./p.m. on March 2, 1983

matter, we are withdrawing what in my opinion is a necessary tool to check to find out whether the counties are complying without sending field clerks out to go through the records individually. Removal of the computer would put us in a position of coming up with an unworkable bill. The purpose of the computer is to collect data so we can keep the values up and we aren't taking over the counties functions.

Senator Angell said the sub-committee came to unanimous agreement and he is amazed that the Association finds Section 2 is vague because they had a part of what Section 2 had to say and he is not about to back off to this committee after giving so much consideration to that.

The chairman said one thing to do about the concern on a centralized computer would be for the counties to send us the information with a code identification number. He thinks this is proper in Rules and Regulations. We are running out of time, and need to get this moving over to the House. There will be ample time to express their concerns when this bill gets to the House committee.

Senator Johnston moved to report SB 275 favorable for passage. Senator Angell seconded the motion.

Senator Hayden asked if any state has a centralized computer and Phil Martin said the state of Washington has this. Senator Hayden said it might be well to find out further if anything didn't work out and thus to avoid any pitfalls. The chairman said he thought we should get this information.

Senator Allen said if the people working with this bill are totally opposed to it he would have trouble with supporting this bill because of that. The chairman said he is trying to work out the problem with the centralized computer and thinks we can work together with a common objective. If the full association opposes the final project of this bill, we are out of business.

It was suggested that two cleanup amendments were needed.

Senator Angell made a substitute motion to adopt the technical amendments to change the date on page 6, line 221, to January 15; and on page 20, lines 739 and 740 to strike "subject to review and approval of the reappraisal review board". Senator Johnston seconded the motion and the motion carried.

Senator Johnston renewed his motion to report SB 275 favorable for passage.

Senator Montgomery moved and Senator Angell seconded the motion that an average capitalization rate used for appraisal of state assessed utilities be inserted in SB 275 on line 132.

Senator Johnston said this bill authorizes the collection of data and should not be expected to do anything else, only collecting raw data. He suggested that when we get the bill on "use value", establish what the cap rate will be.

Senator Mulich said we should put classification first.

The motion failed to pass.

Senator Johnston renewed his motion to report SB 275 as amended favorable for passage. The motion passed. Senators Thiessen, Mulich, Hayden, and Ehrlich asked to be recorded as voting "no".

The chairman told the committee we will have a working session on adjournment to review the figures of Research and Budget Division on the severance tax. The meeting will be in Room 527-S.

The chairman adjourned the meeting at 12 noon.

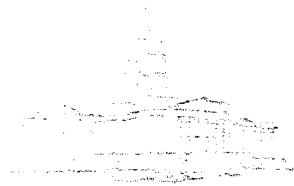
ASSESSMENT AND TAXATION

OBSERVERS
(PLEASE PRINT)

DATE	NAME	ADDRESS	REPRESENTING
MARCH 2	Susan Tanner	1702 Glenellen	Garden City
	Keith Melham	Amunok.	Hayden
	Tim Underwood	Topeka	KAR
	Paul Johnson	Topeka	PACK
	Duke Shurpfe	NYC	Philip Morris
	H. Michael Irish	NYC	Philip Morris
	Paul D Colman	Topeka	Philip Morris
	Chip Wheelen	"	Leg. Policy Group
	Frances Kastner	"	KEDA
	Ronald Musser	"	Ret. Fed. Emp.
	Richard GARRETT	"	Ret. Fed. Emp.
	Robert Gardner	KCK	WY. Co.
	Ann Eslick	Ulysses	Carout Co.
	Gary Smith	SHAWNEE	KCAA
	DON GORDON	LAWRENCE, KS	KCAA
	BILL EDDIS	TOPEKA	REVENUE
	M. Beshears	"	"
	Phil Mart	"	"
	John Meitz	Topeka	KLA
	Jim Hageman	Lakin	L.P.G.
	Steven Wischman	Topeka	Kan. Am. Cat.
	Pete McGill	"	Leg. Policy Group
	Cindy Amundson	Lawrence	Wide World

State of Kansas

Senate



ROSS O. DOYEN
PRESIDENT OF THE SENATE
PRESIDENT
NATIONAL CONFERENCE OF
STATE LEGISLATURES
SENATOR, TWENTY-THIRD DISTRICT
CLAY, CLOUD, DICKINSON, OTTAWA,
WASHINGTON COUNTIES
434 W. 9TH
CONCORDIA, KANSAS 66901

COMMITTEE ASSIGNMENTS
CHAIRMAN ORGANIZATION, CALENDAR AND RULES
LEGISLATIVE COORDINATING COUNCIL
CHAIRMAN INTERSTATE COOPERATION
COMMISSION
CHAIRMAN LEGISLATIVE BUDGET
VICE CHAIRMAN LEGISLATIVE COORDINATING
COUNCIL
MEMBER WAYS AND MEANS
AGRICULTURE AND LIVESTOCK
LEGISLATIVE POST AUDIT

Office of the President

STATE CAPITOL
TOPEKA, KANSAS 66612
913-296-2419

SB 183 allows cigarette manufactures to remit taxes on all sample cigarettes directly to the Kansas Department of Revenue, using a monthly report. Currently, only the taxes on samples of five or less cigarettes can be remitted directly. All other sample packs must bear tax stamps.

Direct payment of all sample taxes would insure that Kansas would receive all revenue due, including sales tax, ten days after the end of the month in which the samples are distributed. It should reduce our costs in collecting cigarette taxes and could potentially increase our revenues without increasing the cigarette taxes. We may be losing revenue because some manufactures, in their report of shipments to distributors, don't include sample shipments since such samples aren't considered to be saleable items. This can cause auditing problems in attempting to reconcile a distributor's record of stamp usage with available inventory.

SB 183 has the added benefit of relieving distributors of having to affix tax stamps to manufacturers' sample packs and would minimize the possibility that retailers might attempt to sell the samples rather than providing them free to the consumer, as intended. The packages would be clearly marked as samples and the lack of a tax stamp would further differentiate samples from purchased cigarettes. Thirty-seven other states use this method of sales tax collection on sample cigarettes.

2

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. Sampling is a means of getting consumers to try a different product, for the purpose of brand loyalty. There is no evidence that sampling increases consumption.

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. Sample 20's are widely used with new brand introductions.

Attch. 2

Commonplace are the coupons in newspapers and magazines whereby consumers can request a free pack of a certain brand. Also used are promotional offers such as, "buy one - get one free" or "buy a carton - get two packs free."

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. In cases of mail-in offers, the manufacturers are unable to send the cigarettes directly to the consumer. Rather, they must first sort out the coupons from Kansas and send them, along with the appropriate number of packs, to a point within the state where the cigarettes are stamped and re-mailed. Given the interstate nature of this practice, efforts to restrict such mailings are inconsistent with the Federal Jenkins Act. In general, the Jenkins Act provides that any person who mails, or transfers cigarettes in interstate commerce (where shipment is made to other than a licensed distributor located in a state taxing the sale or use of cigarettes) must provide the tax administrator, in the state where shipment is made, necessary data upon which to base assessment and collection of the state cigarette tax.

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.

Distributing unstamped sample packages of 20 cigarettes, aside from facilitating tax collection, could also help Kansas avoid some of the auditing problems that have arisen lately in other states where sample 20's have to be stamped. The monthly report of shipments to distributors, supplied to states by manufacturers, may not include sample shipments, since such transactions are not viewed as a saleable event. Unless the state requests and receives supplementary information from the manufacturer concerning sample shipments, it may be difficult, if not impossible, for state auditors to reconcile a particular distributor's record of stamp usage with available inventory. Eliminating the need for sample 20's to be tax stamped prior to distribution can reduce the likelihood of such time consuming auditing problems.

It is less likely that anyone would attempt to resell sample packs of 20 cigarettes that do not bear tax stamps. There have been incidents where consumers, who were residents of states requiring sample 20's to be stamped, unwittingly purchased sample merchandise at retail. These packs may have been associated with one of the promotional offers mentioned before, such as "buy one - get one free"; however, since the free pack of sample 20's had a tax stamp affixed, a retailer opted to place this pack in his retail inventory. Had it not been stamped, it would have been much more noticeable.

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

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.

from

SUPPLEMENTAL STATEMENT BY PROPONENTS
OF SENATE BILL No. 183

On March 2, 1983, The Senate Assessment and Taxation Committee heard testimony from Sen. Ross O. Doyen and Mr. Paul D. Coleman in support of Senate Bill No. 183. Also appearing was Mr. Mark Beshears who voiced certain reservations about the bill, to which Mr. Michael Murphy responded at the hearing. This memorandum will serve to supplement that response and the written testimony previously given to the committee, and will address the questions raised by Mr. Beshears.

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. Cigarette sampling is an important marketing tool to the manufacturers, and they would certainly not do anything to jeopardize what they deem is a privilege of sampling in Kansas. In addition, The bill contains, in lines 55 through 66, its own penalty provisions: the manufacturer could be barred from sampling for up to one year.

The other 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.

IT SHOULD BE NOTED THAT NEITHER OF THESE OBJECTIONS ARE GERMANE TO THE BILL UNDER CONSIDERATION, BUT PERTAIN ONLY TO CIGARETTE SAMPLING IN GENERAL. There has been no indication that sample 6's, 10's, 12's or 20's would be any more likely to go untaxed than would samples of 5 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 the tax indicia.

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.

KANSAS COUNTY APPRAISERS ASSOCIATION

EXECUTIVE COMMITTEE OFFICERS

March 2, 1983

GARY M. SMITH, CKA-ASA
President
Shawnee County Courthouse
Room 102
Topeka, Kansas 66603

Paul "Bud" Burke, Chairman
Senate Assessment and Taxation Committee

A discussion concerning remarks which I made before this committee on Tuesday, March 1, in behalf of the Kansas County Appraisers, left a great deal of doubt in the minds of this committee.

DON GORDON, CKA
President Elect
Douglas County Courthouse
Lawrence, Kansas 66044

I would like to take this time to clarify the Kansas County Appraisers stance on Senate Bill #275.

ROBERT GARDNER, CKA
Vice President
Wyandotte County Courthouse
Kansas City, Kansas 66101

1. The Kansas County Appraisers will support Senate Bill #275 in regards to the Appraisal Program. All appraisers would welcome the opportunity to correct the inequities between property as well as between classes of property.

ANN ESLICK, CKA
Immediate Past President
Grant County Courthouse
Ulysses, Kansas 67880

2. The New Section 2 has been discussed a great deal by the Appraisers Association, beginning with the Interim Study Committee hearings on Senate Bill #27. The position of the Association has been in past years and remains the same concerning Senate Bill #275.

PAULA MOEGE, CKA
Secretary-Treasurer
Shawnee County Courthouse
Topeka, Kansas 66603

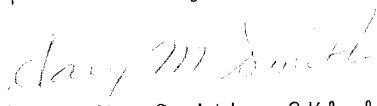
The Kansas County Appraisers are opposed to a centralized computer. While the Appraisers feel the Director needs a necessary amount of information in order to be assured that the counties are in compliance with the law, his necessity to have instantaneous updating has left all of the counties bewildered as to the Departments final goals. The Association feels the language of New Section 2 is vague in describing how a comprehensive computer program will be used during a reappraisal or even in updating the values once the appraisal is complete. As the New Section 2 is now written the Kansas County Appraisers Association is opposed to the comprehensive computer program.

EXECUTIVE COMMITTEE BOARD MEMBERS

TERRY V. BROWN, CKA
Montgomery County Courthouse
Independence, Kansas 67301

I stand ready to answer any questions you may have.

SAMUEL SCHMIDT, CKA
Riley County Courthouse
Manhattan, Kansas 66502


Gary M. Smith, CKA-ASA
President of KCAA

CHARLES (BRAD) WELSH
Kearny County Courthouse
Lakin, Kansas 67860

