

MINUTES OF THE HOUSE COMMITTEE ON ASSESSMENT AND TAXATION

The meeting was called to order by Representative Jim Braden at
Chairperson

9:00 a.m./~~p.m.~~ on February 23, 1984 in room 519S of the Capitol.

All members were present except:

Representative Larry Erne who was excused.

Committee staff present:

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

Conferees appearing before the committee:

Bill Edds, Revenue Department
Mark Beshears, Philip Morris Tobacco Company
Bill Mitchell, Tobacco Institute

Hearings were held on House Bill 3031 which would allow sample packages of cigarettes to be distributed in the State of Kansas. At the present time, the law limits sample packages to not more than five cigarettes. House Bill 3031 would limit sample packages to less than twenty cigarettes. The tax on such sample packages would be paid directly to the Department of Revenue and would not require a tax stamp to be affixed to the package of sample cigarettes.

Mark Beshears, representing the Philip Morris Tobacco Company, testified as a proponent of House Bill 3031. (Exhibits I and II)

Bill Mitchell, attorney for the Tobacco Institute, testified in support of House Bill 3031.

Bill Edds, Department of Revenue, stated that the Department does not have any problem with House Bill 3031.

The Committee then returned to discussion of House Bill 2968. When the committee met on February 21, 1984, a motion had been made by Representative Crowell that HB 2968 be reported adversely. Representative Rolfs seconded the motion. At that time, Representative Rolfs made a substitute motion that HB 2968 be conceptually amended to make certain if an incorrect address is published in the notice of tax sale, the sale would not be invalid. Representative Spaniol seconded the motion.

The vote was taken on the substitute motion and it failed, 9-10.

Representative Reardon made a substitute motion to amend House Bill 2968 on line 37 by reinserting the stricken language "if available"; also by inserting "if available" on line 51 and line 69 and anywhere else that it may be needed throughout the language of the bill. Representative Leach seconded the motion. The motion failed.

The Chairman then called for the vote on the original motion to report House Bill 2968 adversely. The motion carried, 10-9.

The meeting was adjourned.

STATEMENT IN SUPPORT OF
HOUSE BILL NO. 3031

Current Kansas law levies an excise tax on cigarettes of 16 cents per 20 cigarettes or fraction thereof and requires a tax stamp on each pack as evidence of payment. There is an exception for free sample packs of five or fewer cigarettes, in which case the manufacturer pays the excise tax directly to the Department of Revenue by invoice without affixing tax stamps. This provision of the law remained virtually unchanged since 1953 despite the evolution of cigarette sampling practices over the past 30 years.

The cigarette industry is highly competitive. There are over 300 brands, domestic and foreign, available to the public. 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 and 12's.

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

Besides the relief this bill would provide to the industry, it would also benefit the state. First, it would reduce the costs of collecting applicable excise taxes. Eliminating the need to affix tax stamps would reduce the number of stamps and the printing costs. In addition, the state's 3¼% discount allowed to dealers for stamping would be eliminated for the samples. Direct payment of all sample taxes would ensure that Kansas would receive all revenue due ten days after the end of the month in which such distributions occur.

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

SAMPLE CIGARETTES:

	<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 applicable excise taxes being paid. The cigarette manufacturers maintain meticulous books, records and accounts which would withstand even the closest scrutiny by an auditor. Moreover, cigarette sampling is an important marketing tool to the manufacturers, and they would certainly not do anything to jeopardize what they consider to be the privilege of sampling in Kansas. In addition, the bill contains its own penalty provisions: 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 (attached) 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 II 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 are monitored--violations 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. The manufacturers spend money on sampling not to induce people to smoke or smoke more, but to try a different brand.

Kansas is generally regarded as having some of the most modern cigarette tax laws in the country. In order to keep them that way, legislature must be responsive to change. House Bill No. 3031 would modernize a tax provision 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 used by 47 other states including Oklahoma, Colorado and Missouri. 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 to consumers without tax indicia and remit the taxes due on these samples by report. This recommendation was most recently affirmed at NTTA's 1982 annual meeting.

Last year by an overwhelming majority, the Senate passed and your Committee recommended passage of an identical bill (SB 183). The State Revenue Department has no objections to this bill. We respectfully urge your favorable consideration of House Bill 3031. Thank you.

RESOLUTION TWELVE

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

STATEMENT OF PURPOSE

Cigarette sampling is a form of cigarette advertising conducted through the free distribution of sample packages of cigarettes directly to adult smokers. The purpose of this Code is to ensure that certain standards are observed in connection with cigarette sampling, particularly avoiding the distribution of cigarettes to minors and the disruption of pedestrian or vehicular traffic, and to provide a means whereby compliance with those standards can be monitored and enforced.

ARTICLE I

DEFINITIONS

1. "Sampling" means giving or distributing without charge packages of cigarettes in a public place for commercial advertising purposes ("cigarette samples"), but does not include isolated offerings of complimentary packages or the distribution of such packages to wholesale or retail customers or to company shareholders or employees in the normal course of business.
2. "Public place" includes any street, sidewalk, park, plaza, public mall, and the public areas of shopping centers and office buildings.

ARTICLE II

RESTRICTIONS ON CIGARETTE SAMPLING

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.
2. 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.
3. The mails shall not be used to distribute unsolicited cigarette samples.
4. Persons who engage in sampling shall not urge any adult 21 years of age or over to accept a sample if the adult declines or refuses to accept such sample.
5. No cigarette samples shall be distributed by a sampler in a public place to any person in a vehicle.
6. Persons distributing cigarette samples shall secure their stocks of samples in safe locations to avoid inadvertent distribution of samples contrary to the provisions of this Article.
7. Persons distributing cigarette samples shall avoid blocking or otherwise significantly impairing the flow of pedestrian traffic.
8. In the event that circumstances arise at a particular location that make it unlikely that sampling can be conducted in a manner consistent with the provisions of this Article, sampling shall be stopped at that location until such circumstances abate.
9. Persons distributing samples shall promptly dispose of empty sample boxes and shall take reasonable steps to ensure that no litter remains in the immediate area of sampling as a result of sampling activities.

ARTICLE III

COMPLIANCE AND ENFORCEMENT PROVISIONS

1. Each cigarette manufacturer that subscribes to this Code shall impose by contract on all independent contractors who conduct cigarette sampling on the manufacturer's behalf a set of sampling standards no less stringent than those contained in this Code. In addition, each cigarette manufacturer shall require such sampling contractors to inform all personnel employed by the contractor who engage in sampling activities of the provisions of this Code, both orally and in writing.
2. Persons who engage in sampling shall be monitored on a periodic basis by supervisory personnel of the cigarette manufacturer and/or independent contractor for whom the sampling activities are being conducted to ensure compliance with the provisions of this Code.
3. Each cigarette manufacturer that subscribes to this Code shall take all reasonable steps to ensure that any person who engages in sampling and knowingly violates any of the provisions of Article II of this Code shall be discharged from employment as a cigarette sampler.



The Tobacco Institute
Suite 800
1875 I Street, N.W.
Washington, D.C. 20006
(202) 457-4800

Code of Cigarette Sampling Practices



EXHIBIT II

2/23/84