

Approved 3/22/89
Date

MINUTES OF THE House COMMITTEE ON Taxation

The meeting was called to order by Representative Keith Roe at
Chairperson

9:00 a.m./~~p.m.~~ on March 20, 1989 in room 519-S of the Capitol.

All members were present except:
Representative Roy, absent
Representative Spaniol, absent

Committee staff present:
Tom Severn, Research
Chris Courtwright, Research
Don Hayward, Revisor's Office
Lenore Olson, Committee secretary

Conferees appearing before the committee: George Copeland
John Luttjohann - Director of Taxation
Lawrence Buccero, Vend All, Inc., Kansas City
Jonathan Small, Kansas Automatic Merchandising Ass'n, Inc., Topeka
Jack Stevens, Commercial Vending Co., Inc., Wichita
Doyle Pepper, Drink-O-Mat Co., Inc., Topeka
Dave Ptacek, Bird Music & Vending, Manhattan
Jim Kaup, League of Kansas Municipalities
Tom Slezak, Kansas City Pepsi
Bill Sutton, Topeka 7-Up
Wayne Probasco, Kansas Soft Drink Association
Tim Etzel, Jet Services Co., Topeka

John Luttjohann testified in support of SB 220, stating that they see no reason why a business which owes the state money for back withholding taxes should not have to pay all back taxes before having a withholding number issued. (Attachment 1)

Chairman Roe closed the hearing on SB 220.

Lawrence Buccero testified in support of HB 2533, stating that this bill could level out the playing field by collecting the tax from all of the players and not just part of them. (Attachment 2)

John Luttjohann testified on HB 2533 and stated that passage of this legislation would result in a decrease in State General Fund receipts of at least \$2 million. (Attachment 3)

Jonathan Small testified in support of HB 2533, stating that it is their opinion that this proposed legislation will present a healthy and beneficial change in the means whereby sales through vending machines are taxed. (Attachment 4)

Jack Stevens testified in support of HB 2533, stating that without some form of sales tax relief from the State of Kansas, his industry would have to cut down their operations by employing fewer people and serving less businesses. (Attachment 5)

Doyle Pepper testified in support of HB 2533, stating that present Tax Laws and Enforcement Procedures enable many coin operated machines to go "undertaxed." (Attachment 6)

Dave Ptacek testified in support of HB 2533, stating that the vending and amusement industries are in need of sales tax relief. (Attachment 7)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Taxation,
room 519-S, Statehouse, at 9:00 a.m./~~p.m.~~ on March 20, 1989

Jim Kaup testified in opposition to HB 2533, stating that because of the fiscal impact it will have on the local sales tax, and because of the questions that it raises on the ability of cities to impose regulatory fees on vending machines and those who operate them it is unfair.

Tom Slezak testified in opposition to HB 2533, stating that a vending device is similar to a register, they both take cash and should not be limited to their tax liability. (Attachment 8)

Bill Sutton testified in opposition to HB 2533, stating that this bill could conceivably cost them \$50,000 per additional tax. (Attachment 9)

Wayne Probasco testified in opposition to HB 2533, stating that if this bill should pass, it would just be a short period of time until vending became very popular in many areas, such as McDonald's. (Attachment 10)

George Copeland testified in opposition to HB 2533, stating that this bill would not level the tax burden but would put a larger proportion of tax on low volume vending machines.

Tim Etzel testified in opposition to HB 2533, stating that it is unfair.

Chairman Roe concluded the hearing on HB 2533.

The meeting adjourned.

HOUSE COMMITTEE ON TAXATION

DATE 3-20-78

NAME ADDRESS REPRESENTING

NAME	ADDRESS	REPRESENTING
Carol O'Donnell	R2 Meriden, KS.	Top Bottling Co. Topeka
Ron Richardson	Wichita	CSA - Cola
Chuck Wilson	1523 Hick Topeka	Against
Pat Kuester	2210 KINGSTON (LAW)	CLIFF'S VENDING Trans.
Angie Donald	320 Mulholland (LAW)	Cliff's Vending Inc.
Jack Stevens	7301 ^{Wichita} Hurdington	Commercial Vending Co., Inc.
Paul Depper	5332 NW 25 Topeka	Drum - o - met Co.
David Brand	1710 ^{Wichita} Palmer	Bill Music & Landings
Mark Show	889 S. Hwy 8	Air Capital Vending
Kent Criser	3025 Kerney Wichita	Air Capital Vending
Kathleen C. Johnson	112 Mantta KS	Seven Up Bottling
Patrick S. Johnson	112 Mantta KS	Seven Up Bottling
Don Koberline	1321 NW Mantta	Top Btlg
Mal Jones	5806 S.F. Cross	TOP BTLG
Laird Papp	2141 Brookfield St.	Seven up Bottling
Marilyn Murrell	3614 Truman Ct.	Seven up Bottling
William Bill Bolde	2332 Mayfair Place	Seven Up Bottling Co.
TOM SLEZAK	1095 KERRY OLATH, KS.	PSI - COLA
NORMAN MILLER	1715 KERRY RD OLATH, KS	PEPSI-COLA
CHUCK MAUORY	TOPEKA	HAPPY'S TGA
FRANKS KASNER	TOPEKA	KS Food & Drug Assn
John Graham	Topeka	Top Bottling
Cris Joyce	Topeka	TP Bottling

Against
Against

HOUSE COMMITTEE ON TAXATION

DATE 3/20/89

NAME

ADDRESS

REPRESENTING

Cliff B. Wright	15175 W. POLK	Seven Up Bottling Co
Bill Beckers	Box 106 Menden KS	7UP Bottling Co. Topeka
Jeff Jones	6420 Menden Rd	7UP Bottling Co.
Sheldon M. ...	8145-SW 10th Topeka	7up Bottling Co
Joe Sully	3715 NE SEWARD	7UP BOTTLING CO.
Michael A. ...	5219 W 31 st Terr	7up Bottling Co.
Danny ...	1192 Jewell	7up Bottling Co Topeka
Jan Barber	Topeka	Have Sundry
FRANCOIS A. BROWN	2521 SW 15TH Topeka	BROOKS BOTTLED QUAPLEX INC
A. F. ...	2625 N Topeka	Pepsi Cola Topeka
Dick Starr	2625 N Topeka	Pepsi Cola Topeka
JOHN WILLIAMS	9223 SW 105TH AWARD	PEPSI COLA TOPEKA
HANK WASSERBERG	604 CENTER	PEPSI MARYSVILLE
ARNOLD WASSERBERG	221 CORPADO	BEST MONSIEUR SAISON
Lloyd Holt	Box 977 WICHITA	PEPSI COLA
JERRY MIBROOM	D.A. BOX 977 WICHITA	PEPSI-COLA
Catherine Holdeman	Wichita	City of Wichita
Dennis Carpenter	2931 N 15 th Emporia	Coca Cola Bottling of Emporia
LAURENT DEBAUC	1965 Mackin Rd.	Coca Cola Bottling of Emporia
Prof. ...	3658 SENECA	DR PEPPER BOTTLING CO
DAVID ALLEN	416 N. MAIN, ⁶⁷⁵⁰¹ HUTCHINSON	HUTCHINSON VENDING CO.
GEORGE CAPLAND	2268 N FAIRGROVE DR	FULL SERVICE BOV CO OF KS
BILL SUTTON	3615 AVAION LN	7UP - TOPEKA



KANSAS DEPARTMENT OF REVENUE

Division of Taxation

Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

MEMORANDUM

TO: THE HONORABLE KEITH ROE, CHAIRMAN
HOUSE COMMITTEE ON TAXATION

FROM: JOHN R. LUTTJOHANN, DIRECTOR OF TAXATION
KANSAS DEPARTMENT OF REVENUE

RE: SENATE BILL NO. 220

DATE: MARCH 20, 1989

Thank you for the opportunity to appear before you today in support of Senate Bill No. 220.

This bill would make it unlawful for any employer to engage in business in this state without an income tax withholding registration certificate issued by the Director of Taxation. This bill further provides that a certificate of registration will not be issued to an individual or entity that is currently delinquent in the payment of any Kansas withholding tax, penalty and interest.

This bill is similar in design to K.S.A. 79-3608 which requires a prospective Kansas Retailers' Sales tax registrant to be current with all sales tax, penalty and interest before a certificate of registration is issued.

The Division of Taxation and the Department of Revenue support Senate Bill 220. We see no reason why a business which owes the state money for back withholding taxes should not have to pay all back taxes before having a withholding number issued.

I would be happy to respond to any questions which you may have.

3/20/89
Attachment 1

The Honorable Keith Roe
Chairman
House Tax Committee

Remarks of Lawrence F. Buccero
March 20, 1989
Topeka, Kansas

My name is Lawrence F. Buccero. I reside in Overland Park Kansas, and my vending company is located in Kansas City Missouri. Vend-All provides retail vending services throughout the greater Kansas City area.

I'm a graduate of the University of Missouri Kansas City, and I attended both the University of Missouri Kansas City and Kansas School of Law. I have been in the retail vending business since 1960.

The automatic retailing industry is at a competitive disadvantage to other retailers of the same merchandise because of the way we must advertise the price of the product. An automatic retailer must show the price which includes applicable sales tax. Other retail merchants price their merchandise without including sales tax. Most consumers purchase products based upon the visible price. Case in point, a convenience store's Marlboro sign advertising low priced cigarettes only to find when you go inside the price does not include applicable stamps and taxes. The automatic retailer must post the gross price.

Not for profit entities are not subject to sales tax when they purchase their machines, when they sell their products or have their machines repaired by an outside contractor.

Some operators have entered into agreements with the not for profits and act as their agents thus avoiding sales taxes. As the number of these practices increase the states tax base decreases, thus causing the state to either get along with less revenue or increase sales tax which becomes a greater burden on those who have been paying.

Others purchase their own machines or lease them and then purchase products for resale and may pay sales tax at that time, but they generally don't pay the difference that is due the state once the sale through the machine is made.

One of our member vendors has about six hundred machines and is paying between six and seven percent of all taxes collected in Kansas on products sold through vending machines. That equates to one hundred machines equal one percent of revenue collected. Taking into account that this might be an above average vendor these numbers suggest that ten thousand to twelve thousand five hundred represent the number of machines located in Kansas. The truth is that there are probably over sixty thousand machines in Kansas.

— This bill would level out the playing field by collecting the tax from all

3/20/89
Attachment 2

of the players and not just part of them.

1. A per machine license in lieu of sales tax would eliminate the monthly tax computation and the necessity of the state checking them.

2. It would be much easier to enforce the license as machines without license decals would be very easy to spot.

3. The bill should simplify any audits by checking machine lists of vendors rather than invoices or sales.

4. The state would be able to collect at the first of the year and have use of the money for the entire year.

5. It would probably double the amount now collected by the state.

6. It would give creditability to the public when they see a license in place knowing that the operator is in compliance.

Thank you for allowing me to present for your consideration some of the inequities that our industry feels exist today pertaining to the paying of sales tax. This bill will simplify the collection of the sales tax and would increase revenue.



KANSAS DEPARTMENT OF REVENUE

Division of Taxation

Robert B. Docking State Office Building
Topeka, Kansas 66625-0001

MEMORANDUM

TO: THE HONORABLE KEITH ROE, CHAIRMAN
HOUSE COMMITTEE ON TAXATION

FROM: JOHN R. LUTTJOHANN *JR*
DIRECTOR OF TAXATION

RE: HOUSE BILL 2533

DATE: MARCH 20, 1989

Thank you for the opportunity to appear today on House Bill 2533.

This bill would amend K.S.A. 1988 Supp. 79-3606 to exempt all sales of tangible personal property sold through coin operated vending machines. It would establish definitions for various categories of coin operated devices, and establish a system of annual fees to be paid. The fees range from \$2.50 to \$50. Cities, municipalities and towns are also authorized to impose a license or occupation tax upon coin-operated devices in an amount not in excess of 20% of the fees to be imposed by the state.

The bill, in essence, would treat vending machine sales differently than any other type of sale taxed under our sales tax law. Using the 4% state rate, the table below equates the annual fee amounts with the volume of taxable sales which would be generated from each machine for the fees levied under the bill to be revenue neutral.

<u>Fee</u>	<u>Equivalent Taxable Sales - Annual</u>	<u>Equivalent Taxable Sales - Weekly</u>
\$50.00	\$1250.00	\$24.00
\$5.00	\$125.00	\$2.40
\$2.50	\$62.50	\$1.20

*final note
about \$6 million
one-time \$9600 costs
to set up*

The fee imposed under the bill would be the exclusive fee imposed by the state, and would be in lieu of all taxes upon coin-operated devices, except ad valorem taxes, and municipal license fees.

We would anticipate that passage of this legislation would result in a decrease in State General Fund receipts of at least \$2 million.

I would be happy to respond to any questions which you may have.

*3/20/89
Attachment 3*



KANSAS AUTOMATIC MERCHANDISING ASSOCIATION, INC.
5332 NW 25th St.
Topeka, KS 66618
(913) 232-1050

March 20, 1989

TESTIMONY
PROPONENT: 1989 HOUSE 2533

I am Jonathan Small, attorney and lobbyist for the Kansas Automatic Merchandising Association (KAMA), which is a non-profit Kansas organization which supports 1989 House Bill 2533. It respectfully asks for your favorable consideration of this bill.

It is our considered opinion that this proposed legislation will present a healthy and beneficial change in the means whereby sales through vending machines are taxed:

A. ELIMINATES SALES TAX ON VENDING MACHINE SALES

HB 2533 proposes to eliminate the present state and local sales tax upon merchandise and entertainment purchased from vending or coin operated machines [tax authorized at K.S.A. 79-3603(f)].

B. NEW ANNUAL LICENSE FEE

In place of the sales tax, a new annual license fee would be imposed; for example, a machine selling soft drinks at a price above \$.25 would pay a yearly fee of \$50.00, a "gum-ball" machine would be licensed for \$2.50 per year.

The new fee would be paid and collected in two installments in exchange for which the Department of Revenue (DOR) would issue a decal to be prominently affixed to each licensed machine.

C. PROPOSED CHANGE IS NEEDED

The automatic merchandising industry historically has suffered handicap under the sales tax method imposed in Kansas as compared to the traditional "over-the-counter retailer;" a vending machine does not allow for the collection of pennies which are easily and routinely collected by other retailers. The vending machine operator is required consequently to raise his prices by a whole nickel (the smallest denomination accepted by the machines) or else pay the sales tax himself. With the average machine only netting 3% to 4% profit annually, the increase in sales tax by just 1/2% has an immediate and expensive consequence to the automatic retailer.

*3/20/89
Attachment 4*

Nearly 40 states have recognized the inequity suffered by the automatic retailing industry under the sales tax system similar or identical to Kansas' present system and provided some form of relief. Oklahoma has recently adopted the plan proposed in HB 2533, and has experienced positive results (see, attached letters from Oklahoma Tax Commission; Exhibits A and B).

D. ANTICIPATED BENEFITS FROM LICENSE FEE

(1) Increased revenues to state treasury.

The DOR estimated calendar year 1989 sales tax revenues from vending machines to be near \$2,400,000.* Kansas is estimated to have approximately 90,000 machines** which could be licensed for \$50,000 per machine producing a gross revenue to the state of \$4,500,000. If the projected estimates are met the state could potentially realize a gain of \$2,000,000 by adopting the proposal provided in HB 2533.

(2) Decrease in administrative requirements.

HB 2533's requirement for a single annual per machine application will significantly reduce the volumes of tax returns presently required to be processed at both the retail and DOR level. It could possibly eliminate the need for expensive audits. All of this could be a welcomed savings in time, energy and expenses for all.

(3) Enhances/Simplified Enforcement.

It is presently difficult to ascertain full compliance with the Kansas retailers sales tax by all vending machines, if not in some cases impossible. The proposed decal license system would permit easier, (and probably encourage) voluntary compliance without a complicated enforcement mechanism, i.e., either a particular machine displays the required evidence of license-decal, or it does not, it is a simple matter of visual verification to determine compliance with the law.

* Testimony before Senate Committee in March 1988 based upon S/C members; from memo, Department of Revenue to Director of Budget, dated March 4, 1988.

** Kansas shares similar demographic profile characteristics with Oklahoma. Kansas' population at 2,500,000 is about 83% of Oklahoma. Oklahoma (the nearest state with a reasonably accurate survey) estimates they have about 110,000 machines.

It is suspected that many coin-operated machines throughout the state are operated without sales tax being paid on purchases from them. Obviously an operator who sells at retail an item upon which no tax is paid, is able to offer a like product at a price lower than his competitor.

E. SUGGESTED AMENDMENTS TO HB 2533

(1) effective date: January, 1990;

(2) limit the total value of any specific item offered for sale in a licensed machine to a maximum of \$3.00 to eliminate possible abuse;

(3) repeal K.S.A. 1988 Supp. 79-3603(f).

The automatic retailer has long provided an important and valuable service to Kansans but at a recognized disadvantage to other retailers offering similar products. HB 2533 is fundamentally a sound yet simple alternative to the sales tax. If passed, it will equalize the tax burden within the industry, restore the competitive fairness among other traditional retailers and provide a method of taxation which is fair to all.

Your favorable consideration is very much appreciated.

Respectfully submitted,

Jonathan P. Small
Attorney/Lobbyist
Suite 304, 400 W. 8th
Topeka, KS 66603
(913) 234-3686

IS0320T1



OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

ROBERT E. ANDERSON, Chairman
ROBERT L. WADLEY, Vice-Chairman
DON KILPATRICK, Sec'y-Member

2501 LINCOLN BLVD.
OKLAHOMA CITY, OKLAHOMA 73194

BUSINESS TAX
DIVISION
(405)521-3200

March 1, 1989

John Small
400 West 8th Street, Suite 304
Topeka, Kansas 66603

Dear Mr. Small:

I enjoyed visiting with you the other day and I am glad to hear of other states wanting to pursue our vending decal enforcement program.

This program was put into effect this fiscal year starting July 1, 1988 and as of January 30, 1989, we feel it has been quite successful. We have issued over 71,000 decals and rased approximately 3.6 million dollars. Our compliance personnel are now actively sealing machines around the State that have not been properly licensed. We feel that by June 30, 1989, we will reach our target of 5 million dollars.

As I stated in our conversation, when we were looking for estimates on this project, we only had a few areas to gather revenue figures. We used the number of licenses we had issued for music/amusement devices and cigarette vending machines and the amount of sales tax generated for the State from the these two (2) catagories and from the catagory of food vending. We were not able to determine the amount of sales tax if a business was including their vending sales in with their other business. Therefore, our figures are low. A State wide survey was made to determine the number of machines.

The following will give you an idea of how we got our projection:

REVENUE FOR FY88

\$2,476,560.00 - State sales tax @ 4%
\$ 949,940.00 - Coin device license fee (23,746 @ \$40.00 each)
\$ 61,320.00 - Cigarette vending fee (6,132 @ \$10.00 each)
\$3,487,720.00

DECAL PROGRAM FOR FY89

\$5,706,200.00 - Coin device over 25¢ (114,124 @ \$50.00 each)
\$ 50,000.00 - Coin device under 25¢ (5,000 @ \$10.00 each)
\$5,756,200.00

John Small
March 1, 1989
Page -2-

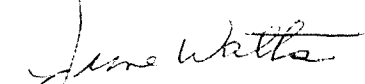
The new program would give us a gain of \$2,268,480 in revenue. We have our share of problems, but that is to be expected when you implement a new program. Hopefully, we will get the legislative changes we have requested to make things go a little smoother next year.

If I can be of further assistance or if you have any more questions, please feel free to contact me at the above address or telephone number.

Sincerely,

OKLAHOMA TAX COMMISSION

Business Tax Division



June Watts, Administrator
Compliance Section

JW:cc

45
Exhibit A-2



OKLAHOMA TAX COMMISSION

STATE OF OKLAHOMA

ROBERT E. ANDERSON, Chairman
ROBERT L. WADLEY, Vice-Chairman
DON KILPATRICK, Sec'y-Member

2501 LINCOLN BLVD.
OKLAHOMA CITY, OKLAHOMA 73194

BUSINESS TAX

DIVISION

(405) 521-4327

January 4, 1989

Ken Nance
4802 South Western
Oklahoma City, OK 73159

Dear Mr. Nance:

Pursuant to your request on behalf of the Oklahoma Coin Machine Association, concerning the new coin device law, I am providing the following information and comments.

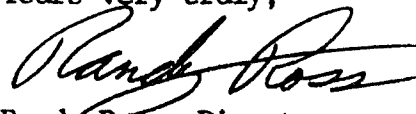
Previous collections for coin device machines under the sales tax system for FY 87 were \$3,023,320 and for FY 88 \$3,468,239. For the first half of FY 89 collections under the sticker program are \$3,526,778. Our estimate for this program was 5.7 million dollars for FY 89 and we believe this figure will be reached by the end of FY 89.

We have just begun compliance work in this area and our agents in the field find this method of verifying compliance significantly more efficient than the old system. Additionally, we have identified a number of individuals who have operated coin device machines for a number of years and failed to report the sales taxes due.

Administratively, this new system is much simpler and seems to be working well. We do, as in all new projects, have some refinements which will improve the new method of collecting these taxes including the acquisition of safety stickers which cannot be removed.

I hope you find this information beneficial.

Yours very truly,


Randy Ross, Director

RR:jg

Commercial Vending Company, Inc.

117 NORTH HANDLEY
WICHITA, KANSAS 67203
(316) 264-2863

March 17, 1989

Dear Representative

I am here to appeal for your support of House Bill No. 2533.

First, I will try to explain why the vending industry needs sales tax relief and second why House Bill No. 2533 is a more fair and equitable way to collect sales tax from coin operated devices.

Buying merchandise from a coin operated device differs in many ways from buying merchandise from an over-the-counter retailer. The one main difference is the vending operator cannot collect the sales tax from the consumer because the coin mechanisms of his machines cannot accept or pay back pennies. This puts us at a very serious competitive disadvantage with the over-the-counter retailer. When the State raised its sales tax 1% (not to mention the cities and counties) the over-the-counter retailer just added that amount to the customers bill. We on the other hand, had to take that increase from our bottom line. In a business that operates on a 2 to 3 percent net profit every year, that is and always has been a big financial burden.

This inequity wrought by the sales tax on the vending industry has been recognized in over 30 states. Sales tax relief has been granted in one form or another in these states. Oklahoma recently passed a bill very similar to the one we are asking for. Not only did their bill provide the much needed relief to the vending industry, it also provided the state with more money than they had ever collected in sales tax from coin operated devices.

There are many "location owned" machines. The sales from these machines are secondary to the principal business of the location and usually no sales tax is paid on these sales. Now, under an audit by the Kansas Department of Revenue, all that has to be done to collect sales tax, is to look for a license on the vending machine. This is why Oklahoma has collected more money and why Kansas would collect more money if House Bill No. 2533 were enacted.

Our industry provides many jobs across the State of Kansas as well as providing a much needed service to many businesses. Without vending, many companies would have to provide longer break periods and longer lunch hours. The net result would be less productivity.

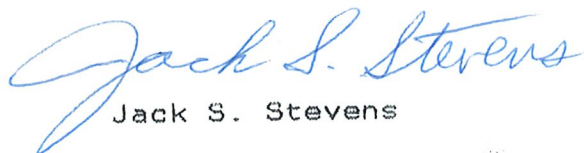
3/20/89
Attachment 5

Without some form of Sales Tax Relief from the State of Kansas, our industry would have to cut down our operations by employing fewer people and serving less businesses. Because of the inequities to our industry, the valuable service rendered by our industry to the working person and those who would not otherwise have the service, and because of the benefits to the State of Kansas, I strongly urge you to vote in favor of House Bill No. 2533.

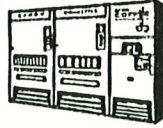
I thank you for your time and consideration.

Sincerely

COMMERCIAL VENDING CO., INC.


Jack S. Stevens

DRINK-O-MAT
COMPANY, INC.
Complete Vending Service



DOYLE G. PEPPER PRES.
PHONE 913-232-1100

5332 N.W. 25TH
TOPEKA, KANSAS 66618

March 16, 1989

Pepper

HOUSE BILL No. 2533

by Committee on Taxation

1. What is wrong with the present Tax System?

Present Tax Laws and Enforcement Procedures enable many coin operated machines to go "undertaxed" because of;

- a) unreported sales
- b) inability to check accuracy of reported sales
- c) lack of ability to isolate those who are in violation of the law

2. What will the New Bill do?

- a) generate more tax dollars to the State
- b) force those who have "hidden sales" in the past to pay their taxes "up front" in order to do business
- c) make it easier and more efficient to check compliance to the law

3. Why do we support this Bill?

- a) it provides for a more equitable form of taxation
- b) it reduces time spent on tax accounting
- c) simplifies the process of tax enforcement, thereby reducing the State's cost

3/20/89
Attachment 6



Bird Music & Vending Co. Inc.

MUSIC * AMUSEMENT * VENDING EQUIPMENT
 P.O. BOX B
 MANHATTAN, KANSAS 66502

MEMO TO: The Honorable Keith Roe, Chairman
 House Tax Committee
 FROM: Jonathan P. Small, Attorney and Lobbyiest
 for KAHsas Automatic Merchandising
 Association, Inc. (KAMA)
 DATE: March 17, 1989

The vending and amusement industries are in need of sales tax relief. Sales tax places an especially hard burden on these companies for two reasons.

The first reason is that coin vending equipment can be adjusted only in 5¢ increments. When sales tax percentages go up, vendors may raise prices by 5¢ and risk losing sales to other competitors that can raise prices by 1¢, like a Convenience Store. More often the operator absorbs the increase. With an average profit margin of only 2-3% of gross sales, any increase of sales tax severely hurts profits. Amusement operators are hit even harder. Most amusement game prices are set at 25¢ and can be raised only in 25¢ intervals. So if there is an increase of sales tax, game operators have to either absorb the increase or raise prices by 25¢. But past experience has shown that customers will not pay 50¢. So the operator ends up absorbing the increase.

The second reason the sales tax system places a heavy burden on machine operators is that most operators place machines in several cities and counties, with each having their own sales tax rate. Operators must then calculate different percentages for each of these political entities. This requires a lot of employee time, and often ties up valuable computer time. This is time that could be better spent on more productive work.

A solution to this problem is the licensing fee with a set rate for each machine. This would simplify vending and amusement operators administrative costs by eliminating the need to keep track of varying sales tax rates. This fee would also put vending and amusement companies on a more even playing field with competitors, who are able to raise prices by pennies.

The State of Kansas, including its cities and counties would also benefit. A licensing fee would simplify tax calculations and procedures for the D.O.R. Enforcement would be much easier than the present system since each machine would be required to display a prominent sticker, which could be easily identified by enforcement agents. Any machine not displaying the decal would then have the coin slot taped shut until the fee and penalty was paid. Just as important, the state may actually gain revenue, as is suggested by the Oklahoma experience with such a licensing fee.

I urge you to support the sales tax relief for the vending and amusement industries. Many states have already recognized this special need. I hope Kansas joins them.

David P. Small
 3/20/89
 Attachment 7



Pepsi-Cola General Bottlers, Inc.

A Whitman Company

1775 Old Kansas City Road
Olathe, Kansas 66061
(913) 791-3000

TESTIMONY IN OPPOSITION TO HOUSE BILL #2533

MY NAME IS TOM SLEZAK. I AM THE ON-PREMISE MANAGER AND DIRECTOR OF PUBLIC RELATIONS FOR PEPSI-COLA GENERAL BOTTLERS, INC. LOCATED AT 1775 KANSAS CITY ROAD IN OLATHE, KANSAS. OUR COMPANY PRODUCES AND DISTRIBUTES VARIOUS SOFT DRINK BRANDS AND PACKAGES IN JOHNSON, WYANDOTTE, AND NINE OTHER EASTERN AND NORTHEASTERN KANSAS COUNTIES. WE HAVE JUST RECENTLY MADE A \$6-MILLION DOLLAR INVESTMENT IN OLATHE WITH A NEW ADMINISTRATIVE AND DISTRIBUTION CENTER. WITHIN 24-MONTHS, OUR ENTIRE METROPOLITAN KANSAS CITY AREA OPERATION WILL BE HOUSED IN THE STATE OF KANSAS. WE EMPLOY 300 PEOPLE IN OUR OPERATION.

I AM HERE TODAY TO TESTIFY NOT ONLY FOR PEPSI-COLA GENERAL BOTTLERS BUT TO SPEAK FOR ALL MEMBERS OF THE KANSAS SOFT DRINK ASSOCIATION IN OPPOSITION TO HOUSE BILL #2533, A TAX ON COIN-OPERATED SOFT DRINK VENDERS. I STRONGLY OPPOSE IT AND WILL SHOW YOU HOW THIS BILL WILL BE DETRIMENTAL TO SALES TAX RECEIPTS IN THE STATE OF KANSAS.

AS SOFT DRINK BOTTLERS WE SELL OUR PRODUCTS TO VARIOUS CHANNELS OF DISTRIBUTION WHO IN TURN RESELL THEM TO THE CONSUMER OR END USER. THE MAJORITY OF OUR CUSTOMERS SUPPLY US WITH RETAIL SALES TAX EXEMPTION CERTIFICATES STATING THAT THEY WILL PAY THE APPROPRIATE SALES TAX ON THE GOODS WE HAVE SOLD THEM. IF WE ARE NOT FURNISHED THIS SIGNED DOCUMENT, WE CHARGE THEM SALES TAX.

*3/20/89
Attachment 8*

LET'S NOW TAKE A LOOK AT SOME OF THE MAJOR CHANNELS OF SOFT DRINK DISTRIBUTION. CURRENTLY ALL SEGMENTS PAY SALES TAX ON AN EQUAL AND PROPORTIONATE BASIS. THE ONLY DIFFERENCE BETWEEN THESE SEGMENTS IS IN THEIR RESPECTIVE MODE OF RETAILING. SOME USE CASH REGISTERS, SOME USE COIN OPERATED VENDING MACHINES, OR A COMBINATION OF BOTH. IT IS OUR BELIEF THAT ALL OF OUR CUSTOMERS FAIRLY REPORT AND PAY THEIR DUE SALES TAX. IF THERE IS EVIDENCE TO THE CONTRARY, THEN SUPPLY THE DEPARTMENT OF TAXATION WITH SAME. WHEN YOU CHANGE ONE CHANNEL'S TAX CONSEQUENCES, THEN THE PLAYING FIELD IS NOT LEVEL. HERE YOU SEE ALL OF THESE RETAILERS PAYING A PERCENTAGE SALES TAX WITH NO LIMIT TO THEIR DOLLAR LIABILITY, WHILE THIS CHANNEL IS LIMITED TO ONLY A \$50-DOLLAR TAX LIABILITY PER VENDER. IF A VENDING MACHINE IN OLATHE, KANSAS DOING ONLY \$17.50 A WEEK IN GROSS SALES HAS A \$50-DOLLAR VENDING DECAL TAX STAMP ON IT INSTEAD OF EARNING 5½% SALES TAX, THIS WOULD BE ECONOMIC SUICIDE FOR THE STATE, JOHNSON COUNTY, AND OLATHE. VERY FEW PEOPLE IN THIS BUSINESS WOULD LEAVE THAT MACHINE PLACED FOR SUCH LOW VOLUME. YET ALL GROSS SALES OVER \$17.50/WEEK WOULD BE A WINDFALL TO THAT OPERATION.

LET'S TAKE A LOOK AT TWO HYPOTHETICAL EXAMPLES OF A FULL LINE VENDING AND SOFT DRINK BOTTLER, EACH WITH 3,000 VENDING MACHINES. A TYPICAL BOTTLING COMPANY WOULD OPERATE 20% OR 600 OF THESE MACHINES, THE BALANCE WOULD BE CUSTOMER OPERATED. ON THIS 20% WE WOULD PAY ALL APPROPRIATE TAXES AS WOULD OUR CUSTOMERS. THE

TYPICAL VENDING COMPANY WOULD OPERATE ALL 3,000.

UNDER THE VENDING DECAL TAX, THE FOLLOWING REVENUE WOULD BE PRODUCED. THE \$70-DOLLAR FIGURE IS USED BECAUSE BOTH COUNTY AND CITY MAY AVAIL THEMSELVES OF THE 20% RULE, AN ADDITIONAL \$10-DOLLAR TAX PER JURISDICTION. UNDER THIS SCENARIO, \$210,000 IS CONTRIBUTED BY BOTH FOR A TOTAL OF \$420,000.

UNDER THE CURRENT SALES TAX COLLECTION SYSTEM, A TOTAL OF \$405,000 WOULD BE CONTRIBUTED BY BOTH OPERATORS FOR A TOTAL OF \$810,000, \$390,000 MORE THAN THE PROPOSED \$70-DOLLAR VENDING DECAL TAX. THE FIGURE IS BASED UPON INDUSTRY AVERAGES AND ACTUAL SOFT DRINK SALES TAX REVENUES. IF ANYTHING, THIS FIGURE IS CONSERVATIVE AS SOFT DRINK BOTTLERS' FULL SERVICE VENDING SALES TEND TO BE LOWER THAN FULL-LINE VENDING COMPANY SALES.

WE HAVE CONSERVATIVELY ESTIMATED THAT THERE ARE 90,000 VENDING MACHINES IN KANSAS. IF YOU TAKE THAT NUMBER TIMES THE \$70-DOLLAR VENDING DECAL TAX, YOU HAVE REVENUE OF \$6,300,000 WHILE THE SAME NUMBER OF MACHINES TIMES THE \$135-DOLLAR CURRENT SALES TAX PER MACHINE, DELIVERS \$12,150,000.....AN ADDITIONAL \$5,850,000.

EVEN IF OUR FIGURES WERE OVERSTATED BY AS MUCH AS 25%, WHICH WE FEEL THEY ARE NOT, THERE IS STILL AN ADDITIONAL \$2,790,000 IN REVENUE VS. THE VENDING DECAL TAX - 44% MORE.

A VAST MAJORITY OF OUR INDUSTRY'S BUSINESS IS DONE WITH LARGE RETAIL AND VENDING OPERATORS WHO ARE HONESTLY PAYING THEIR APPROPRIATE SALES TAX AND WILL CONTINUE TO DO SO UNDER EXISTING STATUTES. IF ONLY A SMALL PERCENTAGE OF RETAILERS ARE UNDER-REPORTING, THEN LET'S CLOSE THE LOOPHOLES AND TURN IN THESE OPERATORS. WE SHOULD ADD A LINE TO THE RETAIL SALES TAX REPORTING FORM THAT ASKS FOR GROSS SALES ON VENDED GOODS. THEN IT WOULD BE AN ACT OF OMISSION IF NOT REPORTED, NOT A CASE OF BAD MEMORY.

OUR INDUSTRY PAYS SALES TAX ON VENDING EQUIPMENT PURCHASES, PROPERTY TAX ON THE EQUIPMENT, STATE, COUNTY, AND CITY SALES TAX ON OUR OWN FULL SERVICE BUSINESS. WE FEEL IT IS OUR PRIVILEGE TO BE ABLE TO PAY THESE TAXES TO THE VARIOUS GOVERNING AGENCIES AND DO NOT WANT TO SEE OUR STATE, COUNTIES, AND CITIES REALIZE A SHORTFALL IN INCOME. ONCE AGAIN, A VENDING DEVICE IS SIMILAR TO A REGISTER, THEY BOTH TAKE CASH AND SHOULD NOT BE LIMITED TO THEIR TAX LIABILITY.

THE SOFT DRINK AND VENDING BUSINESS ARE BOTH IN A GROWTH STAGE. OUR COMPANY REALIZED DOUBLE-DIGIT CASE GROWTH IN 1988 AND 1989 IS STARTING TO TREND IN THE SAME DIRECTION. I URGE YOU NOT TO LIMIT THE GROWTH IN SALES TAX RECEIPTS AND TO CONTINUE WITH THE CURRENT TAX STATUTES AND LOOK AT CLOSING LOOPHOLES, IF ANY.

OUR INDUSTRY IS COMMITTED TO WORKING WITH THE STATE AND MAKING THIS AN EVEN BETTER PLACE TO LIVE. TO CONTINUE IN THAT DIRECTION, I URGE ALL OF YOU TO VOTE NO ON HOUSE BILL #2533.

8-4

**SOFT DRINK
BOTTLERS**

**FOOD
STORES**

DISCOUNTERS

**SERVICE
STATIONS**

HOTELS

DRUG STORES

OFFICE BLDG.

**FULL LINE
VENDING COMPANIES**

**ALL PAY SALES TAX
ON A % OF GROSS SALES.
NO LIMIT TO THE
AMOUNT THEY CAN PAY.**

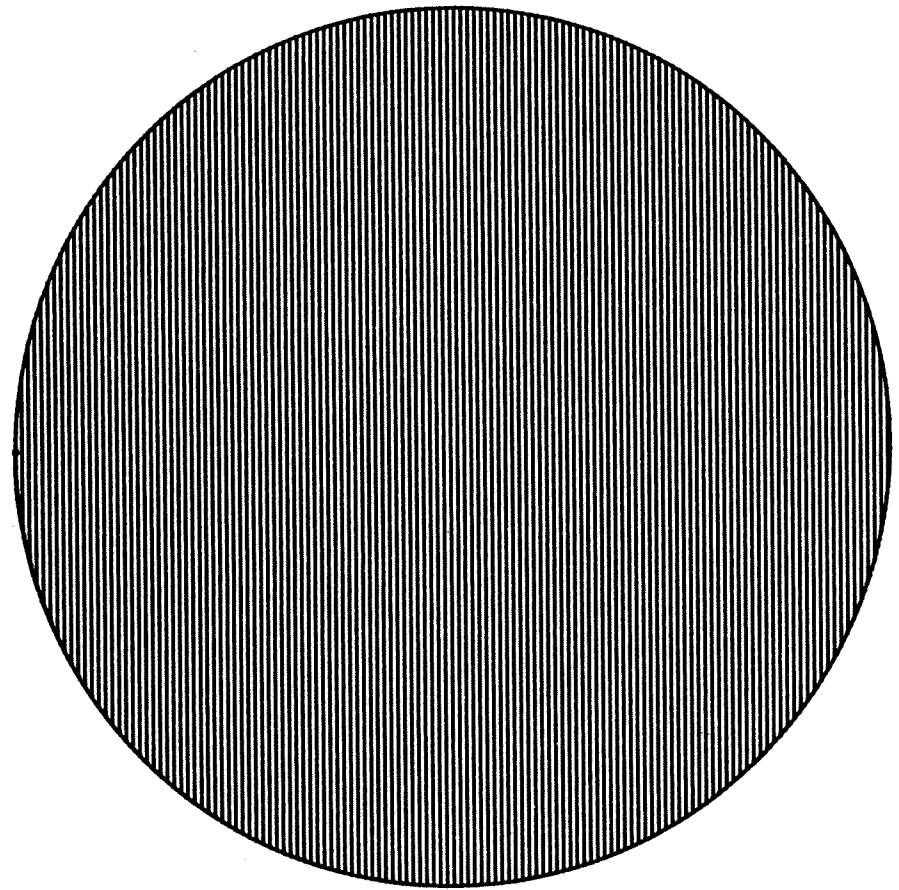
**\$50/VENDER
TAX LIABILITY**

8
9

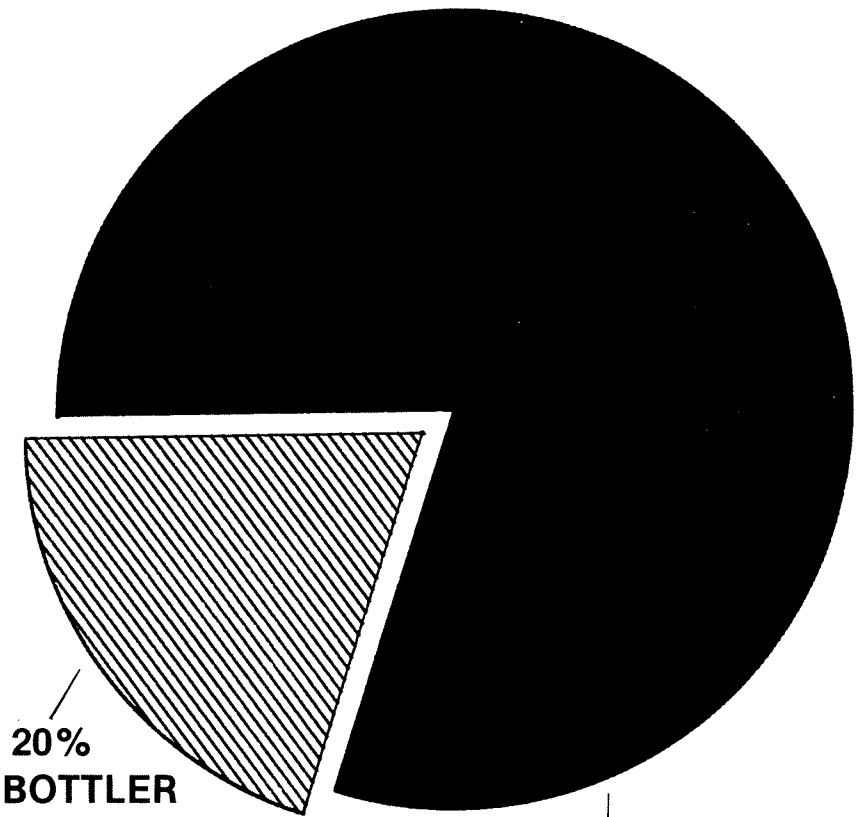
FULL LINE VENDING CO.

BOTTLING COMPANY

(EACH WITH 3000 VENDING MACHINES)



100%
VENDING COMPANY
OPERATED



20%
600 BOTTLER
OPERATED

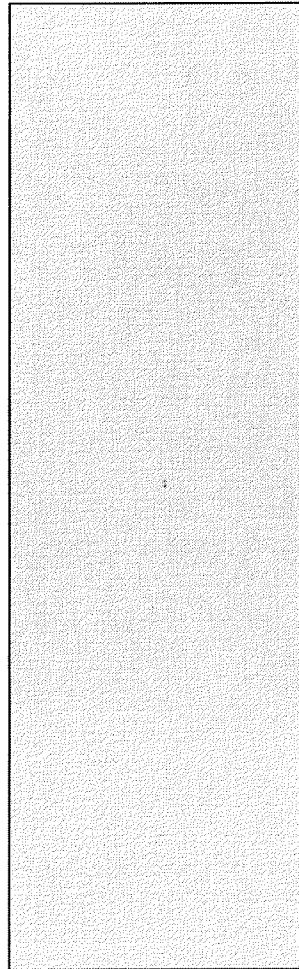
80%
2400 CUSTOMER
OPERATED

8/6

VENDING DECAL STICKER TAX

**FULL LINE
VENDING CO.**

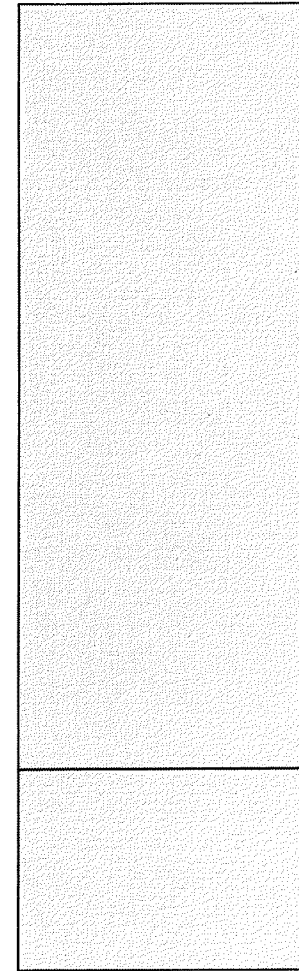
\$210,000



**100%
— VENDING CO.
OPERATED**

**BOTTLING
COMPANY**

\$210,000



**80%
— 2400 CUSTOMER
OPERATED**

**20%
— 600 BOTTLER
OPERATED**

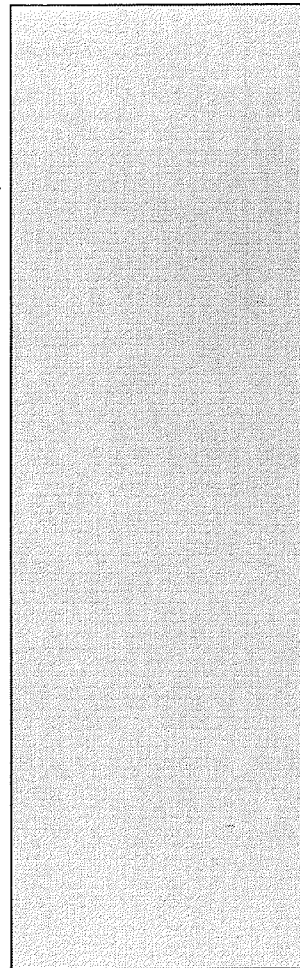
**(3000 X \$70. PER MACHINE)
TOTAL TAX REVENUE \$420,000.**

8-7

CURRENT SALES TAX COLLECTION

FULL LINE
VENDING CO.

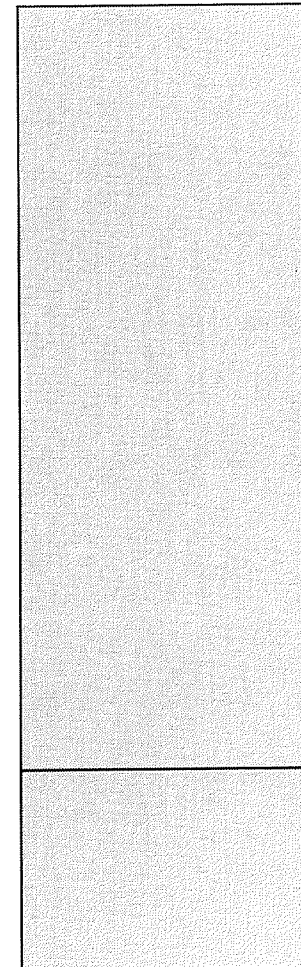
\$405,000



100%
— VENDING CO.
OPERATED

BOTTLING
COMPANY

\$405,000



80%
— 2400 CUSTOMER
OPERATED

20%
— 600 BOTTLER
OPERATED

3000 X \$135. * PER MACHINE

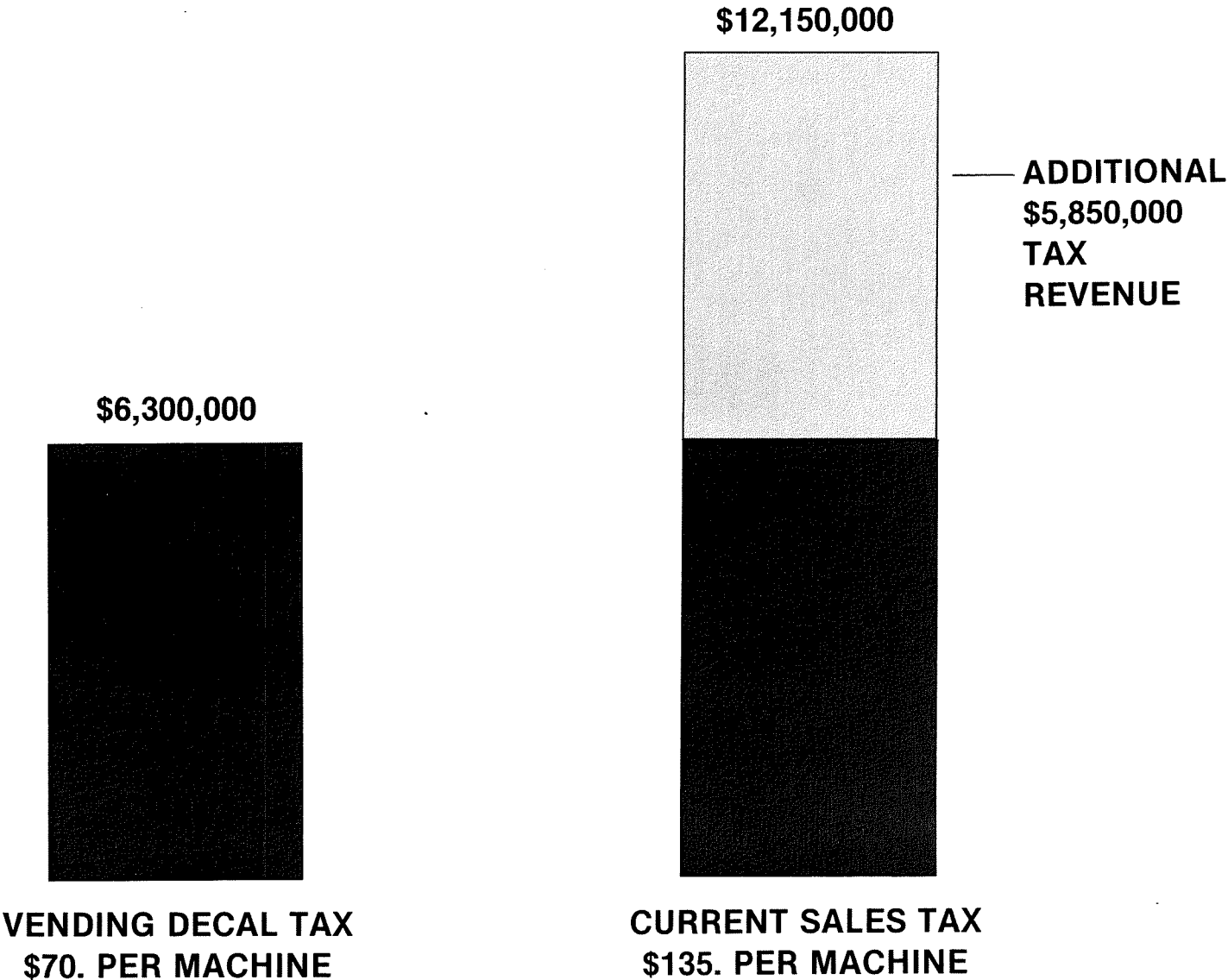
TOTAL TAX REVENUE \$810,000

\$390,000 MORE IN SALES TAX COLLECTED THAN \$70 VENDING DECAL TAX

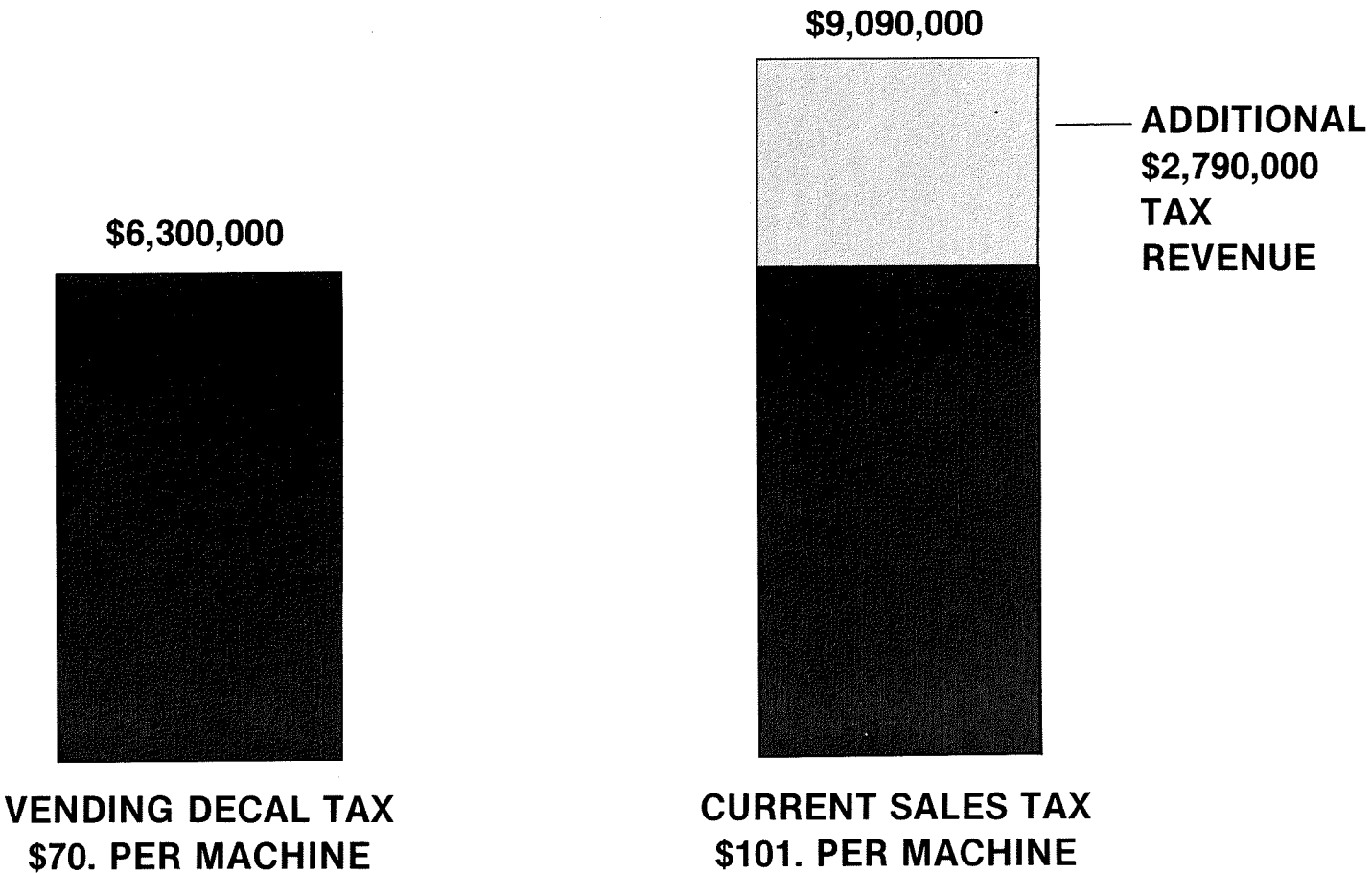
*AVERAGE TAX PAID PER MACHINE BASED ON HISTORICAL DATA

88

90,000 VENDING MACHINES IN KANSAS



90,000 VENDING MACHINES IN KANSAS



SEVEN-UP BOTTLING CO. OF TOPEKA, IN

BOTTLERS OF



Canada Dry - Squirt - Diet-Rite Cola - Sunkist - Dad's Root Beer - Sunglo Juices

TESTIMONY IN OPPOSITION TO HOUSE BILL # 2533

MARCH 20, 1989

PURPOSE: I AM HERE TO TALK TO YOU ABOUT HOUSE BILL #2533 REGARDING AN ADDITIONAL TAX ON COIN-OPERATED SOFT DRINK VENDING MACHINES. I STRONGLY OPPOSE IT. I WOULD APPRECIATE SHARING WITH YOU MY PREPARED STATEMENT.

INTRODUCTION: I AM WILLIAM J. SUTTON, CO-PRESIDENT AND CO-OWNER OF THE SEVEN-UP BOTTLING CO. OF TOPEKA, INC. I AM THE FOURTH GENERATION IN OUR FAMILY OWNED BUSINESS. I AM 40 YEARS OLD AND HAVE CO-MANAGED OUR BUSINESS 15 YEARS. MY FATHER DIED IN 1979. I HAVE A COLLEGE DEGREE FROM WASHBURN UNIVERSITY WITH A MAJOR IN ACCOUNTING. I WORKED FOR ARTHUR ANDERSEN & CO. THREE YEARS BEFORE COMING TO SEVEN-UP OF TOPEKA.

HISTORY: THE SEVEN-UP BOTTLING CO. OF TOPEKA, INC. WAS FOUNDED IN 1928. WE ARE 61 YEARS OLD AND IT IS OUR UNDERSTANDING THAT IN THE NEAR FUTURE CIRCUMSTANCES WILL CHANGE SUCH THAT WE WILL BE THE LAST PRODUCER OF SOFT DRINKS IN THIS AREA. MY FATHER TOLD ME THAT IN THE EARLY 1940'S THERE WERE AS MANY AS 15 BOTTLERS IN THE TOPEKA AREA. NOW, OR SHORTLY, WE'LL BE THE LAST. WE NOW EMPLOY 50 PEOPLE.

SINCE THE LATE 1950'S WE HAVE BEEN PLACING SOFT DRINK, COIN-OPERATED, VENDING MACHINES IN THE TOPEKA AREA. DURING THOSE 30 OR SO YEARS, OUR SALES FORCE HAS WORKED HARD TO REACH A POINT WHERE WE NOW

*3/20/89
Attachment 9*

HAVE APPROXIMATELY 1,000 SOFT DRINK VENDING MACHINES IN OUR MARKET. SOME OF THEM - OUT ON THE TRADE NOW - DATE BACK TO THE EARLY SIXTIES. MOST OF OUR VENDING MACHINES ARE LOCATED IN LOW VOLUME, SMALL BUSINESS ACCOUNTS.

PROBLEM:

WITH THE PLACING OF EACH VENDOR, WE HAVE UNDERSTOOD THE COST OF THE VENDOR, PRODUCT AND DELIVERY COST, THE USE TAX, SALES TAX, AND THE PERSONAL PROPERTY TAX ASSOCIATED WITH EACH VENDING MACHINE. BUT NOW, YOU'RE TRYING TO ASSESS AN ADDITIONAL TAX ON EACH VENDING MACHINE OF WHICH WE HAVE ALREADY MADE A SUBSTANTIAL INVESTMENT - EQUIPMENT THAT ORIGINALLY, DID NOT INCLUDE YOUR ADDITIONAL, PROPOSED TAX! THAT IS AN UNREASONABLE BURDEN TO PUT ON OUR BUSINESS.

YOUR PROPOSED TAX ON COIN-OPERATED VENDING MACHINES AT \$50 FOR EACH VENDOR, TIMES 1,000 OF OUR VENDORS, PLACED & MAINTAINED BY US, OVER THE LAST 30 YEARS, COULD CONCEIVABLY, COST US \$50,000 PER YEAR ADDITIONAL TAX! WE COULD NOT CONTROL THE PASSING ON OF THIS TAX. COKE & PEPSI ARE THE INDUSTRY LEADERS. THIS BILL WILL FORCE US TO RENEGOTIATE OUR AGREEMENT WITH OVER 1,000 OF OUR VALUED CUSTOMERS. IT WOULD PLACE A WEDGE BETWEEN OURSELVES AND OUR CUSTOMERS. MANY OF OUR CUSTOMERS WOULD SIMPLY REFUSE TO PAY THE TAX - FORCING US TO PICK UP THE VENDORS. WE ESTIMATE, THAT DEPENDING ON WHERE WE DRAW THE LINE ON CASES NEEDED TO JUSTIFY KEEPING THE VENDOR AT THE PRESENT LOCATION, WE COULD HAVE TO PICK UP BETWEEN 200 - 400 VENDORS IN OUR AREA. WE WOULD LOSE GROSS PROFIT ON THESE CASES LOST. WE WOULD HAVE A REDUCTION IN SALES WHICH COULD REQUIRE US TO LAY OFF SOME SALES AND SERVICE PERSONNEL AND POSSIBLY OTHERS. WHETHER OR NOT WE DECIDE TO PICK UP THE VENDORS OR OUR CUSTOMERS DECIDE TO HAVE US PICK UP THE VENDORS, I DON'T KNOW HOW MUCH

9.2

IT WILL COST US IN MANPOWER, TRUCK EXPENSE, GASOLINE, ETC. AND I DON'T KNOW WHERE WE WOULD PUT THE 200 - 400 VENDORS AFTER WE PICKED THEM UP. I DO KNOW THAT MOST OF OUR VENDORS ARE IN LOW VOLUME LOCATIONS LIKE BARBER SHOPS, HARDWARE STORES, CHURCHES AND GRAIN ELEVATORS JUST TO NAME A FEW. THESE MACHINES ARE THERE FOR THE CONVENIENCE OF THE PUBLIC. PEOPLE WILL BE DEPRIVED OF CONVENIENT SOFT DRINK REFRESHMENTS DUE TO THIS TAX, BECAUSE THE VENDORS WILL BE REMOVED. IF YOU'RE THIRSTY, THAT VENDING MACHINE THAT YOU ARE USED TO GETTING A COLD DRINK FROM MAY BE GONE.

THE PROBLEM OF ADMINISTRATING, ENFORCING AND CARRYING OUT THE LAW, BOTH YOURS AND MINE, IS A PROBLEM IN ITSELF. YOU WILL NEED PEOPLE DRIVING AROUND THE STATE LOOKING FOR UNSTICKERED VENDING MACHINES. YOU WILL NEED 2 MEN IN A TRUCK WITH A LIFT GATE, PICKING UP MACHINES ALL OVER THE STATE. YOU'LL NEED STORAGE BUILDINGS AND WHO KNOWS HOW MANY ADMINISTRATORS AND WHAT THE RELATED COST WILL BE FOR ENFORCING THIS BILL. BROAD BASED TAXES SUCH AS THE SALES TAX WE HAVE NOW ARE FINE WITH US. THEY ARE FAIR AND SHARED BY ALL! THE CURRENT SYSTEM IS WORKING AND IS TOLERABLE AS IT STANDS NOW!

SALES TAX HAS ALWAYS BEEN PAID BASED ON THE PRODUCT GOING THROUGH THE EQUIPMENT, NOT ON THE EQUIPMENT THAT DISPENSES THE PRODUCT. THE TAX SHOULD NOT BE THE SAME FOR EQUIPMENT THAT SELLS 2 CASES PER YEAR AS THAT FOR EQUIPMENT THAT GENERATES 10,000 CASES PER YEAR. THAT IS LIKE SAYING THAT THE TAX SHOULD BE THE SAME ON ALL CASH REGISTERS AT GROCERY STORES OR ANY RETAIL OUTLET REGARDLESS OF HOW MANY DOLLARS EACH CASH REGISTER GENERATES. THE TAX SHOULD BE BASED ON THE DOLLAR SALES VOLUME NOT ON THE EQUIPMENT DISPENSING OR REGULATING THE PRODUCT.

CONCLUSION:

THIS TAX - COULD CONCEIVABLY - IN THE END - PLACE SEVEN-UP BOTTLING CO. OF TOPEKA, IN THE SAME POSITION AS KARLANS FURNITURE, C & W MARKET, MEMORIAL HOSPITAL, AND MANY OF THE SMALL FAMILY FARMERS OF OUR STATE, ALL OUT OF BUSINESS - WITH THE FAULT BEING IN BIG GOVERNMENT & BIG BUSINESS. WE DON'T HAVE \$50,000 LAYING AROUND. THIS PROPOSED TAX IS DISCRIMINATORY, UNFOUNDED, UNNEEDED AND WITHOUT MERIT. IT WILL NOT INCREASE REVENUES TO THE STATE. IT WILL NOT SIMPLIFY EITHER ENFORCEMENT OR ADMINISTRATION OF SALES TAX COLLECTIONS. IT WILL NOT SHARE MORE EQUITABLY IN THE TAXING OF VENDING MACHINE SALES. RESPECTFULLY, TO EACH OF YOU HONORABLE COMMITTEE MEMBERS, I PLEAD THAT YOU VOTE 'NAY' ON HOUSE BILL #2533. THANK YOU!

SINCERELY,

Bill

WILLIAM J. SUTTON, CO-PRESIDENT
SEVEN-UP BOTTLING CO. OF TOPEKA, INC.

KSDA

KANSAS SOFT DRINK ASSOCIATION
615 S. TOPEKA BOULEVARD
TOPEKA, KANSAS 66603
PHONE: 913-354-7611

Officers As of April 17, 1989

Robert P. Sutton
President
Seven-Up Bottling Co.
of Topeka, Inc.
129 Quincy
Topeka, KS 66603
(913) 233-7471

Wayne Probasco
Executive Secretary

Norman Miller
Vice-President/Treasurer
Pepsi-Cola General
Bottlers, Inc., K.C.

Ron Richardson
Secretary
Coca-Cola Bottling,
Wichita

Laurent C. Debaugé
Ex-Officio
Coca-Cola Bottling Co.
of Emporia, Inc.

Directors Term Expires 1991

Robert Strathman
Dr. Pepper Bottling Co.,
Seneca

H. Arnold Wassenberg
Pepsi-Cola Bottling Co.,
Manhattan

Directors Term Expires 1993

Dan L. Hodges
Mid-Continent Bottler,
Lenexa

Jerry Moore
Pepsi-Cola Bottling Co.,
Wichita

Bill Clay
Coca-Cola Mid America,
Shawnee Mission

March 20, 1989

In Re: House Bill No. 2533, Tax on Vending Machines

Chairman Roe and members of the House Taxation Committee, my name is Wayne Probasco. I am an attorney here in Topeka and represent the Kansas Soft Drink Association.

The Kansas Soft Drink Association is strongly opposed to House Bill No. 2533. The Association views this bill as solely a special interest bill for a special group to get out of paying sales tax.

Let's look at the bill:

Section 1 sets out several definitions concerning vending machines: coin-operated amusement device, coin-operated bulk vending device, coin-operated device, coin-operated music device, coin-operated vending device and music device. With these definitions it gives a list of various items, stating that included but not limited to these various groups of things.

From the outset, a simplified version of this bill simply is: for a basic \$50.00 annual fee to the State (at this time) anything sold with the purpose of going into these vending machines and any sale through these vending machines are excluded from sales tax.

So, from the list of things it is obvious that if this bill should pass, it would just be a short period of time until vending became very popular in many areas. It is certainly within contemplation to see that McDonald's very likely could be selling many of their products through a vending machine, groceries could be sold through a vending machine, in fact, any high volume item could very likely be sold through a vending machine, simply because it would save, at a minimum, the 4% state sales tax and contemplated other special sales taxes that are on the books in various cities around the state.

Section 2 sets forth who is to pay the annual tax on the machine. It is either (1) a person who operates, or (2) a person who permits to be operated, or (3) on such person's place of

*3/20/89
Attachment 10*

business.

This could be ambiguous in many instances. This could be the owner of the machine, this could be the owner of a building, it could be the lessee of the building, this could be the person who operates the machine for the product.

In Section 5 it states that the operator who permits the machine to operate without the decal will be fined \$100.00, plus the annual fee, then in Section 7 this is also stated to be criminal action, a misdemeanor, where the operator may be fined \$200.00 and put in jail for 30 days, or both.

Then in Section 6 it states that a machine that is operated without this decal may be sealed or seized by the Department of Revenue and then the Department of Revenue after the seizure may hold a hearing and if it finds that the seizure was proper, then the department may direct a sale wherein the machine may be sold.

All of these three items make a penalty most severe.

Obviously, one of the major problems would be handling administrative areas of getting decals placed on all of these various machines and then in policing the entire state, seizing machines and going through that procedure, then also proceeding with the criminal actions against these various "operators".

Section 8 states that this is an exclusive fee and then it gives the exceptions, wherein ad valorem taxes will still be paid, as well as the municipal license fee. Then the bill specifically gives cities, municipalities and towns the authority to levy a license or occupation tax upon these machines or persons operating the machines, or premises where the same are located, in an amount of 20% of the state fee.

This section is highly ambiguous, in that the section gives municipalities the right to levy this tax, and it is my understanding that a municipality is any tax supported entity which would mean that any county, school district, township, drainage district, etc. would have the right to impose a 20% tax.

This also, then, brings up the question as to what happens to these special sales tax levies that have been imposed by various municipalities over the past several years. In Topeka, the City has 2 - 1/2 cent special sales tax levies, and I understand there are several special levies in other areas of the state.

We believe that there is certainly a question with regard to the matter of this bill being constitutional. When one group is singled out and given special treatment with regard to not paying a tax that every other business must pay, there is obviously a question as to whether or not this act is constitutional and lawful.

We appreciate your attention and consideration.

Respectfully submitted,

WAYNE PROBASCO
Attorney at Law
615 S. Topeka Blvd.
Topeka, Kansas 66603
(913) 354-7611
On behalf of the Kansas Soft
Drink Association

KSDA

KANSAS SOFT DRINK ASSOCIATION
615 S. TOPEKA BOULEVARD
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Pepsi-Cola Bottling Co.,
Wichita

Bill Clay
Coca-Cola Mid America,
Shawnee Mission

HOUSE BILL NO. 2533 TAX ON VENDING MACHINES

This is a special interest bill for a special interest group to get out of paying sales tax.

The Bill itself:

Section 1 a. "Coin-operated amusement device" lists several kinds of machines for enjoyment. \$50.00

b. "Coin-operated bulk vending device", lists several products that can be obtained from vending machine. \$2.50

c. "Coin-operated device", the above plus coin-operated music devices. \$50.00 if over \$.25; if under \$5.00 - except newspapers.

d. "Coin-operated music device", \$50.00

e. "Coin-operated vending device", machines that dispense tangible items, lists several - but not including vending machines that perform services - telephone, parking meters, etc. \$0.0

f. "Music devices", emits music.

Section 2 a. Person who operates or who permits to be operated or on such person's place of business - shall pay annual fee.

b. Temporary basis - fee 1/10 per month.

Section 3. Person operating machine or operating the premises--

shall apply to Dept. of Revenue for a decal.

Section 4. Calendar year, divided in 2 halves.

Section 5. Any operator that makes machine available, or permits a device to be available at place of business could be fined annual fee plus \$100.00.

Section 6. Machine without decal:

1. May be sealed until released by Dept. of Revenue.

2. Or seized by Dept. of Revenue or any law enforcement officer.

a. Cash and machine delivered to Dept. of Revenue.

3. Dept. of Revenue shall then hold hearing, determine seizure.

a. Operator of machine given at least 10 days notice.

b. Hold hearing - if determined seized.

1. Direct sale

Sold in county seized after 10 days' notice.
Post notice 5 places in county, 1 in county courthouse.

Sale for cash - proceeds

1. Pay cash to seize and sell

2. Pay taxes, penalties

3. Balance to owner

4. Cash therein forfeited

c. Appeal rights.

Section 7. Criminal action - misdemeanor

Operator without decal, upon conviction

Fine up to \$200 and imprisoned up to 30 days, or both.

Section 8. Fees to state exclusive, except:

1. Ad valorem tax

2. Municipal license fee

3. Also, cities, municipalities and towns are authorized to levy tax on machines or person operating same on premises where located in amount of 20% to state.

Now the trade-off is:

Exemption of sales tax

(tt) All sales of tangible personal property purchased for resale through a coin-operated device and all sales of tangible personal property sold through such device.

WAYNE PROBASCO

A handwritten signature in cursive script, appearing to read "Wayne Probasco".