

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman John Edmonds at 9:00 a.m. on February 11, 2004 in Room 519-S of the Capitol.

All members were present except:

Representative John Edmonds- excused
Representative Tom Sawyer- excused
Representative Vaughn Flora- excused

Committee staff present:

Chris Courtwright, Legislative Research Department
Martha Dorsey, Legislative Research Department
Gordon Self, Revisors of Statutes
Carol Doel, Committee Secretary

Conferees appearing before the committee:

Dennis Wilson, Johnson County Treasurer
Jan Kennedy, Sedgwick county Treasurer
Joan Wagon, Secretary Internal Revenue
Rep. David Huff
Ron Hein, R.J. Reynolds Tobacco
Kathy Damron, Philip Morris
Dean Williams, Kansas Motor Carriers
Gwendolyn Cargnel, Tobacco Free Kansas Coalition, Inc.
Tom Palace, Petroleum Marketers and Convenience Store Assoc. Of Kansas

Others attending:

See Attached List.

Acting Vice-Chair Representative Tafanelli opened the meeting for bill introductions.

Representative Goico requested the introduction of a bill which he called aircraft maintenance and repair. This bill would provide sales tax exemptions for aircraft repairs and modifications in the State of Kansas.

Hearing no objections, Acting Vice-Chair Tafanelli accepted that bill for introduction.

With no one else wishing to introduce a bill, the meeting was opened for public hearing on **HB 2560**.

Dennis Wilson, Johnson County Treasurer, was recognized to give testimony in support of **HB 2560**. Mr. Wilson stated that this bill is designed to allow counties across the State to change methods of operation should they choose to do so. The only mandate associated with the bill is an increase to the existing tolerance amount related to interest due for delinquent personal property taxes. (Attachment 1)

Sedgwick County Treasurer, and CPA, Jan Kennedy gave three reasons why Sedgwick County supports **HB 2560**.

- Acceptance of delinquent taxes in full without payment of the interest due if the amount of the interest due is less than \$5.
- Allow the acceptance of delinquent tax payments during the preparation of warrants for unpaid personal property taxes.
- Allowing judgments of delinquent personal property taxes to become dormant after 7 years if the county commissioners determine it is not reasonable to expect payment. (Attachment 2)

Written testimony in support of **HB 2560** was provided by Charles A. Henry, Director of Revenue/Treasury Unified Government of Wyandotte County/Kansas City, Kansas. (Attachment 3)

With no further wishing to address the bill, either as a proponent or opponent, Acting Vice-Chairman

CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on February 11, 2004 in Room 519-S of the Capitol.

Tafanelli closed the meeting for hearings on **HB 2560** and opened the meeting for hearings on **HB 2682**.

First to appear in support of **HB 2682** was Secretary of Revenue, Joan Wagnon. Her supportive testimony stated that the bill requires anyone selling cigarettes to persons who reside in Kansas to obtain the proper cigarette license, to sell only cigarettes with a valid Kansas cigarette tax stamp, to register for Kansas sales tax and to remit and pay sales taxes when due. It also required the seller to obtain certain information from the purchaser and to verify that information before completing the transition. Also, there is an additional requirement for the package to contain a notice concerning liability for the taxes due on the cigarettes. (Attachment 4)

Representative David Huff presented testimony before the committee in support of **HB 2682**. Representative Huff explained the various actions which would be required if the bill was passed. These would include the requirement of a cigarette license from all internet providers, require an internet supplier to obtain from the purchaser a certification that requires confirmation that the purchaser is legal minimum age, as well as several other requirements which will have to be met prior to shipment of cigarettes to the State of Kansas. (Attachment 5)

R.J. Reynolds Tobacco Company was represented by Ronald Hein also in support of **HB 2682**. They support the bill as an appropriate way for the state to insure that internet and other interstate sales of cigarettes are handled in a manner that only persons of lawful age are able to obtain cigarettes and that tobacco excise taxes, sales taxes, and any other taxes applicable are collected from the entities selling cigarettes. (Attachment 6)

On behalf of Philip Morris USA, Kathy Damron introduced their opinion in support of **HB 2682** stating that this bill is a positive step forward in the State's effort to achieve strong public policy regarding sales and shipment of cigarettes. (Attachment 7)

Deann Williams, Kansas Motor Carriers, came before the committee to thank Representative Huff for all the work he did on **HB 2682** as well as to express their feeling that the bill strengthens Kansas law by requiring those that sell and ship cigarettes into Kansas to be in compliance with all required tax and licensing laws. (Attachment 8) Ms. Williams also included a copy of the testimony given before the Senate Taxation Committee on Thursday, October 9, 2003. (Attachment 9)

Next to present testimony in support of **HB 2682** was Gwendolyn Cargnel, policy chair for the Tobacco Free Kansas Coalition and registered lobbyist for the American Cancer Society. It is their opinion that restricting the sale of cigarettes to only those people who are licensed to sell them will not only make it more difficult for youth who get her access to cigarettes via the internet to purchase them, but it will also benefit the State with added revenue. (Attachment 10)

Tom Palace, Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas, PMCA is an advocate for responsible tobacco retailing and feels that **HB 2682** is a step in the right direction to control the number of sellers of tobacco products and to assure that the cigarettes being sold over the internet are being purchased by a person of legal age. (Attachment 11)

Kansas Public Health Association, Inc. represented by Sally Finney, CAE, M.Ed. Also provided testimony in support of **HB 2682** stating that this bill contains provisions limiting the ability of children to purchase and/or access cigarettes available through the internet, and secondly this bill has the potential to discourage smoking by both children and adults. In closing, Ms. Finney thanked Representative Huff for all the work he did on this bill (Attachment 12)

Committee attention was called to written testimony provided by Philip Bradley of the Kansas Licensed Beverage Association. (Attachment 13)

With no one further wishing to address **HB 2682**, Acting Vice-Chairman Tafanelli closed the public hearing.

With no further business before the committee, Acting Vice-Chairman Tafanelli adjourned the meeting at 10:15 a.m.

2/4/2004

TO: Representative John Edmonds
Chairman House Taxation Committee

FROM: Dennis Wilson
Johnson County Treasurer

Testimony on HB 2560

Chairman Edmonds and Committee

Thank you for this opportunity to testify on behalf of Johnson County on the above referenced bill.

The Kansas Association of Counties supports my request with this statute change.

This bill is not designed to mandate any changes in the methods of collection for delinquent personal property taxes currently used in any of our counties. This bill is designed to allow counties across the State to change existing methods of operation, if they so choose, to enhance their current methods of operation. The only mandate associated with the bill is an increase to the existing tolerance amount related to interest due for delinquent personal property taxes.

The association has noticed that it could be cost beneficial to increase the tolerance level related to the underpayment of interest for delinquent personal property taxes from \$1 to \$5. Currently, Treasurer's are only allowed to accept underpayment of delinquent personal property interest payments if the total interest remitted is within \$1 of the total interest due. The cost of county resources spent on the processing of notices to the taxpayers and postage prohibits the \$1 tolerance from being cost effective. An increase to \$5 provides a more appropriate level of tolerance relative to resource costs.

Also, the association has deemed it appropriate that the period of time for which delinquent personal property taxes must be considered active be reduced from 20 years to 7. It has become apparent that accounts still uncollected in excess of 7 years become progressively more difficult to collect as time passes. This change will not mandate that a county must deem uncollected accounts as dormant after 7 years, but rather offers each county the option to do this subject to the approval of the county commissioners. However, delinquent personal property accounts declared dormant may still be collected at any time in the future.

Our association asks that the legislature increase the tolerance level for underpayment of interest due on delinquent personal property taxes from \$1 to \$5 and that each county, subject to the approval of their county commissioners, be allowed to deem accounts uncollected after 7 years as dormant if they so choose.

We ask that this committee move out this bill favorably.

HOUSE TAXATION

Attachment 1

Date 2-11-04

Thank you for this opportunity to address you today. I represent one of the larger population counties in the state. Here are some reasons I support this proposed legislation.

A. Acceptance of delinquent taxes in full without payment of the interest due if the amount of the interest due is less than \$5.

In a county with the number and volume of transactions that the larger counties process, we are interested in both doing our job, providing good customer service to our citizens and achieving throughput. Any payment where the amount doesn't match the full amount of the statement creates a bottleneck. I estimate that the cost to handle a short payment is as much as \$22.00, depending upon when in the cycle of delinquency the payment is received. Cost/benefit analysis would indicate that good business practice would allow each large county to decide if they wish to give up the \$5 in interest and fees to save the \$22.00 in cost associated with collecting the "short" amount.

B. Allowing the acceptance of delinquent tax payments during the preparation of warrants for unpaid personal property taxes.

There probably was a time when the preparation of the warrants for the unpaid personal property taxes required extensive time and effort on the part of the treasury staff. Today, these warrants are prepared by request from our Information Services staff by computer, not by hand. We don't need 26 or 15 days to prepare the warrants, and there is no reason why we shouldn't accept payments tendered.

C. Allowing judgments of delinquent personal property taxes to become dormant after 7 years if the county commissioners determine it is not reasonable to expect payment.

Attached to this testimony is a spread sheet showing delinquent personal property taxes in Sedgwick County last October, and the collections that occurred in 2003 for the first 9 months of the year. As you can see, the amounts collected are much greater in the first few years after obtaining the judgment, as would be expected intuitively. With the requirement that delinquent personal property taxes must be paid to obtain a current vehicle registration in our tag offices, we have a fairly large hammer to collect from those citizens who remain in the county. In Sedgwick County we have a Delinquent Tax Unit, part of the County Counselor's office, that begin collection efforts as soon as practical after a payment date has passed. Once judgment is obtained, delinquent personal property taxes are turned over to a collection agency for collection. Twenty years is a very long time, particularly for citizens in Sedgwick County that have names in common with delinquent non-taxpayers, and as I interpret this bill, each County Commission could determine after 7 years whether or not to pursue collection, depending upon their collection history.

Again, thank you for your courtesy and attention. I will stand for questions.

HOUSE TAXATION

Attachment 2

Date 2-11-04

Sedgwick County /
 Delinquent Personal Property Tax Analysis

<u>Tax Year</u>	<u>Delinquent PP taxes 10/9/03</u>		<u>Collected 1/1 - 10/9/03</u>	<u>Percent of total delinquent collections</u>
	<u>\$\$ Balance</u>	<u>No. of accounts</u>		
2002	\$ 915,641	2,886	\$ 2,901,275	92.3%
2001	784,894	2,255	162,118	5.2%
2000	522,747	1,628	36,458	1.2%
1999	654,406	1,685	18,546	0.6%
1998	452,491	1,610	5,747	0.2%
1997	541,437	1,472	3,175	0.1%
1996	520,965	1,326	3,154	0.1%
7 yr cut off	4,392,581	12,862	3,130,473	99.7%
1995	506,895	1,156	1,327	0.0%
1994	630,012	1,013	1,913	0.1%
1993	463,689	834	1,050	0.0%
1992	345,644	577	3,650	0.1%
1991	964,824	956	2,884	0.1%
1990	983,444	661	281	0.0%
1989	1,074,739	632	20	0.0%
1988	3,564,035	961	272	0.0%
1987	3,311,870	1,066	6	0.0%
1986	6,101,752	1,605	310	0.0%
1985	6,643,502	1,610	245	0.0%
1984	5,794,687	1,602	146	0.0%
1983	5,427,058	1,290	165	0.0%
Last 13 yrs	35,812,151	13,963	12,269	
Total	\$ 40,204,732	26,825	\$ 3,142,742	100.0%

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TESTIMONY – HOUSE BILL 2560
COLLECTION OF DELINQUENT PERSONAL PROPERTY TAXES

To: House Taxation Committee
Representative John Edmonds, Chair

From: Charles A. Henry, Director of Revenue/Treasury
Unified Government of Wyandotte County/Kansas City, KS

Date: February 5, 2004

Dear Representative Edmonds and Committee Members:

I previously scheduled a time to come before you on February 11, 2004, to testify in support of House Bill 2560. This bill amends K.S.A. 79-2017.

Instead, I would like to submit this written testimony and to not make the trip to Topeka at the time of the hearing. The Unified Government will support the bill, if an amendment can be included.

The bill, as presented, makes changes in the manner in which this County, and three others, collect delinquent personal property taxes. We have been following this statute for years.

We would request that the word Wyandotte in the first sentence of K.S.A. 79-2017 be stricken.

We have found the dates in this statute to cause unnecessary delays in our efforts to collect delinquent personal property taxes. K.S.A. 79-2101 allows us to start on January 1 while this statute delays our start until February 16. This leads us to choose to either amend the statute for dates (which further confuses this process) or remove us from this statute and return us to the same statute the other 101 counties follow. We have determined that nothing in K.S.A. 79-2101 would be onerous to us and we would prefer to follow that statute.

For these reasons, I submit this testimony in support of House Bill 2560, if an amendment can be made which strikes the word “Wyandotte” from K.S.A. 79-2017. If that amendment can not be included, we withhold our support of this bill.

Thank you for the opportunity to provide this testimony.

HOUSE TAXATION

Attachment 3

Date 2-11-04



K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony to the House Taxation Committee Joan Wagnon

February 11, 2004
House Bill 2682

Chairman Edmonds and Members of the Committee:

Bill Explanation

House Bill 2682 creates requirements for individuals/companies who sell cigarettes through the Internet, the telephone or any other type of mail-order transaction. The bill requires anyone selling cigarettes to persons who reside in Kansas to obtain the proper cigarette license, to sell only cigarettes with a valid Kansas cigarette tax stamp, to register for Kansas sales tax and to remit and pay sales taxes when due. The bill also requires the seller to obtain certain information from the purchaser and to verify that information before completing the transaction. All packages of cigarettes shipped under the requirements of this bill shall have the word "Cigarettes" printed on all sides of the package. There is also a requirement for the package to contain a notice concerning liability for the taxes due on the cigarettes.

The bill would also require that the Kansas Department of Revenue (KDOR) publish a listing of all cigarette and tobacco licensees and to update that list monthly.

This bill would add language concerning counterfeit cigarettes, the duties of the director related to discovery of counterfeit cigarettes, and it specifies the penalties for violations.

Department Comments on House Bill 2682

This bill would allow KDOR to regulate the sale of cigarettes that are shipped to residents of Kansas and penalize those who violate the requirements. Also, by making certain violations felonies, there would be a greater chance of prosecutors pursuing violators than if an offense were considered only a misdemeanor. Licensing sellers who ship cigarettes directly to the consumer will allow KDOR to take administrative action against the license, in addition to criminal sanctions.

Requiring KDOR to publish the list of cigarette and tobacco licensees will benefit the industry, the health coalitions, and the public. In the past, we have had requests for licensee lists from all segments, and currently, because the cigarette and tobacco laws are in Chapter 79 (the tax

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Attachment 4

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statutes), they are considered confidential information, even though the license information itself contains no confidential taxpayer information.

We point out one concern. Page two, lines 15 through 22, provides for a notice of liability for taxes, which is required to be printed on every package of cigarettes shipped to a purchaser in Kansas from a seller outside of Kansas. In section 1, we are requiring the seller to be licensed and pay all applicable taxes. Some might chose to read this notice as relieving the seller from paying these taxes and putting the responsibility on the purchaser.

Overall, passage of this bill would allow KDOR to better track the flow of cigarettes into Kansas through the cigarette licensing and sales tax registration process, ensure licensees are following Kansas statutes and authorize action against those who violate the laws governing direct shipment of cigarettes to Kansas consumers.

HB 2682

Thank you Mr. Chairman and Ranking member Larkin. Mr. Chairman, HB-2682 has been one year in the making. This bill went through a summer interim committee with a positive recommendation to get all parties involved on the same page. We have done this with special meetings of all parties. I feel this bill is the best possible bill we could have with the number of groups involved. As with any bill it is not perfect, but very close in stopping internet sales of cigarettes to minors.

This bill will require a cigarette license from all internet providers. This bill will require a Kansas cigarette tax stamp. This bill will require a registration certificate which is subject to the provisions of the Kansas Sales Tax act. This bill will require dealers selling cigarettes over the internet to file sales tax returns.

This bill will require an internet supplier to obtain from the purchaser a certification that requires reliable confirmation that the purchaser is legal minimum age. It also requires a statement signed by the purchaser, showing his address and that he or she is of legal age and that signing another persons name to such certification is illegal.

The retail cigarette dealer of internet sales shall verify the information contained in the certification provided by the purchaser against a commercially available database of governmental records, or obtain a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the purchaser.

All invoices, bills of lading, sales receipts and any other document related to the sale of cigarettes through the internet or other mail order transaction shall contain the current, valid retailer Kansas cigarette dealer license number, Kansas sales tax registration number, business name and address of the seller.

All packages of cigarettes shipped from a cigarette dealer to purchasers who reside in Kansas shall clearly print on the package with the word "CIGARETTES" on all sides of the package. In addition, such package shall contain an externally visible and easily legible notice located on the same side of the package as the address to which the package is delivered as follows:

"IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A

HOUSE TAXATION

Attachment 5

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SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES.

The Kansas department of revenue shall publish a list of active cigarette and tobacco licensees and shall update such list monthly.

The list of active cigarette and tobacco licensees published as provided in the subsection shall contain the following information: County name, owner, business name, address, license type and license number.

Counterfeit cigarettes shall be seized by the director. Counterfeit cigarettes includes cigarettes that have false manufacturing labels or packages of cigarettes bearing counterfeit tax stamps.

Mr. Chairman this may not completely stop internet sales of cigarettes to minors, but it makes it very, very difficult. If I were an internet dealer I would not want to jump through this many hoops in order to sell a carton of cigarettes.



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Senate Passes Bill to Capture Illegal Cigarette Sales

by John Skorburg

The U.S. Senate passed on December 9 a bill (S. 1177) intended to curtail illegal cigarette trafficking and strengthen enforcement of cigarette tax collection from Internet vendors. The measure passed late in the evening by voice vote.

Senator Orrin G. Hatch (R-Utah), chairman of the Senate Judiciary Committee, and Senator Herb Kohl (D-Wisconsin) introduced the Prevent All Cigarette Trafficking (PACT) Act on June 3, 2003.

"Contraband cigarettes contribute heavily to the profits of organized crime syndicates, specifically global terrorist organizations," stated Hatch at the bill introduction. "Furthermore, illegal cigarette trafficking has had a damaging impact on the economies of numerous states."

"It is clear that cigarette trafficking is becoming a method of terrorist financing," added Kohl. "This legislation will comprehensively combat tobacco smuggling. In reducing cigarette smuggling, we will simultaneously help deny terrorists a needed source of funding and help our financially struggling states collect their revenue."

The PACT Act would:

- Strengthen the reporting requirements for interstate cigarette sellers.
- Lower the threshold for cigarettes to be treated as contraband from 60,000 to 10,000.
- Make violating reporting requirements a felony.
- Create a substantial civil penalty for

violating reporting requirements.

- Empower state attorneys general to prosecute violators.

The bill "is designed so that the profits of those currently benefitting from contraband cigarettes will go up in smoke," Hatch said when the measure passed.

The legislation also gives state attorneys general the ability to bring action in federal court against Internet vendors who violate state laws by failing to report sales to state tax administrators.

"The PACT Act will give states the authority to collect millions of dollars in lost state tax revenue resulting from online and other remote sales of cigarettes and smokeless tobacco," said Vermont Senator Patrick Leahy, ranking member of the Senate Judiciary Committee, during a July 31 hearing. "It also ensures that every tobacco retailer, whether a brick-and-mortar or remote retailer of tobacco products, plays by the same rules by equalizing the tax burdens."

In the House, Reps. Martin Meehan (D-Massachusetts) and Mark Green (R-Wisconsin) have sponsored similar legislation.

Philip Morris USA, the largest cigarette company in the United States with nearly 50 percent of U.S. retail sales, supports legislation "aimed at stopping the illegal sale of cigarettes," including stolen, illegally imported, counterfeit, and untaxed or under-taxed cigarettes that enter into or are diverted from the legal distribution chain through illegal

"Contraband cigarettes contribute heavily to the profits of organized crime syndicates, specifically global terrorist organizations. Furthermore, illegal cigarette trafficking has had a damaging impact on the economies of numerous states."

SENATOR ORRIN HATCH
R-UTAH

means. According to the company's Web site, "Illegal trade deprives governments of tax revenue and can result in stolen products, hijacked cigarette trucks, tarnished trademarks and brand reputations, and distortions in the legitimate market.

"As excise taxes and other costs increase," the Web site statement continues, "many smokers are seeking lower-priced cigarettes through a variety of alternative venues and channels, many of which are illegal, creating a need for increased enforcement and more stringent penalties. Philip Morris USA is working to support legislation that can provide law enforcement authorities with additional tools to combat illegal trade in cigarettes."

INTERNET INFO

The full text of S.1177, The PACT Act, is available through *PolicyBot*. Point your Web browser to <http://www.heartland.org>, click on the *PolicyBot* icon, and search for document #14098.

The Philip Morris position statement on illegal trade in tobacco products is available online at http://www.philipmorrisusa.com/policies_practices/legislation_regulation/illegal_trade.asp.

John Skorburg is managing editor of Budget & Tax News. His email address is skorburg@heartland.org.



NCSL CAPITOL TO CAPITOL

AN INFORMATION SERVICE OF NCSL'S STANDING COMMITTEES

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CONGRESS FINISHES APPROPRIATIONS WORK. On January 22, the Senate passed H.R. 2673 despite continuing objections to numerous legislative riders and more than \$10 billion in special projects jammed into the bill. Earlier in the week, Senate Republican leaders came up 12 votes shy of limiting debate on H.R. 2673, omnibus FY 2004 appropriations legislation into which seven of the 13 annual appropriations measures are folded. H.R. 2673 includes an NCSL-sought boost of \$1.5 billion in state grants to implement the Help America Vote Act. It also includes an NCSL-sought increase of \$1.2 billion in state grants for the Individuals with Disabilities Education Act. Both actions address NCSL's attempts to blunt revived efforts to expand unfunded federal mandates. H.R. 2673 also boosts state highway obligation ceilings by 6 percent (\$2 billion) allowing continuing growth and economic development in TEA-21 programs. The omnibus imposes a 0.59 percent across-the-board reduction to most discretionary programs. NCSL thanks state legislators for their persistent efforts to call attention to unfunded federal mandates and related issues raised in appropriations bills. (NCSL staff contact: Molly Stauffer)

STATE USE OF FEDERAL FUNDS QUESTIONED. Both the White House and U.S. Department of Education announced recently that states are sitting on \$6 billion in unspent federal education funds. This misrepresentation is being used as evidence that states do not need increased federal resources to meet mandates in the No Child Left Behind Act and other education programs. An NCSL memorandum of Jan. 15, 2004, lays out many of the idiosyncrasies of federal education appropriations, state/federal fiscal years and spend-out mechanisms that clarify the issues of "unspent balances." In the U.S. Department of Education's most recent report on the closeout of federal education funds (FY 2001), states spent all but \$150 million of \$30 billion in K-12 appropriations--or 0.5 percent of all funds. NCSL's memorandum is available at <http://www.ncsl.org/statefed/funds04.htm>. (NCSL staff contact: David Shreve)

FEDERAL COMMITTEE TO MOVE ON INTERNET TOBACCO TAX BILL. On January 28, the House Judiciary Committee will mark up H.R. 2824 (Representative Mark Green, R-Wisconsin), bipartisan legislation that would facilitate collection of state taxes on the sale of tobacco and smokeless tobacco products over the Internet. H.R. 2824 would bolster state enforcement tools to collect these taxes. It would also require on-line cigarette vendors to report their sales to state tax administrators under the decades old Jenkins Act. The U.S. General Accounting Office claims states lost \$550 million in tax revenues in FY 2003 and will lose \$1.2 billion by FY 2005. NCSL supports H.R. 2824 and backed S. 1177, similar but broader legislation that passed the Senate on unanimous consent last December. State legislators should contact their House members and urge their support and co-sponsorship of H.R. 2824. (NCSL staff contacts: Joy Johnson Wilson, Molly Stauffer)

ENERGY BILL - TO PASS OR NOT TO PASS? A conference report on H.R. 6 remains stalled in the U.S. Senate. The last cloture vote taken on the legislation found supporters two votes shy of limiting debate. That number recently grew to three when Senator Jon Ensign (R-Nevada) announced his opposition to H.R. 6. Republicans leaders will discuss alternative strategies to revive the bill at a retreat scheduled for January 26. Senate Energy Committee Chair Pete Domenici (R-New Mexico) stated this week that changes are necessary to break the logjam. MTBE liability provisions, \$27 billion in assorted tax breaks and renewable energy provisions remain as major stumbling blocks. (NCSL staff contact: Gerri Madrid Davis)

ON THE HORIZON. The House and Senate are respectively targeting mid-February for completion of floor action on H.R. 3550 and S. 1072, reauthorizing the Transportation Equity Act for the 21st Century (TEA-21). Senate Majority Leader Bill Frist (R-Tennessee) indicated this week that he intends to schedule reauthorizations of the Individuals with Disabilities Education Act, Higher Education Act and Head Start for March floor action. President George W. Bush releases his FY 2005 budget on February 2. And, Senator Lamar Alexander (R-Tennessee) stated this week that he hopes to offer a compromise to stalled Internet tax moratorium legislation (S.150) next week.

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NEWSPAPER

E-COMMERCE REPORT

Sales of Cigarettes Online Hit

By BOB TEDESCHI

ONLINE sellers of cigarettes have been in an enviable position — until recently. As states steadily raised cigarette taxes in an effort to balance budgets and curb teenage smoking, more and more consumers turned to the Web, where cheap cigarettes abound.

But such bargains may not be so easily found in the future, some analysts said, as states like New York prepare to outlaw online tobacco sales, while others crack down on cigarette buyers who do not pay taxes.

For now, the savings are significant. When a smoker in New York City, for instance, buys a carton of Marlboro Full Flavor Kings from a site like DirtCheapCig.com, the price is \$35.18, including shipping. For the same carton in Manhattan, where customers pay an excise tax of \$1.50 a pack to both the city and the state, taxes alone would amount to \$30.

The reason the Internet is a smoker's haven, analysts and state government investigators said, is that DirtCheapCig and hundreds of other Internet sites do not meet their legal responsibilities to report customers' names to the state taxing authorities, so that states can collect excise taxes.

Executives at DirtCheapCig.com, based in Paducah, Ky., did not return calls seeking comment, but a customer service representative said the site did not report sales to a customer's state. Rather, he said, it charges the Kentucky excise tax of 3 cents a pack.

According to Forrester Research, online bargains will help Web sites sell \$2.2 billion worth of cigarettes this year, up from \$1.2 billion last year. Forrester projects sales of \$5 billion in 2005.

But those rosy figures could be in jeopardy, given the states' growing distaste for online tobacco merchants. New York, for instance, passed a law in 2000 barring the online and mail-order sale of cigarettes to its residents. After the law was initially struck down by the Federal District Court in Manhattan in 2001, it was upheld by a federal appeals panel

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Ronald R. Hein

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**Testimony re: HB 2682
House Taxation Committee
Presented by Ronald R. Hein
on behalf of
R. J. Reynolds Tobacco Company
February 11, 2004**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for R. J. Reynolds Tobacco Company.

Last year, Rep. Huff introduced legislation to solve the problem of internet sales of cigarettes that are being made to under-age purchasers and that are being made without payment of the appropriate taxes. RJR opposed the language but not the intent of that legislation. We offered instead a model bill which would meet the objectives yet eliminate the concerns of many of the opponents. Rep. Huff and the Department of Revenue worked with all of the conferees this summer to craft HB 2682.

RJR supports HB 2682 as an appropriate way for the state to insure that internet and other interstate sales of cigarettes are handled in a manner that only persons of lawful age are able to obtain cigarettes, and that tobacco excise taxes, sales taxes, and any other taxes applicable are collected from the entities selling the cigarettes.

RJR has set high standards of conduct regarding sales to minors and believes that any legislation dealing with interstate sale of cigarettes should provide sufficient protections to insure that minors do not obtain cigarettes. In addition, RJR, while utilizing internet or interstate sales on only a limited basis, also strongly believes that all taxes should be collected on such transactions.

We not only support this bill, but we also applaud the diligent efforts of Rep. Huff to solve the concerns of the opponents and yet to meet his goals to protect against under-age acquisition of cigarettes, and to insure that the Kansas excise and sales taxes on internet sales of cigarettes are paid.

Since this has been such a careful crafting of language, with significant effort by Rep. Huff and the Department of Revenue and numerous groups involved, we would respectfully request that the legislation be approved without any amendments.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

HOUSE TAXATION

Attachment 6

Date 2-11-04

**Kathy
Damron**

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800 SW JACKSON STREET, SUITE 1100

Topeka, Kansas 66612-2205

February 11, 2002

The Honorable John Edmonds
Chairman
House Committee on Taxation
Statehouse
Topeka, Kansas 66612

Dear Chairman Edmonds and members of the Tax Committee:

I am pleased to appear before you this morning in support of House bill 2682 on behalf of Philip Morris USA. This measure is a positive step forward in the state's effort to achieve strong public policy regarding sales and shipment of cigarettes. We are pleased to stand in support of this bill and wish to commend the Representative from Lenexa, Rep. David Huff, for his leadership on this issue.

Philip Morris USA supports legislation aimed at stopping the illegal sale of cigarettes. As the cost of cigarettes increases, due to increased excise taxes and other factors, so too does the traffic of counterfeit cigarettes. This bill helps give the state better tools to deal with this growing problem. In addition, the bill also addresses the issue of internet and direct mail sales of cigarettes and makes important improvements in this area, as well.

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Attachment 7

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As many of you heard this fall in the interim committee, the problem of counterfeit cigarettes is a growing concern and proposals to better deal with it are being considered in many statehouses across the country. It isn't a problem that is isolated to one part of the nation. It is everywhere.

I think it is important to point out that this bill doesn't contain all of the provisions that many of us involved originally suggested. There were additional ideas that each of us involved in developing this proposal agreed to leave behind in the true spirit of compromise and in recognition of the need to make advances this year.

Mr. Chairman, thank you for investing the time of the committee to hear this legislation and our testimony. We urge your favorable consideration of HB 2682.



KANSAS MOTOR CARRIERS ASSOCIATION

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Member Emeritus

TOM WHITAKER
Executive Director

**Legislative Testimony
before the
House Taxation Committee
Rep. John Edmonds, Chairman
Wednesday, February 11, 2004**

**MR. CHAIRMAN AND MEMBERS OF THE
HOUSE TAXATION COMMITTEE:**

I am Deann Williams, director of industry relations of the Kansas Motor Carriers Association. I appear here this morning representing our more than 1,200 member companies in support of House Bill No. 2682 an Act targeted at the sale of cigarettes over the internet.

KMCA testified before this Committee during the 2003 Session and before the Interim Special Committee on Assessment and Taxation expressing our opposition to initial legislative proposals concerning the sale and transportation of cigarettes. A copy of the testimony presented to the Interim Special Committee on Assessment and Taxation is attached.

KMCA would like to express our sincere thanks to Rep. Huff for inclusion in the development of HB 2682. The bill addresses our previous concerns and we feel that it strengthens Kansas law by requiring those that sell and ship cigarettes into Kansas to be in compliance with all required tax and licensing laws. In addition, the bill requires that the buyer of cigarettes be informed that their name will be reported to the Department of Revenue and that the buyer is responsible for any unpaid taxes.

KMCA supports HB 2682. We thank you for the opportunity to appear today and would be pleased to respond to questions you may have.

HOUSE TAXATION

Attachment 8

Date 2-11-04



KANSAS MOTOR CARRIERS ASSOCIATION

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Wal-Mart Stores, Inc.
Public Relations Chairman

DON KIND
Kansas Truck Center
Allied Industries Chairman

WILLIAM H. GRAVES
Member Emeritus

TOM WHITAKER
Executive Director

**Legislative Testimony
before the
Special Committee on Assessment and Taxation
Senator David Corbin, Chairman
Thursday, October 9, 2003**

**MR. CHAIRMAN AND MEMBERS OF THE SPECIAL
COMMITTEE ON ASSESSMENT AND TAXATION:**

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this afternoon representing our 1,250 member firms to discuss Topic No. 5: *Transportation of Cigarettes. Review taxation and other implications of internet cigarette sales and the proposal in 2003 HB 2422 that would prohibit transportation of cigarettes under certain circumstances and review the illegal sale of stolen, counterfeit, untaxed and under-taxed cigarettes that may be available in Kansas.*

Specifically, we are opposed to the transportation by common or contract carrier provisions of HB 2422. The bill is patterned after New York Public Health Law Section 1399-11 which makes it "unlawful for any common or contract carrier to transport cigarettes" to any person in New York state "reasonably believed" by the carrier to be other than: (a) a licensed cigarette tax agent or wholesale or retail dealer, (b) an export warehouse or customs bonded warehouse proprietor, or (c) a federal or state government official acting in an official capacity. If cigarettes are delivered to a home or residence, the legislation presumes that the carrier knew that such consignee was not an authorized recipient.

HB 2422 is not about cigarettes, it is about the shipping business. You cannot have an efficient nationwide economy if before crossing a state border, a trucker has to consult with an endless variety of state and local regulations. In 1994, Congress passed the Federal Aviation Administration Authorization Act. The FAAAA preempts state laws "related to price, routes or service" of any motor carrier with respect to the transportation of property. HB 2422 would require carriers: (1) to identify those packages in their system that both contain cigarettes and are bound for Kansas, (2) as to such packages, to determine whether the consignee is an authorized recipient, and (3) as to unauthorized recipients, to create a procedure for undeliverable packages. Compliance with these provisions would create a substantial burden on the carrier in the form of labor, costs and delay, and would affect the timeliness of the carriers' service.

Additionally, this bill does not apply to one of our industry's major competitors, the **UNITED STATES POSTAL SERVICE.**

HOUSE TAXATION

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Date 2-11-04

Topic No. 5 – Special Committee on Assessment and Taxation – Page 2

The New York statute was scheduled to take effect on November 14, 2000, but was challenged by tobacco companies in the U.S. District Court for the Southern District of New York. Their lawsuit contended that the statute violated the Constitution's Commerce Clause by improperly discriminating against interstate commerce. On November 13, 2000, the district court issued a TRO that enjoined enforcement of the statute. Following a five-day bench trial, on June 8, 2001, the district court permanently enjoined the statute. The second Circuit Court of Appeals reversed the district court and allowed the New York law to become effective on March 6, 2003.

On June 27, 2003, the New York State Motor Truck Association, the New Jersey Motor Truck Association and the Motor Transport Association of Connecticut filed suit against the State of New York in U. S. District court challenging the transportation provisions of Public Law 1399-11 based on the provisions of the FAAAA. As of today, the U.S. District Court has not handed down a ruling.

Imagine if Kansas penalized SBC if someone used its phone lines to order cigarettes, or the railroad that transported the trailer containing the package was fined, or the cigarette companies were fined for selling the cigarettes to the shipper in the first place. Such a law would be crazy, unworkable and unfair. The same is true here. Regulate the conduct, not the carrier.

KMCA respectfully requests that recommendations by the Special Committee on Assessment and Taxation to the full Legislature not include the common and contract carrier provisions of HB 2422. I thank you for the opportunity to appear before you and would be pleased to respond to any questions you may have.



Tobacco *Free* Kansas Coalition, Inc.

House Committee on Taxation
HB 2682

Mr. Chairman and members of the Committee, I am Gwendolyn Cargnel, policy chair for the Tobacco Free Kansas Coalition and registered lobbyist for the American Cancer Society. I appreciate the opportunity to speak in support of HB 2682.

The Tobacco Free Kansas Coalition (TFKC) has more than 125 members including organizations such as the American Cancer Society, the American Heart Association, the American Lung Association, the Kansas State Nurses Association and the Kansas Public Health Association.

TFKC stands in support of this bill. Limiting youth access to tobacco products and ensuring better compliance with the state's taxation requirements on these products is important to the members of TFKC.

Restricting the sale of cigarettes to only those people who are licensed to sell them will not only make it more difficult for youth who get their access to cigarettes via the internet to purchase them, but it will also benefit the state with added revenue.

I would like to thank the committee for seeing this as an important issue and for addressing it. Representative Huff's willingness to consider TFKC's concerns is especially appreciated.

I urge this committee to recommend HB 2682 for passage to the House.

HOUSE TAXATION

Attachment 10

Date 2-11-04

TOBACCO FREE KANSAS COALITION, INCORPORATED OFFICERS

Terri Roberts, J.D., R.N.

EXECUTIVE DIRECTOR

KANSAS STATE NURSES ASSOCIATION

Kevin Walker

ADVOCACY DIRECTOR

AMERICAN HEART ASSOCIATION

KANSAS DIVISION

Joan Smith

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MEMO TO: House Taxation Committee
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and
Convenience Store Association of Kansas
DATE: February 11, 2004
RE: HB 2682

Mr. Chairman and members of the House Taxation Committee:

My name is Tom Palace and I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 260 independent petroleum marketers and convenience store owners throughout Kansas.

I appreciate the opportunity to appear before you today in support of HB 2682.

In an effort to control the Internet sales of tobacco products to minors, HB 2682 will require businesses selling tobacco products to Kansas consumers to be registered with the State of Kansas. PMCA has testified in the past as to how Kansas consumers can bypass the retail system using the Internet to buy tobacco products tax free. We can show you 30-40 Internet sites where a consumer can purchase cigarettes tax free, with no transportation charges and no verification of age when the product is delivered to a residence or business.

When the legislature increased the taxes on tobacco products, the smoking consumer changed their buying habits, looking for ways to purchase tobacco products cheaper. The Internet has become a great resource to purchase just about any product at a price less expensive than going to a retail outlet, and tobacco products are probably at the top of the list.

PMCA is an advocate of responsible tobacco retailing and feels that HB 2682 is a step in the right direction to control the number of sellers of tobacco products. Requiring tobacco sellers to be registered with the Kansas Department of Revenue should cut down on the number of Internet sites that are now available and will act as a catalyst for companies to pay the state excise tax. The bill also requires that the seller of tobacco products certify that the sale of cigarettes being sold over the Internet are being purchased by a person of legal age.

Mr. Chairman, Kansas retailers have been hit hard with the increase in taxes on tobacco and gasoline. These two products alone account for over 85% of gross sales at a convenience store. Tobacco compliance is a big issue not only to the state but to our retailers as well, and as you can imagine, Internet sales of tobacco have taken a bite out of our sales. PMCA applauds the efforts of Representative Huff to make sellers of tobacco products over the Internet be accountable and pay their fair share of excise taxes. We urge your support of HB 2682.

Petroleum Marketers and Convenience Store Association
201 NW Highway 24 • Suite 320 • PO Box 8479
Topeka, KS 66608-0479
785-233-9655 Fax: 785-354-4374

HOUSE TAXATION
Attachment 11
Date 2-10-04

**KANSAS
PUBLIC
HEALTH
ASSOCIATION, INC.**

Kansas Public Health Association, Inc.

AFFILIATED WITH THE AMERICAN PUBLIC HEALTH ASSOCIATION

215 S.E. 8th Avenue

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Phone: 785-233-3103 fax: 785-233-3439

E-mail: kpha@networksplus.net

Web Site: <http://kpha.bluestep.net>

February 11, 2004,

Members of the House Committee on Taxation:

I appreciate the opportunity to appear before you today on behalf of the members of the Kansas Public Health Association to express our support of House Bill 2682.

KPHA is a statewide, non-profit membership organization whose mission is to promote sound public health programs and policies for Kansans. Cigarettes, when used as directed, kill, and we believe HB 2682 has the potential to benefit the health of Kansans in two ways.

First, HB 2682 contains provisions limiting the ability of children to purchase and/or access cigarettes available through the Internet. Studies have repeatedly shown that children are more susceptible to tobacco industry marketing than adults and, therefore, are more likely to begin smoking in their pre-teen years. Keeping cigarettes out of the hands of children is essential to encouraging healthy behaviors as adults.

Secondly, collecting state cigarette tax from Internet vendors will encourage them to raise the price of their goods. We know there is an inverse relationship between cigarette price and cigarette consumption. For every 10 percent increase in price, youth consumption drops by seven percent, and adult consumption decreases by four percent. HB 2682 has the potential to discourage smoking in both children and adults.

Before closing, I want to thank Rep. David Huff for his work on this bill. Rep. Huff worked hard to accommodate the concerns of this state's public health community as this measure was being drafted. We are grateful for his efforts.

On behalf of the Kansas Public Health Association, I ask that you support HB 2682.

Respectfully submitted by
Sally Finney, CAE, M.Ed,
Executive Director

HOUSE TAXATION

Attachment 12

Date 2-11-04

*Kansas
Licensed
Beverage
Association*

President
Tom Intfen

Secretary/Treasurer
Tammy Davis

Vice Presidents
Robert Farha
Glenda Dewey
Jim Hendricks
James Fager
Curt Melzer
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Testimony on HB 2682, Wednesday, February 11, 2004
House Taxation Committee

Chairman Edmonds and Members of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Assn., a group of men and women, in the hospitality industry, who own and manage bars, clubs, caterers, restaurants and hotels where beverage alcohol are served. Thank you for the opportunity

HOUSE TAXATION
Attachment 13
Date 2-11-04

to submit testimony today.

We support HB-2682 and its efforts to reduce counterfeit cigarettes, and unlawful sales of cigarettes in Kansas. We particularly are encouraged with the section addressing internet/mail order sales.

Millions of dollars and thousands of man hours are expended on our side, the "supply" side, of this equation to accomplish these goals. This bill adds to those efforts with measures to "raise the bar" and provide penalties for these unlawful acts.

We hope and work for, the goal of total compliance with this objective.

As always we are available for questions. Thank you for your time.

Dr. Philip B. Bradley
Executive Director

What is the KLBA?

The Kansas Licensed Beverage Association is a non-profit group of men and women licensed to serve beverage alcohol in the state of Kansas. We are small business owners who formed to educate ourselves about this industry and in the process help the public to understand as well. We represent the interests of over 3000 establishments, the women and men who as a part of their business hold a license for on premise alcohol service. We are the restaurants, hotels, clubs, bars, breweries, vineyards and caterers you frequent and enjoy. We are in the hospitality business. We advocate safe responsible consumption and are training our servers to practice these principals.

We work with the ABC to educate, train and promote compliance and responsible practices. We have a server-training program certified by the ABC for Kansas. We believe that education is the single most useful tool in reducing alcohol-related incidents.