

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Les Donovan at 10:39 a.m. on March 10, 2010, in Room 152-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes  
Scott Wells, Office of the Revisor of Statutes  
Chris Courtwright, Kansas Legislative Research Department  
Brandon Riffel, Kansas Legislative Research Department  
Mary Jane Brueck, Committee Assistant

Conferees appearing before the Committee:

Philip Bradley, CEO Kansas Licensed Beverage Association  
Robin Jennison, representing Swedish Match North America  
Thomas Jacob, on behalf of Cigar Chateau, LLC, Wichita KS  
Whitney Damron, on behalf of Swisher International, Inc.  
Kurt Van Keppel, President and founder of XIKAR  
Derrick Sontag, State Director, Americans for Prosperity  
Curt Diebel, President, Diebel's Sportsmens Gallery  
Ronald Hein on behalf of RAI Services Company  
Tom Palace, Executive Director, Petroleum Marketers & Convenience Store Association, Kansas  
Brenda Elsworth, Operations Officer for Pete's Convenient Stores  
Kendall Culbertson, Owner, Outlaw Cigar  
Doug Mays  
Kent Eckles, Vice President of Government Affairs, The Kansas Chamber of Commerce  
Phillip Morris USA  
Mike Murray, Kansas Food Dealers Association & Retail Grocers Association, Greater Kansas City  
Cory Horinek who is an employee of a tobacco company  
Chris McCalla Legislative Director, International Premium Cigar & Pipe Retailers Association  
Tom Foster, Co-Owner Fidel's  
Father H. Setter, priest in Wichita, and Chaplain of the International Premium Cigar and Pipe Retailers Association (IPCPR)

Others attending:

See attached list.

Chairman Donovan explained **SB 516 - Increasing rate of tax on cigarettes and tobacco products and increasing rate of sales tax** will be divided in order to consider tax on cigarettes and tobacco products separately from the sales tax increase. Today's hearing will be for opponents of increasing rate of tax on cigarettes and tobacco products. This portion of **SB 516** will be put into **Senate Sub to HB 2388**.

That being said, Chairman Donovan opened the hearing for opponents of increasing rate of tax on cigarettes and tobacco products. He introduced Philip Bradley, CEO Kansas Licensed Beverage Association who stated his opposition to this tax because it is a targeted tax: targeted at the cigarette and tobacco products industry. (Attachment 1) Next Chairman Donovan recognized Robin Jennison, representing Swedish Match North America. He told the committee if taxes need to be increased, they should not be taxes that target any one segment of our population or business. (Attachment 2) Thomas Jacob, on behalf of Cigar Chateau, LLC, Wichita KS told the committee this tax will drive sales of cigars and other tobacco products over the border into Missouri or onto the internet. (Attachment 3) Whitney Damron spoke on behalf of Swisher International, Inc. In his closing, he said if taxes are to be raised to help improve the State's bottom line, then all Kansans should share in that obligation. (Attachment 4) Kurt Van Keppel also spoke in opposition to this tax. He is President and Founder of XIKAR Inc., the leading accessory brand in retail tobacco and cigar stores. He suggested rather than tax on tobacco products, the state should look at internet sales to see that sales tax on items sold there rarely is collected, and should be. (Attachment 5) Derrick Sontag, State Director, Americans for Prosperity told the committee cigarette tax or any other tax would only exacerbate the problem of

## CONTINUATION SHEET

Minutes of the Senate Assessment and Taxation Committee at 10:30 a.m. on March 10, 2010, in Room 152-S of the Capitol.

increasing revenue for Kansas. (Attachment 6) Curt Diebel, President, Diebel's Sportsmens Gallery spoke about various problems he expects to have to deal with if this tax is applied. He suggested balancing the state budget should be done in such a way that it is equitable and fair for all. (Attachment 7) Ronald Hein, on behalf of RAI Services Company, told the committee to apply this tax to cigarettes it could cause Kansas smokers to look for ways to avoid the tax resulting in a loss to Kansas businesses and ultimately a loss to the State of Kansas itself. (Attachment 8) Tom Palace, Executive Director, Petroleum Marketers & Convenience Store Association of Kansas explained the various ways this bill will have a negative impact on every convenience store retailer in the state. PMCA opposes this bill and urges the committee to reject the proposal in an effort to keep Kansas tax revenues in Kansas. (Attachment 9)

Brenda Elsworth, Chief Operations Officer for Pete's convenient stores expressed opposition to this bill on behalf of over 300 employees and herself. She agrees with others speaking before her, Kansans will purchase cigarettes and other tobacco products via means other than Kansas merchants. (Attachment 10) Kendall Culbertson, Owner, Outlaw Cigar told the committee if this bill is passed, he will have to close his store, because the competition from mail order and internet sales with no tobacco taxes and no sales tax will take away enough of his customers, he will not be able to continue to do business. (Attachment 11) Doug Mays spoke on behalf of the Cigar Association of America. He said his testimony will speak to cigars. He pointed out that this bill will single out a particular group and punish them for making personal choices to purchase legal products. That will lead them to make their purchases in another state or over the internet, decreasing the revenue this bill was to generate. (Attachment 12)

Chairman Donovan asked if there was anyone else present who wished to speak to this bill. Cory Horinek, who is an employee of a tobacco company came to the podium. He is a long-time resident of Kansas who works for a company located in Florida. He stated that he is not sure there are any stores in Kansas – or other states he services – that could afford to stay in business if this bill passes.

Tom Fitzpatrick also wanted to speak to the committee. He said passage of this bill will close stores that sell tobacco products throughout the state, and then tax won't be collected at all.

Chairman Donovan told the committee there is written testimony from: Kent Eckles, Vice President of Government Affairs, The Kansas Chamber of Commerce (Attachment 13); Phillip Morris USA (Attachment 14); Mike Murray, Kansas Food Dealers Association & Retail Grocers Association, Greater Kansas City (Attachment 15); Chris McCalla Legislative Director, International Premium Cigar & Pipe Retailers Association (Attachment 16). Tom Foster, Co-Owner Fidel's, a cigar shop in Kansas City, MO (Attachment 17); and Father H. Setter, priest in Wichita, and Chaplain of the International Premium Cigar and Pipe Retailers Association (IPCPR) (Attachment 18)

Chairman Donovan closed the hearing.

The next meeting is scheduled for March 11, 2010. The committee will hear proponents of the 1-cent sales tax increase.

The meeting was adjourned at 11:42 a.m.

SENATE  
Assessment & Taxation Committee  
GUEST LIST

DATE: MARCH 10, 2010

NAME	REPRESENTING
David Cohen	KDOR
Patrick Vegelesburg	Kearney and Assoc.
Herman	ACS
Terrie Reilly	American Heart Assoc
Anne Spiess	American Cancer Society
Tracy Russell	American Lung Assoc
JUDI L RAOKE	CAMPAIGN FOR TOBACCO-FREE KIDS
TOM FITZPATRICK	TOBACCO - INDUSTRY
LYN BEYER	CIGAR & TABAC, LTD.
M. J. Hillebrand	TFKC
Ginger Park	KDHE
Lorrie Ann Brown	Wine Institute
Cody Horinek	Oliva Cigar Co.
GARY MUZA	Churchills
Hannah Sanders	KHPA
STEPHEN MAHLEY	PERDOMO CIGARS
Kendall Wilbertson	Outlaw Cigar
Ann Zimm	KDOR ABC
Tom Groneman	KDOR/ABC

# SENATE

## Assessment & Taxation Committee

### GUEST LIST

DATE: \_\_\_\_\_

NAME	REPRESENTING
Anne Nugent	Kansas Health Institute
Rachel Smith	KHI
Shirley Ward	BUDGET
Matt Casey	GDA
Terry Heidner	KDOT
Jay May	Agri Assn of America
Paul Jones	United Health Group
Joanne Fluke	KJEA
Wh. by Dan	Smith
John Freubach	Boeing
Carrie Greenwood	Kansas Youth Empowerment Academy (KJEA)
Ron Heis	RAT Services Company
Wigh Keck	HLF
Craig Gunther	K S N A
Rat Martin	RAT SERVICES Company
Aracelis Berube	RAT Services Co
Joe Mosimann	PMCA - AKS
Brenda Ekworth	Reyer's Green Strs.
Kent Eckles	KS Chamber of Commerce

# SENATE

## Assessment & Taxation Committee

### GUEST LIST

DATE: \_\_\_\_\_

NAME	REPRESENTING
Dennis Wilson	KC Food Brokers
Bradley Johnson	Centro Cigars Lawrence, KS
RICH SPARKLER	Centro Cigars Lawrence KS
Brian Farley	Centro Cigars Lawrence KS
Daniel Prather	Centro Cigars, Lawrence, KS
Robin Jannison	Swedish Match North America
Michelle Butler	Cap Strategies
Mark O'burding	Rep Don Hill
Rachel Whitten	Kansas Reporter
JOSEPH VAS	THE HUMIDOR - WICHITA
Tanya Dorf Brunner	Oral Health Kansas
Ron Seiber	K6FA/KARA
Tom Palmer	PMCA of KS
Chris Masner	American Cancer Soc.



***Kansas  
Licensed  
Beverage  
Association***

Testimony on SB-516  
February 26, 2010

Senate Tax Committee

Chairman Donovan, and Senators of the Committee,

I am Philip Bradley representing the Kansas Licensed Beverage Assn. (KLBA). Thank you for the opportunity to speak today and I will be brief. And in respect for your time I am also speaking for the Kansas Viticulture and Farm Winery Assn. (KVFWA) and the Craft Brewers Guild of KS (CBGK) in combined testimony.

**We all ask and urge you to oppose the targeted tax increase in SB 516!**

We have combined our testimony and tried to be brief in the following pages. We appreciate for your attention and ask that you to carefully consider our information.

***We oppose the targeted tax increases!***

**1) Excise Tax Increases Promote Inequalities in Taxation.**

Excise taxes are regressive and force lower income families to shoulder a greater portion of the burden. These taxes will unfairly burden lower wage earners while having little impact on the highest income households. Measured as a percentage of income, excise taxes have an impact that is five times greater for lower income families than for upper income families. At the same time, lower, middle and upper income adults all consume the same type of tobacco. There is a chart of per capita income levels of Kansans below by district.

*"Excise taxes on alcohol, tobacco, and motor fuel constitute relatively minor sources of revenue for most states and have major disadvantages. They have little growth potential, fall heavily upon low-income persons...State and local governments should use restraint in setting excise rates. Tax rates that are substantially higher than neighboring states will encourage tax evasion."* **From, Kansas Policy Choices 1986.**

**2) Targeted taxes further reduce tax competition with Missouri and Colorado.**

**3) In addition the Federal TTB itself questions the effectiveness of this increase, "Economic theory predicts that, other things equal, the increase in the tax rate has the potential to lead to greater tax evasion, including smuggling of tobacco products."** This is from a TTB study that Congress directed Treasury to conduct, reviewing the loss of Federal tax receipts due to illicit tobacco trade in the United States. Link and further text below.

***Philip Bradley  
CEO***

785.766-7492  
[www.klba.org](http://www.klba.org)  
[info@klba.org](mailto:info@klba.org)

There are undoubtedly further issues and questions that will arise as these are read therefore I am available for your questions today and at your convenience.

Again thank you for your attention and consideration.

*Philip Bradley*

Sn Assmnt & Tax  
3-10-10

Attachment # 1

**KLBA**—*Kansas Licensed Beverage Assn.* represents the interests of the men and women in the hospitality industry, who own, manage and work in Kansas bars, breweries, clubs, caterers, hotels, and restaurants. These are the places you frequent and enjoy with the tens of thousands of employees that are glad to serve you.

**KVFWA** – *Kansas Viticulture and Farm Winery Assn:* We began our Association in 2004 but our journey began decades ago. Our mission is the promotion of the production of wine from Kansas grapes, the science and practice of viticulture in the State of Kansas, and the development of Kansas Farm Wineries. We include farm wineries (such as *Blue Jacket, Davenport, Holy-Field, Stone Pillar and White Tail Run*) and numerous growers of fine grapes

**CBGK**—*Craft Brewers Guild of Kansas* is the microbrewers and craft brewers of Kansas. We are a diverse group that embraces the commercial operations and the home hobby artist brewer.



**TTB STUDY LINK** <http://www.ttb.gov/pdf/tobacco-receipts.pdf>

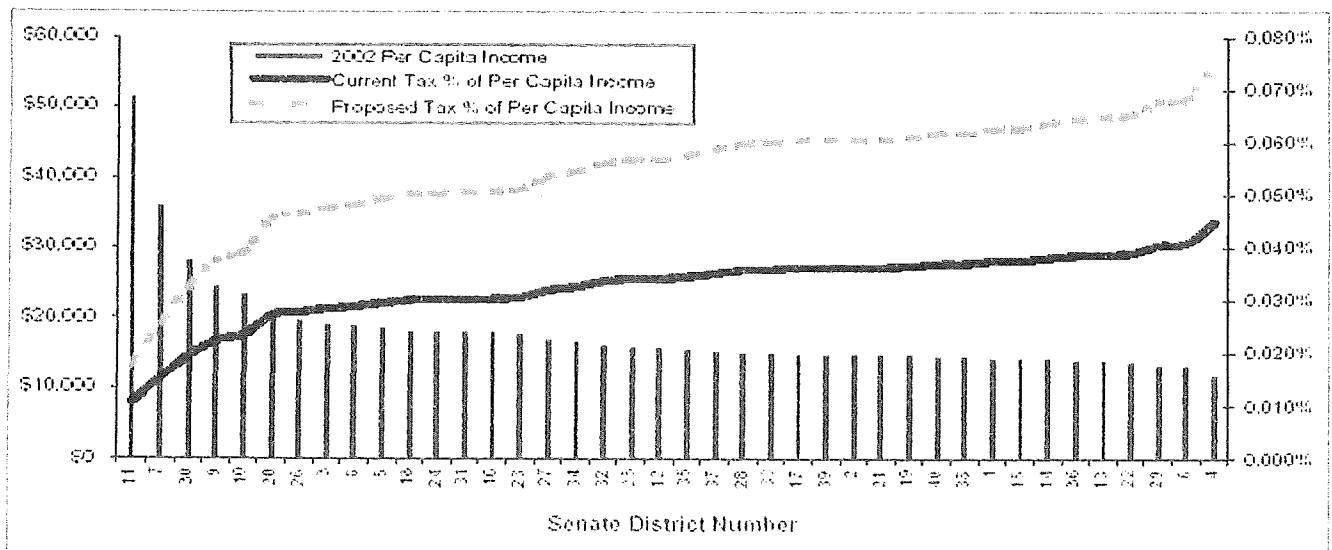
**Conclusion**

CHIPRA increased the federal excise tax on cigarettes from \$0.39 per pack to \$1.01 per pack, with commensurate increases in the tax rates on other tobacco products. **Economic theory predicts that, other things equal, the increase in the tax rate has the potential to lead to greater tax evasion, including smuggling of tobacco products.** Once data from 2009 and 2010 become available, it may be possible to estimate the extent of revenue loss following the tax increase. The magnitude of tax evasion and the activities that facilitate tax evasion have broad implications for policy development and enforcement of existing laws.

Congress directed Treasury to conduct a study reviewing the loss of Federal tax receipts due to illicit tobacco trade in the United States. A "tax gap" method of analysis was employed to estimate tax evasion in the cigarette market, comparing actual tax collections from TTB data and the tax receipts that would be expected if all consumed cigarettes--estimated using the NSDUH, a nationally representative survey--were taxed.

Issues of underreporting loom large in determining the magnitude of tax revenue lost due to the illicit tobacco trade. Reported consumption averages about 70 percent of taxed cigarette removals between 2002 and 2007. Absent making any adjustment for underreporting, the estimated tax evasion is negative; if this were true, manufacturers would be remitting more excise taxes to the Treasury than were owed. This result is implausible. Thus some factor of underreporting must be used. The substantial uncertainty surrounding the degree of underreporting of cigarette consumption in survey data necessarily generates large uncertainty about the magnitude of federal tax receipts lost due to the illicit cigarette trade.

**PER CAPITA INCOMES OF KANSANS**



3-10-10  
1-2

## A short primer on Alcohol Taxes...

Our tier is hurting! Kansas operates under a 4 tier system of alcohol distribution and sales. Alcohol must be manufactured or imported, that is the First Tier. A Distributor or wholesaler acquires from the first tier for resale to retailers. That is the second tier. They then do sell to a retailer, usually to a package store or (for only bulk wine or bulk beer) to an on-premise licensee. That is the third tier. And then the package liquor store sells to the restaurant, bar or caterer who is required to purchase from them. That is the fourth tier.

There are 4 taxes on alcohol. One Federal and then Kansas has three levels of liquor taxation, each of which imposes different rates and provides for a different disposition of revenue, including: **Liquor Gallonage Tax, Liquor Enforcement and Liquor Drink Tax.**

**Gallonage.** The first level of KS taxation is the gallonage tax, which is imposed upon the person who first manufactures, sells, purchases, or receives the liquor or cereal malt beverage (CMB).

**Enforcement or Sales.** The second level of KS taxation is the enforcement or sales tax, which is imposed on the gross receipts from the sale of liquor or CMB to consumers by retail liquor dealers; and to clubs, drinking establishments, and caterers by liquor stores and/or distributors.

**Drink Tax.** A tertiary level of taxation is levied in KS on the gross receipts from the sale of liquor by clubs, caterers, and drinking establishments.

All liquor taxes are compounded unlike other taxes in other businesses and industries. The consumer pays a drink tax, on the enforcement tax that the restaurant paid, on the gallonage tax that the liquor store paid when they purchased from the wholesaler, on the federal tax they paid.

Our People still pay all the other taxes including; Sales, Income, Property, Payroll, SS, and Income. And in addition we collect and pay the liquor taxes. And every year we pay more taxes. The revenue to the state increases every year. Kansas receives more from our industry each year without ever having to increase rates. Please refer to the charts provided. But this year something is different. The Drink tax, which indicates the health of the fourth tier, is down. Luckily for the State the other tiers have increased enough to compensate for the SGF's benefit. What that shows is more people are going home for dinner and entertainment. And that means that the business on the forth tier are hurting, and all the folks, jobs, suppliers and vendors are hurting. More of them would be here except that most have reduced hours of their employees. Many have reduced their Workers too. They are increasing their own hours and they are picking up some of the shifts of cut back workers. And this is a Friday, the biggest Lunch day of the week and a game weekend. They have asked me to speak to you for them. And ask you to go out again please. OFTEN!

Targeted taxes, in this case, are bad idea. Our taxes go to SGF-these do not go to run the agency in fact alcohol taxes create more than the required dollars for licensing and regulation and create a profit for the state. That profit goes into the SGF so that the Legislature can use the proper process to appropriate those funds. This bill seeks to create a private fund for just two of the many states requests without going through that process.

Although we support the funding of deserving programs, we believe that it is bad public policy to earmark revenues to specific projects. We believe that the Legislature should see the merits of these programs and fund them from the state general fund through the budgeting procedure. It has long been a tenant of Kansas legislators that tax revenue should flow to the state general fund and be allocated each year through the legislative process.



Also we oppose targeted taxes. We believe that the funds the state needs for general state needs should come from the taxes that all citizens pay, sales, property and income. Targeting individual industries only makes that industry less competitive in the market place and drives consumers to other states or on-line sales outlets where Kansas receives no tax revenue. The legislature has considered and granted many roll backs and tax benefit to individual industries for just that reason. We ask that you apply consistent reasoning here as we"

Some legislators are rallying around the argument that targeted taxes will pull us out of the state's budget deficit or that they are the answer to specific programs budget woes. They mistakenly contend that consumers of alcoholic beverages, tobacco, lottery tickets and/or some other group should be obliged to pay disproportionately high taxes to help underwrite services that all Kansans enjoy.

Targeted taxes of any kind are the fuzziest form of math, and dangerous because of the implication that a small group of "others" should and can generate enough revenue to fill our current budgetary shortfalls. And they are certainly no way to balance a budget: According to the National Conference of State Legislators, a stable revenue source is "one that is broad-based, equitable, and not narrowly targeted at one specific type of economic activity . . ." The above-mentioned taxes do not pass this test.

The state's spending is overwhelmingly for general purposes: education, social services, transportation, and public safety. Where all citizens benefit, all taxpayers have been willing to contribute equitably to the revenue stream that pays for these programs. It is discriminatory to expect even larger taxes on targeted industries to subsidize statewide needs, and in fact, the numbers that are coming out of budget committees leave too large a hole to be filled with a simple targeted tax.

The needs of all should not be carried on the backs of a few. In a previous state of the state, about the state budget solution, a previous Governor said, "Every Kansan will be affected. Every Kansan will be asked to contribute to the solution." The citizens of Kansas, when shown where specific monies can be directed to provide services, have always been willing to pay their fair share, but first have rightfully asked exactly how existing revenues have been allocated. Increasing the tax burden of the hospitality industry, a segment extremely hard-hit since the 9-11 tragedy, and first and most deeply affected in the current economic downturn, would be counterproductive.

Asking every Kansan to be part of the budget solution is, I suggest, the fairest way out of the budget crisis and the only route that will put the state back on a fiscally sound track. To attempt to balance the budget with any other selective form of taxation would not only be punitive to the targeted group in the short term; it would be fiscally irresponsible in the long run.

Our Industry creates more revenue each year without an increase in rates. That is because of the multiple taxes, compounded upon each other. And that most liquor tax dollars are based on sales prices. Those prices increase with inflation, cost of living and increase of input costs.

***Our industry is working and is a compliant contributor to the success of the state of Kansas. Please do not kill the golden goose in an effort to fix that that is not broken!***

March 10, 2010

Senate Assessment and Taxation Committee

Mr. Chairman and members of the committee:

Thank you for the opportunity to appear in opposition to Senate Bill 516. My name is Robin Jennison and I represent Swedish Match North America.

Swedish Match is a global group with a broad offering of brands in smoke free tobacco products, cigars, pipe tobacco and lights products.

Swedish Match North America manufactures and markets the product categories snus and snuff, machine-made cigars, chewing tobacco as well as pipe tobacco in the US market. Swedish Match is one of the world's largest producers of chewing and pipe tobacco and a major manufacturer in the growing value-priced segment for American snuff.

While I am an opponent of SB516, we fully realize the difficult situation you and your colleagues and in fact all of us find ourselves this session. Many of us in this room recognize raising taxes is not good for a depressed economy but at the same time, if we are honest with ourselves and understand this process we must admit you probably have no alternative.

If that is the case and taxes must be raised, it needs to be done in such a way that it does the least amount of harm to the Kansas economy, is effective, and fair. The other tobacco products (otp) tax provisions of 516 are neither effective, nor fair.

How can they be effective when our neighbor to the east has the lowest tobacco tax in the nation? How many of our boarder residents will make their tobacco purchases in a neighboring state? With what many would view as a confiscatory tax increase more tobacco users may decide to avail themselves of the internet to find their tobacco products. While you "might" and I emphasize "might" see an increase in tobacco tax collections in the short term, it will be short lived because of loss in volume. Swedish Match's experience after Texas and Florida took substantial tax increases in otp was a significant increase in volume in the boarder counties of the neighboring states.

On the issue of fairness. What is fair about targeting a small segment of the population for a tax increase especially when that targeting was not based on any ability to pay or any presumed wealth? And in the case of other tobacco products it is a 400% increase taxing the wholesale value at 40%. I would submit Kansas has a pretty good tax on otb. It is comparable to other states and it is a percentage tax, consequently as prices go up so does the tax. Kansas Department of Revenue numbers show this to be the case with otb taxes increasing every year since 2003 by four to six percent except for 2006 when it was one percent.

In the US Treasury Department's "Fact Sheet on Taxes History of the U.S. Tax System" it was noted that; following the Supreme Court's 1895 ruling on unconstitutionality of the 1894 income tax "the nation was becoming increasingly aware that high tariffs and excise taxes were not sound economic policy and often fell disproportionately on the less affluent.

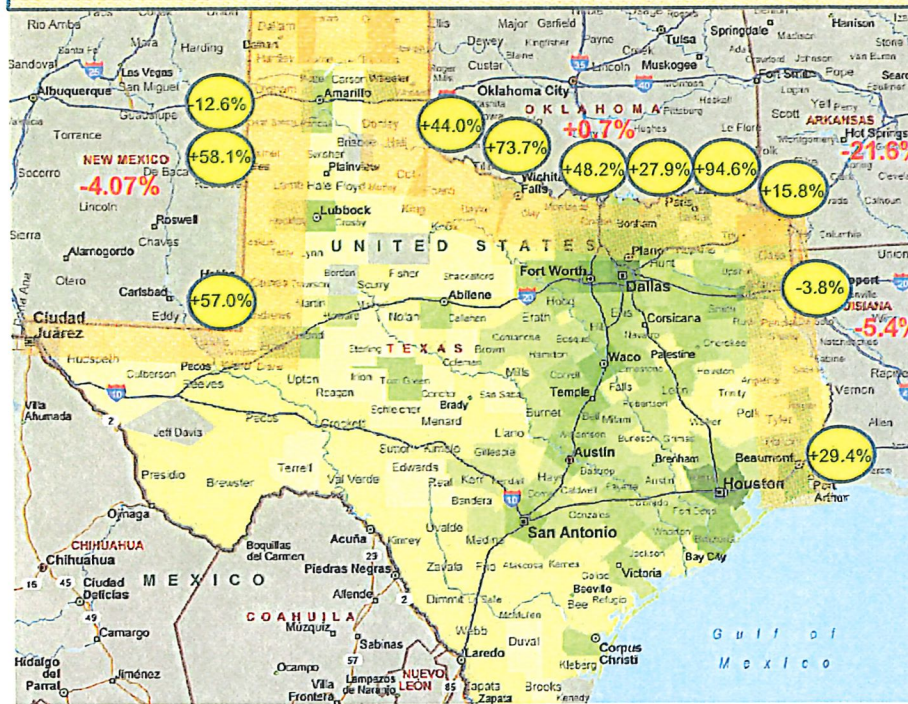
If taxes are to be increased this year, it should be done right. It should not be a tax that targets any one segment of our population or business, but a tax that is fairly distributed to all the citizens of Kansas.

## Texas Border Changes – Chewing Tobacco

- Border Counties benefit from Texas tax increase with the following changes seen over the last 8 weeks vs. YAG: (right to left)
  - Cameron, LA +29.4%
  - Caddo, LA -3.8%
  - Hempstead, AR +15.8%
  - Choctaw, OK +94.6%
  - Bryan, OK +27.9%
  - Love, OK +48.2%
  - Cotton, OK +73.7%
  - Jefferson, OK +44.0%
  - Quay, NM -12.6%
  - Curry, NM +58.1%
  - Lea, NM +57.0%

The border counties represent over 35,000 pouch increase in the latest 12 weeks vs. YAG.

The area within an hour drive to the state borders account for 40.5% of Texas Sales.



Source: CMFP North America PE 12/06/09

# Florida Border Changes – Chewing Tobacco

The area within an hour drive to the state borders account for 45.5% of Florida Sales.

Border Counties benefit from Florida tax increase with the following changes seen over the last 12 weeks vs. YAG: (right to left)

- Camden, GA +32.5%
- Charlton, GA +24.5%
- Echols, GA +19.2%
- Lowndes, GA +15.7%
- Brooks, GA -2.0%
- Decatur, GA +17.1%
- Early, GA -1.2%
- Houston, AL +11.0%
- Covington, AL -4.4%
- Escambia, AL +16.2%
- Baldwin, AL +1.2%

The border counties represent about 11,000 pouch increase in the latest 12 weeks vs. YAG



Source: CMPP North America PE 12/06/09



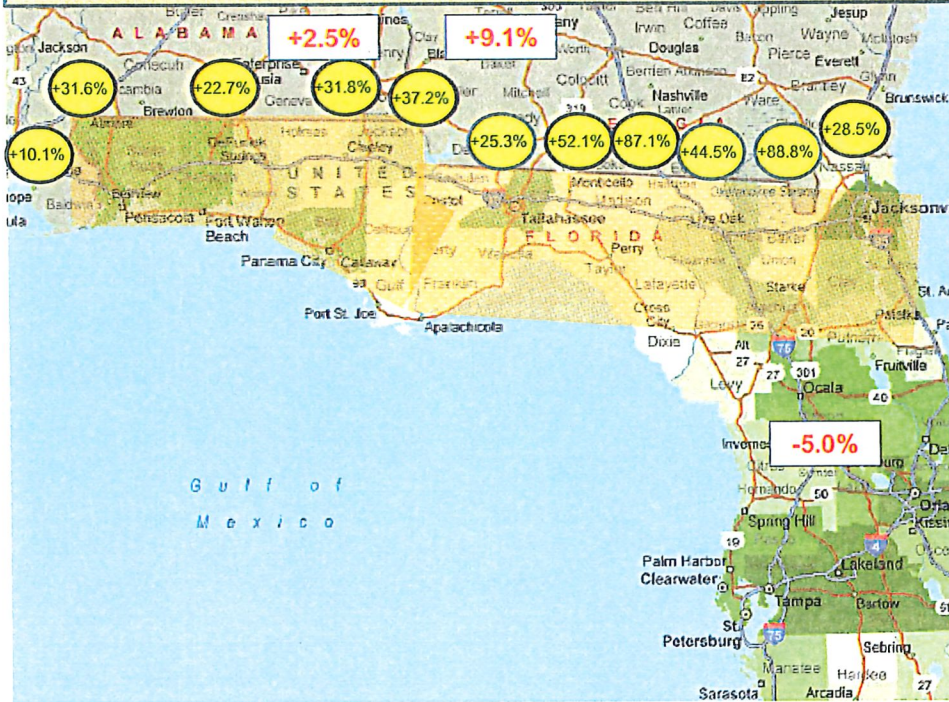
## Florida Border Changes – Moist Snuff

The area within an hour drive to the state borders account for 34.2% of Florida Sales.

Border Counties benefit from Florida tax increase with the following changes seen over the last 12 weeks vs. YAG: (right to left)

- Camden, GA +28.5%
- Charlton, GA +88.8%
- Clinch, GA +44.5%
- Lowndes, GA +87.1%
- Brooks, GA +52.1%
- Decatur, GA +25.3%
- Seminole, GA +37.4%
- Houston, AL +31.8%
- Covington, AL +22.7%
- Escambia, AL +31.6%
- Baldwin, AL +10.1%

The border counties represent about 342,000 cans increase in the latest 12 weeks vs. YAG



Source: CMPP North America PE 12/05/09

SWEDISH MATCH

**TESTIMONY**

**TO:** The Honorable Les Donovan, Chair  
And Members of the Senate Assessment and Taxation Committee

**FROM:** Thomas Jacob  
On behalf of Cigar Chateau, LLC  
Wichita, KS

**RE:** SB 516

**DATE:** March 10, 2010

Mr. Chairman and Members of the Committee:

I am here to address the proposed tax increase from 10-40% on OTP (other tobacco products) on behalf of my family owned tobacco shops in Wichita. Targeted taxes do not work. Especially after just passing a statewide smoking ban that is intended to reduce consumption.

In April 2009 the federal government placed the SCHIP into place. This increased the retail price of a \$3 cigar to \$3.75. This 400% increase of the Kansas OTP tax would make that cigar retail at \$5.

There are less than 12 family-owned tobacco shops in Kansas that sell premium cigars and pipe tobacco. This targeted tax is a miniscule tick in the total tobacco tax revenue stream (about 5% of the state's OTP tax.) The state received a windfall increase in tobacco and cigarette taxes SCHIP last April, plus the accompanying increase in the state sales tax. By the state revenue collections figures of about 6 million on OTP over the past 12 months, that accounts for \$300,000. The tax increase from 10% to 40% means that premium cigars would have contributed less than \$100,000 to the total collections and put at risk the survival of these small businesses. Yes, some stores sell the machine made cigars such as Swisher and chewing tobacco, but this is a very small percentage of their sales. Most of those sales come in chain stores and smoke shops. Cigar Chateau does not sell these products. To put this kind of tax burden, along with a smoking ban, on other tobacco products will be devastating for our business.

Again, I am talking about premium handmade cigars that sell from \$2.00 to \$20.00 per cigar with 85% of our sales falling in the \$2.50-\$6.00 range. The tax increase would make the cost the consumer \$3.50-\$8.50. The consumer will find their cigars elsewhere.

Who is going to buy premium cigars in Kansas? You will drive more and more business to internet sales with absolutely no income to the state, or over state lines, and I would predict that tax collected on premium cigars would be substantially less than what is now collected.

We also sell pipe tobacco. SCHIP raised pipe tobacco \$2 per pound, this tax increase would raise the price another \$5 per pound.

Sn Assmnt & Tax  
3-10-10

Attachment # 3

As a tobacconist we never sold domestic cigarettes, just the specialty style, which accounted for less than 3% of our sales. The federal government turned tobacco over to the FDA, and the sale of flavored cigarettes is now banned. The bottom line is the state has lost over \$7,000 in cigarette and sales taxes, in my store alone. Another target no longer a factor, is the "little cigar" category. It actually hardly exists in premium cigar sales, less than 1%, thanks to the Federal Government. Please consider your actions.

I have attached a list of some of the major internet sites that consumers use to purchase cigars and tobacco products. Several states are now contacting these sites to obtain lists of customers in their state in order to stop the flow of untaxed product. Why not Kansas?

Thank you for your time.

Tom Jacob  
Cigar Chateau, LLC  
3049 N Rock Road  
Wichita, KS 67226

Cigars and tobacco products internet distributors

**Mike's Cigar Distributors Inc.**  
**1030 Kane Concourse**  
**Bay Harbor, FL 33154**

**Cigar International**  
**6771 Chrisphalt Dr**  
**Bath, PA 18014**

**Famous Smoke Shop**  
**1100 Conray Place**  
**Easton, PA 18040**

**JR Cigars**  
**2589 Eric Lane**  
**Burlington, NC 27215**

**Thompson Cigar**  
**5401 Hangar Court**  
**Tampa, FL 33634**





**TESTIMONY**

**TO:** The Honorable Les Donovan, Chair  
And Members of the Senate Committee on Assessment and Taxation

**FROM:** Whitney Damron  
On Behalf of Swisher International, Inc.

**RE:** SB 516 / HB 2388 An Act concerning taxation; relating to tax upon cigarettes  
and tobacco products; rate of sales taxation.

**DATE:** March 10, 2010

Good morning Chairman Donovan and Members of the Senate Committee on Assessment and Taxation. I am Whitney Damron and I appear before you today on behalf of Swisher International in opposition to the tax increases targeted at Other Tobacco Products contained in SB 516.

Swisher International is a leading manufacturer of cigar, little cigar and smokeless tobacco products and is headquartered in Jacksonville, Florida.

Other Tobacco Products or OTP includes cigars, little cigars, smokeless products including moist snuff, pipe tobacco and other non-cigarette tobacco products.

The current tax rate on OTP in Kansas is ten percent of the wholesale price (same as Missouri). SB 516 proposes to increase the tax by 300 percent (from ten percent of the wholesale cost to 40 percent of the wholesale cost). An outrageous increase, particularly in light of the way in which OTP is currently taxed and the benefits that accrue to the state as a result of characteristics of a tax on the wholesale price.

Committee members may not be aware, but the State of Kansas was a beneficiary of a Federal tax increase on OTP implemented in April, 2009 when the Federal Government increased taxes on all tobacco products to fund the State Children's Health Insurance Program (SCHIP). Since tobacco product manufacturers are required to pay Federal taxes due before the product is shipped to wholesalers, the 2009 tax levied to fund SCHIP increased the base price of OTP resulting in higher tax collections in Kansas.

Since the tax is assessed on the wholesale price, every time a manufacturer and a wholesaler increase the cost of their product (or the Federal Government increases the taxes on such products), the state's tax revenues automatically increase. Historically the wholesale price for OTP has increased at a rate greater than inflation, thereby effectively increasing the excise tax on these products without any action by the Legislature.

According to Kansas Department of Revenue, tax collections for OTP have increased 54.7 percent during the time period of 1999-2009, while tax collections on cigarettes declined by 13.3 percent between the years 2004-2008. The state adopted a significant tax increase on cigarettes in 2002, which makes comparison of ten-year numbers for cigarettes misleading.

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Sn Assmnt & Tax  
3-10-10

Attachment # 4

Included with my testimony are graphs taken from the Kansas Department of Revenue's Annual Statistical Report for the past ten years of OTP and cigarette tax collections.

The last time the state increased taxes on cigarettes (2002), the Legislature left the tax on OTP the same, which we suggested was appropriate given the way the product was and is currently taxed.

Swisher would also oppose the change in classification for little cigars that is found in SB 516 that deems them to be cigarettes for tax purposes. This change in state policy would result in a 240 percent increase in the tax on Swisher's little cigar product and similar increases for other little cigars in the market place. Earlier this session the Kansas Senate rejected that proposal, which was contained in KDOR's cigarette and tobacco product act revision legislation (SB 478), killing the bill on final action. Little cigars clearly are not cigarettes under Federal definitions and making them so under SB 516 is inappropriate and not factually accurate.

As noted previously in my testimony, OTP is heavily taxed at the Federal level, having received significant tax increases to help finance the SCHIP program in 2009.

In April, 2009:

- Taxes on cigars increased from 20.719 percent to 52.75 percent of wholesale;
- Taxes on moist snuff increased from 58.5 cents per pound to \$1.51 per pound; and,
- Taxes on little cigars increased from \$0.04 to \$1.01 per pack.

In addition to the Federal and State excise taxes, OTP are also subject to state and local sales taxes.

If the state proceeds down a path of taxing lawful products to extreme limits, consumers will find alternatives to paying such taxes such as purchasing their tobacco products in other states where taxes are lower and over the Internet.

We would suggest before the state increases taxes on any product or service, including tobacco products, it is incumbent upon the state to determine what an appropriate level of taxation should be levied when compared to tax rates in surrounding states and other economic considerations.

We believe the record will clearly indicate the taxes currently applied on Other Tobacco Products by the state are fair; the state annually is the beneficiary of increased tax revenues due to the increase in the wholesale price and that by any measure, a 300 percent increase in the current tax rate for these products cannot be justified by the proponents.

In closing, we would agree that Kansas, like most all other states finds itself in challenging economic times. Most would suggest our nation's problems are closely related to imprudent borrowing and lending in the residential and commercial property, both in the United States and around the world. I have yet to see a news story indicating the +/- 20 percent of the adult population that consumes lawful tobacco products is any more to blame for our state or nation's economic problems than those who do not consume such products. Therefore, it seems as inappropriate to ask these citizens to bear any greater responsibility for shoring up the state's finances than it would to impose or increase taxes on other areas of discretionary spending such as soft drinks or fast food.

While most economists would suggest increasing taxes during such difficult economic times is simply not the appropriate thing to do, if taxes are to be raised to help improve the state's bottom line, then all Kansans should share in that obligation.

On behalf of Swisher International, I thank you for your consideration of our comments on the proposed increase in the taxes on Other Tobacco Products contained in SB 516.

Whitney Damron

Swisher International, Inc.  
[www.swisher.com](http://www.swisher.com)

Attachments:

- *Kansas Department of Revenue Annual Statistical Report*
  
- *F as in Fat: How Obesity Policies are Failing in America 2009*  
*Robert Wood Johnson Foundation*

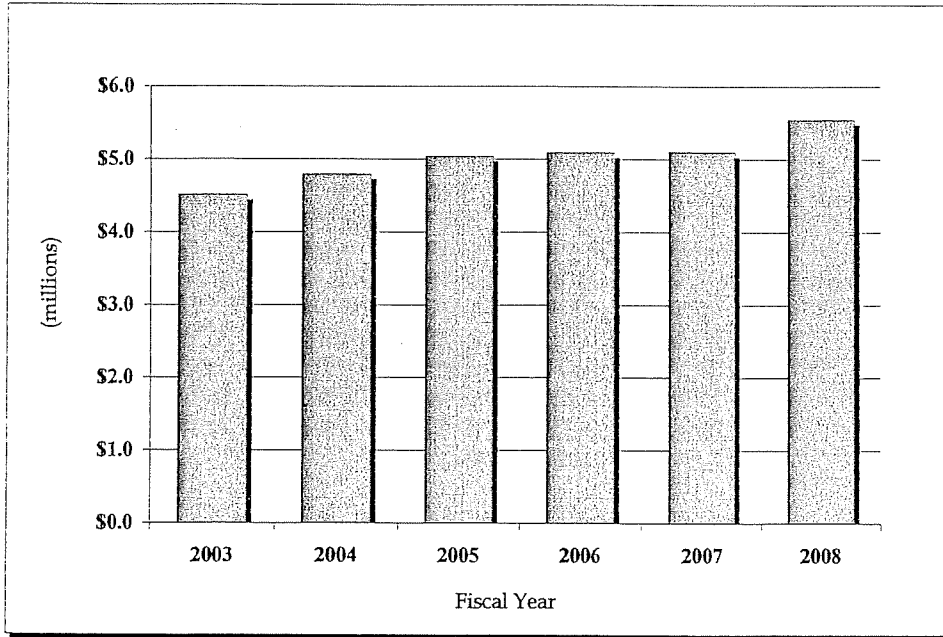
Chart on Obesity and Overweight Rates: Kansas ranks 18<sup>th</sup> most obese state.

- *State Smoking Rates*  
*Wall Street Journal*, November 12, 2009

Kansas ranks 23<sup>rd</sup> least smoking state (including Washington., D.C.)

## Tobacco Products Tax to State General Fund after Refunds

The tobacco products tax was reenacted in 1972. The tax rate is 10% on the wholesale price of tobacco products.



<u>Fiscal Year</u>	<u>Amount Collected</u>	<u>Percent Change</u>
2003	\$4,509,937	4.8%
2004	\$4,797,229	6.4%
2005	\$5,038,551	5.0%
2006	\$5,092,583	1.1%
2007	\$5,305,299	4.2%
2008	\$5,547,754	4.6%

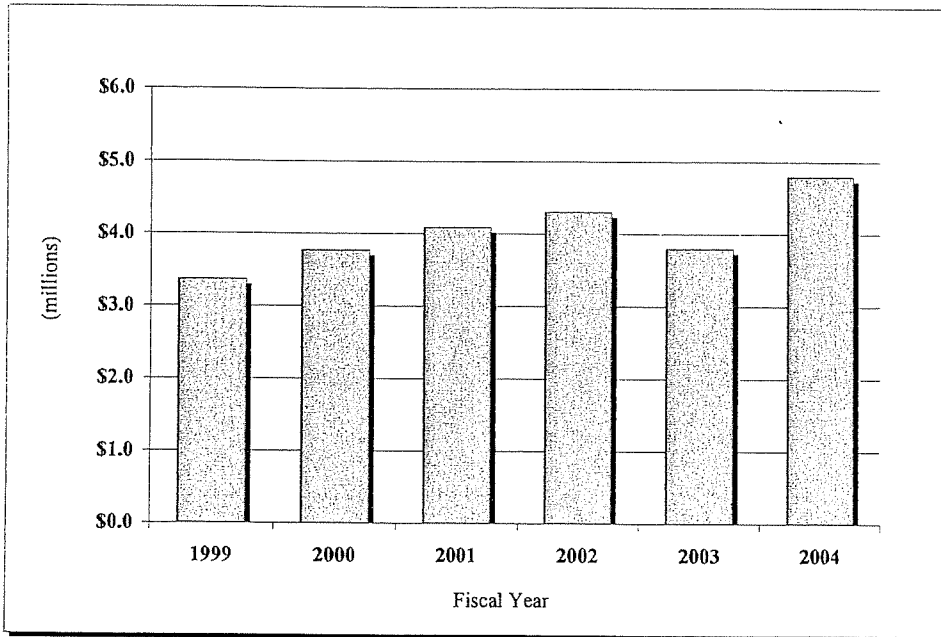
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DEPARTMENT OF REVENUE  
ANNUAL  
STATISTICAL  
REPORT

FISCAL YEAR ENDING  
JUNE 30, 2009

## Tobacco Products Tax to State General Fund after Refunds

The tobacco products tax was reenacted in 1972. The tax rate is 10% on the wholesale price of tobacco products.



<u>Fiscal Year</u>	<u>Amount Collected</u>	<u>Percent Change</u>
1999	\$3,368,976	3.1%
2000	\$3,773,422	12.0%
2001	\$4,091,692	8.4%
2002	\$4,301,982	5.1%
2003	\$4,509,937	4.8%
2004	\$4,797,229	6.4%

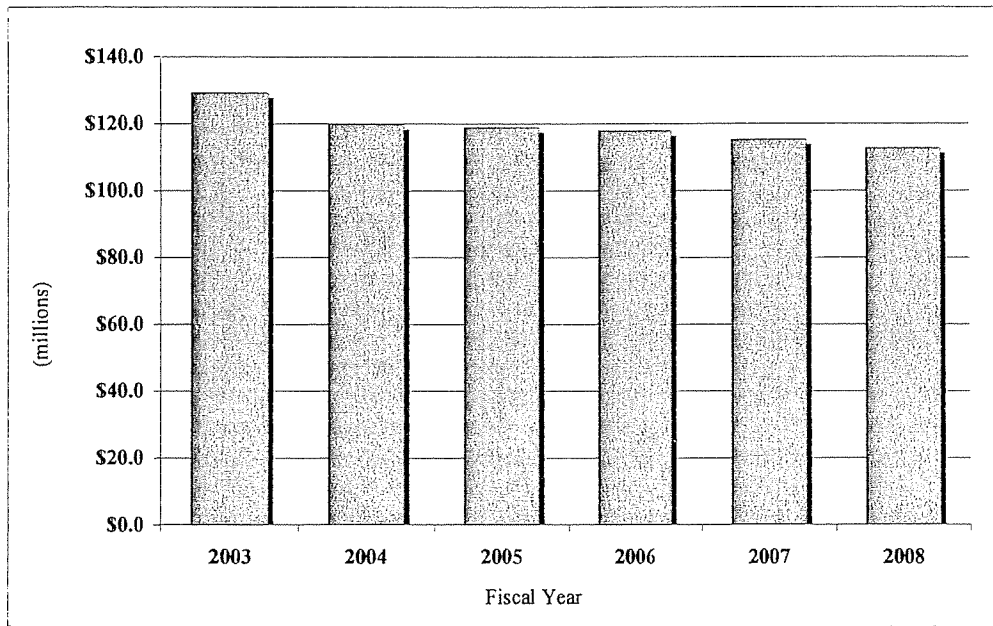
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## Cigarette Tax Collections to State General Fund after Refunds

The cigarette tax is paid upon the purchase of tax stamps. The increase in Fiscal Year 2003 is due to an increase in cigarette tax from 24 cents per pack to 79 cents per pack.



<u>Fiscal Year</u>	<u>Amount Collected</u>	<u>Percent Change</u>
2003	\$129,249,741	169.0%
2004	\$119,789,045	-7.3%
2005	\$118,979,280	-0.7%
2006	\$117,898,816	-0.9%
2007	\$115,281,809	-2.2%
2008	\$112,704,560	-2.2%

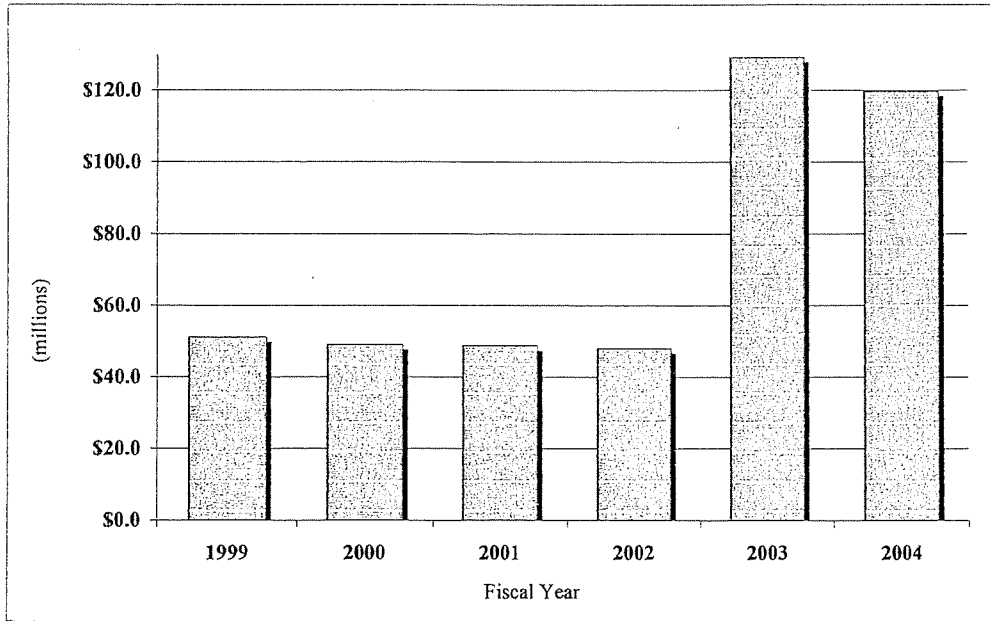
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## Cigarette Tax Collections to State General Fund after Refunds

The cigarette tax is paid upon the purchase of tax stamps. The increase in Fiscal Year 2003 is due to an increase in cigarette tax from 24 cents per pack to 79 cents per pack.



<u>Fiscal Year</u>	<u>Amount Collected</u>	<u>Percent Change</u>
1999	\$51,180,746	-1.8%
2000	\$49,124,538	-4.0%
2001	\$48,784,401	-0.7%
2002	\$48,040,207	-1.5%
2003	\$129,249,741	169.0%
2004	\$119,789,045	-7.3%

STATE OF KANSAS

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JUNE 30, 2004

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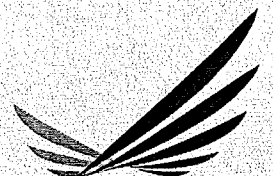
# F as in Fat:

## HOW OBESITY POLICIES ARE FAILING IN AMERICA

# 2009



 **Trust for America's Health**  
WWW.HEALTHYAMERICANS.ORG



Robert Wood Johnson Foundation

4-8

PREVENTING EPIDEMICS.  
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# CHART ON OBESITY AND OVERWEIGHT RATES

**ADULTS**

States	Obesity			Overweight & Obesity	Diabetes		Physical Inactivity	
	2006-2008 3 Yr. Ave. Percentage (95% Conf Interval)	Ranking	Percentage Point Change 2005-2007 to 2006-2008	2006-2008 3 Yr. Ave. Percentage (95% Conf Interval)	2006-2008 3 Yr. Ave. Percentage (95% Conf Interval)	Ranking	2006-2008 3 Yr. Ave. Percentage (95% Conf Interval)	Ranking
Alabama	31.2% (+/-1.1)*	2	1.1	66.5% (+/-1.2)*	10.5% (+/-0.6)**	4	29.5% (+/-1.0)	6
Alaska	27.2% (+/-1.6)	18	-0.1	65.0% (+/-1.8)	6.2% (+/-0.8)**	48	21.8% (+/-1.5)	36
Arizona	24.8% (+/-1.5)**	33	1.5	61.2% (+/-1.7)**	8.2% (+/-0.8)	22	22.6% (+/-1.4)	32
Arkansas	28.6% (+/-0.9)	10	0.5	65.1% (+/-1.1)	9.0% (+/-0.5)**	12	28.8% (+/-0.9)	7
California	23.6% (+/-0.8)	41	0.5	59.7% (+/-1.0)	8.1% (+/-0.5)*	24	23.1% (+/-0.8)	27
Colorado	18.9% (+/-0.6)	51	0.4	55.3% (+/-0.8)	5.5% (+/-0.3)**	51	17.9% (+/-0.6)*	49
Connecticut	21.3% (+/-0.8)	49	0.5	59.2% (+/-1.0)	6.8% (+/-0.4)	41	20.7% (+/-0.8)	40
Delaware	27.3% (+/-1.2)**	17	1.4	64.2% (+/-1.3)	8.3% (+/-0.6)	20	22.6% (+/-1.1)	32
D.C.	22.3% (+/-1.0)	45	0.2	55.0% (+/-1.2)	8.0% (+/-0.6)	27	21.5% (+/-1.0)	37
Florida	24.1% (+/-0.8)*	39	0.8	60.6% (+/-0.9)	8.9% (+/-0.5)	14	25.5% (+/-0.8)	14
Georgia	27.9% (+/-0.9)	14	0.4	63.9% (+/-1.0)	9.7% (+/-0.5)**	9	24.2% (+/-0.9) ^	20
Hawaii	21.8% (+/-0.9)*	47	1.1	56.8% (+/-1.0)**	8.0% (+/-0.5)	27	19.0% (+/-0.8)	46
Idaho	24.8% (+/-0.9)	33	0.2	61.7% (+/-1.1)	7.2% (+/-0.5)	36	20.5% (+/-0.8)	42
Illinois	25.9% (+/-1.0)	27	0.6	62.7% (+/-1.1)	8.4% (+/-0.5)	18	24.5% (+/-0.9)*	18
Indiana	27.4% (+/-0.9)	16	-0.1	63.2% (+/-1.1)	8.7% (+/-0.5)	15	25.8% (+/-1.0)	12
Iowa	26.7% (+/-0.9)	22	0.4	64.0% (+/-1.0)	7.0% (+/-0.4)	37	23.1% (+/-0.8)	27
Kansas	27.2% (+/-0.7)**	18	1.4	63.9% (+/-0.8)**	7.6% (+/-0.4)**	32	23.7% (+/-0.7)	24
Kentucky	29.0% (+/-1.0)	7	0.6	67.4% (+/-1.1)	9.9% (+/-0.5)	7	30.4% (+/-1.0)	2
Louisiana	28.9% (+/-0.9)	8	-0.6	64.0% (+/-1.0)	10.0% (+/-0.5)**	6	30.3% (+/-0.9) ^	3
Maine	24.7% (+/-0.9)*	35	1.1	61.5% (+/-1.0)	7.7% (+/-0.5)	30	21.3% (+/-0.8)	39
Maryland	26.0% (+/-0.8)**	25	0.7	62.2% (+/-0.9)**	8.3% (+/-0.4)**	20	23.3% (+/-0.8)	25
Massachusetts	21.2% (+/-0.6)	50	0.3	57.5% (+/-0.7)**	7.0% (+/-0.3)**	37	21.4% (+/-0.6)	38
Michigan	28.8% (+/-0.9)**	9	1.1	64.6% (+/-0.9)**	9.0% (+/-0.5)**	12	22.9% (+/-0.8)*	29
Minnesota	25.3% (+/-1.0)	31	0.5	62.5% (+/-1.1)	5.8% (+/-0.4)	50	16.3% (+/-0.9)	51
Mississippi	32.5% (+/-0.9)**	1	0.8	67.4% (+/-1.0)	11.1% (+/-0.5)**	2	31.8% (+/-0.9)	1
Missouri	28.1% (+/-1.1)	13	0.7	63.9% (+/-1.3)	8.2% (+/-0.6)*	22	25.5% (+/-1.0)	14
Montana	22.7% (+/-0.9)**	43	1	60.9% (+/-1.1)**	6.5% (+/-0.4)	46	20.7% (+/-0.8)	40
Nebraska	26.9% (+/-0.9)	20	0.4	64.2% (+/-1.1)	7.4% (+/-0.4)	33	22.6% (+/-0.8)	32
Nevada	25.1% (+/-1.2)*	32	1.4	63.1% (+/-1.4)*	8.1% (+/-0.7)	24	26.4% (+/-1.2)	11
New Hampshire	24.1% (+/-0.8)	39	0.6	61.9% (+/-1.0)**	7.3% (+/-0.4)	34	20.1% (+/-0.7)	44
New Jersey	23.4% (+/-0.8)	42	0.5	61.4% (+/-0.9)**	8.4% (+/-0.4)	18	26.7% (+/-0.8) ^	10
New Mexico	24.6% (+/-0.9)**	36	1.3	60.2% (+/-1.1)	7.7% (+/-0.5)	30	22.7% (+/-0.9)	30
New York	24.5% (+/-0.8)**	37	1	60.2% (+/-1.0)	8.1% (+/-0.5)	24	25.6% (+/-0.9)	13
North Carolina	28.3% (+/-0.6)**	12	1.2	64.4% (+/-0.7)**	9.2% (+/-0.3)*	11	24.2% (+/-0.6)	20
North Dakota	26.7% (+/-1.0)*	22	0.8	65.6% (+/-1.1)*	6.8% (+/-0.5)	41	23.3% (+/-0.9)*	25
Ohio	28.6% (+/-1.0)*	10	1.6	63.6% (+/-1.1)	8.7% (+/-0.4)**	15	25.0% (+/-0.9)	17
Oklahoma	29.5% (+/-0.8)**	6	1.4	65.5% (+/-0.9)**	10.1% (+/-0.4)**	5	30.3% (+/-0.8)	3
Oregon	25.4% (+/-1.0)	28	0.4	61.5% (+/-1.1)	6.8% (+/-0.5)	41	17.6% (+/-0.8)	50
Pennsylvania	26.7% (+/-0.8)**	22	1	62.8% (+/-1.0)*	8.7% (+/-0.5)	15	24.0% (+/-0.8)	23
Rhode Island	21.7% (+/-0.9)	48	0.3	60.6% (+/-1.2)	7.3% (+/-0.5)	34	24.1% (+/-1.0)	22
South Carolina	29.7% (+/-0.8)	5	0.5	65.5% (+/-0.9)	9.8% (+/-0.5)	8	25.5% (+/-0.8)	14
South Dakota	26.9% (+/-0.9)**	20	0.9	64.9% (+/-1.0)	6.6% (+/-0.4)	44	24.5% (+/-0.9)**	18
Tennessee	30.2% (+/-1.3)**	4	1.3	66.9% (+/-1.2)**	11.0% (+/-0.7)	3	29.8% (+/-1.2) ^	5
Texas	27.9% (+/-0.9)	14	0.6	64.8% (+/-1.0)	9.3% (+/-0.5)*	10	28.4% (+/-0.9)	8
Utah	22.5% (+/-0.9)	44	0.6	57.0% (+/-1.2)	5.9% (+/-0.4)	49	19.5% (+/-0.9)	45
Vermont	22.1% (+/-0.7)**	46	1	57.8% (+/-0.9)**	6.4% (+/-0.4)	47	18.5% (+/-0.7)	47
Virginia	25.4% (+/-1.2)	28	0.2	61.7% (+/-1.4)	7.8% (+/-0.6)	29	22.3% (+/-1.1)	35
Washington	25.4% (+/-0.5)**	28	0.9	61.5% (+/-0.6)**	7.0% (+/-0.2)**	37	18.1% (+/-0.4)*	48
West Virginia	31.1% (+/-1.0)	3	0.4	67.9% (+/-1.1)**	11.6% (+/-0.6)*	1	28.3% (+/-1.0)**	9
Wisconsin	26.0% (+/-1.0)	25	0.6	63.1% (+/-1.1)	6.6% (+/-0.5)	44	20.3% (+/-0.9)*	43
Wyoming	24.3% (+/-0.8)	38	0.4	61.9% (+/-0.9)	6.9% (+/-0.4)	40	22.7% (+/-0.8)*	30

Source: Behavioral Risk Factor Surveillance System (BRFSS), CDC. To stabilize BRFSS data in order to rank states, TFAH combined three years of data (See Appendix A for more information on the methodology used for the rankings.) \* & Red indicates a statistically significant change (P < 0.05) from 2005-2007 to 2006-2008 (for Hypertension figures - only collected every two years - from 2001-2005 to 2003-2007). \*\* State increased significantly in the past two years. \*\*\* State increased significantly in the past three years. ^ and Blue indicates a statistically significant decrease.

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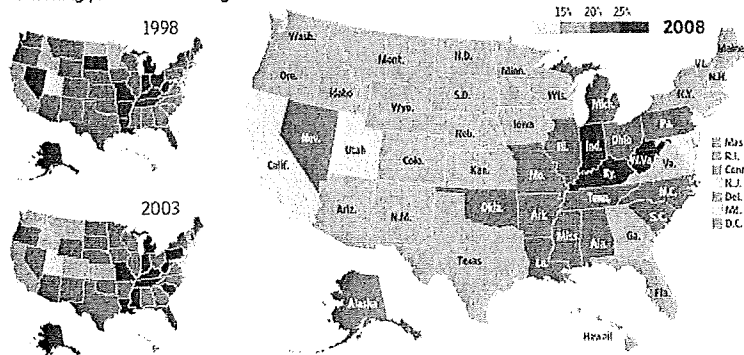
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NOVEMBER 13, 2009

# State Smoking Rates

A national survey conducted by the Centers for Disease Control and Prevention showed that 20.6% of U.S. adults aged 18 and over, or about 46 million people, were smokers in 2008, up slightly from 19.8% in 2007. Below, compare the smoking rate in each state and other data. Click on column headers to sort. (See related article.)

Smoking prevalence among adults




Note: Data based on people who have smoked 100 cigarettes or more during their lifetime and currently smoke every day or some days  
Source: Centers for Disease Control and Prevention

State	Prevalence of cigarette smoking among adults, 2008	State tax on one pack of cigarettes (as of April 1, 2009)	FY 2009 funding for state tobacco-control programs	State legislation on smoking in bars (as of June 2009)
Utah	9.2%	\$0.695	\$8,200,000	No Smoking Allowed
California	14.0%	\$0.870	\$78,100,000	Designated Smoking Areas With Separate Ventilation
New Jersey	14.8%	\$2.575	\$10,200,000	No Smoking Allowed
Maryland	14.9%	\$2.000	\$20,600,000	No Smoking Allowed
Hawaii	15.4%	\$2.000	\$11,300,000	No Smoking Allowed
Washington	15.7%	\$2.025	\$28,400,000	No Smoking Allowed
Arizona	15.9%	\$2.000	\$21,300,000	No Smoking Allowed
Connecticut	16.0%	\$2.000	\$8,300,000	Designated Smoking Areas With Separate Ventilation
Massachusetts	16.1%	\$2.510	\$13,500,000	No Smoking Allowed
Oregon	16.3%	\$1.180	\$9,100,000	No Smoking Allowed
District of Columbia	16.4%	\$2.000	\$4,000,000	No Smoking Allowed
Virginia	16.5%	\$0.300	\$13,600,000	No Restrictions
New York	16.8%	\$2.750	\$81,900,000	No Smoking Allowed
Vermont	16.8%	\$1.990	\$6,100,000	Designated Smoking Areas Required or Allowed
Idaho	16.9%	\$0.570	\$2,600,000	No Restrictions
New Hampshire	17.0%	\$1.330	\$1,100,000	No Restrictions
Rhode Island	17.4%	\$2.460	\$1,900,000	No Smoking Allowed
Florida	17.5%	\$0.339	\$60,200,000	No Restrictions
Colorado	17.6%	\$0.840	\$27,500,000	No Smoking Allowed
Minnesota	17.6%	\$1.230	\$21,500,000	No Smoking Allowed
South Dakota	17.6%	\$1.530	\$5,800,000	No Restrictions
Delaware	17.8%	\$1.150	\$11,300,000	No Smoking Allowed
Kansas	17.9%	\$0.790	\$2,000,000	No Restrictions
Maine	18.2%	\$2.000	\$11,700,000	No Smoking Allowed
North Dakota	18.2%	\$0.440	\$4,100,000	No Restrictions
Nebraska	18.4%	\$0.640	\$4,000,000	No Smoking Allowed
Montana	18.5%	\$1.700	\$9,300,000	No Restrictions
Texas	18.6%	\$1.410	\$12,600,000	No Restrictions
Iowa	18.8%	\$1.360	\$11,200,000	No Smoking Allowed
New Mexico	19.4%	\$0.910	\$10,500,000	No Smoking Allowed

4-10

Wyoming	19.4%	\$0.600	\$6,900,000	No Restrictions
Georgia	19.5%	\$0.370	\$3,200,000	Designated Smoking Areas Required or Allowed
Wisconsin	19.9%	\$1.770	\$16,300,000	No Restrictions
South Carolina	20.1%	\$0.070	\$1,000,000	No Restrictions
Ohio	20.2%	\$1.250	\$7,100,000	No Smoking Allowed
Michigan	20.4%	\$2.000	\$5,100,000	No Restrictions
Louisiana	20.5%	\$0.360	\$8,500,000	No Restrictions
North Carolina	20.9%	\$0.350	\$18,500,000	No Restrictions
Illinois	21.3%	\$0.980	\$9,500,000	No Smoking Allowed
Pennsylvania	21.4%	\$1.350	\$33,200,000	No Restrictions
Alaska	21.7%	\$2.000	\$9,200,000	No Restrictions
Alabama	22.2%	\$0.425	\$2,300,000	No Restrictions
Nevada	22.3%	\$0.800	\$4,100,000	No Restrictions
Arkansas	22.4%	\$1.150	\$16,900,000	No Restrictions
Mississippi	22.7%	\$0.180	\$10,700,000	No Restrictions
Tennessee	23.2%	\$0.620	\$6,100,000	No Restrictions
Oklahoma	24.8%	\$1.030	\$19,100,000	No Restrictions
Missouri	25.0%	\$0.170	\$2,700,000	Designated Smoking Areas Required or Allowed
Kentucky	25.3%	\$0.600	\$3,700,000	No Restrictions
Indiana	26.1%	\$0.995	\$16,000,000	No Restrictions
West Virginia	26.6%	\$0.550	\$6,700,000	No Restrictions

Sources: CDC (prevalence, state tax, smoking bans); Campaign for Tobacco-Free Kids (tobacco-control funding)  
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4-11



## Testimony

**To:** The Honorable Les Donovan, Chair  
And Members of the Senate Committee on Assessment and Taxation

**From:** Kurt Van Keppel, President XIKAR Inc.

**Re:** SB 516 – An Act concerning taxation; relating to tax upon cigarettes and tobacco products; rate of sales taxation.

**Date:** March 10, 2010

Good morning, Charmain Donovan and Members of the Senate Committee on Assessment and Taxation. I am Kurt Van Keppel, Leawood, Kansas resident and President and Founder of XIKAR Inc.

XIKAR is the leading accessory brand in the retail tobacco, or cigar store trade. We design, manufacture and market cigar cutters, lighters, carrying cases, and humidification products. My partner, Scott Almsberger, of Tonganoxie, Kansas, and I invented a cigar cutter that, combined with a lifetime warranty, we launched out of our garages in 1998, and built a multi-million dollar Kansas company that sells to more than 3,000 cigar stores in the USA, and over 2,000 stores overseas. We employ more than twenty people. In twelve short years, we have built the number one selling brand, among all the above product lines, in the entire trade.

I spend two weeks each month visiting cigar store customers. I know most of my customers, especially those in the state of Kansas. Over 90% of cigar and OTP retailers are single store "mom and pop" owned enterprises. Furthermore, most vendors to the OTP trade, like XIKAR, are small entrepreneurial or multi-generational family businesses. We are not "big tobacco"!

The purpose of this letter is to ask you to vote "No" on SB 516.

- An increase on tobacco taxes is a regressive tax, hurting the very people who are least able to afford it.
- Tobacco consumption is demand-inelastic: increases in tobacco taxes will not lower consumption beyond a small initial effect.
- Tobacco purchase behavior is highly flexible, driving consumers to purchase across borders and on the internet, the "tax free zone".

The result of the above three points is that an increase in KS tobacco taxes will:

1. Hurt Kansas businesses like my own and many other tobacco retailers in the state, who will suffer lower sales -- eventually driving to lower employment and even failure. I happen to know that Tampa, Florida's famous HAVATAMPA factory closed its doors for good after last year's OTP tax increase there. This left over 500 workers unemployed.
2. Drive consumers to purchase tobacco on the internet and across borders, generating a loss of tax revenue instead of a gain. Consumers will simply find alternative ways to shop, in order to avoid states' OTP and sales taxes. Ten years ago, the internet comprised less than 40% of cigar sales. Today that number surpasses 65%, and an additional OTP tax will drive it higher!

Vote "No", because this bill has the potential to hurt all Kansas – vendors, retailers and citizens alike.

**PO Box 025757 • Kansas City MO 64102-5757**  
**Tel 816-994-7150 • Fax 917-464-6398 • kurt@xikar.com**

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I have a home in Kansas and two children in Kansas schools. My family has lived in Kansas since the 1830's (from the Ogden area). Naturally, I am extremely concerned with the Kansas state budget and finances, but implore you to look more broadly for increased revenue and net income. As a "garage-startup" entrepreneur, I am intimately, and daily familiar with the difficulty of balancing ever-increasing expenses with limited revenues. This is particularly true in a recession. I am also familiar, if not an example, of the Kansas "can do" spirit. *Ad astra per aspera*, and I assure you that we will reach this lofty goal, through hard work, perseverance and moderation.

Therefore, I stand before you as a businessman, but also as a Kansan, ready to do my part in both austerity and tax contribution. I believe that most Kansans, hearty people, are ready to do the same. Please let us all do are part to strengthen Kansas. May I suggest you start with all internet sales, whose sales tax is rightfully yours but rarely collected?

Sincerely yours,

Kurt Van Keppel, President

**PO Box 025757 • Kansas City MO 64102-5757  
Tel 816-994-7150 • Fax 917-464-6398 • [kurt@xikar.com](mailto:kurt@xikar.com)**



# AMERICANS FOR PROSPERITY

K A N S A S

March 10, 2010

Senate Bill 516  
Senate Taxation Committee

Mr. Chairman and members of the committee,

I am proudly before you today, representing the nearly 40,000 members of Americans for Prosperity-Kansas.

AFP opposes SB 516, which would raise the state sales tax from its current rate of 5.3%, to a rate of 6.3% effective July 1, 2010. Additionally, the bill imposes a 55 cent per-pack increase on the cigarette tax. Passage of this bill would place Kansas in an even larger competitive disadvantage to its neighboring states.

While everyone may agree that the proposed legislation is brought about due to the financial condition the state currently faces, it is important to note excessive spending is the driving factor as to why the state is facing such a large budget shortfall.

During a period of just six fiscal years (FY 2004-2009) state general fund spending increased by a staggering 40%, while receipts increased by more than 23%. Just two and a half years ago, the state had a surplus of \$935 million. If we just would have spent what we took in, we would have had nearly a \$1 billion surplus going into last year. With this record of excessive spending and poor budgeting, the last thing that should be done is to shift the burden to Kansas families and businesses in order to pay for state government's spending problem.

It can be argued that Kansas families and businesses are already overtaxed and that the state receives plenty of tax revenue. When looking at the time frame beginning in 2001 and ending in 2008, individual tax receipts increased by 47% with individual income tax receipts increasing by 46%. During that same time period, business tax receipts increased by 83% with the corporate income tax realizing an increase of 104%.

Kansas' tax environment is already uncompetitive, and AFP supports efforts to balance the budget without asking taxpayers for more. In a time when the national economy is in a recession and Kansas is losing private sector jobs (we now have fewer private sector jobs than we did ten years ago) higher taxes will only worsen the problem, not fix it. Kansas' state and local tax burden is among the highest in the region.

The following chart indicates Kansas' tax rates compared to our neighboring states:

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	Top tax rate for individual with \$50,000 taxable income	Tax burden for individual with \$50,000 taxable income	Top Corporate Income Tax Rate	Sales Tax Rate	Gas Tax	Per Capita Property Tax Collections (2005)
<b>Colorado</b>	4.63%	\$2,315	4.63%	2.90%	\$0.22	\$1,057
<b>Kansas</b>	6.45%	\$2,753	7.05%	5.30%	\$0.24	\$1,127
<b>Missouri</b>	6.00%	\$2,740	6.25%	4.23%	\$0.18	\$811
<b>Nebraska</b>	6.84%	\$2,660	7.81%	5.50%	\$0.26	\$1,198
<b>Oklahoma</b>	5.65%	\$2,508	6.00%	4.50%	\$0.17	\$486

Specific to the cigarette tax increase, the Legislature can look to recent history to understand the impact a cigarette tax increase has on tax receipts. The economic truism of, “the more you tax something the less of it you’re going to get,” was evident after the 2002 cigarette tax increase of 55 cents was enacted. The revenue estimates for the tax increase accurately predicted a drop in sales but not nearly to the degree that had been anticipated. The official estimate had sales declining by 10% the first year after enacted and bouncing back 5% in the second year, thus estimating only a 5% drop after two years. In actuality sales declined 20% in the first year and instead of bouncing back, dropped an additional 5% the second year, resulting in a decrease of 25% after two years. The result was a revenue shortfall created within a singular tax increase, for which both smokers and non-smokers have had to pay.

Relying on a cigarette tax increase to help balance the budget has proven to be a flawed approach.

This is the time for Kansas to implement true budget reform measures such as spending constraints and a budget stabilization fund, and to resist the temptation to raise taxes. Having a high tax burden and annual population increases of less than one half of one percent, surely are not entirely coincidental.

Increasing the sales tax, cigarette tax or any other tax would only exacerbate the problem.

Derrick Sontag  
State Director

# DIEBEL'S SPORTSMENS GALLERY

4829 W 119<sup>th</sup> Street Overland Park, Kansas 66209 (913) 663-0123



Distinguished Committee Members,

My father started our business in 1954. We are in our 56<sup>th</sup> year. I employ 14 people. I sell cigars. A legal product that is as old as our great country. Premium \* Imported \* Luxury \* All tobacco \* Hand-made by Artisans in the Caribbean. There are no chemicals. There are no additives. None of my customers are addicted. My customers are all old enough to fight in Iraq. We do not sell to kids. The great majority of my customers are college educated. My customers smoke cigars for the taste, relaxation and camaraderie of fellow smokers. I am one of the people who collect and pay your OTP tax. None of the proponents yesterday do this. Isn't it ironic that those in glass houses are throwing stones at my business? I also pay sales, withholding and property taxes. How many of the proponents yesterday do? Isn't it ironic? I looked up the origins of the word proponent. It dates to 1580 and is a Latin word meaning: "tax the other guy".

I am a small business. 75% of my business is cigars. Attacking premium cigars is attacking my small business. Cigaraficionado.com did an online consumer survey on February 17, 2009 and asked their readership "If cigar prices rise due to higher taxes, will you buy fewer cigars?" 51% of the respondents said YES.

How will a proposed 400% increase in OTP tax affect my prices?

- Last April the federal cigar tax increased from 5¢ to 41¢ per cigar. This resulted in the retail prices of cigars increasing from 50¢ to \$1.00. In the period since, the total number of cigars I sold decreased 5.2%.
- Currently the average OTP tax I pay Kansas per cigar is 44¢. A 400% increase takes OTP tax to \$1.76 per cigar. A 400% OTP tax increase results in a 28% increase in my prices. A \$4 cigar increases to \$5.10.

What other recent events impact my business?

- Kansas statewide smoking ban - General Cigar (my biggest supplier) states that across the country, they expect every smoking ban to reduce cigar sales by 20%. Every opportunity to indulge in a cigar that is lost is a lost sale.
- Nationwide economic downturn

What will my customer do?

- Shop my store in Missouri – hopefully, but Kansas loses sales
- Shop on the Internet. The Internet controls 60% of the premium cigar market now and pays no taxes. My sales are lost.
- Not shop - they are not addicted, they may stop shopping altogether

What is the net effect if this passes?

- My prices rise 28%, my sales volume drops 20% causing net profit to drop dramatically
- I am selling less but my costs for credit cards, insurance premiums and rent will decrease at a slower rate – causing net profit to drop. These are all tied to gross sales.
- Where would you buy gas next time if you noticed while pumping gas at \$3.00, the station across the street was selling gas at \$2.18? That is a 28% price difference. Missouri is 1.8 miles away from my store.

Balancing our state budget is a daunting task. But it should be done in such a way that is equitable and fair for all. Examine the state general fund receipts. Income and sales taxes make up 90%. Of the remaining taxes, severance tax and insurance premium tax are the only taxes that contribute more than tobacco. Tobacco makes up 2.1% of the state general fund receipts – more than alcohol – more than all the other taxes. A \$70 million increase will make tobacco the highest tax collected behind income and sales. Smokers make up 22% of the state. This is inequitable, unfair and atrocious. My customers and tobacco consumers in our state did not cause this budget shortfall. Tobacco is already paying more than its fair share. If an excise tax is necessary, there are other fish in our state economy.

Cross border competition is real. Internet sales are real. Bootlegging is real. Putting small businesses out of business to placate bureaucrats and non-profits is real. Put a tax on the stones and those who throw.

Curt Diebel  
President  
Diebel's Sportsmens Gallery

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3-10-10

Attachment # 7



# HEIN LAW FIRM, CHARTERED

5845 S.W. 29th Street, Topeka, KS 66614-2462

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*Ronald R. Hein*

*Attorney-at-Law*

Email: rhein@heinlaw.com

**Testimony re: SB 516**  
**Senate Assessment and Taxation Committee**  
**Presented by Ronald R. Hein**  
**on behalf of**  
**RAI Services Company**  
**March 10, 2010**

Mr. Chairman, Members of the Committee:

My name is Ron Hein, and I am legislative counsel for RAI Services Company.

RAI opposes SB 516, which would increase the Kansas cigarette tax 55 cents from 79 cents to \$1.34 per pack. This bill will hurt consumers and retailers alike. This bill, when fully implemented, would result in an increase in cigarette taxes of 69%. This bill will also increase the tax on other tobacco products (OTP), changing the rate from 10% of wholesale price to 40% of wholesale price, which is a rate 400% of the current rate of taxation.

### **History of past tax increases**

Cigarette taxes in Kansas have been raised substantially in recent years. Not only have excise taxes been raised, but Kansas smokers have seen significant increases in the cost of cigarettes resulting from federal excise tax increases and the increased costs resulting from the Master Settlement Agreement (MSA) between the state attorneys general and the tobacco industry. Lastly, Kansas smokers have to pay increased sales tax on the increased cost of cigarettes resulting from the MSA and the increased taxes, which are compounded when the sales tax is collected. Since the sales tax has also been increased, both at the state and, in some cases, at the local level, consumers have had to pay that additional tax as well.

Under the MSA, Kansas will collect \$1.6 billion over the next 25 years from the nations' largest cigarette manufacturers. (Although payments are calculated over a 25-year time-frame, in fact they go on in perpetuity.) This means that Kansas smokers will pay approximately \$1.6 billion over the next 25 years to the state of Kansas in addition to the excise taxes and sales taxes they are paying on cigarettes.

Nationally, from 1998 to 2007, the average price per pack rose from \$2.04 to the current Kansas price of \$5.58. **Today of the \$5.58 per pack cost, \$3.33 of that amount goes to federal, state, and local government.**

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**Effect on Kansas Retailers.**

Kansas retailers should also be concerned. The new \$1.34 tax would be more than the rate in Nebraska (64¢), the Missouri tax (17¢), the tax in Colorado (84¢), and the Oklahoma rate (up to \$1.03).

Cigarette purchasing patterns have changed dramatically since 1989. High-tax states have seen tax reported sales plunge, while low-tax states have seen a corresponding increase.

With low tax Missouri, Colorado and Oklahoma on its borders, Kansas' retailers already confront a competitive challenge and this bill would make that worse. Nearly 33% of Kansas' population lives in counties that border Missouri. Kansas consumers could save as much as \$11.70 per carton purchasing in Missouri, assuming their existing tax rate. These margins exceed the Advisory Commission on Intergovernmental Relations' bootleg "flashpoint". Tax differences above the "flashpoint" are likely to encourage serious investments in cigarette smuggling. Kansas retailers, and ultimately state law enforcement budgets, would be vulnerable to smuggling.

**The Cross Border Threat**

Cigarette purchasing patterns have changed dramatically due to state cigarette tax increases since 1989. High-tax states have seen tax reported sales plunge, while low-tax states have seen a corresponding increase. The Tax Foundation examined this shift in a 1996 study, The Effect of Excise Tax Differentials on Smuggling and Cross Border Cigarette Sales. They discovered that tax differentials between high and low-tax states were creating substantial increases in both casual cross-border purchases and the organized smuggling of cigarettes. In a subsequent study, the Tax Foundation estimated that cross-border sales represented nearly 14% of total U.S. sales in 1997.

**Regressivity**

A study by the Barents Group of KPMG Peat Marwick shows that cigarette taxes are incredibly regressive, extracting a far greater percentage of income from modest wage earners compared to those with high incomes. Barents looked at U.S. families in the bottom half of the income distribution, those earning approximately \$30,000 a year or less. While this group represents roughly 50% of all households in the country, it earns only 16% of all income generated. This group pays about 15.3% of all federal income and FICA taxes, but pays over **47% of all tobacco taxes.**

Barents found that while most excise taxes are regressive, tobacco excise taxes are the most regressive of all. While the bottom half of U.S. households only reaped 16% of all income, they paid 47% of tobacco taxes, 17% of wine taxes, 30% of gas taxes, 30% of distilled spirits

Senate Assessment and Taxation Committee  
SB 516  
March 10, 2010

taxes and 34% of beer taxes. Clearly, the Kansas cigarette tax hike will harm those with modest incomes the most.

Bill Orzechowski puts it very well in his study of the Kansas proposed 55 cents cigarette tax increase in his study attached to this testimony, by stating:

“In Kansas the CDC reports that nearly 44% of all Kansas everyday smokers have incomes below \$25,000 per year. Only about 9% of Kansans with incomes above \$50,000 are everyday smokers<sup>1</sup>. **This clearly shows that the 55 cent cigarette tax hike is squarely aimed at working folks with modest incomes.** “

If the Kansas legislature were to propose trying to solve the Kansas budget shortfall by taxing primarily those Kansans who make less than \$50,000 per year, much less by taxing those who make less than \$25,000 per year, the news media and the public would find that conduct outrageous. And yet that is exactly what is being proposed with SB 516.

### New Jersey Experience

New Jersey raised their tax and saw their actual revenue received fall. This is another example of the problems that can result from cross border sales, Internet sales, or other sales where consumers seek other options for tax avoidance on cigarettes and other products.

Kansas is on the verge of increasing our tax on cigarettes to the point that Kansans will avoid the tax through numerous means, and the result will be a loss to Kansas businesses, and ultimately a loss to the State of Kansas itself.

Thank you very much for permitting me to testify and I will yield for any questions.

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<sup>1</sup> CDC Behavioral Risk Factor Surveillance System, Prevalence and Trends Data for Kansas 2008.

## The Effect of A 55¢/pack Cigarette Tax Hike on Kansas Retailers

- Tobacco Sales are Important to Kansas Retailers – Kansas stores sold approximately 138 million packs of cigarettes in FY 2008/2009. This is about 35% lower than the 209 million packs sold in FY 2002. The decline is due to whopper tax hikes in 2002 that has sent many a Kansas shopper to low tax states like Missouri and the Internet. The 138 million packs sold in FY 2009 had a gross retail value of nearly \$650 million. Kansas merchants earned nearly \$110 million in gross profits on these sales.
- Tobacco Sales Support Kansas Retail Jobs- It is estimated that nearly 1,400 retailer and wholesaler jobs were supported by in-state tobacco sales (based on estimated gross profits).
- Tobacco Sales Have a Magnified Impact on C-Stores – Nearly 70% of all cigarette sales occur in the nation’s 144,875 C-Stores, according to a 2008/2009 National Association of Convenience Stores study. The average C-store sells about \$530,000 worth of cigarettes each year.
- Kansas C-Stores – Kansas’ 1,248 C- Stores sold an estimated \$440 million worth of cigarettes, with gross profits of more than \$70 million in FY 2009.
- Tax Increases Threaten Retail Sales– Cigarette tax hikes are causing consumers to turn to low-tax states and the Internet. Cigarette tax hikes cause consumers to go Online where they can often avoid their own states’ tax. According to NACS about \$5 billion of cigarette sales took place over the Internet in 2005 up from \$750 million in 2001. After a 55¢ tax hike, the Kansas tax would be \$1.34/pack or about 8 times greater than the 17¢ tax in Missouri. Kansas consumers could save a whopping \$11.70 per carton in Missouri. And, given the exceedingly complex nature of Oklahoma’s tribal compacts consumers could find similar savings with some OK tribal merchants where taxes as low as 5.75¢ per pack are available. Adding in special “original” compact stamps at 26¢/pack, special Arkansas border stamps at 31 cents per pack and other special tax deals the tribal total in OK jumps to about 100 million packs in FY 2009. This is about 72% of total tax-paid sales in Kansas in FY 2009. Surely some of these compact packs will find their way into Kansas should it hike taxes once again.

## The Impact of The Last 55¢ Cigarette Tax Hike In 2002/2003

- The Impact of the 2002 Cigarette Tax Hikes– In FY2002/2003 Kansas increased its cigarette tax from 24¢ to 79¢ (by 46¢ on 7/1/02 and another 9¢ on 1/1/03). This 55¢ Kansas cigarette tax hike led to a tumultuous 26% drop in Kansas tax-paid sales. Tax-paid cigarette sales fell from 209 million packs in FY 2002 to 153.5 million packs in FY 2004. They now stand at 138 million packs in FY 2009. Meanwhile cigarette sales in Missouri rose from 558 million packs in FY 2002 to about 600 million packs in FY 2006. Clearly many Kansas smokers were taking their business to the Show Me State. More KS cigarette tax hikes will just send even more business to Missouri.
- Impact Along the Kansas Border - It is likely that Kansas retailers along the Missouri border were damaged even more since low tax Missouri lurks close-by. Moreover,

nearly 33% of the Kansas population lives in counties that border Missouri. It is estimated that retailers along this border may have lost about 37% of their tax-paid sales during the FY 2002 to FY 2004 time span. These retailers may have absorbed gross profit losses of close to \$20 million during this time.

### The Impact of a 55¢ Cigarette Tax Hike In FY 2010/2011

- **Cigarette Sales Impact** – A 55c tax hike could drop Kansas tax-paid volume by nearly 16%. This would be on top of significant sales losses taking place in FY 2010 due to the federal cigarette tax hike of 62 cents in April of 2009. It appears thru December of 2009 that the federal tax has led to about an 11% drop in Kansas tax-paid volume. Both taxes together could mean over a 25% drop in sales in two years.
- **Loss in Cigarette Sales Volume**– Cigarette volume would fall by nearly 22 million packs if the tax were increased by 55¢.
- **Loss in Retail Sales** - The gross retail value of lost cigarette sales is estimated at approximately \$86 million (22 million packs evaluated at a pre-tax price of \$3.90 per pack). Sundry product sales, or products normally bought in conjunction with tobacco products, would fall by \$26 million (based on past estimates of this phenomenon by Price Waterhouse).
- **Loss in Kansas Gross Profits (value added)**- Gross profits lost to Kansas retailers and wholesalers would exceed \$20 million.
- **Convenience Store Losses**– C-Store cigarette sales would fall by 15 million packs. On average, gross profit losses on average could reach nearly \$14,000 per store due to the loss of cigarette and sundry product sales. This means each store would have to boost gross retail sales of other items by \$72,000 to make up for the damage wrought by the tax hike.
- **Lost Jobs** - It is estimated that nearly 220 Kansas retailer and wholesaler jobs could be displaced due to the tax increase (based on estimated gross profit losses).

### Losing The Retail Edge

- Very large savings would be available in bordering states. At \$1.34/pack a Kansas consumer could save \$11.70/carton in Missouri, \$7/carton in Nebraska and as much as \$12.82/canton in Oklahoma at special compact tax rates.

**Table I**

State	Cigarette Tax (per pack)	Potential Savings Per Carton in KS	Tax-Paid Per Capita Cigarette Sales (packs) FY 2009
Kansas	\$1.34 (proposed)		49.1
Colorado	84¢	\$5.00	46.0
Nebraska	64¢	\$7.00	59.8
Oklahoma	(.0575¢ - \$1.03)	\$12.82*	79.0
Missouri	17¢	\$11.70	97.2

\* At special tribal compact rate.

- As Table I illustrates, hefty savings would be available in bordering states after a 55¢/pack KS tax increase. The table also indicates that cross border sales are already quite prevalent in KS as FY 2009 tax-paid per capita in MO (97.2 packs) are almost 100% greater than per capita sales in KS (49.1 packs).
- The Bureau of Alcohol, Tobacco and Firearms (ATF) reports that interstate cigarette smuggling investigations have exploded from 9 cases in 1998 to 153 in 2003. According to ATF, “mom and pop” smuggling rings are being replaced by organized crime syndicates including some linked to terrorist organizations<sup>2</sup>
- Finally a rather interesting case of potential over-taxation has recently occurred in New Jersey. In FY 2006, the NJ tax went from \$2.46/pack to \$2.575/pack nearly an 18 cent increase. However, it is over year later and NJ cigarette tax revenues have fallen by nearly \$23 million. In effect, tax rates went up but revenues went down. New Jersey’s *Asbury Park Press* in an August 2007 article made note of the issue stating, “New Jersey has secured another dubious distinction. It is the first state in the nation to experience a decline in cigarette revenue after increasing the cigarette tax. This fact illustrates it is possible to overtax an economic activity.” The article went onto mention that NJ had hit a “tipping” point. - a point where consumers find low-tax options to such a degree that the state cannot collect more revenues.
- Incredibly NJ has boosted its tax again in FY 2010 from \$2.575 per pack to \$2.70 per pack. The results so far are not promising. From July of 2009 thru November of 2009 the new tax hike has not brought in any new revenue. In fact, revenues have dropped by about \$320,000 since last year.

### Discriminatory Taxation

- **The total tax burden on a pack of cigarettes is high in Kansas.** The current state tax is 79¢/pack and the sales tax is about 24¢/pack. KS also received Master Settlement Payments of about \$72 million in FY 2009. This settlement tax adds another 55¢. Plus the federal excise tax is now \$1.01 per pack. Add those taxes up and they total \$2.59/pack. **It is important to realize that Kansas’ high cigarette taxes are aimed at the working man or blue collar worker.** According to a 2005 BLS report, average annual expenditures on tobacco were \$582 per consumer unit for construction workers and mechanics, \$482 for operators and laborers, and \$377 for service workers. By contrast, tobacco expenditures for managers and professionals were \$251. In other words, construction workers are spending on average about 131% more than do professionals on tobacco. Clearly Kansas’ high cigarette tax is discriminating against blue collar workers<sup>3</sup>
- In Kansas the CDC reports that nearly 44% of all Kansas everyday smokers have incomes below \$25,000 per year. Only about 9% of Kansans with incomes above \$50,000 are

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<sup>2</sup> See, U.S. Government Accounting Office, “Cigarette Smuggling: Federal Law Enforcement and Seizures Increasing,” May 2004.

<sup>3</sup> “Tobacco Expenditures By Education, Occupation and Age,” Consumer Expenditure Survey Anthology, Bureau of Labor Statistics, 2005.

everyday smokers<sup>4</sup>. **This clearly shows that the 55 cent cigarette tax hike is squarely aimed at working folks with modest incomes.**

- If Kansas were to install a \$1.34 cigarette tax, a Kansas consumer would have to drink nearly 13-six-packs of beer (KS tax is 10.1¢/six pack) to pay the potential \$1.34 tax on just one pack of cigarettes in Kansas. The Kansas beer tax was last increased in July of 1977.

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<sup>4</sup> CDC Behavioral Risk Factor Surveillance System, Prevalence and Trends Data for Kansas 2008.



March 10, 2010

Memorandum

To: Senate Assessment and Taxation Committee  
From: Thomas M. Palace  
Re: Opposition to SB 516

Mr. Chairman and members of Senate Assessment and Taxation Committee:

My name is Tom Palace. I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA of Kansas), a statewide trade association representing over 300 independent Kansas petroleum distribution companies and convenience store owners throughout Kansas.

We appreciate the opportunity to appear before you today in opposition to SB 516, a bill that as proposed would increase the excise fee on tobacco products and increasing the state sales tax from 5.3% to 6.3%.

The tax increases the Kansas Legislature are considering, if passed, would have a negative impact on every convenience store retailer in the state. Consumers won't change what they buy; they will simply find a cheaper way to purchase their goods. Cross border sales become more prevalent, internet sales increase and black market sales increase as well. More specifically, the retailers that compete on the border are hit the hardest when tax increases are passed.

It is interesting to note that although tobacco has been deemed bad, the state of Kansas and the convenience store industry have a common bond with tobacco. Both rely on the revenues from the sale of cigarettes to meet budget demands. Smokers are continually targeted for tax increases. Raising tobacco excise taxes to get smokers to quit is counterproductive with SB 516. We have heard over the years that raising tobacco taxes will force people to quit smoking. If this is true, how can the state rely on tobacco tax to fill the budget deficit?

### **TAX PROPOSAL IMPACTING CONVENIENCE STORES**

SB 516 is one of several tax proposals that could spell doom for many convenience retailers. Consider the tax proposals that are being discussed today: Tobacco tax \$.55 increase, motor fuel excise tax \$.07-\$.20 increase, sales tax 1% increase and potentially a pop and alcohol tax. The convenience store industry would be devastated if all these tax proposals were to pass. Not taken into account would be the increased cost of doing business with credit card use. Credit card fees are already a major line item on a retailer's financial statement. If these taxes are imposed can retailers require all consumers to purchases our products with cash? Or better yet can we amend this bill to

**Petroleum Marketers and Convenience Store Association of Kansas**  
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Attachment # 9



allow retailers to charge the consumer the credit card fees just like the State of Kansas does if you pay taxes with a credit card?

### **INTERNET SALES AND FISCAL IMPACT**

Patrick Fleenor, Chief Economist for Fiscal Economics, Inc., prepared a study *Masters of Tax Avoidance* and stated in testimony before the U.S. Congress, "internet retailers sold Kansans 3.7 million pack of cigarettes in fiscal 2003, or about 2.2 percent of taxed sales, costing state and local treasuries \$3.7 million in lost tax revenue. By 2005 internet sales in the state were projected to rise to as high as 26.5 million and cost governments \$29.8 million.

### **CROSS BORDER SALES**

I have been told that approximately 40% of the Kansas population lives in the county adjacent to the border. If you are a convenience store retailer that competes on the Missouri border they are already at a competitive disadvantage because Missouri's taxes are lower. They have lower motor fuel excise taxes (\$.17 gas and diesel vs. \$.24 on gas and \$.26 on diesel), lower tobacco tax (\$.17 per pack vs. \$.79 per pack) and lower sales tax (4.225% vs. 5.3%). Lower taxes mean lower prices forcing retailers to price accordingly so that they don't lose their customers. But in many instances a Kansas retailer cannot price their product low enough to keep their customers from going across the border to buy the same products cheaper...due in part to lower taxes. Increasing these taxes only exacerbates cross border sales.

A great example of this is the recent actions taken by QuikTrip (see attachment). QuikTrip moved a store in Kansas City 100 feet so that they would have a Missouri address at a cost of \$3.4 million. The loss to Kansas is estimated to be \$1.4 million in state and local taxes. The \$1.4 million is a financial loss that Kansas cannot afford. I would venture a guess that if more convenience store retailers could afford to do the same thing, they would do it in a heartbeat.

Mr. Chairman, I know that SB 516 is a tobacco and sales tax bill, but the ramifications of all the tax proposals being considered could/will have dire consequences for small businesses/convenience stores that compete on the border. I have yet to see a study that illustrates the LOSS of state revenue when taxes are raised. The trickle down affect on "other products sold" is probably a lot bigger than anyone knows.

In reality, it appears that Kansas tax increases, in general, are more "economic development" proposal for other states, and in the long run Kansas is the ultimate loser. As an example of that statement I have attached to my testimony a portion of a newsletter drafted by the Missouri Petroleum Marketers Association alerting his members of the benefit they could realize if Kansas continues to tax retailers that compete on the border.

Mr. Chairman, PMCA opposes SB 516 and we urge committee members to reject this proposal in an effort to keep Kansas tax revenues in Kansas.

Thank you.

Missouri Petroleum Marketers and Convenience Store Association (MPCA)

205 East Capitol Avenue, Suite 200 • Jefferson City, MO 65101

573.635.7117 phone • 573.635.3575 fax • [www.mPCA.org](http://www.mPCA.org) • © MPCA 2010

***Petroleum Marketing and Convenience Store News from MPCA***

JANUARY 18, 2010

1. PACE 2010: General Information & Thank You PACE Sponsors & Exhibitors!
2. 2010 Membership Dues: Please Pay ASAP.
3. Kansas Budget Fix May Benefit Missouri Retailers.

### ***3. KANSAS BUDGET FIX MAY BENEFIT MISSOURI RETAILERS.***

**A. KANSAS GOVERNOR PARKINSON'S 1/11/10 STATE-OF-THE-STATE SPEECH.** The following are direct quotes from Kansas Governor Mark Parkinson's 1/11/10 State-of-the-State Address.

"That is because we face another budget hole of almost \$400 million. We are not \$400 million short of what we need to get these programs back to where they need to be. We are \$400 million short of what we need to keep most of these budgets at their already drastically cut levels.

"Here is my plan to come up with the \$400 million - we need to raise two taxes. We must take the cigarette and tobacco tax from 79 cents a pack and raise it to the national average of \$1.34. Not only will this allow us to raise revenue, it has the added benefit of reducing teen smoking. Study after study demonstrates that if you raise this tax, teen smoking will decline.

"We must also raise our sales tax by one cent for a temporary period of 36 months. A temporary increase of just one cent allows us to fund our programs at the minimum acceptable levels while we work our way out of this recession. I am then proposing that after the third year the tax retreat, leaving just two tenths of a cent in place that would be available to craft a moderate but necessary highway program."

**B. MPCA'S THOUGHTS.** Currently, Missouri has a state sales tax advantage over Kansas - 4.225% versus 5.3% - as well as a substantial state cigarette tax advantage - 17 cents per pack (\$1.70 per carton) versus 79 cents per pack (\$7.90 per carton).

If Kansas balances their budget by increasing their state sales tax and state tobacco tax, it's all but certain that Missouri retailers near the Kansas border will benefit and see an increase in cross-border customer traffic.

It's the very definition of short-sighted when state Legislators over-tax the very industries that will drive their economic recovery and development and implement tax policies that force their citizens to purchase goods and services in lower taxed border-states.



Posted on Tue, Aug. 25, 2009

## QuikTrip razes store on Kansas side, will open one 100 feet away in Missouri

The QuikTrip store on Southwest Boulevard is half in Missouri, half in Kansas.

Most customers might not have noticed or cared — until now.

The company on Monday started bulldozing the store at 27 Southwest Blvd. and will open a new store about 100 feet away. When it opens in late October, that store technically will be a Missouri business and customers won't have to pay the higher Kansas taxes on cigarettes and gas. They also will be able to buy liquor with stronger alcohol content than 3.2 beer.

"It's pure economics. We want that store to survive," said Michael Thornbrugh, spokesman for QuikTrip. "Quite frankly it was a mediocre store. This gives our customers more options. Gasoline is six cents higher in Kansas, and tobacco is about 50 cents more per pack or \$5 a carton."

The 15 or so employees will temporarily transfer to other area QuikTrip stores during the construction.

Thornbrugh said the company has done such a move before, including relocating a QuikTrip on Rainbow Boulevard to the Missouri side of the state line. But that store relocated blocks away, not feet away.

As for Kansas City, Kan., it will surely miss the tax dollars from the Southwest Boulevard location, which has been operating since at least the mid-1980s.

"It's unfortunate that this particular business has decided to move across the state line at a time when our city continues to make great progress," said Edwin Birch, spokesman for the Unified Government.

"Wyandotte County has attracted new and one-of-a kind business developments to our region as many business owners continue to see opportunities for growth in Wyandotte County and Kansas City, Kan."

But QuikTrip's Thornbrugh said changes may need to be made to keep some border businesses in Kansas City, Kan.

"They are great to work with but their hands are tied. It's unfortunate that the city and county has no say," he said.

To reach Joyce Smith, call 816-234-4692 or send e-mail to [jsmith@kcstar.com](mailto:jsmith@kcstar.com).

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9-4

## How Tobacco Tax Increases Hurt Kansas Retailers

- **Tobacco sales are important to Kansas retailers.** Convenience stores on average count on sales of tobacco products – and the sundry items smokers typically pick up while buying cigarettes -- for 34 percent of sales.
- **Kansas stores already experienced a 35 percent decline in cigarette sales in FY 2008-09.** A large tax increase in 2002 has gotten many shoppers in the habit of crossing the border to lower-tax states like Missouri. Others are purchasing cigarettes from Internet sites and Native American reservations. A 55-cent tax increase will only encourage more such behavior, as well as “black market” dealing by people who drive to Missouri to purchase large quantities of cigarettes, then resell them in Kansas.
- **Tobacco sales support Kansas retail jobs.** It is estimated that nearly 1,400 retailer and wholesaler jobs are supported by in-state tobacco sales. When sales decline, store owners are forced to make difficult decisions like cutting employees’ hours or eliminating jobs altogether. **It is estimated that 220 jobs would be lost with a 55-cent tax hike.**
- **Kansas retailers responsibly enforce age limits on cigarette purchases.** Unfortunately, it is very easy for under-age smokers to buy cigarettes from Internet sites and black market dealers.
- **A tax hike will put Kansas at an even greater disadvantage to Missouri and other states.** After a 55¢ tax hike, the Kansas tax would be \$1.34/pack -- about 8 times greater than the 17¢ tax in Missouri. Kansas consumers could save a whopping \$11.70 per carton in Missouri. Because 33 percent of Kansas’ population lives along the Missouri border, this is a serious threat. In fact, Kansas’ cigarette tax would be higher than all of its bordering states.
- **Kansas stores are already suffering,** thanks to a sour economy and a federal cigarette tax increase in 2009. A 55-cent cigarette tax increase in 2010, combined with the federal tax increase, would cause an additional projected 25 percent drop in sales for Kansas retailers.
- **Gross profits lost to Kansas retailers and wholesalers would exceed \$20 million.**
- **Kansas’ cigarette tax is discriminating against the blue-collar workers.** Tobacco tax increases are aimed squarely at those who have the least political power. The CDC reports that nearly 44% of all Kansas “every-day” smokers have incomes below \$25,000 per year. Only about 9% of Kansans with incomes above \$50,000 are every-day smokers<sup>1</sup>.

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<sup>1</sup> CDC Behavioral Risk Factor Surveillance System, Prevalence and Trends Data for Kansas 2008.

March 10, 2010

Memorandum

To: Senate Assessment and Taxation Committee  
From: Brenda Elsworth  
Re: Opposition to SB 516

Mr. Chairman and members of Senate Assessment and Taxation committee:

My name is Brenda Elsworth. I am Operations Officer for Pete's convenient stores. We represent 24 Kansas convenient stores and over 300 employees. All but 4 of our stores are with in 2 counties of the Missouri line.

I appreciate the opportunity to appear before you today in opposition to SB 516, a bill that as proposed would increase the excise fee on tobacco products and increasing the state sales tax from 5.3% to 6.3%.

It is impossible to legislate, through taxation, good behavior. The rational is tobacco users need to be taxed because they are creating a huge expense to health care. Yet we rely on the tobacco users to fund health care and now to fill the deficit hole.

According to the Kansas Department of Revenue 2007 Annual report, Kansas cigarette packs sold within the state have dropped from 200 million to under 140 million since the last tobacco tax hike in 2002. If we continue to raise taxes, while neighboring states do nothing, we will continue to see a decline in tobacco pack sales.

Kansas received their MSA payment of \$67.5 million in April of 2009, while Missouri collected \$155.7 million in MSA payments the same month.<sup>1</sup> Kansas's population is 47% of Missouri's population.<sup>2</sup> However, Kansas collected only 43% MSA payments when compared to Missouri's MSA payment.

Patrick Fleenor, chief economist for Fiscal Economics, Inc. has produced a spreadsheet showing the effects of a tax hike on cigarette sales in Kansas (Fiscal years 2010-2015) He predicts a decline in pack sales if a tax hike is implemented. He predicts the packs sold in Kansas will drop to 88 million by 2015.<sup>3</sup> (See attached)

The reason for this proposed tax increase is to fill a hole in the deficit. Cigarettes are considered "low hanging fruit" for taxation. Although I am not a smoker, I respect the right of those who do smoke or use other forms of tobacco. I also sell cigarettes. They represent 34% of our inside sales.

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<sup>1</sup> See pages 1 & 2 attached

<sup>2</sup> See page 3 attached

<sup>3</sup> See page 4 attached

We sell "low hanging fruit" in a very competitive world. In fact, we compete with Missouri everyday while selling tobacco. Our cigarettes, before any retail has been set, is \$6.20 per carton higher than our Missouri competitor. Our customers can choose to purchase their tobacco product for less by traveling to Missouri. Our state has provided wonderful roads for our customers to use while commuting to Missouri.

Our state has also provided an unfair advantage when competing with Missouri in fuel sales. Our fuel tax is 7 cents a gallon higher than Missouri's.

Our competitors in Missouri can sell strong beer, not to mention wine and spirits, to help them meet their expenses, giving our Kansas consumer an opportunity to purchase all three products making the shopping trip very worth while.

We would love to do business the way government raises taxes. We could simply say we are going to charge \$6.20 a carton more retail than our Missouri competitors. The problem? Our competitor is in business to sell the same product we sell to the same customers. We can't set a higher retail and expect customers to continue to shop our stores.

Even in the reports submitted to legislators regarding cigarette tax, there is a calculation for slippage. Slippage means loss of tobacco pack sales, "low hanging fruit". However, the state considers the slippage acceptable because in the end, they will make more dollars in tax revenues from the customers we have retained.

The same is not true for our business. We will not make more dollars when we loose customers. We will loose dollars and customers. With the loss of customers come more Dollars lost, due to incremental sales we have lost from the tobacco customer. Bottom line, Kansas loses income tax and SALES TAX due to loss of customers to our Missouri competitor.

Our "low hanging fruit" customer can also purchase black market cigarettes. They can purchase cigarettes on the Internet THEREBY AVOIDING KANSAS TAXES.

Bottom line, every time government increases Kansas's taxes, we loose customers.

Over 300 employees and myself need our jobs. Please consider the facts and oppose this grab for "low hanging fruit".

Cigarette smokers, through taxation, help fund many Kansas programs.  
Cigarette smokers, work, live and pay taxes in Kansas.  
They may choose to purchase product in Missouri, but they receive health care in Kansas.

To quote Fiscal Economics, Inc., Masters of Tax Avoidance Kansans and the cigarette Excise, 1927-2009, "In spite of eight decades of experience, which clearly demonstrate that smokers in Kansas have become masters of dodging the cigarette excise, the temptation to levy taxes on a minority to fund popular public programs has proven to be

too strong for some politicians. In 2004 Governor Kathleen Sebelius proposed raising the tax by 50 cents to pay for a health insurance program. Concern over border activity helped scuttle the proposal. Undeterred, the governor put forth a similar proposal in 2007 to help pay for the expansion of health insurance coverage in the state. Again concern over border-shopping and bootlegging helped shoot down the plan.”<sup>4</sup>

I hope this is the case with SB 516.

The state of Kansas cannot grab “low hanging fruit” at the expense of the men and women who do business in Kansas.

Please help us compete for the betterment of Kansas and Kansas businesses.

Thank you,

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<sup>4</sup> see page 5 attached

KS

pg 1

## Attorney General Six announces \$67.5 million tobacco payment

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April 20, 2009 — Attorney General Steve Six announced today that Kansas received more than \$67.5 million in its annual payment from the 1998 tobacco Master Settlement Agreement (MSA).

"In a year when revenues are low, we're happy to announce that Kansas received a larger payment this year than last. However, we do recognize that two out of three major tobacco manufacturers have withheld a portion of their payment to the MSA States," Six said. "My office will continue to fight to maintain the annual payments to our state."

Earlier this year, Six recovered \$4.5 million in tobacco settlement funds previously withheld by tobacco companies. With the two payments, the Attorney General's Office has received over \$72 million in tobacco settlement money this year.

Also today, Governor Kathleen Sebelius signed Senate Bill 154 allowing the Attorney General to strengthen the enforcement of the Master Settlement Agreement (MSA) escrow statutes to ensure continued receipt of MSA payouts. This legislation represents another accomplishment of Six's Tobacco Enforcement Unit in its effort to assist with enforcement of the MSA.

Three major tobacco manufacturers make the large majority of the payments. Of these three, only one, Philip Morris, made its payment in full. The other two, Reynolds American and Lorillard, each made partial payments and withheld additional funds. The withholdings based on a Non-Participating Manufacturers Adjustment reduced payments to the MSA States by approximately \$475 million, or 16% of the total \$7.58 billion in payments due.

Although the State of Kansas would have preferred that all companies make their full MSA payments, Kansas nonetheless received \$67.5 million and the signatory States overall received over \$7 billion in MSA payments.





# Missouri Attorney General

pg 2

## Attorney General's News Release

April 30, 2009

### Attorney General Koster announces an additional **\$155 million** in tobacco-settlement money for Missouri

--Again, urges legislature to pass tougher laws on foreign tobacco manufacturers--

Jefferson City, Mo. -- Attorney General Chris Koster today said Missouri received payments of \$155,768,810.48 in tobacco-settlement money in April. This brings Missouri's total receipts from the tobacco Master Settlement Agreement to \$1,548,518,684.96.

"Governor Nixon and other Attorneys General struck an historic agreement with Big Tobacco in 1998," Koster said. "As Missouri's Attorney General I will continue to support this agreement and to encourage the state to continue providing resources from the settlement to prevent young people from using tobacco."

The Attorney General used the occasion to renew his call for the General Assembly to pass tougher legislation on foreign tobacco manufacturers. The other 45 states that participated in the settlement have since enacted additional laws to aid in their enforcement, particularly against foreign tobacco manufacturers that are difficult to prosecute. Although bills were introduced in both the House and Senate this session, for the fifth time in seven years, Missouri has failed to enact the additional enforcement legislation.

Missouri currently faces a national arbitration on whether the state diligently enforced its laws relating to the 2003 settlement payment, and will likely face similar challenges for each subsequent year. A ruling against Missouri could result in the potential loss of the state's annual settlement payments of approximately \$140 million for years to come.

"Let me be clear, the potential exists that Missouri could lose its share of its tobacco-settlement dollars if the national panel finds that Missouri failed to diligently enforce its laws. If this were to occur, it would be one of the greatest wastes of public resources in recent history," Koster said. "I urge the legislature to take action, particularly against foreign manufacturers of contraband cigarettes."

10-5



Pg 4

<b>Figure 3</b>						
<b>The Effects of a \$1.34 Tax Hike on Taxed Cigarette Sales in Kansas</b>						
<b>(Fiscal Years 2010-2015)</b>						
	<b>Excise</b>		<b>Price</b>		<b>Tax-Paid Sales</b>	
	<b>Nominal</b>	<b>Real (\$2010)</b>	<b>Nominal</b>	<b>Real (\$2010)</b>	<b>(millions of packs)</b>	
<b>Scenario I: No Tax Increase</b>						
<b>2010</b>	\$0.79	\$0.79	\$5.03	\$5.03	125.3	
<b>2011</b>	0.79	0.78	5.17	5.07	125.0	
<b>2012</b>	0.79	0.77	5.32	5.15	123.8	
<b>2013</b>	0.79	0.76	5.47	5.24	122.3	
<b>2014</b>	0.79	0.75	5.62	5.32	121.0	
<b>2015</b>	0.79	0.74	5.77	5.38	120.0	
<b>Scenario II: \$1.34 per pack tax increase in 2011</b>						
<b>2010</b>	\$0.79	\$0.79	\$5.03	\$5.03	125.3	
<b>2011</b>	2.13	2.09	6.51	6.39	92.3	
<b>2012</b>	2.13	2.06	6.66	6.45	91.4	
<b>2013</b>	2.13	2.04	6.81	6.52	90.3	
<b>2014</b>	2.13	2.02	6.96	6.59	89.1	
<b>2015</b>	2.13	1.99	7.11	6.63	88.5	
<b>Source: Fiscal Economics, Inc.</b>						

28.5  
 In spite of eight decades of experience, which clearly demonstrate that smokers in Kansas have become masters of dodging the cigarette excise, the temptation to levy taxes on a minority to fund popular public programs has proven to be too strong for some politicians. In 2004 Governor Kathleen Sebelius proposed raising the tax by 50 cents to pay for a health insurance program. Concern over border activity helped scuttle the proposal.<sup>28</sup> Undeterred, the governor put forth a similar proposal in 2007 to help pay for the expansion of health insurance coverage in the state. Again concern over border-shopping and bootlegging helped shoot down the plan. "It isn't a reliable source of income to pay for health care" stated Senator Jim Barnett, the lead sponsor of the health insurance plan.

More recently some have suggested a \$1.34 hike to \$2.13 per pack. Figure 3 shows the likely effects of such a hike. These estimates were produced using a Kansas-specific model developed by Fiscal Economics, Inc. to examine the effects of price changes on taxed cigarette sales in the state while holding all other factors affecting taxed sales constant. The model was used to examine two scenarios. In the first, current law was assumed to remain in place through 2015. As illustrated in the second column of the table, as the nominal excise remains constant, inflation

<sup>28</sup> "Cigarette Tax Increase Still Smoldering," *Lawrence Journal-World*, August 2, 2005.

My Name is Kendall Culbertson and I own Outlaw Cigar located in Johnson County at 137<sup>th</sup> and Metcalf. My store opened 2 months ago and cost several million dollars to build. Outlaw Cigar is strictly a cigar store with lounges for customers to relax and enjoy our products. The age range of our customers is from 40 – 70 years old. We employ 21 people.

If HB2388 passes I will be forced to close my doors. The competition of mail order / internet with no Tobacco taxes and no sales tax will drive enough of my customers away that we will not be able to survive.

Outlaw Cigar is located across the street from Corbin Park, one of the largest developments in the country. Corbin Park is now in Bankruptcy. The land on the other side of my property has been foreclosed on by the bank. Now is not the time to pass a law that will cause my land to go vacant as well.

Outlaw Cigars' other location in Kansas City Missouri was awarded the 2009 Community Business of the Year for the Kansas City region by the EDC and City Council because of the charity work we do in the community. Outlaw Cigar has 15 plus charity events per year driving thousands of dollars to local charities. We have the perfect demographic of affluent patrons to drive charity dollars into the local market. Your very own Adjutant General - Major General Tod Bunting has partnered with Outlaw Cigar in an effort to drive charity dollars. For 2010 we have another charity event planned as well.

An OTP tax change from 10% to 40% will end the existence of my Johnson County location and all the charity work that we do. Please vote no to the changing of OTP taxes.

Thank You,

Kendall Culbertson  
Outlaw Cigar  
137<sup>th</sup> and Metcalf

Sn Assmnt & Tax  
3-10-10

Attachment # 11

**Doug Mays & Associates, LLC**  
**Kansas Governmental Affairs**

[dougmys@KsCapitol.com](mailto:dougmys@KsCapitol.com)

**Doug Mays**

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785.235.1968 tel  
785.221.9332 cell

Testimony

TO: The Honorable Les Donovan, Chair  
And Members of the Senate Committee on Assessment and Taxation

FROM: Doug Mays  
On Behalf of the Cigar Association of America.

RE: HB 2388 – An act concerning taxation; relating to tax upon cigarettes  
and tobacco products; rate of sales taxation.

DATE: March 10, 2010

Chairman Donovan and members of the Senate Committee on Assessment and Taxation. Thank you for this opportunity to come before you on a matter of significant importance. I am Doug Mays and I appear before the committee representing the Cigar Association of America.

The Cigar Association of America is the national trade organization of cigar manufacturers, importers and distributors as well as major suppliers to the industry. Originally established in New York City in 1937, it is now headquartered in Washington, D.C.

**A THORNY SITUATION**

Kansas, like all but three other states, finds itself in a thorny situation. And, by virtue of the honor bestowed upon you by the voters of your district, it falls upon you to decide whether, what, and how much to increase the tax burden that Kansan citizens and businesses must bear. Congratulations.

I do believe that most Kansans who are, at least, acquainted with the process in which you are presently engaged, understand just how difficult the task that lies before you will be. I know that I do.

I am not here to advise you on whether to increase the tax burden. That decision is strictly yours, and if you decide to demand more of the people of Kansas, then you must be fair in your decision as to what taxes to increase and how much.

Sn Assmnt & Tax

3-10-10

Attachment # 12

## **HOUSE BILL 2388**

In my 30+ years of observing and serving in the Kansas Legislature, taxes have always been a popular topic. But in all that time, I can't recall such stratospheric numbers being proposed in this bill.

HB 2388 proposes, among other things, to increase the tax rate on cigars and other tobacco products (OTP). Proposals include:

*The reclassification of little cigars, which, are not cigarettes under Federal definitions, As "cigarettes" for tax purposes. This change in state tax policy would result in a **240 % tax increase.***

An increase from current Kansas OTP tax rate from 10% of the wholesale price, to 40% -- **400% of the current tax rate.**

## **STATE REVENUES INCREASE ANNUALLY**

OTP is taxed on the cost at the wholesale level. Whenever there is a price increase by a manufacturer or wholesaler, the amount of taxes paid to the state increases. Historically, the amount of OTP revenue collected by Kansas has risen virtually every year averaging at or above the rate of inflation.

## **A TAX UPON A TAX**

Cigars and OTP are also taxed federally. In April of 2009, the U.S. Congress enacted a massive increase in federal taxes on Cigars and OTP. These products are taxed by states at the wholesale level, while federal taxes are assessed at the manufacturer level. The inflated price that occurred as a result of increased federal taxes resulted in an unforeseen boost in Kansas tax collections – a tax upon a tax.

Cigars and OTP are also subject to state and local sales taxes.

## **BORDER STATES**

With the state of Missouri having the lowest tobacco taxes in the America, there is little doubt that the outrageous proposals contained in HB 2388 will result in a huge shift in buying habits by Kansas consumers. This will, however, not be confined to the eastern border if Kansas becomes the high tax point on the prairie, as is proposed in HB 2388.

Such has been the experience in other states that have overreached regarding tobacco taxes. Most Kansans are frugal by nature and will drive in order to save on purchases of all consumables. The greater disparity, the further they will drive. And when a consumer product has a long shelf life, they are motivated to drive long distances combining their road trips with other out-of-state activities.

## THE INTERNET

Times have changed, and the Internet is perhaps the simplest method to purchase cigars and OTP without paying high taxes. One need only Google “cigar wholesalers” or “tobacco wholesalers” to see the plethora of aggressive and sophisticated web based marketers. Consumers are increasingly internet savvy and require scant encouragement to shop online for less costly alternatives.

## PRESENT SYSTEM WORKS

The current method and level of taxation of cigars and other tobacco products by Kansas works.

- The Kansas Cigar and OTP tax is a percentage tax that automatically increases as prices go up.
- It is comparable to other states.
- Kansas sales taxes are levied on Cigars and OTP at the retail price which includes state and federal taxes.

## PERSONAL CHOICES / LEGAL PRODUCTS

There is no justification for Kansas Government to single out and punish Kansan citizens for making personal choices to purchase legal products. Yet, that is what is proposed in HB 2388.

It is a strange symbiotic relationship between those who feel the need to increase taxes, and those who desire to perfect humanity. This “don’t tax you, don’t tax me, tax the guy behind the tree” mentality runs counter to every precept at the heart of democracy. It also has another name: “The tyranny of the majority.”

Who would have believed just ten years ago that the Kansas Legislature would today be considering, in the name of balancing the budget, social engineering via tax policy. This is a very slippery slope. Without too much trouble, we will find ourselves looking regularly behind the tree for alcohol, soda pop, sugar, french fries and Big Macs. Where does it end?

If enhanced state revenue is the choice of the Kansas Legislature, may I strongly suggest that it be fairly distributed among all of our citizens and businesses in the form of statewide sales tax.

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# 90

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 <p><b>ROCKY PATEL VINTAGE 90 CHURCHILL NATURAL</b> ITEM #: R66049 Pack 5</p>	Compare at: \$39.95 <b>\$36.95</b>	<input type="text" value="1"/> <input type="button" value="UPDATE TOTAL"/> <a href="#">Remove</a> <a href="#">Move to Wish List</a>	<b>\$36.95</b>	 <p>GURKHA BLACK DRAGON ROBUSTO MADURO \$39.95</p>  <p>CAO ITALIA CIAO HABANO ROBUSTO \$26.95</p>  <p>PERDOMO LOT 23 TORO CONNECTICUT \$27.95</p>

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Written Testimony before the Senate Assessment & Taxation Committee  
Senate Sub. to HB 2388 – Cigarette Tax Increase  
Submitted by J. Kent Eckles, Vice President of Government Affairs

Wednesday, March 10<sup>th</sup>, 2010

The Kansas Chamber of Commerce appreciates the opportunity to present testimony in opposition to Senate Sub. to HB 2388, which would raise cigarette taxes by \$.55 per pack. Our opposition to this tax increase is summarized below:

**Negative Economic Impact:** Kansas is known as one of the “unlucky 13” states amongst economists because we are one of the last 13 states to exit a recession. We have achieved that notoriety because during economic downturns, the legislature typically raises various taxes, which prolongs the effects of the recession and stifles our economic recovery.

**Declining Revenue Source:** According to the National Conference of State Legislatures (NCSL), “cigarette taxes are not a stable source of revenue...if Kansas relies on a cigarette tax increase to fund important government programs, it will create long-term funding revenue shortfalls that will have to be paid for with other budget revenues or tax increases.” (Source: *Tax Policy Handbook for State Legislators*, NCSL, April, 2003).

**Illegal Activity:** An excise tax increase adds incentives for smuggling and other contraband activities, including buying tobacco products at Native American territories or over the Internet where they are not taxed. According to John D’Angelo of the BATFE: “There is no doubt that there’s a direct relationship between the increase in a state’s tax and an increase in illegal trafficking.”

**Negative Retail Impact:** Kansas retailers stand to lose from a cigarette tax increase since it is a significant source of revenue for many of Kansas’s 2,630 retailers. According to the National Association of Convenience Stores, cigarette sales account for 32.9% of all in-store sales at convenient stores nationwide. (Source: *State of the Industry: Convenience Store Totals, Trends & Averages*, National Association of Convenience Stores, 2008)

**Unfair Tax Burden:** Since FY 2000, federal and state governments have increased cigarette taxes 104 times. Because cigarette taxes are based on product and not on income levels, they are regressive, impacting low-income adult smokers more than high-income adult smokers.

We urge the Committee to not pass Senate Sub. to HB 2388.

The Kansas Chamber, with headquarters in Topeka, Kansas, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium, and large employers all across Kansas. Please contact me directly if you have any questions regarding this testimony.



# PM USA Opposes an Increase in the Kansas Excise Tax on Cigarettes

The negative consequences from a \$0.55 increase in the Kansas excise tax on cigarettes are summarized below.

**The Economy:** The historic financial and economic crisis has led to exceptionally high levels of unemployment and eliminated trillions of dollars of wealth from the American economy. While it has also weakened state budgets across the nation, now is not the time to further strain households struggling to recover from this crisis with tax increases.

**Declining Revenue Source:** Total state tax-paid cigarette sales in the United States have declined by an average of 3.2% per year from 2000-2009.<sup>1</sup> In FY2009, tax-paid sales declined by 4.3%.<sup>2</sup> In Kansas, tax-paid cigarette sales have declined by 4.7% a year for the last ten years.<sup>3</sup> As a result, the Kansas government will realize less revenue from a cigarette tax over time and will need to find other means to fill the future gaps in funding.

**Illegal Activity:** An excise tax increase could contribute to increased incentives for smuggling and other contraband activities. This includes buying tobacco products at Native American territories or over the Internet, where taxes are not collected. As stated by John D'Angelo of the Bureau of Alcohol, Tobacco, Firearms and Explosives, "There is no doubt that there's a direct relationship between the increase in a state's tax and an increase in illegal trafficking."<sup>4</sup>

**Retailers:** Kansas retailers stand to lose from a cigarette excise tax increase. Cigarette sales are an important source of revenue for many of Kansas's 2,630 retailers.<sup>5</sup> According to the National Association of Convenience Stores, cigarette sales account for 32.9% of all in-store sales at convenience stores nationwide.<sup>6</sup>

**Unfair Tax Burden:** Since fiscal year 2000, federal and state governments have increased their cigarette excise tax 104 times. Because cigarette excise taxes are based on the product and not on the income level, they are regressive, impacting low-income adult smokers more than high-income adult smokers. Based on data from the Center for Disease Control, in Kansas more than 32.6% of adults earning less than \$15,000 are adult smokers; whereas only 12.3% of adults earning \$50,000 or more are adult smokers.<sup>7</sup> An increase in the cigarette excise tax sets up a situation where the lowest income households in Kansas end up paying for programs for households that earn an equal or higher income than they do.<sup>8</sup>

	Pack per Day Adult Smoker's Annual Revenue to Government	Government Burden on Lowest Income (\$15,000)	Government Burden on Median Income (\$49,119)	Government Burden on Highest Income (\$100,000)
<b>Current</b>	<b>\$993</b>	<b>6.6%</b>	<b>2.0%</b>	<b>1.0%</b>
<b>After Proposed Increase</b>	<b>\$1,208</b>	<b>8.1%</b>	<b>2.5%</b>	<b>1.2%</b>

**The unintended consequences of a tobacco excise tax increase can lead to short and long-term economic and fiscal problems for state governments and hurt legitimate cigarette retailers and wholesalers.**

<sup>1</sup> Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2010); funded in part by Altria Client Services Inc.

<sup>2</sup> Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2010); funded in part by Altria Client Services Inc.

<sup>3</sup> Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2010); funded in part by Altria Client Services Inc.

<sup>4</sup> Maria Schultz, *Raised Tax on Smokes May Stoke Illicit Sales*, DETROIT NEWS, (July 21, 2002).

<sup>5</sup> Retail locations based on internal PMUSA data and rounded down to nearest 10.

<sup>6</sup> *State of the Industry: Convenience Store Totals, Trends & Averages*, NATIONAL ASSOCIATION OF CONVENIENCE STORES, 2008.

<sup>7</sup> *Behavioral Risk Factor Surveillance System; Prevalence and Trends Data; Nationwide (States and DC) – 2007 Tobacco Use*, U.S. Center for Disease Control, at <http://apps.nccd.cdc.gov/brfss/income.asp?cat=TU&yr=2007&qkey=4396&state=UB>.

<sup>8</sup> Methodology: estimated aggregate FET revenue increase of \$9.9 billion divided by a 2007 Aggregate Household income of \$7.9 trillion. Household income figures are from the 2007 Current Population Survey, U.S. Census Bureau, at [www.census.gov](http://www.census.gov). Income levels rounded from lowest 20% and highest 5% of single family households as provided by the US Census Bureau.



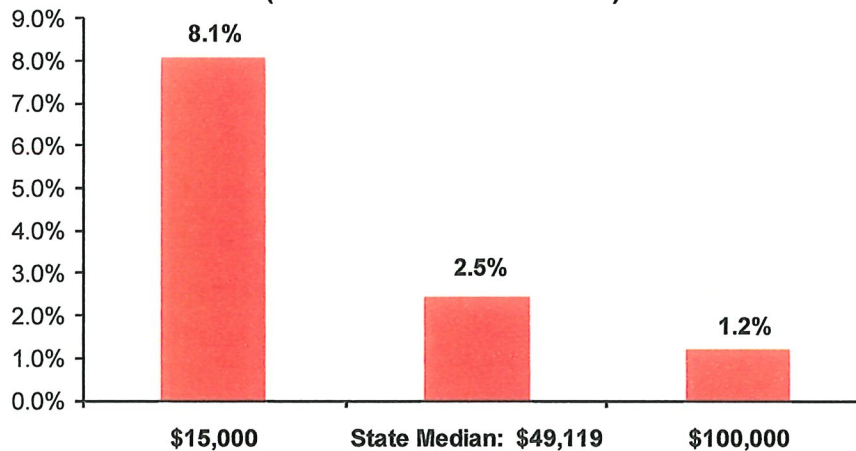
# Taxes on Top of Taxes

The government imposed burden on cigarettes is already significant for adult smokers.<sup>1</sup> This is on top of the other taxes that a typical household pays, including income taxes, social security taxes, excise taxes on other products (such as gasoline) and property taxes. If Kansas increased the cigarette excise tax by \$0.55, bringing it to \$1.34 per pack, this burden will increase significantly.

	Government Burden per Pack	Annual Government Burden for Pack a Day Adult Smoker
Current	\$2.72	\$993
After Proposed Increase	\$3.31	\$1,208
Increase	\$0.59	\$215

This government imposed burden takes a large bite out of a household's income and hurts lower income households more than higher income households.<sup>2</sup> Based on data from the Center for Disease Control, in Kansas more than 32.6% of adults earning less than \$15,000 are adult smokers; whereas only 12.3% of adults earning \$50,000 or more are adult smokers.<sup>3</sup>

**Government Burden on Cigarettes for Households with a Pack a Day Adult Smoker (% of household income)**



**The Government-imposed burden on cigarettes is already significant and more burdensome on lower-income households. The proposal to raise the state excise tax will exacerbate this situation.**

<sup>1</sup> The total government costs include: the federal excise tax, the state excise tax, the state sales tax, the costs to cover the tobacco settlement & quota buyout agreements, and the costs of the new FDA user fee.

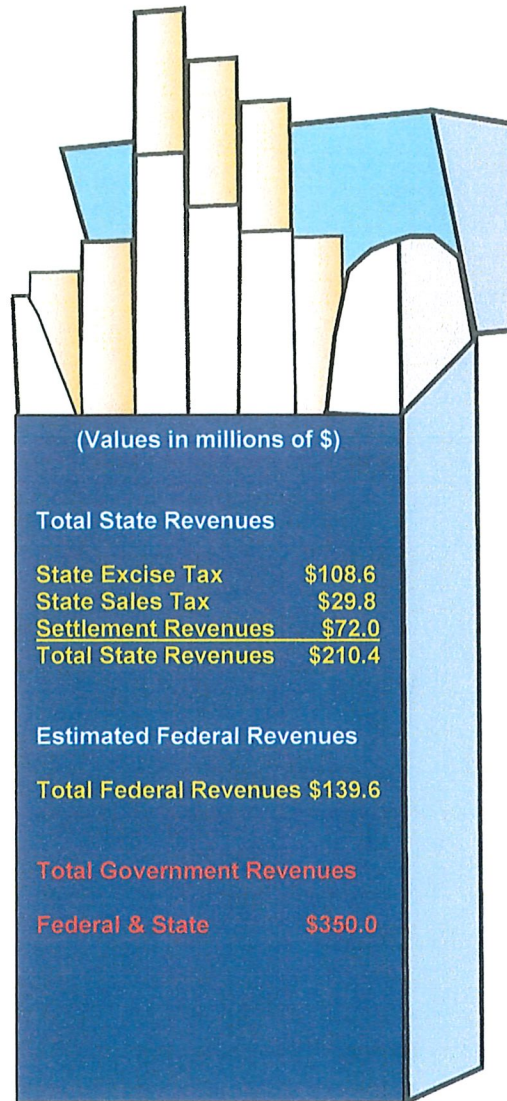
<sup>2</sup> State Median Income is from the U.S. Census, [www.census.gov](http://www.census.gov).

<sup>3</sup> Behavioral Risk Factor Surveillance System; Prevalence and Trends Data; Nationwide (States and DC) – 2008 Tobacco Use, U.S. Center for Disease Control, at <http://apps.nccd.cdc.gov/BRFSS/income.asp?cat=TU&yr=2008&qkey=4396&state=KS>



# Enough is Enough!

**Adult Smokers in Kansas Already Pay an Estimated \$350 Million Per Year in Cigarette Taxes Alone!**



This graphic estimates the total annual state and federal government revenues paid by adult smokers in Kansas.<sup>1</sup> These are current revenues and do not include the proposed \$0.55 increase in the state excise tax. Total government revenues are an estimated **\$350 Million!**

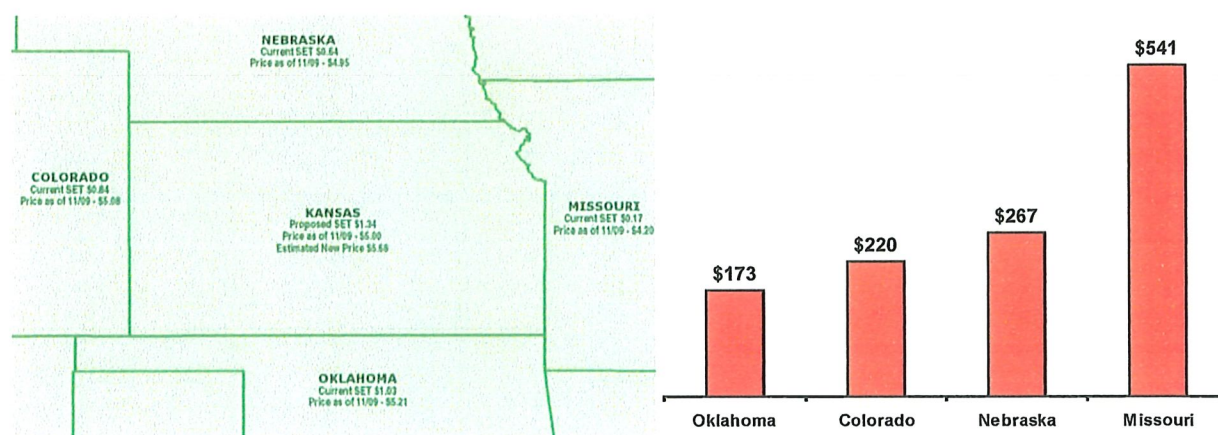
<sup>1</sup> Bill Orzechowski & Rob Walker, The Tax Burden on Tobacco, vol. 44 (forthcoming February 2010); funded in part by Altria Client Services Inc. The estimated federal revenues are calculated based on state tax-paid sales data and the federal excise tax rate and includes the FDA user fee revenues that are estimated based on total FDA user fee revenues and total national and state tax-paid sales.



# Cross-Border Purchasing Results in Government Revenue Loss

The proposed cigarette excise tax will cause packs of cigarettes to be more expensive in Kansas when compared to its neighbors. The current average price per pack in Kansas is \$5.00.<sup>1</sup> If a \$0.55 increase in the state cigarette excise tax were implemented, the average price would jump to \$5.68 per pack.<sup>2</sup> As demonstrated in the map and chart below, the resulting per pack price difference between Kansas and its neighbors will provide incentives for adult smokers to cross the border to buy cigarettes in states with lower excise taxes.

## After a \$0.55 Increase: Estimated Annual Savings to a Pack a Day Adult Smoker if they Engage in Cross-Border Purchasing



When adult smokers act on these incentives, states collect less revenue than expected from a cigarette excise tax increase. For example, in July, 2007, Indiana raised its cigarette excise tax above that of surrounding states. After this increase, its revenues fell short of projections by 24%.<sup>3</sup>

**Cross-border purchasing undermines the stability of this revenue source. Kansas should strongly consider this before the tax is increased to fund important government programs.**

<sup>1</sup> Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2010); funded in part by Altria Client Services Inc.

<sup>2</sup> The resulting price in Kansas has been estimated by adding the \$0.55 tax increase, the resulting increase in the sales tax per pack and including an estimated 18% trade margin. The estimated trade margin is based on *State of the Industry: Convenience Store Totals, Trends & Averages*, NATIONAL ASSOCIATION OF CONVENIENCE STORES, 2007.

<sup>3</sup> Indiana raised its cigarette excise tax in July 2007. Actual revenues came in \$49.9 million below expectations. *State Cigarette Excise Tax Increases: A Comparison of Projected versus Actual Revenue FY 2003 -2007*, FISCAL PLANNING SERVICES, INC., (January 1, 2009); prepared for and funded by Altria Client Services Inc.





# Cigarettes Are an Unstable and Declining Tax Revenue Source

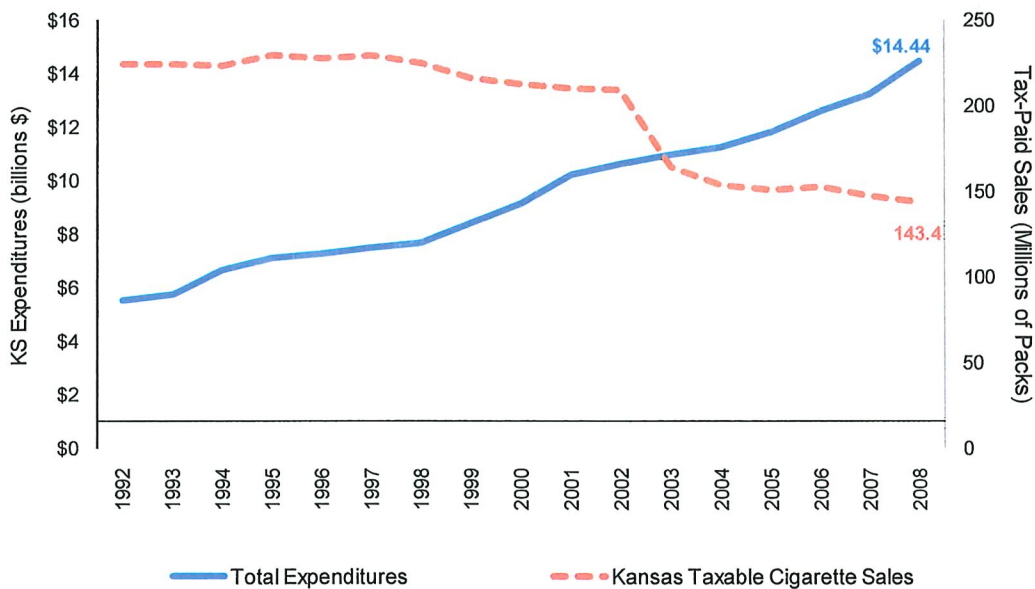
## Cigarettes as a Revenue Base Continue to Decline

Total state tax-paid cigarette sales in the United States have declined by an average of 3.2% per year from 2000-2009.<sup>1</sup> In FY2009, tax-paid sales declined by 4.3%. In Kansas, tax-paid cigarettes sales have declined 4.7% per year on average over the past 10 years.<sup>2</sup> If this trend continues, the amount of revenue raised from the proposed tax increase will be less and less in the future.

## Government Expenditures Continue to Increase

Funding needs for Kansas continue to grow. Overall expenditures have grown an average 6.2% per year over the same time period.<sup>3</sup> Relying on a declining revenue base to fund important government programs is akin to "sticking your head in the sand." The fact that long-term funding needs still exist has simply been overlooked.

## Declining Cigarette Tax Base Compared to Growing Expenditures in Kansas



According to the National Conference of State Legislatures, "cigarette taxes are not a stable source of revenue."<sup>4</sup> If Kansas relies on a cigarette excise tax to fund important government programs, it will create long-term funding revenue shortfalls that will have to be paid for with other budget revenues or tax increases.

<sup>1</sup> Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2010); funded in part by Altria Client Services Inc.

<sup>2</sup> Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2010); funded in part by Altria Client Services Inc.

<sup>3</sup> Data is from *Federal, State and Local Governments: State Government Tax Collections*, U.S. CENSUS BUREAU, at <http://www.census.gov/govs/www/statetax.html>.

<sup>4</sup> *Tax Policy Handbook for State Legislators*, NATIONAL CONFERENCE OF STATE LEGISLATURES, (April 2003).



# Cigarette Excise Tax Increases Miss Revenue Projections

The following table examines the 20 most disappointing revenue shortfalls that occurred following increases to cigarette excise taxes since July 1, 2002. Between Fiscal Year 2003 and Fiscal Year 2008, 67 state excise tax increases went into effect. Of these increases, only in 20 cases did the actual increase to state tax revenues meet or exceed the estimates made by internal state offices in the first year following the increase.<sup>1</sup> In 45 instances, states fell short of projections—one state, New Jersey, fell short by 181%.<sup>2</sup>

State and Date	Tax Increase	Est. Rev. Increase (millions)	Act. Rev. Increase (millions)	Difference (millions)	Diff. As % of Est.
NJ 7/1/2006	\$0.175	\$30.00	(\$24.34)	(\$54.34)	-181%
AK 7/1/2007	\$0.20	\$4.50	\$1.12	(\$5.62)	-75%
NJ 7/1/2004	\$0.35	\$65.80	\$21.40	(\$44.40)	-67%
WY 7/1/2003	\$0.48	\$25.30	\$10.40	(\$14.90)	-59%
HI 10/1/2002	\$0.20	\$33.00	\$13.80	(\$19.20)	-58%
HI 7/1/2003	\$0.10				
NH 7/1/2007	\$0.28	\$45.00	\$22.68	(\$22.32)	-50%
AZ 12/4/2006	\$0.82	\$188.30	\$97.80	(\$90.50)	-48%
CT 3/15/2003	\$0.40	\$25.50	\$14.60	(\$10.90)	-43%
TN 7/1/2007	\$0.42	\$228.00	\$133.48	(\$94.52)	-41%
GA 7/1/2003	\$0.25	\$180.00	\$117.10	(\$62.90)	-35%
CT 7/1/2007	\$0.49	\$86.40	\$59.15	(\$27.25)	-32%
AZ 11/5/2002	\$0.60	\$90.20	\$62.40	(\$27.80)	-31%
DE 8/1/2007	\$0.60	\$46.90	\$32.22	(\$14.68)	-31%
MT 1/1/2005	\$1.00	\$17.60	\$12.30	(\$5.30)	-30%
RI 7/1/2004	\$0.75	\$26.50	\$19.00	(\$7.50)	-28%
OK 1/1/2005	\$0.80	\$76.60	\$55.00	(\$21.60)	-28%
DC 1/1/2003	\$0.35	\$5.80	\$4.20	(\$1.60)	-28%
OR 11/1/2002	\$0.60	\$70.70	\$53.70	(\$17.00)	-24%
IN 7/1/2007	\$0.44	\$205.00	\$155.40	(\$49.60)	-24%
MI 7/1/2004	\$0.75	\$210.20	\$160.60	(\$49.60)	-24%

**These historical revenue shortfalls suggest that states may not collect as much revenue as expected following a cigarette excise tax increase.**

<sup>1</sup> There are only 65 states where there is enough data to determine the difference in projected versus actual revenue. In two instances, increases in New York and Hawaii, the data was not available.

<sup>2</sup> *State Cigarette Excise Tax Increases: A Comparison of Projected versus Actual Revenue FY 2003 -2008*, FISCAL PLANNING SERVICES, INC., (January 1, 2009); prepared for and funded by Altria Client Services Inc.



# Enough is Enough!

## A Pack of Marlboro Cigarettes in Kansas Could Cost \$5.60!



Manufacturer's Price	\$1.48
Trade Markup	\$0.81
Federal Excise Tax	\$1.01
State Excise Tax	\$0.79
<b>Proposed Increase</b>	<b>\$0.55</b>
Settlement Expense	\$0.61
Quota Buyout & FDA User Fee	\$0.07
Sales Tax	\$0.28
<b>Total</b>	<b>\$5.60</b>
<b>Total Government Revenue</b>	<b>\$3.31</b>
<b>Total Government Revenue as a Percent of Price</b>	<b>59%</b>

The chart above estimates the price of a pack of cigarettes in Kansas should the proposed \$0.55 per pack excise tax be enacted.<sup>1</sup> The total estimated government revenue would represent **59%** of the total cost!

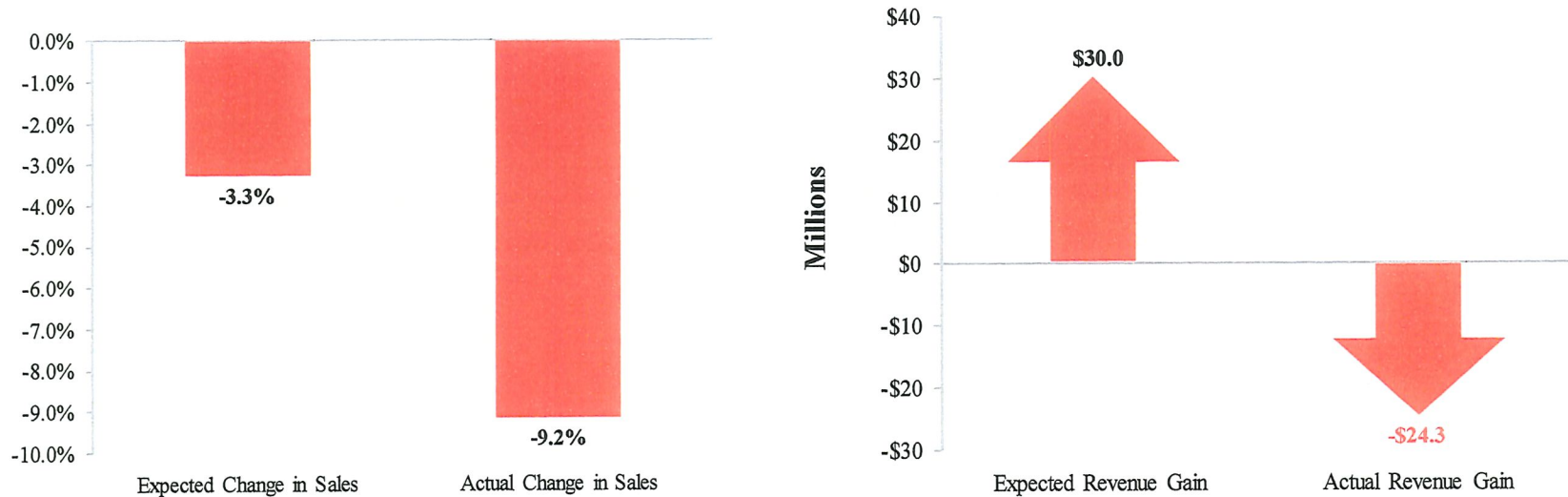
<sup>1</sup> Manufacturer's price is the list price of a pack of Marlboro® cigarettes to wholesale less off-invoice allowance and applicable terms as of December 2009, excluding settlement agreement and federal excise tax payments. The existing excise taxes can be found in, Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2009); funded in part by Altria Client Services Inc. The estimated settlement cost per pack and the estimated quota buyout payment are from PM USA internal data. The estimated trade markup is based on data from: *State of the Industry: Convenience Store Totals, Trends & Averages*, NATIONAL ASSOCIATION OF CONVENIENCE STORES, 2007. Actual retail prices will vary. Numbers may not add due to rounding. The FDA user fee revenues are estimated based on total FDA revenues and total national and state tax-paid sales.



# New Jersey's 2006 Cigarette Excise Tax Increase Contributed to a Decline in Total Cigarette Tax Revenues

In July 2006, New Jersey's cigarette excise tax increased from \$2.40 per pack to \$2.575 per pack. The 17.5 cent tax increase was expected to raise an additional \$30 million in state revenue.<sup>1</sup> Instead of raising revenues, the cigarette excise tax increase contributed to a substantial **loss** of tax revenues notwithstanding the increase in the amount of the cigarette tax.

The two figures below show the actual versus expected decline in tax-paid cigarette sales revenue following the 17.5 cent tax increase. Tax-paid sales were expected to decline by 3.3% but actually dropped by 9.2%, causing an actual revenue loss of \$24.3 million dollars.<sup>2</sup>



**Instead of New Jersey having more revenues to fund government programs, the 17.5 cent cigarette excise tax increase led to substantially lower cigarette excise tax revenues to support the state's operations.**

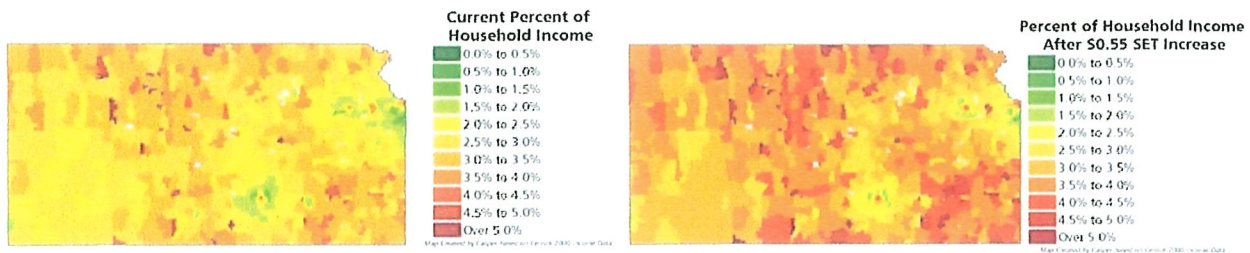
<sup>1</sup> Assembly Budget Committee Statement to Assembly, No. 4705, State of New Jersey, July 7, 2006.  
<sup>2</sup> Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2010); funded in part by Altria Client Services Inc.



# Estimated Government Burden in Kansas

Adult smokers pay the same dollar amount of excise tax on cigarettes regardless of their income. The proposed \$0.55 tax increase would increase the total government burden per pack from \$2.72 per pack to \$3.31 per pack.<sup>1</sup> For a pack a day adult smoker, the annual costs would increase from \$993 up to \$1,208.<sup>2</sup>

The maps below, broken up by zip codes, show the government burden as a percentage of household income an adult smoker in Kansas pays.<sup>3</sup> The left map shows the percentage of median household income that a pack a day adult smoker currently pays to the government. The right map shows the increased burden from the proposed \$0.55 tax increase.



**This clearly illustrates that a \$0.55 increase in the cigarette excise tax rate hurts all adult smokers in Kansas.**

<sup>1</sup> The total government burden is defined as applicable federal, state and local excise taxes, settlement expense, FDA user fee, quota buyout, and sales tax. The estimated federal revenues are calculated based on state tax paid sales data and the federal excise tax rate. Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2010); funded by Altria Client Services Inc. and other tobacco companies.

<sup>2</sup> Numbers may not add due to rounding.

<sup>3</sup> The maps are created by Caliper based on Census 2000 median income data and shown by zip code.



# Kansas Retailers Stand to Lose from Cigarette Tax Increase

As the Kansas legislature considers increasing the cigarette excise tax by \$0.55 per pack, it should consider the effect on in-state retailers.

There are more than 2,630 retailers in Kansas that typically sell cigarettes.<sup>1</sup> Cigarette sales are an important revenue source for many of these retailers. For example, according to the National Association of Convenience Stores, cigarette sales account for 32.9% of all in-store sales at convenience stores nationwide.<sup>2</sup>

TOP TEN PRODUCT CATEGORIES AS A PERCENTAGE OF IN-STORE SALES		
	2006	2007
1. Cigarettes	33.7%	32.9%
2. Packaged Beverages (non-alcoholic)	12.8%	13.4%
3. Foodservice	13.4%	14.0%
4. Beer	11.1%	11.1%
5. Salty Snacks	3.8%	3.7%
5. Other Tobacco	3.1%	3.3%
6. Candy	3.1%	3.0%
8. General Merchandise	2.2%	2.6%
9. Fluid Milk Products	2.6%	2.5%
10. Edible Grocery	1.9%	1.8%
<b>Total</b>	<b>87.7%</b>	<b>88.3%</b>

Source: 2008 NACS SOI Survey Data

Tobacco excise tax increases may harm legitimate, in-state retailers. In-state retailers lose sales and revenues when users of tobacco products react to a tax increase by shifting their purchases across state lines or to other sources, such as Native American territories or over the Internet, where taxes are often not collected. In fact, many Internet sites erroneously state that their products are free from state excise taxes. The effect of this purchasing shift on retailers becomes even more pronounced when tobacco purchases are bundled with other products, such as gasoline and groceries.

In the case of the current proposal, the taxes on a carton of cigarettes in Kansas would become up to \$12.60 more expensive than those sold in neighboring states.<sup>3</sup> Substantial differences in the price per carton of cigarettes may also exist when purchases take place on Native American territories or through the Internet. When adult smokers act on these incentives, tax-paid cigarette sales fall for Kansas retailers.

Furthermore, following a cigarette excise tax increase, adult smokers spend more of their income on cigarettes and have less to spend on other goods, which hurts other segments of the economy. The Congressional Joint Committee on Taxation (JCT) notes that "because smokers are paying more in aggregate to smoke, they consume less of other goods and services in the economy. This implies that incomes of producers and workers in other sectors will decline."<sup>4</sup> In fact, when estimating the revenue increase from a tobacco excise tax increase, the JCT offsets gross revenues by 25% to account for decreases in income and payroll tax revenues.

## Tobacco Excise Tax Increases May Harm Legitimate, In-State Retailers.

<sup>1</sup> Retail locations based on internal PMUSA data and rounded down to nearest 10.

<sup>2</sup> *State of the Industry: Convenience Store Totals, Trends & Averages*, NATIONAL ASSOCIATION OF CONVENIENCE STORES, 2008.

<sup>3</sup> The cigarette tax differential has been estimated by comparing Kansas' state excise tax including the proposed increase (\$13.40 per carton) and state sales tax (\$2.86 per carton) to all of its neighbors. The neighbor with the lowest combined taxes was Missouri: state excise tax (\$1.70 per carton), weighted average local excise tax (\$0.33) and state sales tax (\$1.63 per carton). Tax rates are from: Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2010); funded in part by Altria Client Services Inc.

<sup>4</sup> Joint Committee on Taxation, *Modeling the Federal Revenue Effects of Proposed Changes in Cigarette Excise Taxes*, (JCX-101-07), October 19, 2007.

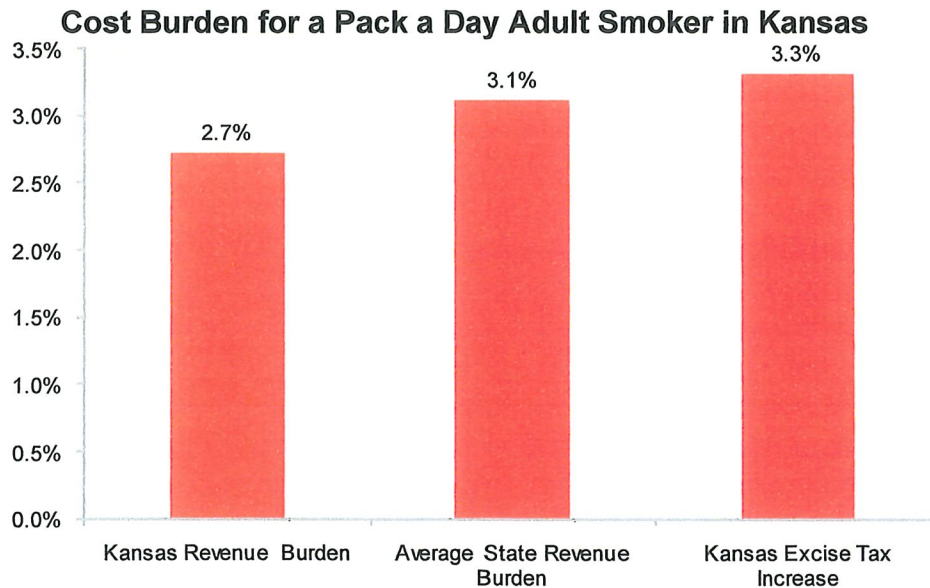


# Kansas has an Excessive Burden on Cigarettes Compared to the Average State

Tax-paid cigarette sales in Kansas are subject to the following current and potential government revenue burden:<sup>1</sup>

State Excise Tax	\$0.79
Proposed Increase	\$0.55
Federal Excise Tax	\$1.01
Settlement Expense	\$0.61
Quota Buyout & FDA User Fee	\$0.07
Sales Tax	\$0.28
<b>Total Government Revenue Burden</b>	<b>\$3.31</b>

The proposed \$0.55 cigarette excise tax increase will raise the costs on a pack a day adult smoker in Kansas from 2.7% of per capita personal income to 3.3% of per capita personal income.<sup>2</sup> This means that the Kansas tax burden will jump from the 33rd highest burden in the country to the 21st highest burden in the country.



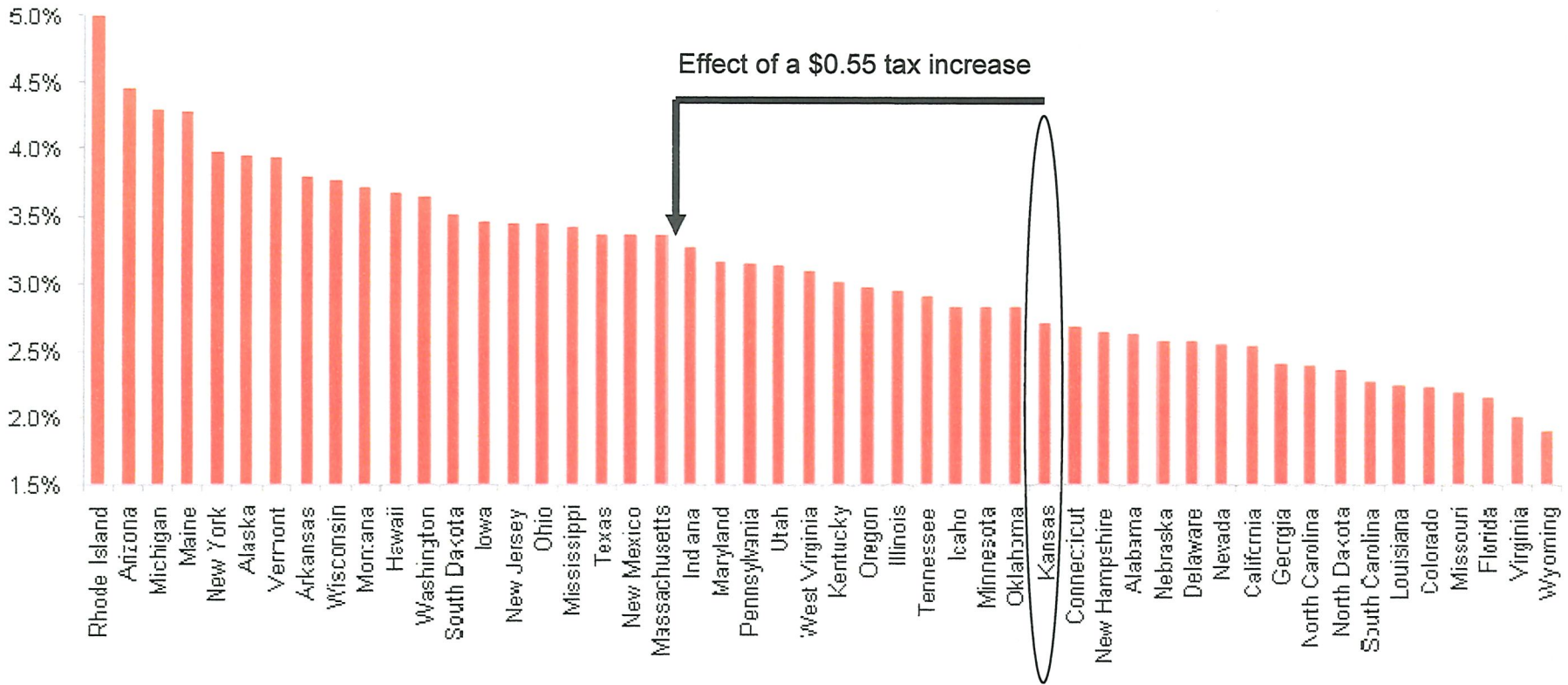
**Kansas should not raise the state excise tax by \$0.55 per pack. Kansas residents would have to pay the 21st highest cigarette excise tax burden in the country if this excise tax increase were enacted.**

<sup>1</sup> Bill Orzechowski & Rob Walker, *The Tax Burden on Tobacco*, vol. 44 (forthcoming February 2010); funded by Altria Client Services Inc. and other tobacco companies. The estimated sales tax per pack, settlement cost per pack, and the estimated quota buyout payment are from PM USA internal data, numbers may not add due to rounding. The FDA user fee revenues are estimated based on total FDA revenues and total national and state tax-paid sales.

<sup>2</sup> Per capita personal income is from the Bureau of Economic Analysis. In 2007, Kansas per capita personal income was \$36,483 while the US average per capita personal income was \$38,564.



### Total Government Revenue Burden as a Percentage of Per Capita Personal Income



Following a \$0.55 tax increase, Kansas burden increases to 3.3%, or the 21st highest burden in the country



Before the Senate Assessment and Taxation Committee

SB 516

Michael R. Murray

March 10, 2010

Representing the Kansas Food Dealers Association  
and the Retail Grocers Association of Greater Kansas City

**WRITTEN TESTIMONY ONLY**

Mr. Chairman and Members of the Committee:

On behalf of the **Kansas Food Dealers Association (KFDA)** and the **Retail Grocers Association of Greater Kansas City (RGA)**, thank you for the opportunity to comment on SB 516 which would increase the Kansas sales tax by 1%, and which would increase the tax on cigarettes from \$.79 per pack to \$1.34 per pack.

These two organizations represent **over 400 grocery store locations** in the State of Kansas with **tens of thousands of employees**.

**The KFDA and the RGA are opposed to these tax increases.**

**If this sales tax increase were enacted Kansas would have the highest sales tax of any of our surrounding states.** And, there are local sales taxes on top of that.

**The Missouri tax on cigarettes is \$.17 per pack. The Kansas tax on cigarettes would be \$1.34 per pack.** People will flock to Missouri in greater numbers than today to buy groceries and cigarettes making businesses on the Kansas side less and less competitive.

**Raising taxes in times of recession is precisely the wrong approach.** The retail grocery business is still in a recession. Obviously, consumers continue to purchase food, but many are purchasing food that is less expensive. Our retailers still have the same costs of doing business—labor, utilities, maintenance, etc.—but they have less revenue and less profit because of the shift in consumer spending habits. Increasing the state sales tax will drive a certain segment of the market to retailers out-of-state further diminishing the retail revenue stream and lessening the retailers' ability to maintain and create jobs.

**Respectfully, the KFDA and the RGA urge you to vote NO on SB 516.**

Sn Assmnt & Tax  
3-10-10

Attachment # 15

JULIUS WE  
Executive Director

Gary Pesh, *President*  
Curt Diebel, *First Vice President*  
Finnie Helmuth, *Second Vice President*  
Craig Cass, *Treasurer*  
Ken Neumann, *Secretary*

Tom Moran, *Ex-Officio*



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Phone: 706-494-1111  
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email: info@ipcpr.org

March 10, 2010

Dear Senate Committee on Assessment and Taxation:

I speak on behalf of nine Kansas premium tobacco retail shop owners. The Other Tobacco Products (OTP) excise tax increase from 10% to 40% in SB516 will have devastating effects on our small, independent business owners. Last year the federal government enacted the highest tobacco tax increases in history to help fund expansion of the State Children's Health Insurance Program which is bringing more money to Kansas. The tax increase on premium (large) cigars varied from 158% to more than 700% and the tax on smaller (little) cigars increased more than 2,400%.

Because Kansas levies its current OTP tax on the manufacturer's selling price, and because manufacturers' prices increased as a result of the federal tax increases, Kansas is getting more money because the tax is now levied on a higher base. OTP taxes are pegged to inflation in that every time the cost of the product increases, the state gets more revenue. The combination of the higher federal taxes and the current economic recession has negatively impacted our members' sales.

Our brick-and-mortar retail shops already face tremendous competition from mail order and internet sales operations that sell directly to our members customers. These out-of-state vendors already sell premium cigar and tobacco products at prices much lower than our retailers may offer them in their shops. To the consumer, these vendors' prices are far too attractive for Kansas consumers not consider purchasing from out-of-state. These price variances are directly related to the fact that these out-of-state vendors do not collect the Kansas excise or sales taxes.

The issue will only be exasperated by the state approving this excessive tax increase. On behalf of our premium retail tobacco shops, I urge you to vote no on SB516.

Thank you very much for your time and attention in this matter.

Chris McCalla  
Legislative Director

Sn Assmnt & Tax  
3-10-10

Attachment # 16



My name is Tom Foster. I have owned and operated a family tobacco store in Kansas City, Missouri for the past 11 years.

In the past decade, I have witnessed several cigarette tax increases in both Missouri and Kansas. I would be opposed to a cigarette tax increase in Kansas.

Increasing a tax in a neighboring state such as Kansas would only increase cigarette sales in a store such as mine, where the cigarette taxes are significantly lower.

This only encourages individuals to break the law, cross the state line, purchase cigarettes and then bring them back to a state such as Kansas. All done in an effort to evade higher prices.

The overall effect would be shrinking sales of cigarettes in Kansas thus hurting, not only the small businesses that sell cigarettes, but also lowering the revenue generated from the sales of cigarettes in the state of Kansas.

Taxes on tobacco products are already excessive and the revenue generated from our industry to states such as Kansas is enormous.

Raising the cigarettes tax in Kansas will only push customers away from stores that do business in Kansas.

Tom Foster  
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[www.fidelscigarshop.com](http://www.fidelscigarshop.com)

Sn Assmnt & Tax  
3-20-10

Attachment # 17

March 10, 2010

Mr. Chairman and members of the Senate Committee on Assessment and Taxation,

My name is Father H Setter. I am a priest in Wichita. I also happen to be the Chaplain of the International Premium Cigar and Pipe Retailers Association or the "IPCPR."

I am asking you to vote NO for HB2388. I am opposed to this bill because of the ongoing attack on the tobacco industry that our current legislators across this nation are engaging in that ultimately threatens the livelihood of many industry people, including manufactures, retailers and further burdens the consumers as well.

Raising taxes the way our legislature is trying to do right now is not a quick fix or let alone a long term solution to our financial woes as a state. Though the temptation may be there to think so, let's look at this with some common sense. You know that you generate big tax dollars from tobacco products. That's because of economics 101: supply and demand. Contrary to what some people think you can tax the demand for consumable goods right out of existence. People can and will buy tobacco products where they get the best prices, even if that means going across state lines to do so. These kinds of taxes only encourage a black market mentality that brings less tax dollars to the state of Kansas.

What about the people whose livelihoods are at stake here as well. In particular I am concerned for the local tobacconist who sells premium cigars and pipes in our state. What happens when businesses start closing or laying off people because of falling statewide sales? Specifically with a 40% tax on O.P.T.s, long term customers will search for better deals. That means instead of buying locally from Kansas business owners many buyers will buy via the internet or phone sales in other states that do not have to pass on to consumers outrageous tax hikes. A 40% tax increase on cigars will actually cause the state to lose tax dollars as consumers buy out of state. That also means the potential loss of jobs and businesses.

If you owned a business would you be willing to let your customers be taxed outrageous amounts of money so the government can try to fix budget woes? Not to mention with the smoking issue you've made it illegal to smoke anywhere in public except "your" casinos, private clubs and care homes. How is that helping generate sales that you want tax dollars from? I find it hypocritical that you want the tax revenue from tobacco products yet you don't want to give people a legitimate place to consume these legal products and you want to tax them more than ever.

What would you do if you were the recipients of these tax hikes? How would you respond if you were to be taxed 40% on something that is legal that some legislator chose to "target" as a taxable item just because they don't use it? Or they don't like it? Or they don't believe in it? In my opinion that is the equivalent of racial profiling on a political level.

As a voice for the IPCPR, I would ask you to represent all Kansans equally and fairly, especially those who cannot bring you added tax revenue when consumers are no longer shopping and spending in their Kansas stores. This bill is not fair. You and I both know it. Raising taxes like this can do more damage in the long run than helping us now. You are setting up long time Kansas businesses owners for jeopardy with this kind of taxation. I am asking you to vote NO for HB2388.

Father H Setter

Sn Assmnt & Tax  
3-10-10

Attachment # 18