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**Testimony re: SB 462  
Senate Federal and State Affairs Committee  
Presented by Ronald R. Hein on behalf of  
RAI Services Company  
March 15, 2012**

Mr. Chairman, Members of the Committee:

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

RAI Service Company opposes SB 462, which would increase the Other Tobacco Product tax from a 10% of wholesale price tax rate to a 30% tax rate, and which bill would also eliminate sampling of products.

This bill will hurt consumers and retailers alike. This bill would result in a 200% increase in OTP taxes.

OTP tax rate currently is a percentage of the price, therefore the taxes increase as the price of the product increases. This automatically keeps up with inflation. The only reasons to increase the rate of the tax would be to increase taxes on the public, or to attempt to deter consumers from utilizing smokeless tobacco products.

If the latter is the intent, this tax increase flies directly in the face of what the state should be doing.

I'd like to talk to you today about two ideas. The first is pretty simple: It's all about tax fairness and how we shouldn't triple tax rates on Kansans of modest means. The second idea – Tobacco Harm Reduction - is also simple.

Now, changing the Other Tobacco Tax rate from 10% to 30% of the wholesale price represents an unbelievable 200% tax increase on working Kansans while we are still in the midst of an economic downturn!

We believe such an increase is unfair and unwise.

It's unfair because it hits those who can least afford it when they're down, when they're struggling in the face of skyrocketing gas prices and ongoing unemployment.

It's unwise, because of the impact the tax increase will have on retailers, wholesalers, and other business in the tobacco trade – businesses that employ Kansans and pay taxes.

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But raising taxes on those who can least afford it - in this economy – is just unfair. Real people will ultimately bear the burden of this massive 200% tax increase; not tobacco companies, but average, working people; people trying to find their way through these tough economic times.

Many people support the proposition that you shouldn't increase taxes on those who can least afford them. However, when it comes to tobacco taxes, legislatures have frequently been inclined to make an exception and support a tobacco tax increase.

The thinking sometimes is the higher the tobacco tax, the more people quit - so even if the tax is unfair - it's good for public health.

### **Tobacco Harm Reduction**

The idea is that if there is less risk associated with one tobacco product than another, then we can *reduce* the harm associated with tobacco if those who won't quit tobacco entirely, at least switch to a less risky product.

Policies that encourage switching are called harm reduction policies.

However, can you imagine a tobacco tax that might have a negative effect on public health?

What if a tax increase actually *discouraged* people from moving to less risky products? If some tobacco products presented less risk than others, then taxing these products as much as the riskiest products could actually discourage people from switching couldn't it?

In short, discouraging people who buy the riskiest products from moving instead to less risky products can't be good for public health, can it?

I submit to you that SB 462 could do just that by raising the taxes on smokeless tobacco. Smokeless tobacco presents substantially less risk of disease than cigarettes. Let me say that again. Smokeless tobacco presents substantially less risk of disease than cigarettes. This is a matter of scientific consensus, and I am more than happy to provide you a complete bibliography of the published studies on this issue.

But for the sake of expediency, here are just a few.

The Cancer Prevention Study, conducted under the auspices of the American Cancer Society, collected information on the lifestyle and environmental cancer risks of over 1.2 million Americans. Based on estimates provided by this data, smokeless tobacco use

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presents substantially lower risk of death for every disease associated with cigarette smoking.

It isn't surprising that the risk of death from lung cancer and respiratory disease was far greater for cigarettes than for smokeless tobacco, but did you know that cigarette smoking was estimated to present twenty seven times more risk of oral cancer than smokeless tobacco.<sup>1</sup>

The prestigious Royal College of Physicians similarly concluded in 2002 that "as a way of using nicotine, the consumption of non-combustible tobacco is on the order of 10-1,000 times less hazardous than smoking, depending on the product."

In 2008, a World Health Organization study group on Tobacco Product Regulation concluded: "there is little question that, in general, [smokeless tobacco] products are less harmful than combusted tobacco products such as cigarettes."

I could continue to cite more examples of credible scientists, scientific organizations and publications acknowledging the fact that smokeless tobacco products present less risk than smoking but I'm aware of the limits on this committee's time.

But the evidence is clear and compelling.

So, if smokeless tobacco is far less risky than cigarettes, shouldn't tax policy reflect that difference in risk?

After all, the hallmark of a fair and wise law or tax policy is that it treats equal things equally, and different things differently. Since smokeless is substantially less risky than cigarettes, shouldn't it be taxed at a lower rate?

Forget about intrinsic fairness and philosophical soundness, though the smokeless tax hike in SB 462 is neither fair nor sound. What about the law of unintended consequences?

Shouldn't we consider the effect of equalizing the smokeless tax with the cigarette tax - not only on those who buy smokeless tobacco - but also on those who might buy it rather than of buying cigarettes?

We know the answer to this question because we know people are more likely to switch to a product if it costs them less money. So, the smokeless tobacco tax-increase in SB 462 will actually discourage people from switching from a more risky product to a less risky product.

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And at least to that extent, is a perfect example of how a dramatic tax increase - offered in the name of public health - could actually have a negative impact on the health of those who would otherwise chew smokeless tobacco rather than smoking a cigarette.

Now, some might say that, since quitting is plainly healthier than switching, we'd rather just encourage everybody to quit.

But the fact is this: cessation-only policies are producing diminishing returns. After decades of declines in the percentage of Americans who smoke, the rate of decline has begun to flatten out.

In fact, the US Congressional Budget Office predicts that the incidence of smoking will decline just 2 percent over the next decade.

If that's true, does it make sense to rely solely on cessation efforts to reduce the harm associated with tobacco use?

Doesn't it make sense to augment cessation efforts with harm reduction?

And what is harm reduction, again? Harm reduction says that policy ought to seek and accept reductions in the harm associated with smoking, through switching from cigarettes to lower risk alternatives even as it pursues elimination of harm by encouraging everyone to quit and nobody to start.

If you're willing to consider a practical approach to tobacco control; if you are willing to accept progress as a result of switching even as you pursue perfection through cessation, then harm reduction should be part of your strategy.

But if you accept this approach, then you're not likely to support, SB 462 because equalizing taxes is what you'd do if you don't want people to switch from riskier cigarettes to less risky smokeless tobacco.

It's what you'd do if you wanted quitting tobacco entirely to be the one and only way for smokers to reduce their risk.

That might be fine for the 2 percent of smokers the CBO expects to quit over the next decade, but what about the others?

I'd ask you to think about the smokers who aren't expected to quit in the next decade, and I'd ask that you consider how policy can encourage them to switch to less risky tobacco products.

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I ask that you vote against the increase in smokeless tobacco taxes in SB 462

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

[1] USDHHS, 1989 (Citing unpublished data and estimating the relative risk (RR) for death from oropharyngeal cancer for cigarette smokers versus nonsmokers to be 27.48; (RR27.48; 95% CI: 9.96-75.83); and, Henley et al., 2005 (Calculating a hazard ratio for smokeless tobacco and oropharyngeal cancer of .90 (HR 0.90; 95% CI: 0.12-6.71).