



TESTIMONY

**TO: Chairman Pete Brungardt
And Members of the Senate Federal and State Affairs Committee**

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

**RE: SB 462 -- An Act concerning the Kansas cigarette and tobacco products act;
relating to taxation and enforcement under the act; licensing of
retail dealers.**

DATE: March 15, 2012

Chairman Brungardt and Members of the Committee:

For the record, I am Whitney Damron and I appear before you today on behalf of Swisher International, Inc., in opposition to the provisions of SB 462 that would redefine "little cigars" as "cigarettes" and thereby increase their taxes substantially; increase the excise on Other Tobacco Products (OTP) by 200 percent with a statutory escalator provision tied to the tax rates for cigarettes; eliminate product sampling by anyone; and, making revisions to the licensure requirements for cigarette and OTP retailers.

Other Tobacco Products.

OTP are taxed differently due to their unique nature that defies a one-sized approach as found in the taxation of cigarettes in packs of 20 or 25 cigarettes. OTP includes moist and dry snuff, leaf tobacco, cigars, pipe tobacco and other products. Accordingly, most states tax OTP at the wholesale level. In Kansas, the tax rate is ten percent of the wholesale price, which is the same as the state of Missouri. By its very nature of how it is taxed, the State receives a tax increase practically every year, as when the wholesale price increases, the tax increases. In addition, OTS is subject to state and local sales taxes, so they stack on top proportionally as well.

In 2010, Kansas passed a statewide smoking ban and effectively halted smoking in most public places. A number of tobacco consumers have chosen to take up smokeless products as a partial or total replacement for smoking. There are significant health benefits for smokeless products vs. cigarettes, not the least of which is second-hand smoke and its impact on non-smokers. The Kansas Legislature has decided it is in the public's best interests for there to be a statewide smoking ban. It now seems counterintuitive, if not downright punitive to those who have chosen to partake in the use of smokeless products as a substitute to cigarettes by now bringing forth legislation to increase the tax on these products by 200 percent and effectively treat them the same as cigarettes for tax purposes now and going forward.

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There are currently studies underway to try to determine whether smokeless products can be an effective tool to help people stop smoking. The James Brown Cancer Center and the University of Louisville have created a "Switch and Quit" program in the city of Owensboro encouraging smokers to trade out cigarettes for non-smoking forms of nicotine delivery, including smokeless tobacco products (*Program urges smokers to switch to smokeless tobacco, USA Today, 10-28-2011*).

That same article cites the program's director, a University of Louisville professor of medicine that his analysis of the *2000 National Health Review Survey* "found that male smokers who switched to smokeless tobacco were more likely to quit smoking than those who used nicotine patches or gum."

Little Cigars.

Little cigars are different from cigarettes and they have been treated differently for regulatory purposes at the Federal level since the 1800's.

Little cigars differ from cigarettes based upon three criteria established by the Bureau of Alcohol, Tobacco and Firearms (ATF) in 1973: Wrapper, filler and packaging & labeling.

"Little cigars" are defined at the Federal level as "any cigar weighing less than three pounds per thousand." And while they may resemble cigarettes, that is where the similarities end; they are distinctly a cigar product and have long been treated differently from cigarettes.

- **Wrapper:** Little cigars are wrapped in 100% tobacco leaf or reconstituted tobacco wrapper consisting of at least 2/3rds tobacco; cigarettes are typically wrapped in white paper.
- **Filler:** Little cigar filler tobacco consists predominantly of air-cured and naturally fermented tobaccos and the smoking characteristics are quite different from cigarettes, which are chemically more acidic and contain more sugar.
- **Packaging & Labeling:** Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations require different labeling and advertising for little cigars and cigarettes, which clearly informs the consumer that the product is a cigar, not a cigarette.

Some have suggested that consumers are moving to little cigars to avoid paying the higher prices of cigarettes. The facts do not support that premise.

The market for little cigars is very small. In 2008, consumers spent an estimated \$80 billion on cigarettes, but less than \$350 million on little cigars, meaning more was spent on cigarettes in one week than was spent on little cigars during the entire year. And, during the time period of 2004-2008, consumption of cigarettes declined by 52 billion sticks, yet the consumption of little cigars increased by less than 3 billion sticks, meaning consumers are not transitioning to little cigars as a product replacement.

It is incumbent upon the Federal Government to insure that cigarette products are not being repackaged as little cigars to evade the appropriate application of tax and they take that job seriously. Tobacco products are manufactured in secured, bonded facilities; detailed reports are required for inflow and outflow of materials and taxable products and the TTB goes to great lengths to insure cigarettes are not being misclassified to avoid higher Federal taxes.

In summary, we believe these definitional changes for Little Cigars are not needed in our state and are simply a 200+ percent tax increase masked as an unneeded change in longstanding state policy.

Product Sampling.

Years ago the Legislature adopted stringent limitations on tobacco product sampling, which are removed altogether in this legislation.

Product sampling is oftentimes done by manufacturers or retailers to persuade a customer to try a competing brand to their current product of choice. Current law allows for sampling at retail locations where cigarettes and tobacco products are the primary commodity for sale or certain outdoor venues. Obviously there can be no product sampling by minors.

Licensing Act Revisions.

We do not necessarily have an opinion to offer in regard to changes proposed by the licensing provision changes in the bill, but also we do not have an understanding of the problem the sponsor of this legislation is trying to correct. Accordingly, we will reserve our opinion on that portion of the bill.

On behalf of Swisher International, I thank you for your consideration of our concerns with SB 462 and would ask the Committee to take no action on the bill.

WBD.

For more information on Swisher International, Inc.

www.swisher.com

