

ALASKA STATE LEGISLATURE
HOUSE SPECIAL COMMITTEE ON WAYS AND MEANS

March 31, 2004

7:05 a.m.

MEMBERS PRESENT

Representative Mike Hawker, Chair
Representative Bruce Weyhrauch, Vice Chair
Representative Vic Kohring
Representative Dan Ogg
Representative Ralph Samuels
Representative Peggy Wilson
Representative Max Gruenberg
Representative Carl Moses

MEMBERS ABSENT

Representative Norman Rokeberg

OTHER LEGISLATORS PRESENT

Representative Paul Seaton

COMMITTEE CALENDAR

HOUSE BILL NO. 538

"An Act relating to taxes on cigarettes and tobacco products; relating to tax stamps on cigarettes; relating to forfeiture of cigarettes and of property used in the manufacture, transportation, or sale of unstamped cigarettes; relating to licenses and licensees under the Cigarette Tax Act; and providing for an effective date."

- HEARD AND HELD

HOUSE BILL NO. 537

"An Act relating to the levy, collection, and administration of sales and use taxes on tourism services; and providing for an effective date."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 538

SHORT TITLE: TOBACCO TAX; LICENSING; PENALTIES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/18/04 (H) READ THE FIRST TIME - REFERRALS
03/18/04 (H) W&M, L&C, FIN
03/24/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
03/24/04 (H) Heard & Held
03/24/04 (H) MINUTE(W&M)
03/26/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
03/26/04 (H) Heard & Held
03/26/04 (H) MINUTE(W&M)
03/31/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519

BILL: HB 537

SHORT TITLE: TOURISM SALES AND USE TAXES

SPONSOR(S): RULES BY REQUEST OF THE GOVERNOR

03/18/04 (H) READ THE FIRST TIME - REFERRALS
03/18/04 (H) W&M, L&C, FIN
03/24/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
03/24/04 (H) <Bill Hearing Postponed to Fri. 3/26>
03/26/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519
03/26/04 (H) <Bill Hearing Postponed to 3/31/04>
03/31/04 (H) W&M AT 7:00 AM HOUSE FINANCE 519

WITNESS REGISTER

MICHAEL BARNHILL, Assistant Attorney General
Commercial/Fair Business Section
Civil Division
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Explained Amendment 1 and answered questions about the proposed committee substitute (CS) for HB 538.

WILLIAM CORBUS, Commissioner
Office of the Commissioner
Department of Revenue (DOR)
Juneau, Alaska

POSITION STATEMENT: Introduced HB 537 on behalf of the Office of the Governor.

DAN DICKINSON, Director
Tax Division
Department of Revenue
Anchorage, Alaska

POSITION STATEMENT: Explained HB 537 and answered questions on behalf of DOR.

CHIP THOMA
Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of HB 537.

DENNIS BRANDON, President
Cook Inlet Region, Incorporated (CIRI) Alaska Tourism
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

ROGER GAY
Big Lake, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

BRUCE BUSTAMONTE, President and Chief Executive Officer
Anchorage Convention and Visitors Bureau (ACVB)
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

RON PECK, President
Alaska Travel Industry Association (ATIA)
Anchorage, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

JOHN SHIVELY, Vice President
for Government and Community Relations
Holland America Lines
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 537.

ALLAN TESCHE, Member
Anchorage Assembly
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 537.

GEORGE REIFENSTEIN, JR., General Manager
Mount Roberts Tramway
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

MIKE WINDRED, Director of Operations
Alaska Travel Adventure (ATA)
Juneau, Alaska

POSITION STATEMENT: Testified in opposition to HB 537.

LORENE PALMER, President and Chief Executive Officer
Juneau Convention and Visitors Bureau
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 537.

DALE ANDERSON, Owner
Auke Lake Bed and Breakfast
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 537.

DOT WILSON, Owner
Coastal Helicopters
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 537.

PAMELA LaBOLLE, President
Alaska State Chamber of Commerce (ASCC)
Juneau, Alaska
POSITION STATEMENT: Testified in opposition to HB 537.

CHRIS VONIMHOFF, Manager
Alyeska Ski Resort;
Member,
Visitors Benefit Alaska
Girdwood, Alaska
POSITION STATEMENT: Testified during the discussion of HB 537.

ACTION NARRATIVE

TAPE 04-19, SIDE A
Number 0001

CHAIR MIKE HAWKER called the House Special Committee on Ways and Means meeting to order at 7:05 a.m. Representatives Hawker, Samuels, Kohring, Weyhrauch, Wilson, Gruenberg, Moses, and Ogg were present at the call to order. Representative Seaton was also present.

HB 538-TOBACCO TAX; LICENSING; PENALTIES

[Contains discussion of SB 168]

Number 0200

CHAIR HAWKER announced that the first order of business would be HOUSE BILL NO. 538, "An Act relating to taxes on cigarettes and tobacco products; relating to tax stamps on cigarettes; relating

to forfeiture of cigarettes and of property used in the manufacture, transportation, or sale of unstamped cigarettes; relating to licenses and licensees under the Cigarette Tax Act; and providing for an effective date." He noted that Version D includes the two amendments that were passed at the previous meeting.

Number 0244

REPRESENTATIVE WEYHRAUCH moved to adopt the proposed committee substitute (CS) to HB 538, labeled 23-GH2116D, Kurtz, 3/29/04, as the working document. There being no objection, Version D was before the committee.

Number 0300

REPRESENTATIVE SAMUELS moved to adopt Amendment 4 which read as follows:

Page 2, following line 26:

Insert new bill section to read:

"* **Sec. 4.** AS 43.50.105 is amended to add a new subsection to read:

(i) A person who violates the provisions of this section is jointly and severally liable for the taxes imposed by AS 43.50.090 and AS 43.50.190. To the fullest extent permitted by the Constitution of the United States, such persons are required to collect the taxes and pay them to the department."

Re-number the following bill sections accordingly.

Page 5, lines 5-6:

Delete all material

Insert: "**Sec. 43.50.625. Forfeiture of other property.** (a) Upon a showing of probable cause that a person has committed the crime of misconduct involving unstamped cigarettes or stamps in the first degree under AS 43.50.640, the following are subject to forfeiture:"

Page 5, line 8:

Delete "possession for sale, barter, or exchange"

Insert "or possession for sale"

Page 5, lines 11-12:

Delete "possessed for sale, or bartered or exchanged"

Insert "or possessed for sale"

Page 7, lines 19-28

Delete all material

Renumber following subsections accordingly
Page 8, following line 16:

Insert new bill sections to read:

"* **Sec. 15.** AS 43.50.640(a) is amended to read:

(a) A person commits the crime of misconduct involving unstamped cigarettes or stamps in the first degree if the person

- (1) with reckless disregard that the cigarettes are unstamped
 - (A) sells or distributes 5,000 [1,000] or more unstamped cigarettes in a single transaction;
 - (B) owns or possesses 5,000 [1,000] or more unstamped cigarettes with the intent to sell; or
 - (C) acquires, holds, transports, imports, or possesses 10,000 or more unstamped cigarettes; or
- (2) with reckless disregard that the stamp was previously affixed to another cigarette package, [;]
 - (A) affixes a previously used stamp to a cigarette package; or
 - (B) possesses, sells, or distributes a previously used stamp.

* **Sec. 16.** AS 43.50.650(a) is amended to read:

(a) A person commits the crime of misconduct involving unstamped cigarettes or stamps in the second degree if the person

- (1) with reckless disregard that the cigarettes are unstamped
 - (A) sells or distributes at least one but fewer than 5,000 [1,000] unstamped cigarettes in a single transaction;
 - (B) owns or possesses at least one but fewer than 5,000 [1,000] unstamped cigarettes, with intent to sell; or
 - (C) acquires, holds, transports, imports, or possesses at least one but fewer than 10,000 unstamped cigarettes; or
- (2) is not licensed under this chapter or otherwise authorized by the department to possess stamps and possesses a stamp that is not affixed to a cigarette package."

Renumber following bill sections accordingly.

REPRESENTATIVE WEYHRAUCH objected for discussion purposes.

Number 0402

MICHAEL BARNHILL, Assistant Attorney General, Commercial/Fair Business Section, Civil Division, Department of Law (DOL) explained Amendment 4 by saying it addresses many of the concerns mentioned in the last meeting. He said it adds a new Section 4 on page 2 of the bill in response to Representative Gruenberg's concern about the Quill decision, which has to do with individuals that import cigarettes to Alaska and who then would be liable for the tax. He explained that last session the legislature enacted a bill which prohibits importation by a non-licensee, so he said he predicts it won't be much of a problem. If there is a cigarette seller from out of state who does not have physical presence in Alaska and who is selling a large number of cigarettes to people in Alaska who don't have licenses, subsection (i), which is an addition to the shipping restriction statute, 43.50.105, should address that issue. It would make the out-of-state shipper liable for the tax to the full extent permitted by the constitution. He called it the "Quill notion," which would allow tax to be collected from [out-of-state] sellers.

Number 0605

MR. BARNHILL explained that the next proposed section [of Amendment 4] deals with the forfeiture provision, which is on page 5 of the proposed CS. The preamble in the CS [lines 5-6] which says "The following are subject to forfeiture:" is deleted. He said that the only conduct targeted is conduct which rises to the level of a felony, which is clarified by inserting "Upon a showing of probable cause that a person has committed the crime of misconduct involving unstamped cigarettes or stamps in the first degree under AS 43.50.640, the following are subject to forfeiture:".

MR. BARNHILL, turning to the second page of [Amendment 4], pointed out that in [subsection (a), paragraphs (1) and (2)], the transactions of bartering and exchanging have been deleted in response to Representative Samuels' concerns and a proposal made by Deputy Commissioner Porter.

Number 0730

REPRESENTATIVE GRUENBERG remarked that [that portion of Amendment 4] may not be technically correct. Looking at page 2, lines 4-6 of the amendment, he asked if Mr. Barnhill has the D version of the bill handy.

MR. BARNHILL replied he does.

REPRESENTATIVE GRUENBERG suggested, included in [the wording] which eliminates "possessed for sale, or bartered or exchanged", should also be "for goods and services". He asked Mr. Barnhill if that additional phrase is needed.

MR. BARNHILL said Representative Gruenberg is absolutely right.

REPRESENTATIVE GRUENBERG offered that as a friendly amendment.

MR. BARNHILL said he appreciates that observation. He corrected the amendment on page 2, lines 1 and 5, to add the words, "for goods and services".

Number 0906

The committee took an at-ease from 7:15 a.m. to 7:17 a.m. to fix technical difficulties with the off-net sites.

Number 0944

REPRESENTATIVE GRUENBERG withdrew his friendly amendment and moved to adopt a conceptual amendment to Amendment 4, which would change the language on page 5, lines 7, 8, and 9 [of the proposed CS] to say "material and equipment used in the manufacture, sale, offering for sale, or possession for sale of cigarettes in this state in violation of - and then the statutes." There being no objection, it was so ordered.

MR. BARNHILL continued to explain the changes contained in Amendment 4. He noted that [subsection (i)] on page 7 [of the proposed CS] is deleted in response to concerns voiced by members of the committee. He said that the judge could still order forfeiture at his or her discretion.

REPRESENTATIVE WILSON said she would like to see "something very strong here" or there may be many violations.

MR. BARNHILL responded that he has discussed deleting this part with the criminal section [of DOL] which said "to get a judge comfortable with a new forfeiture section, there is going to have to be a major violation. There's going to have to be a lot of bootlegged cigarettes at stake." He said that if deleting this does not work, it can be returned to at a later date for an amendment to require mandatory forfeiture. He reported that [DOL] is comfortable with deleting [subsection (i) of the proposed CS].

MR. BARNHILL continued to say on page 8, following line [16] to the end [of the proposed CS], a new section is added. This section amends the two criminal provisions in the cigarette tax stamp Act [SB 168] enacted last session, which deals with the crimes of misconduct involving unstamped cigarettes in the first degree and in the second degree. The threshold increases from 1,000 to 5,000 cigarettes for a felony violation in order to address the concern of a felony kicking in when the threshold is too low, and in order to achieve parity with the rest of the criminal statutes.

Number 1410

REPRESENTATIVE WEYHRAUCH asked on page 2, line 18, and page 3, line 1 [of Amendment 4], why it doesn't say "with reckless knowing or intentional disregard" instead of just "reckless."

MR. BARNHILL said he does not recall the reason.

REPRESENTATIVE WEYHRAUCH asked if there is a reason not to add those standard words.

MR. BARNHILL said he thinks that reckless disregard is the floor of intent and knowing or intentional is a higher level of intent.

REPRESENTATIVE WEYHRAUCH asked if reckless is the lowest form.

MR. BARNHILL replied yes.

REPRESENTATIVE WILSON asked what the change in number is in cartons.

MR. BARNHILL said five cartons.

REPRESENTATIVE WILSON asked if a person can now bring in five cartons of cigarettes for personal use.

MR. BARNHILL replied that is a different issue. Elsewhere in the statutes there is a provision for people to bring in 100 cigarettes a month, he explained. This amendment has to do with bootlegging: any amount of bootlegging up to 5,000 cigarettes is a misdemeanor, and anything over 5,000 is a felony, he added.

Number 1608

REPRESENTATIVE WILSON asked why the number of cigarettes is used rather than the number of cartons.

MR. BARNHILL said he has no idea.

REPRESENTATIVE GRUENBERG, responding to Representative Wilson's question, said that the size of a carton could be varied, but a number is certain.

REPRESENTATIVE GRUENBERG referred to page 8 [of the proposed CS] and suggested a renumbering of the Section 16.

Number 1743

CHAIR HAWKER acknowledged that any conforming changes that need to be made, should this amendment be approved, Legislative Legal and Research Services could incorporate without changing the substance of the amendment.

REPRESENTATIVE GRUENBERG asked Mr. Barnhill if [Section 16] of the amendment conforms the misdemeanors.

MR. BARNHILL replied yes.

REPRESENTATIVE GRUENBERG asked if possessing one unstamped cigarette would be a misdemeanor, and he said he is concerned about that because packs are stamped, but cigarettes are not. He asked how a person would know if a cigarette has been stamped.

MR. BARNHILL opined that if a person bought a stamped pack of cigarettes, those 20 cigarettes inside would be deemed to have been stamped. He continued to say, "If someone handed you one cigarette from an unstamped pack of cigarettes, and you didn't know, then I would say that doesn't raise to the reckless disregard standard required for either a misdemeanor or a felony."

REPRESENTATIVE GRUENBERG asked how many cigarettes are in a pack.

REPRESENTATIVE WILSON said twenty.

REPRESENTATIVE GRUENBERG offered a friendly amendment to say "at least 20 cigarettes."

MR. BARNHILL replied that he is not sure that would be received as a friendly amendment. He said he believes that Senator Bunde may have good reasons for making the floor one [cigarette].

REPRESENTATIVE GRUENBERG said he would not pursue the friendly amendment.

Number 2017

REPRESENTATIVE WEYHRAUCH withdrew his objection.

CHAIR HAWKER asked if there was any further objection [to the motion to adopt Amendment 4]. Hearing none, it was so ordered.

REPRESENTATIVE OGG stated that he is not going to offer Amendment 3.

REPRESENTATIVE GRUENBERG said he is not going to offer Amendment 6.

CHAIR HAWKER noted that Amendment 6, which deals with bond requirements, will also not be offered. He explained that Amendment 6 would have changed Section 43.50.550, which deals with the deferred payment for stamps. He read from the statute:

A licensee who submits an application for the purchase of stamps on a deferred payment basis shall post a bond acceptable to the department in the amount equal to 200 percent of the maximum dollar amount of allowed monthly purchases under this section as a condition for approval of the application.

CHAIR HAWKER said this is an important provision for business, in general, but particularly for small businesses that do not have unlimited cash resources. He related that he has been in lengthy discussions with insurance companies that are involved in bonding, but he has not been able to get anyone to testify by today. Doubling the bond requirements for small businesses is an insurance product that is not readily available, which could cripple or eliminate these businesses, he said. He stated his intention is to set the bill aside and ask [DOR] to resolve this issue so that the ability of industry to operate in Alaska is not compromised. He opined that an amendment would not solve the problem and more research is needed.

Number 2333

REPRESENTATIVE GRUENBERG mentioned that the reason he withdrew [Amendment 5] was to not delay the movement of the bill, but now, knowing that the bill will be taken up again, he said he will be offering his amendment at the next meeting.

CHAIR HAWKER said that a brief recess is needed to fix technical sound problems.

[HB 538 was held over.]

The committee took an at-ease from 7:32 a.m. to 7:38 a.m.

HB 537-TOURISM SALES AND USE TAXES

Number 2434

CHAIR HAWKER announced that the final order of business would be HOUSE BILL NO. 537, "An Act relating to the levy, collection, and administration of sales and use taxes on tourism services; and providing for an effective date."

Number 2550

REPRESENTATIVE WEYHRAUCH moved to adopt HB 537, labeled 23-GH2114\A, as the working document. There being no objection, Version A was before the committee.

Number 2626

WILLIAM CORBUS, Commissioner, Office of the Commissioner, Department of Revenue (DOR) introduced HB 537, a tourism sales and use tax bill, on behalf of the Office of the Governor. He said it applies to a broad range of tourist-related activities such as taxes on cruise ship fares, shore-side activities, transient accommodations, and guided tours. Revenues for FY 05 are estimated to be \$19 million, and for FY 06 and years following, \$49 million per year. He called this bill a user-pay type of legislation, which will help pay for the identified costs associated with tourism in Alaska of up to \$160 million per year. Elements of this legislation are found in the other 49 states, he said. "The administration urges support for the passage of this bill," he concluded.

Number 2840

DAN DICKINSON, Director, Tax Division, Department of Revenue, explained the three parts of HB 537. Section 1 is the heart of

the bill and adds a new chapter on tourism services sales and use taxes, he said. The tax is levied to try and catch the transaction at the point of the sale or when [the service] is used in the state. Sec. 43.51.020 establishes the tax rate at 5 percent, and Sec. 43.51.030 requires sellers or providers to register with DOR, he related. Sec. 43.51.040 establishes the procedures by which the tourism tax takes place within the state and those that take place outside of the state are allocated. Sec. 43.51.050 provides for the seller of services or the commercial provider to collect the taxes. It details the conditions for collection and remittance, and lists incentives for encouraging electronic filing, which will save money. Mr. Dickinson continued to explain that Sec. 43.51.060 states that proceeds from this tax will go to the general fund. Sec. 43.51.990 is the definition section and the two critical definitions listed here are the "commercial provider" and "tourism service", he said, because they determine which services will be taxed. He said that those proposals will all be added to Title 43.

Number 3130

MR. DICKINSON continued to explain Section 2 of HB 537 which establishes that the tax will apply to all services that are purchased and used after January 1, 2005. Section 3 says that the bill takes effect immediately. "What the effect of this is from the time this Act takes effect until January 1, 2005, if there is a sale, which will then ultimately be used after January 1, 2005, we tax that sale. If something is sold and used before January 1, 2005, we will not tax it," he concluded.

Number 3319

CHAIR HAWKER stated that HB 537 would not be moving out of committee today, and he asked if there were any questions from the committee for Mr. Dickinson or Mr. Corbus.

REPRESENTATIVE GRUENBERG noted that there are letters in the committee members' packets from Mayor Begich and Mr. Lemke, both from Anchorage, and from Julie Hursey from Alaska Passages Adventure Cruises, which seem to address very serious concerns about the effect of this tax. He asked Commissioner Corbus if he has had a chance to review any of those letters.

MR. CORBUS said he has not seen those letters, but he would review them and be prepared to address those issues at the next hearing.

REPRESENTATIVE GRUENBERG repeated that the concerns expressed [in those letters] are very serious.

Number 3436

REPRESENTATIVE WEYHRAUCH requested that the many people who have submitted comments and letters to his office should make them available to the committee. He said he would like to hear the people who have taken the time to come and testify on this bill. He expressed his appreciation to Commissioner Corbus for always appearing to introduce his department's bills, saying it shows leadership.

CHAIR HAWKER reiterated the importance of the public providing written comments to be added to the record.

REPRESENTATIVE WILSON said she has several questions about the bill but would like to hear public testimony first.

Number 3659

CHIP THOMA, testifying as an individual, said that the question of basic fairness compels him to speak today. He said that any tax measure that can be legally levied on the cruise ships and their vendors for the benefit of the general fund is welcome, and he encouraged support of that basic concept. He commented on the definition of "transient accommodation" on page 5, line 30 of the bill saying that this definition is not fair to small year-round hotels and lodges when the tourist season is between May and September. He suggested setting a tourist season provision or exempting year-round hotels with less than 50 rooms. With a 7 percent bed tax, a 5 percent sales tax, and a 5 percent tourist tax in Juneau, long-term-stay hotels would end up paying 17 percent in tax. He opined that the head tax is working very well and should be increased from \$5 to \$7, or even higher in future years, as long as the money is used for docks, harbors, and on-shore amenities adjacent to the cruise ship area. He said he believes that Juneau is reaching its capacity to handle the one million cruise ship visitors, plus 150,000 who arrive by plane, as well as the numbers of crew in town each summer. He concluded that he encourages the basic concept of the bill and believes that the cruise ships should pay a fair tax.

Number 4030

DENNIS BRANDON, President, Cook Inlet Region, Incorporated (CIRI) Alaska Tourism, related that he has worked for many years to try to stimulate one of the economic engines for Alaska, in spite of several tough years. He mentioned that Alaska is losing ground to competitive destination markets and pricing has become a very critical issue in trying to lure a robust visitor traffic. Having a tax on the tourist industry is going to further curtail its growth potential, he opined. He stated his opposition to [HB 537] because it looks at a single sector of the economy to try to make up for the shortfalls in the fiscal gap, which goes counter to economic development in the state. Any time a tax is imposed, it increases pricing, which is counter to the industry and to economic growth of the state. He also pointed out that it is difficult to determine what a tourism product is. A retail petroleum outlet does not consider itself to be a tourism product, but, in fact, gets the benefits, as do pharmacies and restaurants, he said. He suggested that the industry be encouraged rather than discouraged by having taxes applied to it.

REPRESENTATIVE KOHRING thanked Mr. Brandon for his comments and said he agrees with him. He pointed out that the tourism industry is one of the bright spots in Alaska's economy, from his perspective, and said his is concerned about the effect this bill might have on that industry, especially with timber, mining, and fisheries down. He suggested not doing anything that would result in less growth of the tourist industry since it is so vital to many areas in Alaska.

Number 4636

ROGER GAY said he does not appreciate the piecemeal approach to taxation where a weak group is targeted. Under the equal protection clause everyone should be treated the same, he said. If the tourist tax can be justified for tourism services, there should be a tax on all services. Taxes have a negative impact on the people who are subjected to them and turn all Alaskans seeking recreation into tourists, he opined.

TAPE 04-19, SIDE B

MR. GAY continued to say that Alaska's motto should be, "Alaska - we tax the other guy and pass the savings on to you."

Number 4555

BRUCE BUSTAMONTE, President and Chief Executive Officer,

Anchorage Convention and Visitors Bureau (ACVB), stated his organization's opposition to HB 537 saying that they are opposed to all target taxes. For the last five years ACVB has been working to build a new convention center in Anchorage with the intent to increase the local bed tax. This proposed tax would layer 5 percent on top of the existing 8 percent bed tax and take away the upward mobility for adding to the structure, he said. He explained that the national average for tax in large cities is 12 percent, which could make Anchorage less competitive at 13 percent. He noted that the tourism industry has been a "shining star" in Alaska, has added jobs, and is broad reaching, and he stated his concern that it keep growing. He said that the best way to do that is to increase the convention capacity by building a new center.

CHAIR HAWKER asked if ACVB is opposed to all additional state revenues such as the broad-based sales tax, or if it is just opposed to the targeted aspect of this bill. He also asked if Mr. Bustamonte believes that the tourism industry should be exempt from all state taxes.

MR. BUSTAMANTE replied, "That is something that we need to evaluate as we have more details if we're going to have the tax you're talking about - broad-based taxation." He said his organization supports percent of market value (POMV) and would look at a broad-based tax, but with protecting entities that are always taxed, such as hotels and car rentals.

Number 3953

RON PECK, President, Alaska Travel Industry Association (ATIA), stated his opposition to HB 537 because it is a tax that will not benefit tourism or the state in the long run. A 5 percent tourism sales tax is too high and none of the revenue will go to tourism marketing, he opined. He said that ATIA has a better solution, which is to create a tourism marketing assessment and return the proceeds back into tourism marketing. A 5 percent tourism tax will add to the price of visiting Alaska and potential customers may reevaluate their decisions to travel to Alaska, which is already perceived as an expensive destination, he related. The tax may cause some businesses to lose access to nationwide cooperative marketing programs and be unable to compete nationwide, he opined.

Number 3632

JOHN SHIVELY, Vice President for Government and Community Relations, Holland America Lines, said that the Governor's transmittal letter of March 16, 2004, has several problems from his organization's standpoint. It makes estimates on revenues of \$19 million in FY 05 and \$49 million thereafter and Holland America Lines was surprised to see no analysis [of those figures]. He said he is interested in finding out how DOR came to those figures.

MR. SHIVELY continued to say that another problem in the letter is the claim that the state is currently providing \$116 million in services to the cruise industry. He called it a fantasy or a fabrication on the part of the administration. The list of these expenses provided to Representative Gatto is "outright wrong" because it lists things that have already been paid for like the Alaska railroad, the Anchorage and Fairbanks airports, and the St. Paul Harbor, he maintained.

MR. SHIVELY related that the last problem in the letter is a statement that "Alaska can recover part of its costs through reasonable taxes without appreciably - I emphasize appreciably - affecting the growth of the Alaska cruise ship industry." He said he does not know how the administration came to that conclusion. He compared this tax to the tobacco tax which has a goal to reduce the number of people who smoke. This tax will have a similar effect on the cruise industry, he opined.

CHAIR HAWKER noted that the letter Mr. Shively is referring to has not yet been distributed to the committee, but will be soon.

Number 3155

MR. SHIVELY pointed out that "zero states have the kind of tax that you're proposing on the cruise industry." He opined that because this kind of tax is so complicated is probably the reason why other states have not imposed one. [Referring to the memorandum from DOR], Mr. Shively noted that on page 6, the list of fees that are collected in other states, none of the fees are collected by state governments, but rather by courts, for the same reasons that courts and communities in Alaska collect the fees - the fees are to go to support the services provided to the cruise industry. The port fees that the cruise industry does pay are listed on page 12, he said, which shows that the cruise industry does pay its way. He called attention to Anchorage, Matanuska-Susitna, and Fairbanks to show a growth in the bed tax directly related to the passengers the cruise industry brings to the state. He pointed out that on page 7 DOR

has listed what other countries pay for head taxes, but he said constitutional prohibitions on certain taxes in this country don't apply to other countries.

Number 2830

MR. SHIVELY voiced his support for the comments made by Mr. Bustamante and Mr. Peck against targeting one industry with a tax, saying that is not the way to go. He said that though the tourist industry has grown, it is losing market share because Alaska is an expensive destination and the industry has been opening up new markets. This tax is very complicated and it will have a negative impact, especially if the passenger does not see the tax up front, he concluded.

REPRESENTATIVE KOHRING asked Mr. Shively to provide written testimony to the committee and said he agrees with him.

MR. SHIVELY replied that he would provide a letter that contains the points he discussed.

Number 2333

ALLAN TESCHE, Member, Anchorage Assembly, reported that the Anchorage Assembly passed Anchorage Resolution (AR) 2458 on March 2, which made the point that the proposed tax on tourism will effectively kill a new downtown civic and convention center. An existing tax of 8 percent, which is used in part for the visitor industry, together with the proposed 5 percent is going to make it very difficult for [the Assembly] to sell an additional 4 percent tax to the electorate. A 17 percent tax would send a chilling message that economic development is not a priority, and would send a message to the Lower 48 that Alaska is very expensive, he said. He urged the legislature to look at a broad-based fiscal plan that does not target a specific industry or group.

MR. TESCHE referred to the Alaska Municipal League's 2004 policy statement to answer the question if [the Assembly] would support any other broad-based tax. He indicated opposition to any action that would diminish the existing statutory authorities of local governments to raise needed revenues through the levy of taxes. He suggested that the way out is to consider a broad-based tax which respects local taxes already in place.

MR. TESCHE offered comments as an owner of a bed and breakfast. The 17 percent tax would be very difficult to market to

transient guests coming into Anchorage, he remarked. He maintained that the tax would also have a negative affect on the cruise industry because those passengers spend a lot of time and money in Alaska and they would be lost to more competitively-priced cruises. Anchorage would like to be able to welcome large cruise ships to their area again, but that possibility is "off the table" if this tax takes place, he concluded.

Number 1714

REPRESENTATIVE SAMUELS asked Mr. Tesche if he supports a general statewide sales tax of 2-3 percent.

MR. TESCHE replied that he could only speak for himself. He asked how [a new sales tax] would relate to the existing local sales tax and said he would not like to see it layered on top of that. The local taxing authority should be respected, he said.

REPRESENTATIVE SAMUELS asked if "local taxing authority" means just a bed tax in Anchorage.

MR. TESCHE responded that there are other types of taxes in Anchorage like the car-rental tax. He said local taxing authority was used in the broad sense.

REPRESENTATIVE SAMUELS replied said that if this tax is taken off of the table, and people don't want their dividends touched, [the money] has to come from somewhere unless the budget is cut some more.

MR. TESCHE replied that the legislature has difficult choices to make, but suggested that any system of taxation is not discriminatory and does respect local taxes as they exist or may exist in the future.

REPRESENTATIVE SAMUELS asked Mr. Tesche if he supports a general income tax.

MR. TESCHE said yes, speaking only for himself.

Number 1400

CHAIR HAWKER pointed out to Mr. Tesche that he emphasized several times in his discussion that any state policy should respect, or defer to local authority for any tax that may exist in the future. He asked Mr. Tesche if he is suggesting that the state defer all taxing authority to the municipalities.

MR. TESCHE said he did mean "respect" instead of "defer" when he said he has to recognize that if a community such as Anchorage wants to consider an additional 4 percent sales tax to build a new convention center, there should be a system that could do that without layering a tax on top of an additional state sales tax. He opined that the problem with a sales tax is the same, and he suggested carving out an exemption for the tourism industry.

CHAIR HAWKER said he does have Mayor Begich's letter regarding the convention center issue and AR 2458 [from the Anchorage Assembly].

Number 1129

REPRESENTATIVE OGG remarked that a lot of municipalities have a sales tax such as his community of Kodiak, which has a 6 percent tax of which 1-2 percent is dedicated to a specific project like roads or harbors. He said is not speaking in favor of [HB 537] but said it seems to him that putting a 4 percent city sales tax on tourism is only one percent different than the 5 percent tax. Addressing Mr. Tesche, Representative Ogg opined that Anchorage has the option of pursuing a general sales tax to build a convention center. He asked Mr. Tesche if there is any reason he would not want to "go down that road" like other municipalities and allow the state to enact a tourism tax.

MR. TESCHE replied that the answer to the question is very simple. It is a local requirement in Anchorage to approve a sales tax only if 60 percent of voters approve, he said. It would be easier to pass a local tax that is limited to hotel and motel accommodations, which are largely used by visitors rather than local residents, than to pass a broad-based sales tax.

REPRESENTATIVE OGG responded, "Like a lot of folks, it's better in Anchorage to tax the other fellow instead of having a little, minimal tax on yourselves to provide these things that are going to be of benefit to your community."

REPRESENTATIVE SAMUELS replied that it would be very difficult to ever pass a sales tax with a 60 percent threshold in Anchorage, however, for individual property tax it is similar to people in the state who have a sales tax and a lower property tax rate. Per individual, he said the people in Anchorage are on scale with the rest of the state.

Number 0720

GEORGE REIFENSTEIN, JR., General Manager, Mount Roberts Tramway, said he has been in tourism since he worked as a waiter on the ferries in 1969. He stated his opposition to [HB 537] because "it is a targeted tax on an industry that is experiencing a low growth rate and yet is one of the brighter spots in many regions of the state as far as economic growth goes." He stated a concern for the decline in the number of independent visitors because of possible layering of taxes. He said he is concerned that it will be more difficult for travel agents and promoters to package and sell the tramway. Having to verify whether a ticket holder has paid the tax is a problem that could cause a loss of revenue, he said. A tramway is a mix of tourists and residents and it would be difficult to describe the tax as a tourist tax because of that, he concluded.

Number 0416

MIKE WINDRED, Director of Operations, Alaska Travel Adventure (ATA), stated he has been working for ATA for 21 years. He said he has operations in the whole state and he spoke in opposition to HB 537. He mentioned that two years ago ATA was looking for funding for marketing from the legislature and there was, at that time, \$160 million in tourism revenues, which shows that the industry does pay its way. He said, however, that he thinks the intent of the bill is to try and fill the fiscal gap and not to make the industry pay its way.

MR. WINDRED reported that 50 percent of the recreational vehicle (RV) business has gone under in Anchorage. A 5 percent tax for a 28-foot motor home increases the cost to over \$200 a day, which is an important barrier to someone looking at a package to Alaska, he opined. He said that a 5 percent tax would kill ATA's RV business. He listed the taxes someone on a cruise ship in Juneau would pay to go river rafting: docking fees, a head tax, a 5 percent sales tax, per seat bus fee, U.S. Forest Service fee, and sales tax on goods and services to support the business.

TAPE 04-20, SIDE A

Number 0040

MR. WINDRED continued to say that adding another 5 percent tax would be taking money out of ATA's pocket. He concluded, "Overall, I have a little bit of an issue taxing a little old

lady from Lincoln, Nebraska, to solve the fiscal problems in my state."

CHAIR HAWKER asked Mr. Windred how he would target the residents of Alaska.

MR. WINDRED suggested a broad-based sales tax.

Number 0235

REPRESENTATIVE WILSON said a broad-based sales tax would probably have to be 2-3 percent. She asked Mr. Windred if he preferred a sales tax or an income tax.

MR. WINDRED said he personally favored a broad-based sales tax, one that is a lot lower than the 5 percent in the proposed tourist tax.

Number 0352

LORENE PALMER, President and Chief Executive Officer, Juneau Convention and Visitors Bureau, stated her organization's opposition to HB 537. She said it would layer 5 percent on top of a 5 percent city tax and a 7 percent bed tax in Juneau. The 7 percent bed tax is the sole source of funding for Juneau's convention center and for the promotion of Juneau to the tourism sector, as well as the meetings and conventions business, she explained. She said a total tax of 17 percent would put Juneau at the top of the nation for taxes, which will make it difficult to attract conventions on top of the already high transportation costs to get to Juneau. In response to Mr. Tesche's discussion of deferring taxes to the local municipalities, Ms. Palmer said that adding a new tax on top of the existing bed tax would prevent the city from raising any more money locally, both for the borough and for Centennial Hall. She said the borough is going to see a reduced amount from the bed tax this year of \$122,000.

CHAIR HAWKER asked if Juneau has a head tax on the ships.

MS. PALMER said that is correct.

CHAIR HAWKER asked if there was a decline in tourist volume when that tax was imposed.

MS. PALMER said she does not believe so because of the consistent increase in passenger capacity and arrivals, an

increase of 4-5 percent, and sometimes as high as a 9 percent increase, over the last 10 years. On another topic, she said that unexpected taxes can affect a visitor's experience when he or she goes to pay a bill. She said it sometimes "leaves a bad taste in your mouth," and that could happen as a result of this tax.

Number 0955

DALE ANDERSON, Owner, Auke Lake Bed and Breakfast, testified in opposition to HB 537 primarily because of the target aspect of it. A 17 percent total tax would directly affect his sales, he related. He said he has not been able to increase his rates since 1999, and he markets to independent travelers who are more price conscious about spending on their adventure to Alaska. He said he is also opposed to all of the revenues going into the general fund instead of back into tourism marketing. He said he would much rather use the percent of market value (POMV) concept to solve the state's fiscal problems. He related that he has two jobs in order to pay the tax burden already in existence.

Number 1309

DOROTHY WILSON, Owner, Coastal Helicopters, said she is opposed to HB 537 because it punishes the tourist industry for bringing people into the state. "The regulations described in this bill will place an onerous burden on a business like ours," she remarked. Small businesses like hers have limited accounting capability and are burdened by maximum taxes and regulations, she said. She termed the bill complex. She noted that her business, which provides 11 full-time and 20 part-time jobs, will be out of business if tourism decreases due to this tax. She opined that the contribution by this tax to solving the state's fiscal problems will be minimal. "This legislation targets a specific industry and will have a negative impact on tourism in Alaska," she concluded.

REPRESENTATIVE KOHRING thanked all of the Juneau residents who testified today and said he agrees with all the points made. The testimony underscores the fact that this is not a good tax, he opined. He said he has been a very good education in terms of looking at the larger operators who are paying their share. He suggested that the legislature look at the bigger picture, which is the effect on the economy a tax like this has. He said that [the legislature's] role should be to decide what is best for the economy, not what is best in terms of revenue for the state.

REPRESENTATIVE SAMUELS said he sympathizes with Ms. Wilson's industry about the multitude of different regulatory agencies that have to be faced. He asked her for her opinion of the sales tax in general.

MS. WILSON said she personally supports an income tax or the POMV, and not the sales tax.

Number 1939

PAMELA LaBOLLE, President, Alaska State Chamber of Commerce (ASCC), said her association of 700 businesses is opposed to HB 537 because it is a targeted tax. To solve the fiscal gap, budget discipline should be used first, then new uses of the permanent fund earnings, and only after those have been addressed, then further taxation from a state-wide, broad-based tax, she stated. She said her organization has not taken a position whether the tax should be an income tax or a sales tax. She said that for years, business has been the only entity that has paid taxes to the state, and she has a concern that a new business tax would negatively impact the competitiveness of business. She urged the committee to defeat this tax against the tourism industry.

Number 2255

CHRIS VONIMHOFF, Manager, Aleyska Resort; Member, Visitors Benefit Alaska, testified that he is greatly concerned about this new tax. He wondered why [the legislature] wants to penalize [the tourist industry], which contributes so much to the economy in terms of jobs, taxes, marketing, property taxes, and capital improvements. He said it would jeopardize the planned [Anchorage] convention center. He said the entire [tourism] industry supports a broad-based state tax and tapping into the permanent fund earnings, if necessary. He spoke of a survey where 90 percent of the people supported some of the permanent fund. "I hope that the legislature has the guts and the will to solve our fiscal problems by either using some of the permanent fund earnings, and/or introducing some type of broad-based income and/or sales tax," he concluded.

CHAIR HAWKER concurred with Mr. Vonimhoff's idea to use the great wealth in the permanent fund to support services and continue to pay out the dividend.

Number 2630

CHAIR HAWKER noted that further public testimony would be continued on Friday.

[HB 537 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Special Committee on Ways and Means meeting was adjourned at 9:17 a.m.