

HB

80

# HOUSE COMMITTEE REPORT

(7)

Date Referred: January 12, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 3/2/89

The HEALTH, EDUCATION & SOCIAL SERVICES Committee recommends that:

HOUSE BILL NO. 80 [INCREASE CIGARETTE TAX]

"An Act increasing the excise tax on cigarettes."

[X] be replaced with CS HB 80 (HESS) [ ] the same title  
[X] a new title  
[ ] have attached amendment(s)

- [ ] do pass
- [ ] do not pass
- [ ] no recommendation
- [ ] individual recommendations
- [ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- [X] fiscal impact
- [ ] zero fiscal note
- [X] zero with analysis

APPROVES PREVIOUS:

- [ ] fiscal note(s) published: \_\_\_\_\_
- [ ] zero fiscal notes(s) published: \_\_\_\_\_

SIGNING DO PASS:

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SIGNING OTHER THAN DO PASS:  
(Do Not Pass, No Recommendation, Amend)

W Farnace no rec  
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Mark [Signature] No rec  
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 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[Signature]  
 \_\_\_\_\_  
 Chairman's signature

Original sponsors: Ellis, Koponen,  
and M.Davis

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 80 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act increasing the excise tax on cigarettes, and  
7 authorizing municipalities to levy and collect taxes  
8 on the retail sale of cigarettes and tobacco products  
9 without limitation."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 \* Section 1. AS 29.45.650(a) is amended to read:

12 (a) Except as provided in (f) and (g) of this section, a borough  
13 may levy and collect a sales tax not exceeding six percent on sales,  
14 rents, and on services provided in the borough. The sales tax may  
15 apply to any or all of these sources. Exemptions may be granted by  
16 ordinance.

17 \* Sec. 2. AS 29.45.650 is amended by adding a new subsection to read:

18 (g) The limitation on the rate of levy specified in (a) of this  
19 section does not apply to taxes imposed on sales of cigarettes and  
20 tobacco products at retail. For purposes of this subsection,

21 (1) "cigarette" has the meaning given in AS 43.50.170;

22 (2) "tobacco product" has the meaning given in AS 43.50.-

23 390.

24 \* Sec. 3. AS 43.50.190(a) is amended to read:

25 (a) There is levied an excise tax of 10 [FIVE AND ONE-HALF]  
26 mills on each cigarette imported or acquired in this state.

# AMERICAN LUNG ASSOCIATION of ALASKA

*Dedicated to the prevention and control of lung disease*

## Fact Sheet

Smoking remains the single most important preventable cause of death in our society, killing 390,000 Americans each year.

The age at which children start smoking keeps falling. Of the 20% of high school seniors who admit to being steady smokers, most started by the 8th grade and 25% say they started smoking by the 6th grade.

A recent survey by the American Council on Education shows a dramatic increase in the number of college freshmen who smoke. From 1987 to 1988, the rate of smoking increased from 8.9% to 10.1%.

According to Dr. George Lundberg, Editor for the Journal of the American Medical Association:

Tobacco kills 1000 Americans each day  
Alcohol kills 350 Americans each day  
Sedatives & Depressants kill 5 - 20 Americans each day  
Cocaine kills 2 - 10 Americans each day

Cigarette tobacco is considered one of the three "gateway drugs" for youth.

Among smokers born since 1935, more than 80% started smoking before they reached the age of 21. Ninety percent of ALL smokers start smoking during their teenage years.

Today there are fewer legal restrictions on children's access to tobacco products than in 1964.

The National Conference of State Legislators reports that excise taxes do deter use of alcohol and cigarettes, especially smoking among teenagers.

Cigarettes and other forms of tobacco are addicting.

Compiled by Rocky Plotnick-Weller  
President-Elect  
American Lung Association of Alaska  
February, 1989

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99801  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 28, 1989

SUBJECT: Pertinency of National Bellas Hess, Inc. v. Illinois Department of Revenue to requirement of licensure of a "buyer" under AS 43.50.010(a) (Work order 6-0932A)

TO: Representative Max F. Gruenberg, Jr.  
ATTN: Mark Handley

FROM: Jack Chenoweth  
Legislative Counsel

*copy in 11441 file*

The United States Supreme Court decision is cited 386 U.S. 753, 18 L.Ed.2d 505, 87 S.Ct. 1389 (1967). It, as you probably know, establishes limitations on state and local government imposition of use taxes on otherwise taxable transactions that are completed outside the jurisdiction.

The Alaska licensure provision cited is AS 43.50.010(a). For purposes of the chapter, a "buyer" is defined as one who "imports or acquires cigarettes for his own consumption from any source other than a manufacturer, distributor, direct-buying retailer, or retailer. AS 43.50.170(1).

I do not see this as governed in any way by the holding of National Bellas Hess. If our statute had only said "imports or acquires," one might cite by way of example a Seattle-based importer of tobacco products to Alaska, claim the importer qualified as a "buyer," attempted to impose the tax, and encountered a potential interstate commerce problem. However, the statute in question limits the definition of buyer to one who imports or acquires for his own consumption," thereby obviating, in my judgment, any commerce clause problem: the "buyer" must, in fact, be a resident of the state, and the clear purpose of the inclusion of the term as it is defined is to avoid opportunity to evade payment of the tax due under a claim that the person is purchasing for personal consumption rather than for resale.

If you are considering an amendment to this statute, substitution of "the person's" for "his" would be in order.

JBC:kb  
wkk2/073

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Department of Revenue  
 Title: An Act Increasing the Excise BRU: \_\_\_\_\_  
Tax on Cigarettes  
 Sponsor: Ellis and Koponen Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	4324.1	4194.5	4194.5	4194.5	4194.5

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page for analysis.

See attached page.

Prepared By: David Tonkovich  
 Division: Research

Phone: 465-2173  
 Date: January 19, 1989

Approved by Commissioner: \_\_\_\_\_  
 Agency: Department of Revenue

Date: 1/24/89

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

## **ANALYSIS**

1. Assumes effective date of legislation is July 1, 1989.
2. Total cigarette consumption has fallen six percent per year for the three year period ending in FY88. Forecasts under present law assume consumption will drop three percent in FY89 and FY90, then remain level through FY94.
3. The increase in cigarette prices due to the higher tax will reduce consumption. It is estimated that the quantity of cigarettes sold will fall by three percent from the level presently forecast.
4. Revenues to the School Fund will decrease by about \$72,000 each year as that tax rate is not changed by the proposed legislation.

## **COMMENT**

The latest information indicates that Alaska ranks somewhere in the bottom one-third among states that levy a tax on cigarettes. The highest tax is assessed by Minnesota at 38 cents per pack and the lowest by North Carolina at 2 cents per pack. The state of Alaska levies 16 cents per pack on cigarettes. There are thirty-five states that levy a higher rate than Alaska.

§ 43.50.190

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§ 43.50.300

REVENUE AND TAXATION

§ 43.50.320

Article 3. Excise Tax on Certain ~~Products~~

Section  
300. Excise tax levied  
310. Exemptions  
320. Licensing  
330. Returns  
340. Records

Section  
350. Disposition of proceeds  
360. Annual report  
370. Regulations  
390. Definitions

Sec. 43.50.300. Excise tax levied. An excise tax is levied on tobacco products in the state at the rate of ~~two percent~~ of the wholesale price of the tobacco products. The tax is levied when a person

(1) brings, or causes to be brought, a tobacco product into the state from outside the state for sale;

(2) makes, manufactures, or fabricates a tobacco product in the state for sale in the state; or

(3) ships or transports a tobacco product to a retailer in the state for sale by the retailer. (§ 4 ch 125 SLA 1988)

Sec. 43.50.310. Exemptions. (a) A facility operated by one of the uniformed services of the United States is exempt from the tax. In this subsection, "uniformed services" has the meaning given in 5 U.S.C. 2101.

(b) The tax does not apply to a tobacco product if the United States Constitution or other federal laws prohibit the levying of the tax on the product by the state. (§ 4 ch 125 SLA 1988)

Sec. 43.50.320. Licensing. (a) Except as provided in (g) of this section, a person must be licensed by the department if the person engages in business as a distributor for a tobacco product that is subject to the tax.

(b) The department, upon application and payment of a fee of \$50, shall issue a license for one year to a person who applies for a license under (a) of this section.

(c) The department may refuse to issue a license under this section if there is reasonable cause to believe the information submitted in the application is false or misleading and is not made in good faith.

(d) A license issued under this section must include the name and address of the licensee, the type of business to be conducted, and the year for which the license is issued.

(e) The department may renew a license issued under this section for a fee of \$50.

(f) The department may suspend or revoke a license issued under this section if the licensee violates a provision of AS 43.50.300 — 43.50.390 or a regulation adopted under AS 43.50.370.

(g) A license required by this section is in addition to any other license required by law, except that a person who is licensed under AS

Rep. Johnny Ellis

CONTENTS: HB 80 HOUSE HESS

FEBRUARY 9, 1989

- 
- 1) HB 80: "An Act Increasing the Excise Tax on Cigarettes"
  - 2) Department of Revenue Fiscal Note
  - 3) Cigarette Taxes - Rates, Incidence, Payment, Reports (state-by-state analysis of tax rates)
  - 4) History of Alaska's Cigarette Tax
  - 5) Cigarette Tax Act, AS 43.50.101 - 190

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11-15-86

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## CIGARETTE TAXES—RATES, INCIDENCE, PAYMENT, REPORTS

¶286 The main features of the state taxes on cigarettes are given in the chart below. If incidence of the tax is on consumer, tax will be deductible on income tax returns in some states (by law). It isn't deductible under IRC, nor in states in line with current Fed.

RATE PER PACK OF 20	INCIDENCE	PAYMENT METHOD	MONTHLY REPORT REQUIREMENTS (Who, when and to whom)
ALA. 16.5¢ (5)	Stamps	Consumer(13)	Wholesaler jobber, 20th. Dept. Rev.
ALASKA 16¢	Seller	Reports	Licensee, last day, Tax Commr.
ARIZ. 15¢	Seller	Report	Distributor, 1st. Dept. Rev.
ARK. 21¢	Seller	Stamps(1)	Distributor, 10th. Dept. Fin. & Adm.
CALIF. 35¢ (eff. 1-1-89; was 10¢)	Consumer(13)	Stamps(2)	Distributor, 25th. State Eq. Bd.
COLO. 20¢	Seller	Stamps	Wholesaler, 10th (eff 7-1-88; was 20th); Dept. Rev.
CONN. 26¢	Consumer	Stamps	Distributor (4), 15th. Commr. Rev. Serv.
DEL. 14¢	Consumer	Stamps	Wholesaler, agent, 20th. Dir. Rev.
D.C. 17¢	Seller(14)	Stamps	Wholesaler, retailer, 15th. Dept. Fin. & Rev.
FLA. 24¢ (11)	Seller	Stamps	Agent, 10th. Tax Dept.
GA. 12¢	Distributor	Stamps	Distributor, 10th. Commr. Rev.
HAW. 40% (6)	Seller	Stamps	Wholesaler, retailer, last day, Dept. Tax.
IDA. 15¢	Seller	Stamps	Wholesaler, 15th. Tax Comm.
ILL. 20¢ (16)	Seller	Report	Distributor (7), 15th. Dept. Rev.
IND. 15.5¢	Consumer	Stamps	Distributor, 15th (8), ABC
IOWA 34¢ (31¢ eff 7-1-89)	Seller	Stamps	Permittees, 20th. Dept. Rev. & Fin.
KAN. 24¢	Seller	Stamps	Wholesaler, 10th. Dir. Tax.
KY. 3¢	Consumer	Stamps	Wholesaler, 20th. Cabinet Rev.
LA. 16¢	Seller	Stamps	Dealer, 15th. Sec'y Rev. & Tax.
ME. 21¢	Consumer	Stamps	Distributor, 10th. Bur. Rev.
MD. 13¢	Seller	Stamps	Distributor, 20th. Commr.
MASS. 26¢	Consumer(13)	Stamps	Distributor, 20th. Commr. Rev.
MICH. 25¢	Seller	Report	Licensee, 20th. Dept. Treas.
MINN. 31¢	Seller	Report	Distributor, 25th. Dept. Rev.
MISS. 18¢	Consumer(13)	Stamps	Distributor (9), 15th. Tax Comm.
MO. 13¢ (5)	Consumer	Stamps	Wholesaler, 20th. Dept. Rev.
MONT. 16¢	Consumer	Stamps	Interstate Carriers, (no fixed dates), Dept. Rev.
NEB. 27¢	Consumer	Stamps	Retailer, wholesaler, 10th. Tax Comm.
NEV. 29¢ (15¢ eff 6-1-89)	Seller	Stamps	Wholesaler, 15th (15), Div. Tax.
N.H. 17¢	Consumer	Stamps	(Monthly reports not required)
N.J. 27¢	Consumer	Stamps	Distributor, 20th. Dir. Tax.
N.M. 15¢	Seller	Stamps	Distributor, 25th. Tax. & Rev. Dept.
N.Y. 21¢ (17)	Consumer	Report	Agent, 15th. Dept. Tax. & Fin.
N.Y.C. 8¢ (17)	Consumer	Stamps	Agent, 15th. Comm. Fin.
N.C. 2¢	Consumer	Stamps	Distributor, 20th. Sec'y Rev.
N.D. 27¢	Seller	Stamps	Distributor, quarterly (10), Tax Comm.
OHIO 16¢	Consumer	Stamps	Dealer, 1-31 & 7-31, Tax Comm.
OKLA. 23¢	Consumer	Stamps	Wholesaler, retailer, 10th. Tax Comm.
ORE. 27¢	Consumer	Stamps	Distributor, 20th (reports: payment, quarterly), Dept. Rev.
PA. 18¢	Consumer	Stamps	Dealer, 10th. Dept. Rev.
R.I. 27¢ (eff 7-1-88; was 25¢)	Consumer	Stamps	Dealer, distributor, 10th. Tax Admr.
S.C. 7¢	Seller	Stamps	(Monthly reports not required)
S.D. 23¢	Consumer	Stamps	Distributor, wholesaler, 15th. Dept. Rev.
TENN. 13¢	Consumer	Stamps	Distributor, 15th. Dept. Rev.

RATE PER PACK OF 20	INCIDENCE	PAYMENT METHOD	MONTHLY REPORT REQUIREMENTS (Who, when and to whom)
TEX. 26¢	Consumer	Stamps	Distributor, 30th. Comptr. Pub. Accts.
UTAH 23¢	Seller	Stamps	(Monthly reports not required)
VT. 17¢	Seller	Stamps	Distributor, wholesaler, 15th. Comm. Taxes
VA. 2.5¢ (3)	Seller	Stamps	Wholesaler, storer, 10th. Dept. Tax.
WASH. 31¢	Consumer	Stamps	Wholesaler, retailer, 15th. Dept. Rev.
W.VA. 17¢	Consumer	Stamps	Wholesaler, 15th. Tax Dept.
WIS. 30¢	Consumer	Stamps	Mfg. wholesalers, 15th. Dept. Rev.
WYO. 8¢	Consumer	Stamps	Wholesaler, 20th. Dept. Rev. & Tax.

**FOOTNOTES to chart** (corresponding to numbers in parentheses in the chart)

- (1) Payment with report for stamps purchased on consignment.
- (2) Payment with report for tax not paid by stamp or meter.
- (3) City taxes are also in effect in some cities.
- (4) Machine dealer and operator with over 5 machines, report on 15th.
- (5) City and county taxes may be levied.
- (6) Wholesale price is basis.
- (7) Manufacturer reports on 5th.
- (8) Report drop shipment on 15th.
- (9) Wholesaler and manufacturers also report.
- (10) 10th of Jan., Apr., July, and Oct.; monthly reports may be allowed.
- (11) State tax is net after credit for 10¢ Fed excise tax.
- (12) (Reserved)
- (13) Not deductible on state return.
- (14) Deductible on state return.
- (15) Metered stamping machine report by 10th.
- (16) Cook City, Ill. added 5¢ tax per 20's.
- (17) Added 3 2/3¢ (1¢ on NYC) per 5 cigarettes of pack, 11th. 22 (1988)

TABLE 1  
CIGARETTE TAX RATE AND REVENUE, 1949 - 1987

YEAR	CIGARETTE TAX RATE (CENTS PER PACK)			CIGARETTE TAX REVENUE (\$1,000)			NOTES:
	DEDICATED TAX	ADDITIONAL TAX	TOTAL	DEDICATED TAX	ADDITIONAL TAX	TOTAL	
49	5	0	5	299.8	0.0	299.8	1949--Tobacco Tax Act enacted. Tax levied on all types of tobacco products at varying rates. Receipts deposited in the School Fund and dedicated to school construction.
50	5	0	5	442.6	0.0	442.6	
51	5	0	5	643.1	0.0	643.1	
52	5	0	5	808.6	0.0	808.6	
53	5	0	5	825.1	0.0	825.1	
54	5	0	5	825.5	0.0	825.5	
55	5	0	5	1,015.8	0.0	1,015.8	1955--Tobacco Tax Act repealed and replaced with the Cigarette Tax Act. Tax of 2.5 mills levied on cigarettes. Receipts deposited in the School Fund.
56	5	0	5	1,127.0	0.0	1,127.0	
57	5	0	5	1,041.6	0.0	1,041.6	
58	5	0	5		0.0		1959--Statehood. Dedicated taxes, except for those existing prior to ratification of the constitution, prohibited.
59	5	0	5		0.0		
60	5	0	5		0.0		
61	5	0	5		0.0		1961--Additional tax of 1.5 mills levied on cigarettes. Receipts deposited in the general fund.
62	5	3	8				
63	5	3	8				
64	5	3	8				
65	5	3	8	1,303.1	781.9	2,085.0	
66	5	3	8	1,638.1	982.9	2,621.0	
67	5	3	8	1,530.0	918.0	2,448.0	
68	5	3	8	1,576.3	945.8	2,522.0	
69	5	3	8	1,643.8	986.3	2,630.0	
70	5	3	8	1,694.4	1,016.6	2,711.0	
71	5	3	8	1,854.4	1,112.6	2,967.0	
72	5	3	8	2,015.0	1,209.0	3,224.0	
73	5	3	8	2,015.0	1,209.0	3,224.0	
74	5	3	8	2,143.8	1,286.3	3,430.0	
75	5	3	8	2,521.1	1,511.6	4,032.7	
76	5	3	8	2,883.7	1,733.6	4,617.3	
77	5	3	8	3,033.0	1,817.7	4,850.7	
78	5	3	8	2,886.6	1,740.6	4,627.2	
79	5	3	8	2,756.5	1,654.0	4,410.5	
80	5	3	8	2,679.7	1,602.8	4,282.5	
81	5	3	8	2,837.0	1,714.7	4,551.7	
82	5	3	8	3,067.0	1,827.0	4,894.0	
83	5	3	8	3,306.0	2,000.0	5,306.0	
84	5	3	8	3,391.0	2,000.0	5,391.0	
85	5	3	8	3,295.0	2,000.0	5,295.0	1985--Additional tax raised to 5.5 mills.
86	5	11	16	2,833.0	4,938.2	7,771.2	
87	5	11	16	3,239.0	6,657.2	9,896.2	

SOURCE: Alaska Department of Revenue.

1. Revenue from the dedicated portion of the tax are deposited in the "School fund" and are available for appropriation to the Department of Education for the exclusive purpose of school construction.
2. Revenue from the additional tax are deposited in the general fund and may be appropriated for any purpose.

Prepared by the House Research Agency, February 1988, (88-173).

**ATTACHMENT D**  
**Cigarette Tax Act, AS 43.50.010 - 190**

(A) "user" means a person consuming or using motor fuel, who either  
 (A) purchases the fuel out of the state and ships it into the state for personal use in the state;

(B) manufactures the fuel in the state; or

(C) purchases or receives fuel in the state that is not taxed at the time of purchase or receipt or is taxed at a rate that is less than the rate prescribed by AS 43.40.010. (§ 18-5-1 ACLA 1949; am § 1 ch 56 SLA 1949; am § 9 ch 47 SLA 1955; am § 26 ch 70 SLA 1964; am §§ 6, 7 ch 158 SLA 1970; am § 1 ch 74 SLA 1972; am § 5 ch 116 SLA 1977; am § 10 ch 83 SLA 1980; am §§ 10 — 12 ch 82 SLA 1982; am § 4 ch 87 SLA 1983)

Revisor's notes. — Paragraph (3) and (4) were renumbered in 1983 to achieve alphabetical order.

Effect of amendments. — The 1980 amendment added subparagraph (F) in paragraph (2).

The 1982 amendment, in paragraph (2), added subparagraphs (G)-(K); in paragraph (3) added the subparagraphs (A) and

(B) designations, substituted "personal use" for "his own use" and deleted "or" from the end, in subparagraph (A), added "or" to the end of subparagraph (B), and added subparagraph (C), and added paragraph (4).

The 1983 amendment added paragraph (2)(L).

Secs. 43.40.110 — 43.40.120. *Additional tax levy on transfers or consumption of motor fuel.* [Repealed, § 8 ch 158 SLA 1970.]

### Chapter 43. Disaster Taxes.

Secs. 43.43.010 — 43.43.060. *Disaster relief tax.* [Repealed, § 1 ch 48 SLA 1969.]

Secs. 43.43.110 — 43.43.160. *Disaster Severance tax.* [Repealed, § 2 ch 247 SLA 1970.]

### Chapter 45. School Tax.

[Repealed, § 3 ch 166 SLA 1976; § 2 ch 64 SLA 1980; § 46 ch 113 SLA 1980.]

### Chapter 50. Tobacco Tax.

#### Article

1. Cigarette Tax Act (§§ 43.50.010 — 43.50.180)
2. Additional Cigarette Tax (§ 43.50.190)

Collateral references. — 51 Am. Jur. 2d, State and Local Taxation, § 615.  
 2d, Licenses and Permits, §§ 5, 16, 71 Am. 53 C.J.S., Licenses, § 30.

### Article 1. Cigarette Tax Act.

#### Section

10. License
20. Separate licenses
30. License fees
35. Wholesaler-distributor license
40. Expiration of licenses
50. Transfer of licenses
60. Refunds
70. Revocation of licenses

#### Section

80. Returns
90. Tax imposed
100. Civil penalties
130. Records
140. Disposition of proceeds
150. Administration
170. Definitions
180. Short title

Sec. 43.50.010. *License.* (a) No person may sell, purchase, possess, or acquire cigarettes as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer without a license.

(b) The department, upon application and payment of the fee, shall issue a license to each manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer. The department shall make reasonable regulations which it considers necessary in respect to the application for and the issuance of licenses.

(c) The department may refuse to issue a license if there is reasonable cause to believe that the applicant has wilfully withheld information requested to determine the applicant's eligibility to receive a license, or if there is reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

(d) A license required by this chapter is in addition to any other license required by law.

(e) A license issued under this chapter shall include

(1) the name and address of the licensee;

(2) the type of business to be conducted; and

(3) the year for which the license is issued. (§ 3 ch 187 SLA 1955; am § 38 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment added subsection (e).

Sec. 43.50.020. *Separate licenses.* If a person operates more than one place of business, the person must obtain a separate license for each place of business, except that a person operating one or more cigarette vending machines is considered to have only one place of business for the purpose of a license under AS 43.50.010 — 43.50.180. A person licensed only as a manufacturer, distributor, direct-buying retailer, vending machine operator, or buyer may not operate in another capacity unless the appropriate license for it is first secured. Each license shall be exhibited at the place of business for which it is issued and in the manner prescribed by the department. (§ 4 ch 187 SLA 1955)

**Sec. 43.50.030. License fees.** (a) For each license issued to a manufacturer, and for each renewal, the fee is \$5.

(b) For each license issued to a distributor or wholesaler-distributor, and for each renewal, the fee is \$50.

(c) For each license issued to a vending machine operator, and for each renewal, the fee is \$25.

(d) For each license issued to a direct-buying retailer, and for each renewal, the fee is \$25.

(e) For each license issued to a buyer, and for each renewal, the fee is \$25.

(f) No license may be issued except upon the payment of the fee notwithstanding a statute or exemption to the contrary. (§ 5 ch 187 SLA 1955; am § 1 ch 47 SLA 1964)

**Sec. 43.50.035. Wholesaler-distributor license.** A person may qualify for a wholesaler-distributor license by furnishing a good and sufficient surety bond in an amount equal to twice the average monthly return and in no case less than \$5,000, payable to the department and approved by the Department of Law. If a wholesaler-distributor fails to pay the cigarette tax when due, the bond may be forfeited and the license revoked. The department may issue permits in place of bonds to resident holders of wholesaler-distributor licenses doing business wholly in the state who pay the tax before shipment. (§ 2 ch 47 SLA 1964)

**Sec. 43.50.040. Expiration of licenses.** A license issued under AS 43.50.010 expires on June 30, following the date of issue. If a license is revoked, or the business for which the license is issued changes ownership or the licensee changes the place of business from the premises covered by the license, the licensee shall immediately return the license to the department. If the licensee moves the business to another location in the state, the license shall, upon the payment of a fee of 50 cents, be reissued for the new location for the balance of the unexpired term. The licensee, on application to the department accompanied by the renewal fee, may, before the expiration of the license, renew the license for one year from the expiration date of the license. (§ 6 ch 187 SLA 1955)

**Sec. 43.50.050. Transfer of licenses.** A license is not assignable or transferable. However in the case of death, bankruptcy, receivership, or incompetency of the licensee, or if the business of the licensee is transferred to another by operation of law, the department may extend the license for a limited time to the executor, administrator, trustee, receiver, or the transferee. (§ 7 ch 187 SLA 1955)

**Sec. 43.50.060. Refunds.** The department may not refund the license fee upon the surrender or revocation of a license. The department may refund a license fee that is paid or collected in error. If a

license is lost, destroyed, or defaced, the department may issue a duplicate license upon payment of a fee of 50 cents. (§ 8 ch 187 SLA 1955)

**Sec. 43.50.070. Revocation of licenses.** The department may suspend or revoke a license issued under AS 43.50.010 — 43.50.180 (1) for violation of AS 43.50.010 — 43.50.180 or a regulation of the department adopted under AS 43.50.010 — 43.50.180, or (2) if a licensee ceases to act in the capacity for which the license was issued. No person whose license is suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of the suspension or revocation on the premises occupied or controlled by that person. No disciplinary proceeding or action is barred or abated by the expiration, transfer, surrender, renewal, or extension of a license issued under AS 43.50.010 — 43.50.180. The department shall comply with the provisions of the Administrative Procedure Act (AS 44.62). (§ 9 ch 187 SLA 1955)

**Sec. 43.50.080. Returns.** (a) On or before the last day of each calendar month a licensee shall file with the department a return, under penalty of perjury, for each place of business. The return shall state the number of cigarettes manufactured, imported, or acquired by the licensee during the preceding calendar month, and other information which the department requires. If a licensee ceases to import or acquire cigarettes, the licensee shall immediately file with the department a return for the period ending with the cessation.

(b) A person holding a wholesaler-distributor license under AS 43.50.035 shall file a return with the department on or before the last day of each calendar month. The return shall state the number of cigarettes sold, including those cigarettes exempt from tax, and remit the tax due by the wholesaler-distributor for the preceding calendar months and other information which the department may require. (§ 10 ch 187 SLA 1955; am § 3 ch 47 SLA 1964)

**Sec. 43.50.090. Tax imposed.** (a) There is levied an excise tax of two and one-half mills on each cigarette imported or acquired in the state. Each licensee shall, at the time of filing the return required by AS 43.50.080, pay to the department the excise for the calendar month covered by the return, deducting one per cent of the total tax due, which the licensee shall retain to cover the expense of accounting and filing returns. Cigarettes upon which the excise is imposed are not again subject to the excise when acquired by another person.

(b) It is the intent and purpose of this section to provide for the collection of this excise from the person who first acquires the cigarettes in this state.

(c) The tax imposed under (a) of this section does not apply to cigarettes imported or acquired in the state by an exchange, commissary, or ship's stores operated by one of the uniformed services of the United States as defined in 5 U.S.C. 2101. (§ 11 ch 187 SLA 1955; am § 5 ch 94 SLA 1977)

NOTES TO DECISIONS

**Constitutionality of 1977 act.** — Chapter 94, SLA 1977, relating to both state and local taxation, does not violate Alaska Const., art. II, § 13, which requires every bill to be confined to one subject. *North Slope Borough v. Sohio Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659; 585 P.2d 534 (1978)).

**Sec. 43.50.100. Civil penalties.** (a) *(Repealed, § 45 ch 113 SLA 1980.)*

(b) *(Repealed, § 3 ch 166 SLA 1976.)*

(c) *(Repealed, § 45 ch 113 SLA 1980.)*

(d) A person or licensee who is in control or possession of cigarettes contrary to AS 43.50.010 — 43.50.180, or who offers to sell or dispose of cigarettes to others for the purpose of resale without being licensed to do so is considered to have possession of the cigarettes as a consumer and is personally liable for the tax, plus a penalty of 100 per cent.

(e) *(Repealed, § 45 ch 113 SLA 1980.)* (§ 12 ch 187 SLA 1955; am § 4 ch 47 SLA 1964; am § 3 ch 166 SLA 1976; am § 45 ch 113 SLA 1980)

**Cross references.** — For present provisions concerning civil penalties, see AS 43.05.220. **Effect of amendments.** — The 1980 amendment repealed subsections (a), (c), and (e).

**Sec. 43.50.110. Taxpayer's remedies.** *(Repealed, § 3 ch 166 SLA 1976. For current law, see AS 43.05.240.)*

**Sec. 43.50.120. Lien.** *(Repealed, § 4 ch 94 SLA 1976. For current law, see AS 43.10.035.)*

**Sec. 43.50.130. Records.** (a) Every licensee shall keep a complete and accurate record of all cigarettes manufactured, purchased, or acquired. The records, except in the case of a manufacturer, shall include a written statement containing the name and address of the seller and the purchaser, the date of delivery, the quantity of cigarettes, the trade name and brand, and the price paid for each brand of cigarettes purchased. The licensee shall keep such other records as the department prescribes. All statements and records required by this section shall be in the form prescribed by the department, shall be preserved for three years, and shall be offered for inspection upon demand by the department.

(b) No licensee may issue or accept a written statement which falsely indicates the name of the customer, the type of merchandise, the price, the discounts, or the terms of sale.

(c) Where an invoice is given or accepted by a licensee (1) a statement which makes the invoice a false record of the transaction may not be inserted in the invoice; and (2) a statement which should be included in the invoice may not be omitted from the invoice if the invoice does not reflect the transaction involved without the statement.

(d) An invoice for the sale of cigarettes given or accepted by a licensee under AS 43.50.010 — 43.50.180 shall state whether the tax imposed by AS 43.50.010 — 43.50.180 has been paid. (§ 16 ch 187 SLA 1955)

**Sec. 43.50.140. Disposition of proceeds.** The proceeds derived from the payment of taxes, fees, and penalties, provided for under AS 43.50.010 — 43.50.180, and the license fees received by the department shall be paid into a state fund entitled "School Fund," and shall be used exclusively to rehabilitate, construct, and repair the state's school facilities, and for costs of insurance on buildings comprising school facilities during the rehabilitation, construction, and repair, and for the life of the buildings. (§ 16 ch 187 SLA 1955)

**Opinions of attorney general.** — In order to insure that tobacco tax funds are used most effectively in being a part of major rehabilitation, construction and major repair projects, the law requires that expenditures from such funds be made only after study and concurrence by the city school board, the city council, and the commissioner of education (now Department of Education). 1962 Op. Att'y Gen., No. 24. It is necessary for the city council to concur by resolution in any expenditure of tobacco tax funds. 1962 Op. Att'y Gen., No. 24. In addition to the approval of the city council, any disbursement of tobacco tax funds must be made with the authorization of the local school board. 1962 Op. Att'y Gen., No. 24.

**Sec. 43.50.150. Administration.** (a) The department shall (1) administer this chapter, and (2) collect, supervise, and enforce the collection of taxes due under this chapter and penalties as provided in AS 43.05.

(b) The department may adopt regulations necessary for the administration of this chapter. (§ 17 ch 187 SLA 1955; am § 39 ch 113 SLA 1980)

**Effect of amendments.** — The 1980 amendment in subsection (a), substituted "this chapter" for "AS 43.50.010 — 43.50.180," deleted "and penalties" following "the collection of taxes," and substituted "this chapter and penalties as provided in AS 43.05.010 — 43.05.290" for "AS 43.50.010 — 43.50.180"; in subsection (b), substituted "adopt" for "publish," and "AS 43.05" for "AS 43.50.010 — 43.50.180, (1) to enforce AS 43.50.010 — 43.50.180, and (2) to collect the taxes, fees, and penalties imposed by AS 43.50.010 — 43.50.180."

**Sec. 43.50.160. Criminal penalties.** *(Repealed, § 46 ch 113 SLA 1980. For current law, see AS 43.05.290.)*

**Sec. 43.50.170. Definitions.** In this chapter, unless the context otherwise requires,

(1) "buyer" means a person who imports or acquires cigarettes for his own consumption from any source other than a manufacturer, distributor, direct-buying retailer, or retailer;

(2) "cigarette" means a roll for smoking of any size or shape, made wholly or partly of tobacco, whether the tobacco is flavored, adulterated, or mixed with another ingredient, if the wrapper or cover of the roll is made of paper or a material other than tobacco;

(3) "department" means the Department of Revenue;

(4) "direct-buying retailer" means a person who is engaged in the sale of cigarettes at retail in this state, and who brings or causes to be brought cigarettes into the state;

(5) "distributor" means a person who brings cigarettes, or has cigarettes brought into the state, and who sells or distributes at least 75 per cent of the cigarettes to others for resale in the state;

(6) "licensee" means a person licensed under AS 43.50.010 — 43.50.180;

(7) "manufacturer" means a person who makes, fashions, or produces cigarettes for sale to distributors or other persons;

(8) "person" includes an individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, corporation, estate, trust, business trust, receiver or trustee, syndicate, or political subdivision of this state, or combination acting as a unit;

(9) "place of business" means a place where cigarettes are sold, or where cigarettes are brought or kept for the purpose of sale or consumption, including a vessel, vehicle, airplane, or train;

(10) "retailer" means a person in the state who is engaged in the business of selling cigarettes at retail;

(11) "sale" includes a sale, barter, exchange, and every other manner of transferring the ownership of personal property. (5 2 ch 187 SLA 1955; am § 27 ch 70 SLA 1964)

Sec. 43.50.180. Short title. AS 43.50.010 — 43.50.180 may be cited as the Cigarette Tax Act. (3 1 ch 187 SLA 1955)

Article 2. Additional Cigarette Tax.

Section

190 Additional tax levy on cigarettes

Sec. 43.50.190. Additional tax levy on cigarettes. (a) There is levied an excise tax of one and one-half mills on each cigarette imported or acquired in this state.

(b) The tax levied by this section is in addition to the tax levied by AS 43.50.010 — 43.50.180. The tax shall be administered and collected in the same manner as the tax levied by AS 43.50.010 — 43.50.180, except that receipts from the tax shall be deposited in the general fund. The penalties provided in AS 43.05 apply to the tax levied in this section. (69 1, 2 ch 53 SLA 1961; am § 40 ch 113 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "provided in AS 43.05" for "established in AS 43.50.010 — 43.50.180" in the third sentence of subsection (b).

Chapter 55. Oil and Gas Properties Production Tax.

Section

- 11. Oil production tax
- 12. Adjustment in tax rates
- 13. Economic limit factor
- 16. Gas production tax
- 17. Relation to other taxes
- 20. Payment of tax
- 30. Filing of statements
- 40. Powers of Department of Revenue

Section

- 50. Incorrect returns
- 60. Delinquency
- 80. Collection and deposit of revenue
- 90. Refunds
- 110. Administration
- 135. Measurement
- 140. Definitions
- 150. Determination of gross value

Collateral references. — 71 Am Jur 2d, State and Local Taxation, § 218 — 220.

84 CJS, Taxation, ¶ 404, 410.

State tax on or in respect of goods shipped in interstate commerce to consignee for sale on consignor's account without previous sale or order for purchase, 4 ALR2d 244.

Constitutional exemption from taxation as subject to legislative regulation respecting conditions of its assertion, 4 ALR2d 744.

Power of legislature to remit, release, or compromise tax claim, 28 ALR2d 1425.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 ALR2d 1350.

Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution, 61 ALR2d 1031.

Financial hardship or inability to pay taxes as rendering inapplicable statutes denying remedy by injunction against assessment or collection of tax, 65 ALR2d 550.

Expenses and taxes deductible by lessee in computing lessor's oil and gas royalty or other return, 73 ALR2d 1056.

Sec. 43.55.010. Gross production tax. [Repealed, § 9 ch 136 SLA 1977.]

Sec. 43.55.011. Oil production tax. (a) There is levied upon the producer of oil a tax for all oil produced from each lease or property in the state, less any oil the ownership or right to which is exempt from taxation. The tax is equal to either the percentage-of-value amount calculated under (b) of this section or the cents-per-barrel amount calculated under (c) of this section, whichever is greater, multiplied by the economic limit factor determined for the oil production of the lease or property under AS 43.55.013. If the amounts calculated under (b) and (c) of this section are equal, the amount calculated under (b) of this section shall be treated as if it were the greater for purposes of this section.

(b) The percentage-of-value amount equals 12.25 percent of the gross value at the point of production of taxable oil produced on or before June 30, 1981, from the lease or property and 15 percent of the gross value at the point of production of taxable oil produced from the lease or property after June 30, 1981; except that for a lease or property coming into commercial oil production after June 30, 1981, the percentage-of-value amount equals 12.25 percent of the gross value at the point of production of taxable oil produced from the lease or prop-

§ 43.40.035

15.260. (§ 2 ch 24

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Gaming Devices.

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§ 43.50.140

REVENUE AND TAXATION

§ 43.50.190

section directly from the supplier rather than by filing a claim for the credit or refund with the department. When an election is properly made under this subsection, the supplier may claim the credit or refund from the department. To be effective an election under this subsection must be signed in quadruplicate by the reseller and by the supplier. The reseller and the supplier shall each file one copy of the election, with original signatures, with the department. The reseller and supplier shall each retain a copy of the election with original signatures for audit review by the department. If an election is made under this subsection, it may not be revoked without the express written consent of the supplier. (§ 6 ch 82 SLA 1982; am § 3 ch 87 SLA 1983)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

### Chapter 50. Tobacco Tax.

#### Article

2. Additional Cigarette Tax (§ 43.50.190)

#### Article 1. Cigarette Tax Act

#### Sec. 43.50.140. Disposition of proceeds.

#### NOTES TO DECISIONS

Distribution to particular recipients not required. — There is no express requirement in this section that school fund proceeds be distributed to any particular recipient and, in the view of the Alaska

Supreme Court, there are no grounds for implying such a requirement. Southwest Region School Dist. v. Department of Educ., Sup. Ct. Op. No. 3099 (Filo No. S-1030), P.2d (1986).

#### Article 2. Additional Cigarette Tax.

#### Section

190. Additional tax levy on cigarettes

Sec. 43.50.190. Additional tax levy on cigarettes. (a) There is levied an excise tax of five and one-half mills on each cigarette imported or acquired in this state.

(b) The tax levied by this section is in addition to the tax levied by AS 43.50.010 — 43.50.180. The tax shall be administered and collected in the same manner as the tax levied by AS 43.50.010 — 43.50.180, except that receipts from the tax shall be deposited in the general fund. The penalties provided in AS 43.05 apply to the tax levied in this section. (§§ 1, 2 ch 53 SLA 1961, am § 40 ch 113 SLA 1980; am § 2 ch 24 SLA 1985)



# Alaska State Legislature

Please enter into the record my testimony to the House Health, Ed & S.S.  
committee name

committee on House Bill #80, dated 2/9/89  
bill/subject

As a teacher of "Freedom From Smoking Classes and as an ex-smoker I am aware of the agony that smokers go through in the process of quitting this habit/addiction. This bill with a minor increase in the excise tax can produce moneys which can be vital to the health of our State. I would hope that at least some of these additional revenues can be used to counter the billions of dollars spent by the tobacco Industry in promoting their products. Specifically ~~a targeting of~~ <sup>money could be use to fund</sup> tobacco education ~~toward~~ <sup>for</sup> our youth. Either in traditional Educational

Signed: John W. Kharuyto  
Testifier

Representing (Optional)  
Route 2, Box 318 Ketchikan  
Address  
225-3401  
Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the \_\_\_\_\_  
committee name

committee on \_\_\_\_\_, dated \_\_\_\_\_  
bill/subject

*settings of our public schools; or media  
advertising graphically depicting the hideous  
health consequences of long term tobacco  
use.*

Signed:

*[Handwritten Signature]*  
\_\_\_\_\_

Testifier

\_\_\_\_\_  
Representing (Optional)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone No.



ALASKA DIVISION, INC.

*bill file*

**REC'D FEB 16 1989**

Roland Gower, M.D.  
President

Michael Franklin, M.D.  
President Elect

Daniel R. Cooper, Jr.  
Chairman of the Board

Veva Becker  
Chairman, Executive Committee

Leslie Holden  
Secretary

Eldon Ulmer  
Treasurer

Diana Kuhns  
Executive Vice President

February 14, 1989

Rep. Johnny Ellis  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Ellis,

The American Cancer Society, Alaska Division Public Issues Committee recommended to the Board of Directors on January 28, 1989, the following resolution:

Whereas the Surgeon General of the United States has determined that there is a direct link between cancer and tobacco products and

Whereas cancer in its many faces exacts both a personal toll and financial toll on the citizens of Alaska and indeed the world and

Whereas an increase in the tax of cigarette products will provide revenues which will help offset the economic tolls exacted by tobacco from the people of the state of Alaska

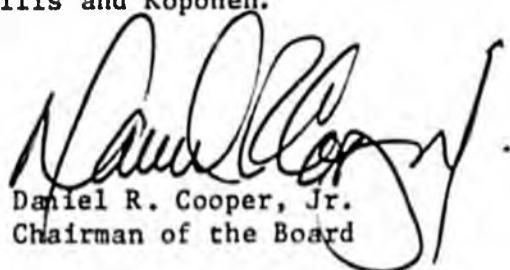
Now therefore be it

Resolved that the American Cancer Society, Alaska Division, Inc. supports the passage of H.B. 80.

This resolution was unanimously passed and we request your support of House Bill 80 introduced by Ellis and Koponen.

Sincerely,

  
Roland Gower, M.D.  
President

  
Daniel R. Cooper, Jr.  
Chairman of the Board

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Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. HESS 2-9-89