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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 14, 1997

FURTHER REFERRALS:

Finance

Date of Committee Action: 4/22/97

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

CSSB 13(RLS)

CS FOR SENATE BILL NO. 13(RLS)

INCREASE TOBACCO TAXES

"An Act relating to taxes on cigarettes and tobacco products and to the use of the proceeds of those taxes, and increasing by at least 35.5 mills the amount of excise tax levied on each cigarette imported or acquired in the state; and providing for an effective date."

recommends it be replaced with the following committee substitute HES CSSB 13(HES) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) _____

fiscal note(s) Revenue / 4-7-97

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>		✓		
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE Car Bando

Revision Date: _____ Dept. Affected: Revenue
 Title: Increase Tobacco Taxes BRU: Revenue Operations
 Component: Income and Excise Audit
 Sponsor: Senator Sharp
 Requestor: (S) FIN COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	30.0	30.0	30.0	30.0	30.0	30.0
TRAVEL	0.5	0.5	0.5	0.5	0.5	0.5
CONTRACTUAL	6.5	1.5	1.5	1.5	1.5	1.5
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	4.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	41.5	32.5	32.5	32.5	32.5	32.5
CAPITAL EXPENDITURES						
CHANGE IN REVENUES	22,048.0	33,072.0	33,072.0	33,072.0	33,072.0	33,071.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	41.5	32.5	32.5	32.5	32.5	32.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	41.5	32.5	32.5	32.5	32.5	32.5

Estimate of any current year (FY97) cost \$ 0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

(See Attached Analysis)

Prepared by: Brett Fried, Economist Phone: 465-3682
 Division: Income and Excise Audit Division Date: April 7, 1997
 Approved by Commissioner: Wilson L. Condon Date: April 7, 1997
 Agency: Department of Revenue

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Alaska Department of Revenue
Income and Excise Audit Division

Increase Tobacco Taxes
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April 7, 1997
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BILL ANALYSIS

Section 1 discusses legislative intent.

Section 2 increases the School Fund portion of the cigarette tax rate by \$.71 per pack of 20; from 2.5 mills per cigarette (\$.05 per pack) to 38 mills per cigarette (\$.76 per pack). Combining this rate with the 12 mills per cigarette (\$.24 per pack) levied under AS 43.50.190, which goes to the General Fund, the total tax rate on a pack of cigarettes would increase from \$.29 to \$1.00. Additionally changes the percent that the licensee can deduct to cover expenses from 1 to four-tenths of one percent of the tax due.

Section 3 This section only takes effect if section 2 of this act is ruled unconstitutional (see section 8). If so, the statute would be amended back to how it was prior to the bill passage.

Section 4 This section only takes effect if section 2 is ruled unconstitutional (see section 8). If so, this section increases the General Fund portion of the cigarette tax rate by \$.71 per pack of 20; from 12 mills per cigarette (\$.24 per pack) to 47.5 mills per cigarette (\$.95 per pack). Combining this rate with the 2.5 mills per cigarette (\$.05 per pack) levied under AS 43.50.090, which is dedicated to the School Fund, the total tax rate on a pack of cigarettes would increase from \$.29 to \$1.00.

Section 5 increases the tobacco products tax rate from 25% to 75% of the wholesale price of the tobacco products.

Section 6 provides for the disposition of tax collected under section 5 of this act to the general fund. These tax proceeds may then be used by the legislature to make appropriations to health programs as well as programs targeted at reducing tobacco use of children. Additionally changes the percent that the licensee can deduct to cover expenses from 1 to four-tenths of one percent of the tax due.

Section 7 discusses the legislative intent not to create a dedicated fund.

Section 8 provides for sections 3 and 4 of this act only taking effect if dedication of the proceeds of the cigarette tax to the School Fund is found to be unconstitutional.

Alaska Department of Revenue
Income and Excise Audit Division

Increase Tobacco Taxes
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Section 9 establishes that if section 2 is ruled unconstitutional and sections 3 and 4 of this act take effect then revenue derived under section 2 (prior to it being found unconstitutional) that exceeds the original 2.5 mills will be credited to the tax levied under AS 43.50.190 (a) as amended by section 4 of this act.

Section 10 establishes an effective date of October 1, 1997 for sections 1, 2, 5-7 and 9 of this act.

Section 11 establishes an effective date of which ever of the following comes later for sections 3 and 4 of this act: (1) when a court enters a final judgement that the amendment under section 2 of this act is unconstitutional or (2) when the time for appeal has expired or upon entry of a final order on the appeal that section 2 is unconstitutional.

OPERATING EXPENDITURES

Department of Revenue is requesting operating funds to cover ½ the costs of a Revenue Auditor III position. With such a large increase in taxes due the state (increase from \$17 to \$50 million annually), the department anticipates increased taxpayer noncompliance.

With significantly higher levels of tax, it is possible that taxpayers will look for loopholes or other methods of tax avoidance. This ½ position will be responsible for ensuring that all taxpayers are identified and that taxpayers are filing and paying the proper amount of tax. The projected annual salary costs for the ½ portion of this position comes to \$30.0.

The department is also requesting one time FY 98 funding of \$5.0 for contractual funds to cover costs of public notice of rate increases, forms revisions and postage, and \$4.0 for equipment (\$3.5 for computer costs and \$.5 for office equipment). The recurring costs will be \$2.5 to cover travel, contractual and supplies.

REVENUE COLLECTED

The attached spreadsheet details revenue projections from rate increases in this bill.

Alaska Department of Revenue
Income and Excise Audit Division
Projected Revenue Increases from Change in Tobacco Tax Rates

Increase Tobacco Taxes
 CSSB 13
 April 7, 1997
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	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Cigarettes							
<i>Elasticity Factor</i>	-13.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Consumption (packs of cigarettes)	30,487,136 *	45,730,706	45,730,706	45,730,706	45,730,706	45,730,706	45,730,706
Rate	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00	\$1.00
Cigarette Tax	\$30,487,136	\$45,730,706	\$45,730,706	\$45,730,706	\$45,730,706	\$45,730,706	\$45,730,706
Less .4 % Commission	(121,949)	(182,923)	(182,923)	(182,923)	(182,923)	(182,923)	(182,923)
Net Cigarette Tax	\$30,365,188	\$45,547,783	\$45,547,783	\$45,547,783	\$45,547,783	\$45,547,783	\$45,547,783
FY 97 Projected Net Cigarette Tax	(10,083,937) *	(15,125,905)	(15,125,905)	(15,125,905)	(15,125,905)	(15,125,905)	(15,125,905)
Net Cigarette Tax Increase Into the School Fund	\$20,281,251	\$30,421,878	\$30,421,878	\$30,421,878	\$30,421,878	\$30,421,878	\$30,421,878
Tobacco Products							
<i>Elasticity Factor</i>	-13.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Consumption (Whole. Pr. 1996 \$)	\$3,825,216 *	\$5,737,824	\$5,737,824	\$5,737,824	\$5,737,824	\$5,737,824	\$5,737,824
Rate	75%	75%	75%	75%	75%	75%	75%
Tobacco Products Tax	\$2,868,912	\$4,303,368	\$4,303,368	\$4,303,368	\$4,303,368	\$4,303,368	\$4,303,368
Less .4 % Commission	(11,476)	(17,213)	(17,213)	(17,213)	(17,213)	(17,213)	(17,213)
Net Tobacco Products Tax	\$2,857,436	\$4,286,154	\$4,286,154	\$4,286,154	\$4,286,154	\$4,286,154	\$4,286,154
FY 97 Projected Net Tob. Prod. Tax	(1,090,715)	(1,636,073)	(1,636,073)	(1,636,073)	(1,636,073)	(1,636,073)	(1,636,073)
Net Tobacco Prod. Tax Increase	\$1,766,721	\$2,650,081	\$2,650,081	\$2,650,081	\$2,650,081	\$2,650,081	\$2,650,081
Cigarette and Tob. Products							
Cigarette and Tobacco Tax	\$33,222,624 *	\$49,833,937	\$49,833,937	\$49,833,937	\$49,833,937	\$49,833,937	\$49,833,937
Net Cig. and Tob. Tax Increase	\$22,047,972 *	\$33,071,959	\$33,071,959	\$33,071,959	\$33,071,959	\$33,071,959	\$33,071,959

*Note: The bill's effective date results in the tax increase covering 8 months in FY 98.

HOUSE CS FOR CS FOR SENATE BILL NO. 13(HES)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS SHARP, Ellis

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to taxes on cigarettes and tobacco products and to the use of
2 the proceeds of those taxes, and increasing by at least 35.5 mills the amount of
3 excise tax levied on each cigarette imported or acquired in the state; and
4 providing for an effective date."

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

6 * Section 1. LEGISLATIVE INTENT. It is the intent of the legislature that, of the tax
7 revenue derived

8 (1) from the amendment to the cigarette tax made by sec. 2 of this Act, the
9 amount obtained be deposited into the school fund (AS 43.50.140) and used as required by
10 that section for state support of elementary and secondary education; and

11 (2) from the amendment contingently made to the cigarette tax by sec. 4 of this
12 Act, subject to appropriation, the amount obtained be expended for state support of elementary
13 and secondary education.

14 * Sec. 2. AS 43.50.090(a) is amended to read:

1 (a) There is levied an excise tax of 38 [TWO AND ONE-HALF] mills on each
2 cigarette imported or acquired in the state. Each licensee shall, at the time of filing
3 the return required by AS 43.50.080, pay to the department the excise for the calendar
4 month covered by the return, deducting four-tenths of one percent of the total tax due,
5 which the licensee shall retain to cover the expense of accounting and filing returns.
6 Cigarettes upon which the excise is imposed are not again subject to the excise when
7 acquired by another person.

8 * Sec. 3. AS 43.50.090(a) is amended to read:

9 (a) There is levied an excise tax of two and one-half [38] mills on each
10 cigarette imported or acquired in the state. Each licensee shall, at the time of filing
11 the return required by AS 43.50.080, pay to the department the excise for the calendar
12 month covered by the return, deducting four-tenths of one percent of the total tax due,
13 which the licensee shall retain to cover the expense of accounting and filing returns.
14 Cigarettes upon which the excise is imposed are not again subject to the excise when
15 acquired by another person.

16 * Sec. 4. AS 43.50.190(a) is amended to read:

17 (a) There is levied an excise tax of 47.5 [12] mills on each cigarette imported
18 or acquired in this state.

19 * Sec. 5. AS 43.50.300 is amended to read:

20 **Sec. 43.50.300. Excise tax levied.** An excise tax is levied on tobacco products
21 in the state at the rate of 75 [25] percent of the wholesale price of the tobacco
22 products. The tax is levied when a person

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

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

27 (3) ships or transports a tobacco product to a retailer in the state for
28 sale by the retailer.

29 * Sec. 6. AS 43.50.330(b) is amended to read:

30 (b) The licensee shall remit with the return the tax due under AS 43.50.300
31 for the month covered by the return, after deducting four-tenths of one percent of the

1 tax due, which the licensee shall retain to cover the expense of accounting and filing
2 the return.

3 * Sec. 7. **CONDITIONAL EFFECT OF CERTAIN SECTIONS.** Sections 3 and 4 of this
4 Act take effect only if

5 (1) a court enters a final judgment that the amendment made to
6 AS 43.50.090(a) by sec. 2 of this Act changing the rate of taxation on cigarettes violates the
7 prohibition set out in art. IX, sec. 7, Constitution of the State of Alaska, against dedication of
8 the proceeds of a state tax or license; and

9 (2) either the time for appeal of that judgment expires or, if an appeal is taken,
10 the court enters a final order on appeal that AS 43.50.090(a), as amended by sec. 2 of this
11 Act, violates art. IX, sec. 7, Constitution of the State of Alaska.

12 * Sec. 8. **RETROACTIVITY.** If secs. 3 and 4 of this Act take effect under sec. 7 of this
13 Act, then the amendments to AS 43.50.090(a) and 43.50.190(a) made by secs. 3 and 4 of this
14 Act are retroactive to the effective date of this section and 35.5 mills per cigarette of the tax
15 levied under AS 43.50.090(a), as amended by sec. 2 of this Act, for cigarettes sold on or after
16 the effective date of this section shall be credited to the tax levied under AS 43.50.190(a), as
17 amended by sec. 4 of this Act.

18 * Sec. 9. Sections 1, 2, 5, 6, and 8 of this Act take effect October 1, 1997.

19 * Sec. 10. If secs. 3 and 4 of this Act take effect under sec. 7 of this Act, they take effect
20 on the later of (1) the date a court enters a final judgment that the amendment made to
21 AS 43.50.090(a) by sec. 2 of this Act changing the rate of taxation on cigarettes violates the
22 prohibition set out in art. IX, sec. 7, Constitution of the State of Alaska, against dedication of
23 the proceeds of a state tax or license, and (2) the expiration of any time for appeal of that
24 judgment, or upon entry of a final order on the appeal that AS 43.50.090(a), as amended by
25 sec. 2 of this Act, violates art. IX, sec. 7, Constitution of the State of Alaska. The attorney
26 general shall promptly notify the lieutenant governor and the revisor of statutes of a judgment
27 described in this section.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSSB 13(RLS)

- 1 Page 1, line 10, following "education;":
- 2 Insert "and"

- 3 Page 1, line 13:
- 4 Delete "; and"
- 5 Insert "."

- 6 Page 1, line 14, through page 2, line 5:
- 7 Delete all material.

- 8 Page 3, lines 9 - 23:
- 9 Delete all material.

- 10 Renumber the following bill sections accordingly.

- 11 Page 4, line 2:
- 12 Delete "sec. 9"
- 13 Insert "sec. 7"

- 14 Page 4, line 8:
- 15 Delete "5 - 8, and 10"
- 16 Insert "5, 6, and 8"

- 17 Page 4, line 9:
- 18 Delete "sec. 9"

I

Insert "sec. 7"

CSSB 13(FIN)

Increase Tobacco Taxes

<u>Description</u>	<u>Mills Per Cigarette</u>	<u>Cents Per Pack</u>	<u>Net Change: New-Old</u>
<u>Existing Statutes</u>			
OLD Tax on Cigarettes:			
School Fund	2.5	\$.05	- 0 -
Excise Tax to General Fund	12.0	\$.24	- 0 -
Additional Education/Enforcement	0	0	- 0 -
Total amount collected	<u>14.5</u>	<u>\$0.29</u>	<u>- 0 -</u>

Deduction for Administrative Expense: One (1) percent of tax due.

New Statute: IF Section 2 is effective:

NEW Tax on Cigarettes:			
School Fund	38.0	\$0.76	\$0.71
Excise Tax to General Fund	12.0	\$0.24	-0-
Total amount collected	<u>50.0</u>	<u>\$1.00</u>	<u>\$0.71</u>

Deduction for Administrative Expense: Four tenths of One (1) percent.

New Statute: IF Sections 3 and 4 are effective:

NEW Tax on Cigarettes:			
School Fund	2.5	\$.05	- 0 -
Excise Tax to General Fund	47.5	\$0.95	\$0.71
Total amount collected	<u>50.0</u>	<u>\$1.00</u>	<u>\$0.71</u>

Deduction for Administrative Expense: Four tenths of One (1) percent.

New Statute: Sections 5. 6:

Tax on OTHER tobacco products:

OLD: Existing statutes	25 percent of the wholesale price
NEW: CSSB 13(FIN)	75 percent of the wholesale price

Additional support for Education and enforcement, by appropriation.
 Deduction for Administrative Expense: Four tenths of One (1) percent.

NOTE: Each one mill per cigarette equals two cents per pack.

Alaska State Legislature

SENATOR
BERT SHARP

DISTRICT P

CO-CHAIRMAN
SENATE FINANCE COMMITTEE

MEMBER
RESOURCE COMMITTEE



Senate

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DENALI BANK BUILDING
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SPONSOR STATEMENT CSSB-13(RLS) INCREASE TOBACCO TAX

SPONSORED BY: SENATOR BERT SHARP

This bill is a an education bill, a health bill and a revenue bill.

Section 1. details the legislative intent and purpose of the bill. Section 1, items (1) and (2), starting on line 6, directs the cigarette tax be deposited to the existing "dedicated school fund" and can only be used for rehabilitation, construction and repair of the state's school facilities per AS 43.50.140.

Item (3), page 1, lines 12-14 and page 2, lines 1-3, states legislative intent, "subject to appropriation," that the new tobacco tax revenue be used for the establishment and maintenance of an aggressive anti-tobacco campaign targeting children and also to establish and maintain a program of pass through grants to municipalities for programs to detect and prosecute those who sell or supply tobacco products to children

Sections 3 and 4, increases the tax on each cigarette by .71 cents per pack.

Section 5, increases the excise tax on tobacco products (non-cigarettes) from 25% of wholesale value to 75% of wholesale value.

Section 6. amends AS 43.50.330(b) to change the percentage the licensee deducts to cover accounting and filing expenses from one percent to four-tenths of one percent.



REPRESENTING
GOLDEN HEART
OF ALASKA

Section 7 amends AS 43.50.350 to bring the statute into line with legislative intent. The new CS revises AS 43.50.350 (Disposition of proceeds) and is expanded to cover the use of proceeds for criminal prosecutions involving the sales of tobacco products to persons under the age of 19, per the intent stated in this legislation.

Sections 9, 11 and 12, sets varying conditions and effective dates depending on any possible court decisions.

Section 10, allows for a retroactive fall-back clause to accommodate any court ordered changes.

The accompanying fiscal note analysis breaks the estimated revenue from cigarettes and that from other tobacco products, because of the constitutional constraints and proposed different uses. These amounts would represent a significant portion of the \$66 million of new revenue that we have committed to raise in FY'98 per our long range fiscal plan. I urge your consideration of the several positive public policy elements of this proposal and the strong public support of this action statewide.

LEGAL SERVICES
DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 403
Juneau, Alaska 99801-2103

MEMORANDUM

January 16, 1997

SUBJECT: Senate Bill 13, increasing taxes on cigarettes and tobacco products -- sectional analysis. (Work Order No. 20-LS0159\F)

TO: Senator Bert Sharp
ATTN: Larry Stevens

FROM: Jack Chenoweth
Legislative Counsel



Senate Bill 13 proposes increases to state-imposed taxes on cigarettes and tobacco products.

Bill section 2: The bill section increases the tax on cigarettes and, because the change is made to the rate of a tax that is dedicated, would have the effect of providing for the deposit of the increase into the "School Fund," AS 43.50.140. The increase in the per cigarette tax would be set at 52 1/2 mills, a 50 mill rate increase, or an increase of \$1.00 per pack (50 mills x 20 cigarettes per pack = 1000 mills or \$1.00) from the current cigarette tax levy.

Bill section 3: Whether the rate imposed in a dedicated tax may be changed without destroying the dedication is debatable. In the event the courts are asked to decide the question and determine that the dedication is destroyed, this bill section is included to restore the current rate of tax for the component that is dedicated for inclusion in the School Fund.

Bill section 4: This is a contingent amendment. In the event the changes set out in bill section 1 are found to destroy the dedication, the tax rate changes are made to current AS 43.50.190(a), a provision that imposes a further tax on cigarettes and that, because the proceeds are not dedicated, adds the increased revenue to the state general fund.

Bill section 5: The amendment proposed would increase the excise tax on tobacco products other than cigarettes from its current 25 percent of the product's wholesale price to 100 percent of the wholesale price.

Bill section 6: This bill section spells out the contingency under which certain of the earlier bill sections are to take effect. They are to be given effect only if a court determines that

January 16, 1997

Page 2

changing the rate of taxation on cigarettes destroys the dedication of tax revenue derived from the cigarette tax.

Bill section 1: This is an uncodified section that summarizes the bill's general purposes. Note that, if a rate change to a dedicated tax destroys the dedication, paragraph (2) expresses a legislative intent that the ongoing increased tax rate would be available in the general fund for expenditure "for state support of elementary and secondary education." For the tobacco tax change, paragraph (3) expresses a legislative intent that the ongoing increased tax rate would be available in the general fund for expenditure for the public health and public safety program purposes there identified. Setting in place the objectives identified in paragraphs (2) and (3) requires further implementing legislation.

Bill sections 7 and 8 are effective date provisions. Key tax change provisions are to take effect October 1, 1997; other provisions take effect on the date that contingency identified in bill section 6 occurs.

*

If the bill presents questions, please contact me.

JBC:pl
97-010.plm

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

PLEASE REPLY TO

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February 4, 1997

Honorable Bert Sharp
Senator
State Capitol Rm. 514
Juneau, Alaska 99801-1182

Re: Senate Bill 13 (relating to taxes on cigarettes
and other tobacco products)

Dear Senator Sharp:

At the request of Pat Pourchot, we have reviewed SB 13. We are concerned about the prospects for litigation involving the power of the legislature to increase the tobacco tax levied under AS 43.50.090. The proceeds of a tax levied under AS 43.50.090 may be dedicated, because the dedication was in effect before statehood. If you are prepared to assume the risk of a challenge to the validity of this tax increase, you may wish to consider an amendment intended to make certain that tax receipts collected during the pendency of a court challenge are not lost to the state treasury if the appellants prevail. Under the bill as currently drafted, effective October 1997, the rate of the tax dedicated since before statehood (hereinafter the "primary tax") is increased.¹ The bill also levies an alternate tax with the proceeds deposited in the general fund to take effect if a court decides that the amendment to the primary tax violates the dedicated fund prohibition.²

It is likely that a taxpayer will protest levy of the primary tax, and sue to recover a refund of any tax paid. The claim for a refund would be based on the theory that the legislature lacked the power to increase the primary tax rate, to a dedicated fund.³ Because the alternate tax is not made retroactive, a taxpayer could receive a complete refund of the primary tax, and the alternative tax would not take effect until the date of the final unappealable appellate court decision. Even if the tax increase is promptly protested after enactment, the date of a final unappealable appellate court decision may be as long as two tax years after the primary tax is first levied. As currently drafted, the alternative tax is levied prospectively only, to remedy the possibility of losing perhaps two years of increased tax revenues, it would be prudent to make the alternate tax retroactive

¹ Sec. 2 of SB 13.

² Sec. 3, 4, and 6 of SB 13.

³ In our 1959 opinion, we declared that any attempt to change the rate of dedication is "a nullity." 1959 Opinion of the Attorney General No. 7 at p. 5.

Hon. Bert Sharp

February 4, 1997

Page 2

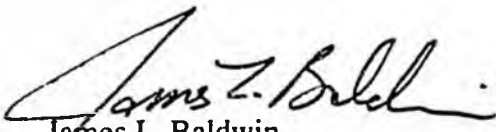
to October 1997, and to further provide that any tax increase paid under the primary tax may be taken as a credit against the retroactive alternate tax. This would protect against possible double taxation.

Thank-you for the opportunity to comment on this bill.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:


James L. Baldwin
Assistant Attorney General

JLB:clh

cc: Pat Pourchot
Legislative Director
Office of the Governor

Elmer Lindstrom
Special Assistant
Office of the Commissioner
Department of Health & Social Services

- Sec. 43.50.100. Unlicensed possession or sale.** (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.

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) A licensee shall keep a complete and accurate record of all cigarettes manufactured, purchased, or acquired. The records, except in the case of a manufacturer, must 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) A licensee may not issue or accept a written statement that 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 that makes the invoice a false record of the transaction may not be inserted in the invoice; and

(2) a statement that 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 must state whether the tax imposed by AS 43.50.010 — 43.50.180 has been paid. (§ 15 ch 187 SLA 1955)

Sec. 43.50.140. Disposition of proceeds. The proceeds derived from the payment of taxes, fees, and penalties 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

(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 43.50.010 — 43.50.180 is exempt from the licensing requirements of this section.

(h) A license issued under this section is not assignable or transferable, except that 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. (§ 4 ch 125 SLA 1988)

Sec. 43.50.330. Returns. (a) On or before the last day of each calendar month, a licensee shall file a return with the department. The return must state the number or amount of tobacco products sold by the licensee during the preceding calendar month, the selling price of the tobacco products, and the amount of tax imposed on the tobacco products.

(b) The licensee shall remit with the return the tax due under AS 43.50.300 for the month covered by the return, after deducting one percent of the tax due, which the licensee shall retain to cover the expense of accounting and filing the return. (§ 4 ch 125 SLA 1988)

Sec. 43.50.340. Records. A licensee shall keep a complete and accurate record of all tobacco products of the licensee subject to the tax, including purchase prices, sales prices, the names and addresses of the sellers and the purchasers, the dates of delivery, the quantities of tobacco products, and the trade names and brands. Statements and records required by this section must be in the form prescribed by the department, preserved for three years, and available for inspection upon demand by the department. (§ 4 ch 125 SLA 1988)

Sec. 43.50.350. Disposition of proceeds. The tax collected by the department shall be deposited in the general fund. The annual estimated balance in the account maintained by the commissioner of administration under AS 37.05.142 may be used by the legislature to make appropriations for health care, health research, health promotion, and health education programs. (§ 4 ch 125 SLA 1988; am § 17 ch 90 SLA 1991) —

Expanded here
Effect of amendments. — The 1991 amendment, effective July 3, 1991, deleted the former second sentence, and, in the present second sentence, in-

serted "maintained by the commissioner of administration under AS 37.05.142."

Sec. 43.50.360. Annual report. [Repealed, § 35 ch 126 SLA 1994.]

Sec. 43.50.370. Regulations. The department shall adopt under the Administrative Procedure Act (AS 44.02) reasonable regulations that it considers necessary to carry out the provisions of AS 43.50.300 — 43.50.390. (§ 4 ch 125 SLA 1988)

Sec. 43.50.390. Definitions. In AS 43.50.300 — 43.50.390

(1) "distributor" means a person who

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

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

(C) ships or transports a tobacco product to a retailer in the state for sale by the retailer;



Official Business

COMMITTEE:

House Health, Education and Social Services Committee

DATE: April 22, 1997

SIGN-IN

Subject of meeting:

SB 13 INCREASE TOBACCO TAXES

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<i>Pete Andrews</i>	<i>Juneau</i>	<i>789-7422</i>	<i>AA RP</i>	<i>Yes</i>
<i>Pat Carr</i>	<i>DISS</i>			<i>No Questions Only</i>