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**1 3**

Revision Date: \_\_\_\_\_ Dept. Affected: Revenue  
 Title: Increase Tobacco Taxes BRU: Revenue Operations  
 Component: Income and Excise Audit  
 Sponsor: Senator Sharp  
 Requestor: (S) HES 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						
<b>TOTAL OPERATING</b>	<b>41.5</b>	<b>32.5</b>	<b>32.5</b>	<b>32.5</b>	<b>32.5</b>	<b>32.5</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	28,938.8	43,408.2	43,408.2	43,408.2	43,408.2	43,408.2
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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						
<b>TOTAL</b>	<b>41.5</b>	<b>32.5</b>	<b>32.5</b>	<b>32.5</b>	<b>32.5</b>	<b>32.5</b>

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: February 3, 1997  
 Approved by Commissioner: Wilson L. Condon Date: February 4, 1997  
 Agency: Department of Revenue

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**Alaska Department of Revenue**  
***Income and Excise Audit Division***

Increase Tobacco Taxes

SB 13

0-LS0159\F

February 3, 1997

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**DRAFT BILL ANALYSIS**

**Section 1** establishes the legislative intent to use revenues generated by increases in the cigarette tax rate for the state support of elementary and secondary education and revenues generated by increases in the tobacco tax rate to establish and maintain an anti-tobacco campaign targeted at children.

**Section 2** increases the School Fund portion of the cigarette tax rate by \$1.00 per pack of 20; from 2.5 mills per cigarette (\$.05 per pack) to 52.5 mills per cigarette (\$1.05 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 \$1.29.

**Section 3** This section only takes effect if section 1 of this act is ruled unconstitutional (see section 6). 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 1 is ruled unconstitutional (see section 6). If so, this section increases the General Fund portion of the cigarette tax rate by \$1.00 per pack of 20; from 12 mills per cigarette (\$.24 per pack) to 62 mills per cigarette (\$1.24 per pack) through FY 2000. 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 \$1.29.

**Section 5** increases the tobacco products tax rate from 25% to 100% of the wholesale price of the tobacco products.

**Section 6** 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.

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

**Section 8** 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

**Alaska Department of Revenue**  
***Income and Excise Audit Division***

Increase Tobacco Taxes

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under section 1 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 1 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 \$60 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  
 SB 13  
 O-LS0159\F  
 February 3, 1997  
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	<u>FY 98*</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>
<b>Cigarettes</b>							
<i>Elasticity Factor</i>	-18.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Consumption (packs of cigarettes)	28,625,595 *	42,938,393	42,938,393	42,938,393	42,938,393	42,938,393	42,938,393
Rate	\$1.29	\$1.29	\$1.29	\$1.29	\$1.29	\$1.29	\$1.29
Cigarette Tax	<u>\$36,927,017</u>	<u>\$55,390,527</u>	<u>\$55,390,527</u>	<u>\$55,390,527</u>	<u>\$55,390,527</u>	<u>\$55,390,527</u>	<u>\$55,390,527</u>
Less 1.0% Commission	<u>(369,270)</u>	<u>(553,905)</u>	<u>(553,905)</u>	<u>(553,905)</u>	<u>(553,905)</u>	<u>(553,905)</u>	<u>(553,905)</u>
Net Cigarette Tax	\$36,557,747	\$54,836,622	\$54,836,622	\$54,836,622	\$54,836,622	\$54,836,622	\$54,836,622
FY 97 Projected Net Cigarette Tax	<u>(10,083,937) *</u>	<u>(15,125,905)</u>	<u>(15,125,905)</u>	<u>(15,125,905)</u>	<u>(15,125,905)</u>	<u>(15,125,905)</u>	<u>(15,125,905)</u>
Net Cigarette Tax Increase	\$26,473,810	\$39,710,717	\$39,710,717	\$39,710,717	\$39,710,717	\$39,710,717	\$39,710,717
Increase to School Fund	\$26,473,810	\$39,710,717	\$39,710,717	\$39,710,717	\$39,710,717	\$39,710,717	\$39,710,717
<b>Tobacco Products</b>							
<i>Elasticity Factor</i>	-18.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Consumption (Whole. Pr. 1996 \$)	\$3,591,648 *	\$5,387,473	\$5,387,473	\$5,387,473	\$5,387,473	\$5,387,473	\$5,387,473
Rate	100%	100%	100%	100%	100%	100%	100%
Tobacco Products Tax	<u>\$3,591,648</u>	<u>\$5,387,473</u>	<u>\$5,387,473</u>	<u>\$5,387,473</u>	<u>\$5,387,473</u>	<u>\$5,387,473</u>	<u>\$5,387,473</u>
Less 1.0% Commission	<u>(35,916)</u>	<u>(53,875)</u>	<u>(53,875)</u>	<u>(53,875)</u>	<u>(53,875)</u>	<u>(53,875)</u>	<u>(53,875)</u>
Net Tobacco Products Tax	\$3,555,732	\$5,333,598	\$5,333,598	\$5,333,598	\$5,333,598	\$5,333,598	\$5,333,598
FY 97 Projected Net Tob. Prod. Tax	<u>(1,090,715)</u>	<u>(1,636,073)</u>	<u>(1,636,073)</u>	<u>(1,636,073)</u>	<u>(1,636,073)</u>	<u>(1,636,073)</u>	<u>(1,636,073)</u>
Net Tobacco Prod. Tax Increase	\$2,466,016	\$3,697,625	\$3,697,625	\$3,697,625	\$3,697,625	\$3,697,625	\$3,697,625
Increase to General Fund	\$2,466,016	\$3,697,625	\$3,697,625	\$3,697,625	\$3,697,625	\$3,697,625	\$3,697,625
<b>Cigarette and Tob. Products</b>							
Net Cigarette and Tobacco Tax	\$40,113,479 *	\$60,170,220	\$60,170,220	\$60,170,220	\$60,170,220	\$60,170,220	\$60,170,220
Net Cig. and Tob. Increase	<u>\$28,938,827 *</u>	<u>\$43,408,242</u>	<u>\$43,408,242</u>	<u>\$43,408,242</u>	<u>\$43,408,242</u>	<u>\$43,408,242</u>	<u>\$43,408,242</u>

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

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 1/13/97

FURTHER: Finance

Date of 5-Day Notice: 1/30/97  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 2/14/97

Health, Education and Social Services Committee considered SENATE BILL NO. 13

"An Act relating to taxes on cigarettes and tobacco products, and to the use of the proceeds of those taxes; and providing for an effective date."

and recommends:

- be replaced with CS SB 13 (HES)
- adopt previous CS (    )
- attached amendment(s)
- adopt Letter of Intent by                      Committee
- further referral to the                      Committee

- Senate Bill:**  
 same title  
 new title
- House Bill:**  
 same title  
 technical title  
 new: SCR#

SIGNING DE PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
Revenue	2/3/97		<input checked="" type="checkbox"/>
Fiscal Notes for CSSB/3(HES) forthcoming			

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*Include fiscal notes accompanying Governor's bill

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY THE SENATE 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 filings  
2 of returns for and the use of the proceeds of those taxes; and providing for an  
3 effective date."

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

5 \* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

- 6 (1) the first two and one-half mills of the tax on cigarettes supports the "school  
7 fund," a pre-Statehood dedicated fund the proceeds of which are to be used only for the  
8 construction and maintenance of public school facilities and for closely related purposes;
- 9 (2) as reported in the Alaska Constitutional Convention Proceedings, the  
10 delegates to Alaska's Constitutional Convention, while favoring a general prohibition against  
11 dedicated funds, authorized an exception in order to permit the continuance of a dedication  
12 for special purposes in effect on the date of ratification of the proposed state constitution;
- 13 (3) in debate about the provision, key members of the convention committee  
14 that developed its language, defending the exception, related that the provision was drafted

1 so that the rate of taxation that supported a dedicated fund could be changed by law without  
2 affecting the status of the dedication;

3 (4) the attorney general, in a 1959 opinion, concluded that the legislature was  
4 without power to raise or lower the dedication by increasing or decreasing the rate of a tax  
5 or license fee;

6 (5) while the intent of the constitutional framers has weight in determining the  
7 intent of the Constitutional Convention and has influenced the legislature in its decision to  
8 increase the rate of the tax on cigarettes dedicated for deposit to the "school fund," a final  
9 resolution of the question rests with the courts, which may find that any change made by the  
10 legislature in the rate of taxation of cigarettes eliminates the dedicated status of the "school  
11 fund" as an exception to the dedicated fund prohibition; and

12 (6) it is in the best interests of the state that the tax on cigarettes be increased,  
13 but that provision for the increase in the rate of the state's tax on cigarettes shall be made in  
14 the alternative so that, in the event a court makes a final determination that adjustment of the  
15 rate of the tax that supports a dedicated fund eliminates the dedication, the tax will return to  
16 its current rate, its dedication for school facility related purposes may continue, and the  
17 increased levy shall instead be deposited into the general fund for the uses and purposes  
18 otherwise described in this Act.

19 \* Sec. 2. LEGISLATIVE INTENT. It is the intent of the legislature that, of the tax  
20 revenue derived

21 (1) from the amendment to the cigarette tax made by sec. 5 of this Act, the  
22 amount obtained be deposited into the school fund (AS 43.50.140) and used as required by  
23 that section for state support of elementary and secondary education;

24 (2) from the amendment contingently made to the cigarette tax by sec. 7 of this  
25 Act, subject to appropriation by the legislature to the school construction savings fund, an  
26 endowment trust fund, with the income to be used for state support of elementary and  
27 secondary education; and

28 (3) from the amendment made to the tobacco tax by sec. 9 of this Act, subject  
29 to appropriation, the amount obtained be used to establish and maintain an aggressive anti-  
30 tobacco campaign targeting children, to be administered by the Department of Health and  
31 Social Services, and be used to establish and maintain a program of pass-through grants to

1 municipalities to detect and prosecute those who sell or otherwise supply tobacco to children,  
2 to be administered by the Department of Public Safety.

3 \* Sec. 3. AS 37.13 is amended by adding a new section to article 2 to read:

4       **Sec. 37.13.320. Corporation to manage school construction savings fund.**

5       The corporation shall manage the school construction savings fund subject to  
6 AS 37.13.120.

7 \* Sec. 4. AS 37.14 is amended by adding a new section to read:

8                   **Article 2A. School Construction Savings Fund.**

9               **Sec. 37.14.175. School construction savings fund established.** (a) The  
10 school construction savings fund is established as a separate endowment trust of the  
11 state. The principal of the school construction savings fund consists of legislative  
12 appropriations to it, including those made under AS 43.50.190(c), and amounts  
13 transferred from the fund's income to the fund's principal sufficient to offset the  
14 effects of inflation on fund principal during the fiscal year.

15               (b) The school construction savings fund shall be held and invested by the  
16 Alaska Permanent Fund Corporation subject to AS 37.13.120.

17               (c) The earnings from the school construction savings fund shall be accounted  
18 for separately. Subject to appropriation, after transfer from income earnings to the  
19 fund's principal of an amount sufficient to offset the effects of inflation on fund  
20 principal during the fiscal year, the remaining income may be used for a purpose  
21 described in AS 43.50.140. This section is not intended to create a dedication in  
22 violation of art. IX, sec. 7, Constitution of the State of Alaska.

23 \* Sec. 5. AS 43.50.090(a) is amended to read:

24               (a) There is levied an excise tax of 52 1/2 [TWO AND ONE-HALF] mills on  
25 each cigarette imported or acquired in the state. Each licensee shall, at the time of  
26 filing the return required by AS 43.50.080, pay to the department the excise for the  
27 calendar month covered by the return, deducting three-tenths of one percent of the  
28 total tax due, which the licensee shall retain to cover the expense of accounting and  
29 filing returns. Cigarettes upon which the excise is imposed are not again subject to the  
30 excise when acquired by another person.

31 \* Sec. 6. AS 43.50.090(a) is amended to read:

1 (a) There is levied an excise tax of two and one-half [52 1/2] 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 three-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. 7. AS 43.50.190 is amended to read:

9 Sec. 43.50.190. Additional tax levy on cigarettes. (a) There is levied an  
10 excise tax of 62 [12] mills on each cigarette imported or acquired in this state.

11 (b) The tax levied by this section is in addition to the tax levied by  
12 AS 43.50.010 - 43.50.180. The tax shall be administered and collected in the same  
13 manner as the tax levied by AS 43.50.010 - 43.50.180, except that receipts from the  
14 tax shall be deposited in the general fund and may be appropriated by the  
15 legislature as provided by (c) of this section. The penalties provided in AS 43.05  
16 apply to the tax levied in this section.

17 \* Sec. 8. AS 43.50.190 is amended by adding a new subsection to read:

18 (c) The tax collected under (a) of this section that is deposited into the general  
19 fund shall be accounted for separately in an account called the "school construction  
20 savings transfer account." The legislature may appropriate from the "school  
21 construction savings transfer account" to the school construction savings fund  
22 established in AS 37.14.175. The deposit required and appropriation authorized by this  
23 section are not intended to create a dedication in violation of art. IX, sec. 7,  
24 Constitution of the State of Alaska.

25 \* Sec. 9. AS 43.50.300 is amended to read:

26 Sec. 43.50.300. Excise tax levied. An excise tax is levied on tobacco products  
27 in the state at the rate of 100 [25] percent of the wholesale price of the tobacco  
28 products. The tax is levied when a person

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

31 (2) makes, manufactures, or fabricates a tobacco product in the state

1 for sale in the state; or

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

4 \* Sec. 10. AS 43.50.330(b) is amended to read:

5 (b) The licensee shall remit with the return the tax due under AS 43.50.300  
6 for the month covered by the return, after deducting three-tenths of one percent of the  
7 tax due, which the licensee shall retain to cover the expense of accounting and filing  
8 the return.

9 \* Sec. 11. AS 43.50 is amended by adding a new section to read:

10 Sec. 43.50.365. Tax adjustment. (a) The amounts in AS 43.50.090(a), in  
11 AS 43.50.190(a), and in AS 43.50.300 change, as provided in this section, according  
12 to and to the extent of changes in the Consumer Price Index for all urban consumers  
13 for the Anchorage Metropolitan Area compiled by the Bureau of Labor Statistics,  
14 United States Department of Labor. The index for January of 1998 is the reference  
15 base index.

16 (b) The amounts change on July 1 of each even-numbered year in an amount  
17 equal to the percentage of change, calculated to the nearest whole percentage point,  
18 between the index for January of that year and the most recent index used to change  
19 the amount in AS 43.50.300. However, the amounts do not change if the amounts  
20 required by this section are those currently in effect as a result of earlier application  
21 of this section.

22 (c) If the index is revised, the percentage of change is calculated on the basis  
23 of the revised index. If a revision of the index changes the reference base index, a  
24 revised reference base index is determined by multiplying the reference base index  
25 applicable by the rebasing factor furnished by the United States Bureau of Labor  
26 Statistics. If the index is superseded, the index referred to in this section is the one  
27 represented by the Bureau of Labor Statistics as reflecting most accurately changes in  
28 the purchasing power of the dollar for Alaska consumers.

29 \* Sec. 12. AS 43.50 is amended by adding a new section to read:

30 Sec. 43.50.380. Notice. At the time of a change under AS 43.50.365 in the  
31 amount of a tax, the department shall promptly give public notice of the change. The

1 department shall also provide notification of a change to all persons licensed under this  
2 chapter.

3 \* Sec. 13. **CONDITIONAL EFFECT OF CERTAIN SECTIONS.** Sections 3, 4, and 6 - 8  
4 of this 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. 5 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 in the appeal that AS 43.50.090(a), as amended by sec. 5 of this  
11 Act, violates art. IX, sec. 7, Constitution of the State of Alaska.

12 \* Sec. 14. **CONDITIONAL RETROACTIVITY OF CERTAIN PROVISIONS.** If secs. 6  
13 and 7 of this Act take effect under sec. 13 of this Act, then the amendments to  
14 AS 43.50.090(a) and 43.50.190(a) made by secs. 6 and 7 of this Act are retroactive to  
15 October 1, 1997, and the revenue derived from the levy of mills per cigarette of the tax levied  
16 under AS 43.50.090(a), as amended by sec. 5 of this Act, for cigarettes sold after  
17 October 1, 1997, that exceeds two and one-half mills shall be credited to the tax levied under  
18 AS 43.50.190(a), as amended by sec. 7 of this Act.

19 \* Sec. 15. Sections 1, 2, 5, and 9 - 12 of this Act take effect October 1, 1997.

20 \* Sec. 16. If secs. 3, 4, and 6 - 8 of this Act take effect under sec. 13 of this Act, they take  
21 effect on the later of (1) the date a court enters a final judgment that the amendment made to  
22 AS 43.50.090(a) by sec 5 of this Act changing the rate of taxation on cigarettes violates the  
23 prohibition set out in art. IX, sec. 7, Constitution of the State of Alaska, against dedication of  
24 the proceeds of a state tax or license, and (2) the expiration of any time for appeal of that  
25 judgment, or upon entry of a final order in the appeal that AS 43.50.090(a), as amended by  
26 sec. 5 of this Act, violates art. IX, sec. 7, Constitution of the State of Alaska. The attorney  
27 general shall promptly notify the lieutenant governor and the revisor of statutes of a judgment  
28 described in this section.

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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

<sup>1</sup> Sec. 2 of SB 13.

<sup>2</sup> Sec. 3, 4, and 6 of SB 13.

<sup>3</sup> 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.

PLEASE REPLY TO:

1031 WEST 4TH AVENUE, SUITE 200  
 ANCHORAGE, ALASKA 99501-1031  
 PHONE: (907) 269-5100  
 FAX: (907) 276-3697

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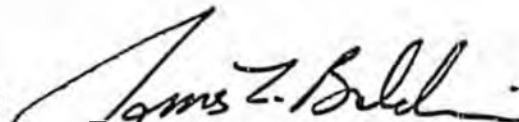
to October 1997, and to further provide that any tax increase paid under the primary tax may be taken as a credit against the retroactive alternate tax. This would protect against possible double taxation.

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

AMENDMENT

OFFERED IN THE SENATE

TO: SB 13

1 Page 3, following line 10:

2 Insert a new bill section to read:

3 **"\* Sec. 7. RETROACTIVITY.** If secs. 3 and 4 of this Act take effect under sec. 6 of this  
4 Act, then the amendments to AS 43.50.090(a) and 43.50.190(a) made by secs. 3 and 4 of this  
5 Act are retroactive to October 1, 1997, and 50 mills per cigarette of the tax levied under  
6 AS 43.50.090(a), as amended by sec. 2 of this Act, for cigarettes sold after October 1, 1997,  
7 shall be credited to the tax levied under AS 43.50.190(a), as amended by sec. 4 of this Act."

8 Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE \_\_\_\_\_

BY SENATOR WARD

TO: \_\_\_\_\_

1 To the title of a bill relating to cigarettes or tobacco, insert:

2 "relating to penalties for sales or gifts of tobacco to persons under 19 years of age, to  
3 possession of tobacco by a person under 19 years of age, and to penalties on cigarette  
4 tax and tobacco tax licensees for selling or giving cigarettes or tobacco to persons under  
5 19 years of age."

6 Insert new bill sections at appropriate places:

7 \*\* Sec. A. AS 11.76.100(d) is amended to read:

8 (d) A person

9 (1) who violates (a)(1) of this section by selling, exchanging,  
10 [SELLING] or giving tobacco to a person under 19 years of age [MINOR] is guilty  
11 of a class A misdemeanor, except that, if within the five years preceding the  
12 offense, the person has previously been convicted under this subsection or a law  
13 or ordinance of this or another jurisdiction with elements substantially similar  
14 to this section, the person is guilty of a class C felony;

15 (2) who maintains a vending machine in violation of (a)(2) of this  
16 section commits a violation and upon conviction is punishable by a fine of not less  
17 than \$300.

18 \* Sec. B. AS 11.76.105(b) is amended to read:

19 (b) Possession of tobacco or a product containing tobacco in violation of  
20 (a) of this section by a person under 19 years of age [MINOR] is a violation.

21 \* Sec. C. AS 43.50.070 is amended to read:

22 Sec. 43.50.070. Revocation of licenses. The department shall revoke a

1        license issued under AS 43.50.010 - 43.50.180 for a violation of  
2        AS 11.76.100(a)(1). The department may suspend or revoke a license issued under  
3        AS 43.50.010 - 43.50.180 (1) for a criminally negligent violation of AS 11.76.107,  
4        [AS 11.76.100, 11.76.107 OR] a violation of AS 11.76.100(a)(2) or AS 43.50.010 -  
5        43.50.180, or a regulation of the department adopted under AS 43.50.010 - 43.50.180;  
6        (2) if a licensee ceases to act in the capacity for which the license was issued; or (3)  
7        if a manufacturer, distributor, or wholesale distributor negligently sells tobacco or  
8        products containing tobacco to a nonlicensed retailer or a retailer whose license  
9        endorsement under AS 43.70.075 has been suspended. A person whose license is  
10       suspended or revoked may not sell cigarettes or permit cigarettes to be sold during the  
11       period of the suspension or revocation on the premises occupied or controlled by that  
12       person. A disciplinary proceeding or action is not barred or abated by the expiration,  
13       transfer, surrender, renewal, or extension of a license issued under AS 43.50.010 -  
14       43.50.180. The department shall comply with the provisions of AS 44.62 ( [THE]  
15       Administrative Procedure Act [(AS 44.62)].

16       \* Sec. D. AS 43.50.320(f) is amended to read:

17                (f) The department shall revoke a license issued under this section for a  
18                violation of AS 11.76.100(a)(1) and may suspend or revoke a license issued under  
19                this section if the licensee violates AS 11.76.100(a)(2) or violates a provision of  
20                AS 43.50.300 - 43.50.390 or a regulation adopted under AS 43.50.370.

21        \* Sec. E. APPLICABILITY. This Act applies to offenses committed on or after the  
22        effective date of secs. A - E of this Act. References in AS 11.76.100(d)(1), amended by  
23        sec. A of this Act, to prior or previous convictions refer to convictions occurring on or after  
24        the effective date of secs. A - E this Act."

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: SB 13

1 Page 1, line 6:

2 Delete "sec. 2"

3 Insert "sec. 4"

4 Page 1, line 9:

5 Delete "sec. 4"

6 Insert "sec. 6"

7 Page 1, line 12:

8 Delete "sec. 5"

9 Insert "sec. 8"

10 Page 2, following line 3:

11 Insert new bill sections to read:

12 **\*\* Sec. 2.** AS 37.13 is amended by adding a new section to article 2 to read:

13 **Sec. 37.13.320. Corporation to manage school construction savings**  
14 **account.** The corporation shall manage the school construction savings fund subject  
15 to AS 37.13.120.

16 **\* Sec. 3.** AS 37.14 is amended by adding a new section to read:

17 **Article 2A. School Construction Savings Fund.**

18 **Sec. 37.14.175. School construction savings fund established.** (a) The  
19 school construction savings fund is established as a separate endowment trust of the  
20 state. The principal of the school construction savings fund consists of legislative  
21 appropriations to it, including those made under AS 43.50.190(c).

22 (b) The school construction savings fund shall be held and invested by the

1 Alaska Permanent Fund Corporation subject to AS 37.13.120.

2 (c) The net income from the school endowment savings fund shall be  
3 accounted for separately and may be appropriated by the legislature for a purpose  
4 described in AS 43.50.140. This section is not intended to create a dedication in  
5 violation of art. IX, sec. 7, Constitution of the State of Alaska."

6 Renumber the following bill sections accordingly.

7 Page 2, lines 20 - 22:

8 Delete all material and insert:

9 **"\* Sec. 6.** AS 43.50.190 is amended to read:

10 **Sec. 43.50.190. Additional tax levy on cigarettes.** (a) There is levied an  
11 excise tax of 62 [12] mills on each cigarette imported or acquired in this state.

12 (b) The tax levied by this section is in addition to the tax levied by  
13 AS 43.50.010 - 43.50.180. The tax shall be administered and collected in the same  
14 manner as the tax levied by AS 43.50.010 - 43.50.180, except that receipts from the  
15 tax shall be deposited in the general fund and may be appropriated by the  
16 legislature as provided by (c) of this section. The penalties provided in AS 43.05  
17 apply to the tax levied in this section.

18 **\* Sec. 7.** AS 43.50.190 is amended by adding a new subsection to read:

19 (c) The tax collected under (a) of this section that is deposited into the general  
20 fund shall be accounted for separately in an account called the "school construction  
21 savings transfer account." The legislature may appropriate from the "school  
22 construction savings transfer account" to the school construction savings fund  
23 established in AS 37.14.175. The deposit required and appropriation authorized by  
24 this section are not intended to create a dedication in violation of art. IX, sec. 7,  
25 Constitution of the State of Alaska."

26 Renumber the following bill sections accordingly.

27 Page 3, line 2:

28 Delete "Sections 3 and 4"

1           Insert "Sections 2, 3, and 5 - 7"

2   Page 3, line 5:

3           Delete "sec. 2"

4           Insert "sec. 4"

5   Page 3, line 9:

6           Delete "sec. 2"

7           Insert "sec. 4"

8   Page 3, line 11:

9           Delete "Sections 1, 2, and 5"

10          Insert "Sections 1, 4, and 8"

11   Page 3, line 12:

12          Delete "If secs. 3 and 4 of this Act take effect under sec. 6"

13          Insert "If secs. 2, 3, and 5 - 7 of this Act take effect under sec. 9"

14   Page 3, line 14:

15          Delete "sec. 2"

16          Insert "sec. 4"

17   Page 3, line 18:

18          Delete "sec. 2"

19          Insert "sec. 4"

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR WILKEN

TO: Draft CSSB 13(HES) ("K" version dated 2/12/97)

1 Page 6, following line 2:

2 Insert a new bill section to read:

3 **\*\* Sec. 13. FLOOR STOCK TAXES.** (a) There is imposed on every person engaged in  
4 business in this state as a distributor of cigarettes a floor stock tax. The floor stock tax is  
5 imposed once on the cigarettes that are in the person's possession or under the person's  
6 control at 12:01 a.m. on the date that is the effective date of this section. The tax is imposed  
7 at the rate required under AS 43.50.090(a), as amended by sec. 5 of this Act, less any tax  
8 paid or owed on the same product under AS 43.50.010 - 43.50.190 at the rate in effect on  
9 the date before the effective date of this section.

10 (b) There is imposed on every person engaged in business in this state as a distributor  
11 of tobacco products other than cigarettes a floor stock tax. The floor stock tax is imposed  
12 once on those tobacco products that are in the person's possession or under the person's  
13 control at 12:01 a.m. on the effective date of this section. The tax is imposed at the rate  
14 required under AS 43.50.300, as amended by sec. 9 of this Act, less any tax paid or owed  
15 on the same product under AS 43.50.300 - 43.50.390 at the rate in effect on the date before  
16 the effective date of this section.

17 (c) The provisions of AS 43.05 and AS 43.10 apply to the administration,  
18 enforcement, and collection of the floor stock tax levied by this section.

19 (d) The Department of Revenue shall adopt regulations as necessary to implement  
20 this section.

21 (e) In this section,

22 (1) the definitions of AS 43.50.170 apply to (a) of this section; and

23 (2) the definitions of AS 43.50.390 apply to (b) of this section."

24 Renumber the following bill sections accordingly.

- 1 Page 6, line 13:
- 2 Delete "sec. 13"
- 3 Insert "sec. 14"

- 4 Page 6, line 19:
- 5 Delete "9 - 12"
- 6 Insert "9 - 13"

- 7 Page 6, line 20:
- 8 Delete "sec. 13"
- 9 Insert "sec. 14"

**Summary of Changes to**  
**CS for Senate Bill No. 13 (HES)**  
**"Increase in Tobacco Taxes"**

- 1) Legislative Findings Sec. 1
  - Strengthens the argument that it is constitutional to change the rate of a pre-Statehood dedicated fund
  
- 2) School Construction Savings Fund Sec. 2, 3, 4, 7, 8
  - Establishes a secure fall-back position that will provide a steady source of revenue for school construction
  
- 3) Change in Tax Collection Administrative Fee Sec. 5 & 10
  - Ensures that the administrative fee for filing tax returns remains constant even as the tax increases
  
- 4) Tax Increase Tied to the Consumer Price Index Sec. 11
  - Guarantees an increase in the tax as the Consumer Price Index increases
  
- 5) Public Notice of Tax Change Sec. 12
  - Ensures a public notice of the tax change due to an increase in the Consumer Price Index
  
- 6) Retroactive Protection of Revenue Collected Sec. 14
  - Provides a safeguard that the tax revenue collected after 10/1/97 will be transferred to the School Construction Savings Fund if a constitutional challenge is successful

## Increase Tax on Cigarettes and Tobacco Products

The excise tax levied on cigarettes is increased 50 mills on each cigarette (\$1.00 per pack).

Tax revenue (\$39.7 million in FY 99) is deposited directly into the School Fund (AS 43.50.140) for rehabilitation, construction, and repair of school facilities.

The Legislature may appropriate money from the School Fund (AS 43.50.140) for rehabilitation, construction, and repair of school facilities.

The tax rate on tobacco products is increased from 25% to 100% of the wholesale price.

Tax revenue (\$3.7 million in FY 99) is deposited directly into the General Fund for appropriation.

The legislature may appropriate tax revenue to establish and maintain an aggressive anti-tobacco campaign targeting children; administered by DH&SS.

The legislature may appropriate tax revenue to establish and maintain a program of pass-through grants to detect and prosecute those who sell tobacco to children; administered by DPS.

## Court Rules on Dedicated Fund Deposit

*Dedicated fund deposit was constitutional*

The excise tax levied on cigarettes is increased 50 mills on each cigarette (\$1.00 per pack).

Tax revenue (\$39.7 million in FY 99) is deposited directly into the School Fund (AS 43.50.140) for rehabilitation, construction, and repair of school facilities.

The Legislature may appropriate money from the School Fund (As 43.50.140) for rehabilitation, construction, and repair of school facilities.

*Dedicated fund deposit was unconstitutional*

The excise tax levied on cigarettes is increased 50 mills on each cigarette (\$1.00 per pack).

Unencumbered tax revenue collected since 10/1/97 and new revenue is deposited in the School Construction Savings Transfer Account within the General Fund.

The legislature may appropriate the tax revenues into the School Construction Savings Account, an endowment fund managed by the Permanent Fund Corporation (AS 37.14.175).

The legislature may appropriate the net income minus inflation proofing for rehabilitation, construction, and repair of school facilities.

# Cigarette and Tobacco Activity

<i>Alaska Department of Revenue</i>				
<i>Income and Excise Audit Division</i>				
<b>Tobacco Tax Report</b>				
<i>For the Period 01/11/97 - 02/10/97</i>				
			<b>FY 97 YTD</b>	
	<i>Activity</i>	<i>Tax</i>	<i>Activity</i>	<i>Tax</i>
<b>Cigarettes</b>				
Gross Number of Cigarettes Sold	60,477,090		609,951,281	
Less Military Sales	(800,100)		(4,807,260)	
Less Other Credits	(60,000)		(3,615,275)	
Net Taxable Cigarettes	59,616,990		601,528,746	
<b>Tax</b> <i>(equals 1.45¢ per cigarette)</i>		864,446		\$8,722,167
<b>Tobacco Products</b>				
<i>(Tax equals 25% of wholesale price)</i>				
Gross Wholesale Price of Sales	430,169		\$4,067,567	
Less Military Sales	(5,457)		(23,648)	
Less Other Credits	(14,415)		(58,666)	
Net Wholesale Price	\$410,297		\$3,985,253	
<b>Tax</b> <i>(equals 25% of wholesale price)</i>		102,574		996,313
Gross Tax		967,021		9,718,481
Less 1% Commission		(9,670)		(97,186)
<b>Total Net Tax</b>		<b>\$957,350</b>		<b>\$9,621,294</b>

*Note: This statistical report is based on tax return information received during the period, however it does not necessarily represent the actual revenue collected.*

Prepared by the Dept. of Revenue

# Cigarette and Tobacco Activity

## Alaska Department of Revenue

### Income and Excise Audit Division

#### Tobacco Tax Report

For the Period 02/11/97 - 03/10/97

		FY 97 YTD		
	Activity	Tax	Activity	Tax
<b>Cigarettes</b>				
Gross Number of Cigarettes Sold	84,561,677		694,512,958	
Less Military Sales	(908,132)		(5,715,392)	
Less Other Credits	(1,563,510)		(5,178,785)	
Net Taxable Cigarettes	82,090,035		683,618,781	
Tax <i>(equals 1.45¢ per cigarette)</i>		1,190,306		\$9,912,473
<b>Tobacco Products</b>				
<i>(Tax equals 25% of wholesale price)</i>				
Gross Wholesale Price of Sales	465,856		\$4,533,423	
Less Military Sales	(3,380)		(27,028)	
Less Other Credits	(2,241)		(60,907)	
Net Wholesale Price	\$460,235		\$4,445,488	
Tax <i>(equals 25% of wholesale price)</i>		115,059		1,111,372
Gross Tax		1,305,364		11,023,844
Less 1% Commission		(13,054)		(110,240)
<b>Total Net Tax</b>		<b>\$1,292,311</b>		<b>\$10,913,605</b>

# LEGAL SERVICES

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

(907) 465-3867 or 465-2450  
FAX (907) 465-2028  
Mall Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2108

## MEMORANDUM

April 3, 1996

**SUBJECT:** Tobacco Tax - (Work Order No. 9-LS1832)

**TO:** Representative Jeannette James

**FROM:** Michael R. Ford  
Legislative Counsel

You have asked for an explanation of the effects of an increase of the tobacco tax (AS 43.50.090) on the dedicated fund provision contained in AS 43.50.140. As explained in this memo, it appears that the legislature may be able to increase the tax without affecting the dedicated status of the state school fund.

Under AS 43.50.140, the proceeds derived from the tobacco tax are required to be paid into the school fund. This fund avoids the constitutional prohibition against dedicated funds contained in Article IX, sec. 7, of the Alaska Constitution because the fund existed at the time the Alaska Constitution was ratified by the voters. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska." The two main motivations for the ban on dedicated funds are to maintain the potential of flexibility in budgeting and to ensure that the legislature does not abdicate its responsibility in making budget decisions. Fairbanks v. Convention & Visitor Bur., 818 P.2d 1153, at 1158 (Alaska 1991).

The precise question you have raised is whether the Alaska Constitution allows the legislature to change the amount of the tax, without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued opinion No. 7, that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5. This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Mr. Barrie M. White. The following discussion with Mr. White and other delegates illustrates the intent of the framers of the Alaska Constitution:

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R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year

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April 3, 1996

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and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS. If they lowered it down to three could they then re-enact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

We believe that this discussion indicates a clear intent to allow a change to the rate of taxation, without affecting the status of a dedication of the proceeds of the tax. To this extent, we disagree with the 1959 opinion No. 7 issued by the Attorney General, that the framers of the constitution intended that a change to the rate of taxation would destroy the dedicated status of the fund.

It is important to note that while the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitution rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of tobacco taxation destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v. Haggund, 374 P.2d 316, 319 (Alaska 1962), the court stated that "opinions of individual members of the constitutional convention are not considered to be a safe guide in ascertaining the purpose of a majority of the convention when adopting a particular provision. But reports of committees and statements of chairmen of such committees stand on more solid footing and may be resorted to in determining the

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intent of the enacting body." (Emphasis added) Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court.

You have also asked if the rate of taxation is changed, does the additional revenue go into the school fund or the general fund? We believe that any increase in the tax imposed under AS 43.50.090 will not, by itself, affect the disposition of the proceeds of the tax. The increased revenues will still flow into the school fund as required under AS 43.50.140. It is also important to note that to maintain the status of the school fund as an exception to the dedicated fund rule, that disposition of the proceeds of the tobacco tax cannot be changed. To change the disposition of the proceeds of the tax as required under AS 43.50.140 would destroy the dedicated fund exemption granted to the school fund under Article IX, sec. 7, of the Alaska Constitution.

Please contact me if you have further questions.

MFF:klb  
96-252.klb

# LEGAL SERVICES

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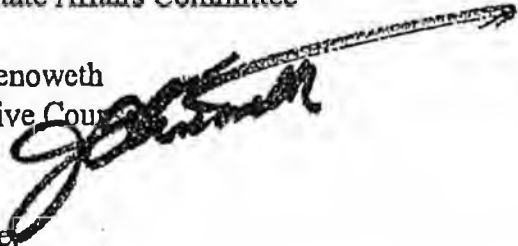
## MEMORANDUM

April 26, 1996

**SUBJECT:** Draft CSHB 431 ( ) (Work Order No. 9-LS1518\F)

**TO:** Representative Jeannette James, Chair  
House State Affairs Committee

**FROM:** Jack Chenoweth  
Legislative Counsel



This is drafted in the alternative.

Until a few weeks ago, based on a very old Opinion of the Attorney General, I would have advised as a matter of course that this proposal to dedicate the tax increment constituted a violation of the dedicated fund prohibition of article IX, section 7. Now, as a result of further research explained in Legislative Counsel Mike Ford's April 3 memorandum, I believe that conclusion is not so certain.

The drafting of the amendment reflects the possibility that the dedication might not be found unconstitutional for the reason given in that memo.

To repeat advice already provided to you:

Under AS 43.50.140, the proceeds derived from the original tobacco tax are required to be paid into the school fund. This fund avoids the constitutional prohibition against dedicated funds contained in Article IX, sec. 7, of the Alaska Constitution because the fund existed at the time the Alaska Constitution was ratified by the voters. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska." The two main motivations for the ban on dedicated funds are to maintain the potential of flexibility in budgeting and to ensure that the legislature does not abdicate its responsibility in making budget decisions. Fairbanks v. Convention & Visitors Bureau, 818 P.2d 1153, at 1158 (Alaska 1991).

A question was raised as to whether the Alaska Constitution allows the legislature to change the amount of the tax, without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued opinion No. 7, that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the

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tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5. This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Barrie M. White. The following discussion with Delegate White and other delegates illustrates the intent of the framers of the Alaska Constitution:

R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

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PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS. If they lowered it down to three could they then re-enact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

(Emphasis added). This discussion indicates a clear intent on the part of the delegates to allow a change to the rate of taxation without affecting the status of a dedication of the proceeds of the tax. While the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitution rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of tobacco taxation destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v. Hagglund, 374 P.2d 316, 319 (Alaska 1962), the court stated that

Representative Jeannette James

April 26, 1996

Page 4

opinions of individual members of the constitutional convention are not considered to be a safe guide in ascertaining the purpose of a majority of the convention when adopting a particular provision. But reports of committees and statements of chairmen of such committees stand on more solid footing and may be resorted to in determining the intent of the enacting body.

(Emphasis added) Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court.

Please contact me if you have further questions.

JBC:pl:glc:lmb

96-091.lmb

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL  
OFFICE  
P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3425  
FAX: (907) 465-4043

OFFICE OF SPECIAL PROSECUTION  
AND APPEALS  
310 K STREET, SUITE 305  
ANCHORAGE, ALASKA 99501-3277  
PHONE: (907) 269-6250  
FAX: (907) 269-6270


DEPARTMENT OF LAW

CRIMINAL DIVISION

July 26, 1996

MEMORANDUM

TO: Loren Jones, Director  
Division of Alcoholism and Drug Abuse  
Department of Health and Social Services

FROM: Dean J. Guaneli   
Chief Assistant Attorney General

This is in response to your request for advice as to the criminal liability of juveniles who purchase tobacco as part of a carefully supervised program, that has been approved by your department, to assess how well local vendors are complying with state laws prohibiting sale of tobacco products to minors.

The short answer to your question is that, if the juvenile is under appropriate adult supervision as part of a department-approved program, and possesses the tobacco only for so long as is necessary to turn the material over to the adult supervisor, no offense has been committed by the juvenile.

Your request arises in the context of a federal initiative to determine if tobacco retailers are complying with state laws aimed at reducing the accessibility of tobacco to young people. Your department has developed a program under which carefully selected and trained juveniles, under trained adult supervision, attempt to purchase tobacco products. The training includes instruction in the proper procedures to follow. For example, the adult must wait outside the store while the juvenile goes inside, and the juvenile must not have contact with any other juveniles before giving the tobacco product to the adult supervisor immediately after the purchase.

Loren Jones, Director  
Division of Alcohol and Drug Abuse

July 26, 1996  
Page 2

Under Alaska law it is an offense for a juvenile to possess tobacco products. AS 11.76.105. "Possess" is defined to mean having physical possession or the exercise of dominion or control over property. AS 11.81.900(b).

Yet Alaska case law makes it clear that momentary possession of contraband for purposes of disposal does not constitute possession for purposes of the criminal law. *Jordan v. State*, 819 P.2d 39 (Alaska App. 1991). Such momentary possession is often called "passing control" or "fleeting possession". As noted by the court of appeals in *Jordan*, "Alaska cases have tended to treat the issue of passing control as intrinsically related to the definition of possession . . . ." *Id.* at 41.

Alaska case law does not set forth any clear guidelines to determine the maximum amount of time that property can be handled yet still not be "possessed" for purposes of the criminal law, and in *Jordan* the court recognized that the time is variable and dependent on the circumstances. *Id.* at 43, n. 4. Thus it is not possible to try to discuss all the complicating factual scenarios that might arise when juveniles are buying tobacco products under a monitoring program such as your department has developed. We can say, however, that if a juvenile purchases tobacco products under proper adult supervision and under guidelines set down by your department, and immediately gives the tobacco product to an adult supervisor, the juvenile has not "possessed" the tobacco for purposes of AS 11.76.105.

We caution that the juveniles and the adult supervisors should strictly adhere to the program's guidelines. We also recommend that local municipal authorities be contacted to determine the applicability of local laws.

Please contact me if you have additional questions.

DJG:rew

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**DIVISION OF ALCOHOLISM AND DRUG ABUSE**

P.O. BOX 110607  
JUNEAU, ALASKA 99811-0607  
PHONE: (907) 465-2071  
FAX: (907) 465-2185

July 9, 1996

Dear Law Enforcement Official.

The Alaska Department of Health and Social Services Divisions of Public Health (DPH) and Alcoholism and Drug Abuse (ADA) are collaborating to implement new Synar regulations. Synar is an amendment of the Public Health Act that mandates states demonstrate they are taking effective measures to enforce laws restricting access of tobacco to minors.

One of the key regulations of the Synar amendment requires every state to conduct annual random, unannounced inspections (*compliance checks*) of tobacco vendors to ensure compliance with tobacco restriction laws. The compliance checks have to be conducted in a scientifically sound manner using a random probability sample. A total of 200 inspections will be conducted between July and August across 26 communities in the state. This effort will provide the state with a baseline percent of the number of tobacco vendors who comply with the law.

The only feasible way to adequately meet the federal regulations is to use persons under the age of nineteen to purchase cigarettes or smokeless tobacco. ADA and DPH have met with the Department of Law, and local community health associations to develop a compliance check protocol, training manual and procedures that will be used this summer. These inspections may take place in your community between July 13 and August 24. This is not an enforcement activity and data on individual vendors will not be released. All participants in the inspections have agreed to keep the results on individual stores confidential.

If you have any questions regarding this effort please contact Mary P. Collins, Research Analyst at (800) 478-2072. We will be happy to provide you copies of our protocol or training manual if you require it. Results from this statewide effort will be available in September. Feel free to contact Ms. Collins for any additional information. Thank you for your cooperation.

Sincerely,



Loren Jones  
Director

# HICKEY & ASSOCIATES

Planning • Management • Lobbying

211 Fourth Street, Suite 108, Juneau, Alaska 99801

Telephone 907-586-2263, Fax 907-586-1097

January 26, 1996

The Honorable Steve Rieger  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Senator Rieger:

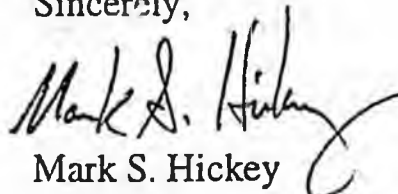
Per our discussion, enclosed for your consideration is proposed "floor stock" language for inclusion in any proposal to increase the taxes on cigarettes and tobacco products. The intent of this language is to dissuade wholesalers from stockpiling cigarettes and tobacco products prior to the effective date of any tax increase.

This language is based on a provision used recently in Minnesota to achieve the same purpose. If you or your staff would like more information on the Minnesota experience, I can provide the name of an individual and a phone number to call.

This type of provision is particularly relevant given the significant nature of the proposed increase. A \$1 a pack tax increase will mean roughly a price increase of 30%, which is likely to be strong incentive to stockpile and postpone payment of tax receipts for as long as possible. I am told that Michigan recently adopted a 75-cent increase without a floor stock provision, and have experienced serious problems as a result.

Please give me a call if you have questions or need more information. Thanks again for your time and support on this matter.

Sincerely,

  
Mark S. Hickey  
Principal

Enclosure

cc. Eric Meyers/Diana Kuhns, CPKT

## **PROPOSED "FLOOR STOCK" LANGUAGE**

### **RE: CIGARETTE/TOBACCO TAX INCREASE LEGISLATION**

"Sec.\_\_\_\_. AS 43.50.190 is amended by adding a new subsection to read:

(d) A floor stock tax is imposed on every person engaged in business in this state as a distributor on the cigarettes in the person's possession or under the person's control at 12:01 a.m. on October 1, 1996. The tax is imposed at the rate required under (a) of this section minus any tax paid or owed on the same product at the rate in effect prior to 12:01 a.m. on October 1, 1996."

"Sec.\_\_\_\_. AS 43.50.300 is amended by making the existing section subsection (a), and adding a new subsection to read:

(b) A floor stock tax is imposed on every person engaged in business in this state as a distributor on the tobacco products in the person's possession or under the person's control at 12:01 a.m. on October 1, 1996. The tax is imposed at the rate required under (a) of this section minus any tax paid or owed on the same product at the rate in effect prior to 12:01 a.m. on October 1, 1996."

# **Tobacco Tax Bill Analysis**

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**Presentation to the  
20th Alaska Legislature**

# **Tobacco Usage**

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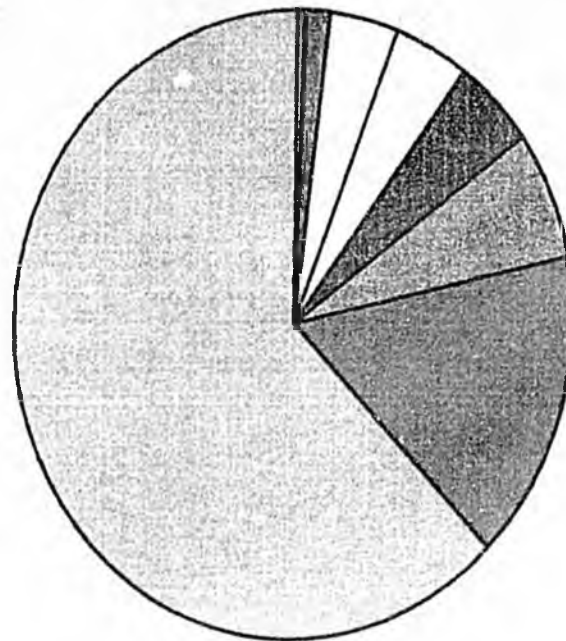
- Tobacco usage is the number one cause of preventable death and disease in the US, accounting for more than **419,000 deaths each year.**
- **23% of deaths of Alaskans 35 years of age or older in 1991 were attributable to smoking.**

# Health Impact of Smoking

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Number of Deaths in USA

Cigarette  
Smoking 418,690



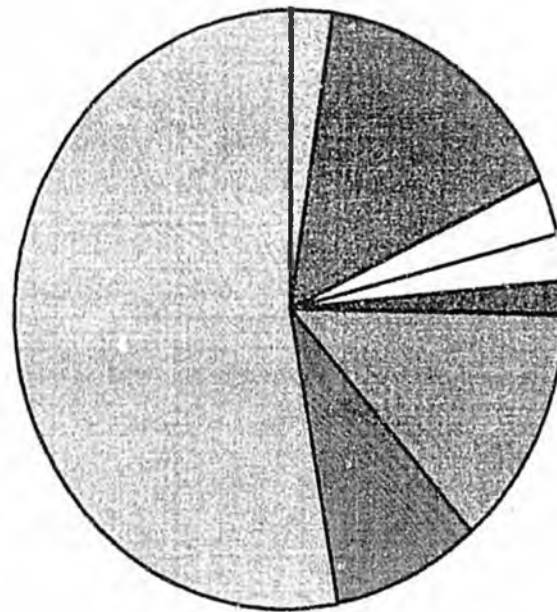
- Fires
- Illegal Drugs
- Homicides
- AIDS
- Suicides
- Mot. Veh. Accidents
- Alcohol
- Cigarette Smoking

# Health Impact of Smoking

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## Number of Deaths in Alaska

Cigarette  
Smoking 1,416



- Fires
- Firearms
- Aircraft crashes
- AIDS
- Falls
- Mot. Veh. Accidents
- Alcohol
- Cigarette Smoking

# Youth Tobacco Usage

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- **83%** of adult smokers report that they started smoking before the age of 20.
- **21%** of Alaskan high school students reported they regularly smoked in the last month.
- **25%** of Alaskan middle school students reported smoking at least one cigarette in the last month.

# Youth Tobacco Vendors Survey

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- 64% of Alaska tobacco merchants complied with tobacco restriction laws in 1996.
- The federal government mandates an **80% compliance rate** by the year 2000 under the Synar Amendment.
- Tobacco vendors refused to sell to 14-15 year olds **71%** of the time, while 16-17 year olds were refused **58%** of the time.

# **Alaska Native Tobacco Use**

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- Today Alaska Natives have some of the highest rates of tobacco use in the world, **47% for men and 39% for women.**
- Alaska Natives account for **23%** of **smoking related deaths** while they account for **17%** of the **state's population.**

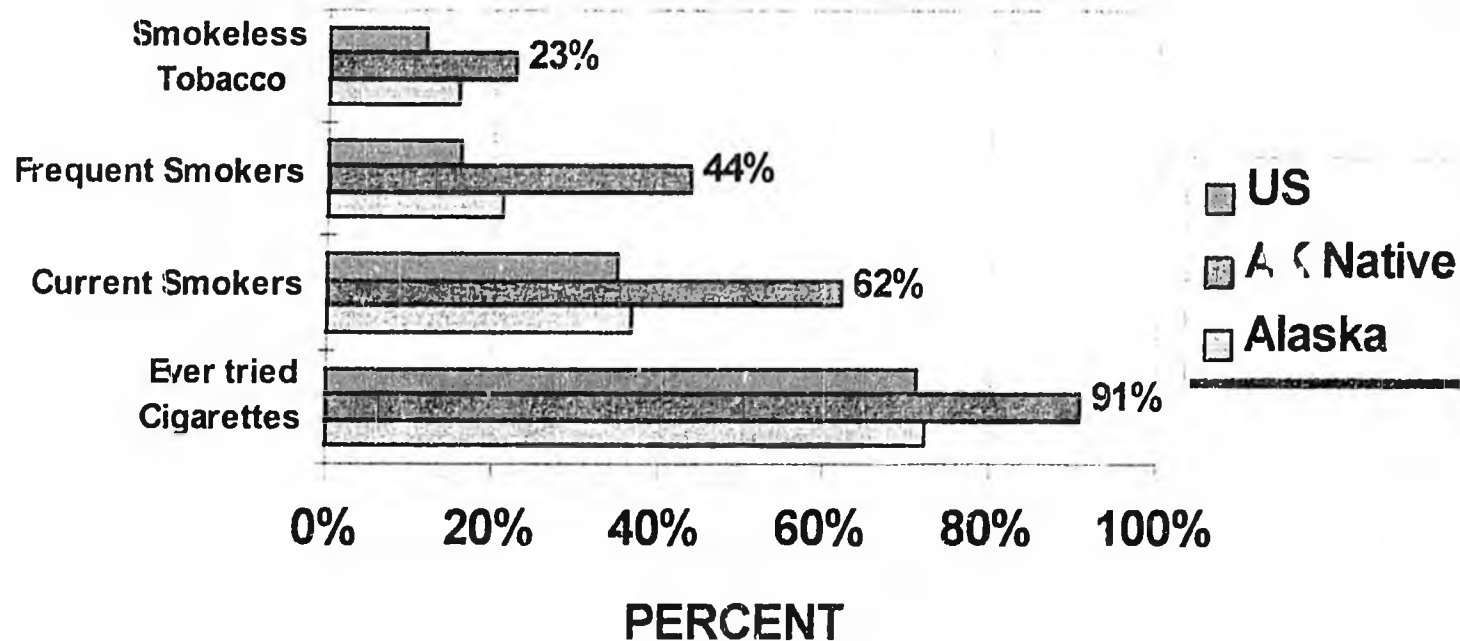
# **Alaska Native Tobacco Use**

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- Alaska Natives have the **highest cancer mortality rate** of any Indian Health Service Area.
- The lung cancer death rate among AK Native women is **three times** the national average.
- Tobacco use among Alaska native youth is higher than non-native youth.

# Alaska Native Tobacco Use

Tobacco Use Among High School Students  
Alaska and US  
1995



# Alaska Native Tobacco Use

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- 41% of Alaska Native boys and 32% of Alaska Native girls were using smokeless tobacco weekly.
- Among the boys, 45% started using tobacco before the age of 8.

# Health Related Costs of Smoking, A Drain on the Economy

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- Total direct medical costs for smoking related illnesses for Alaskans aged 35 years or older in 1993 was \$96.5 million.
- \$23 million of the direct medical care costs for smoking related illness was paid by Medicaid in Alaska.
- Meanwhile, the state collected only \$15.6 million in cigarette tax revenues in 1993 (excludes taxes on smokeless tobacco).

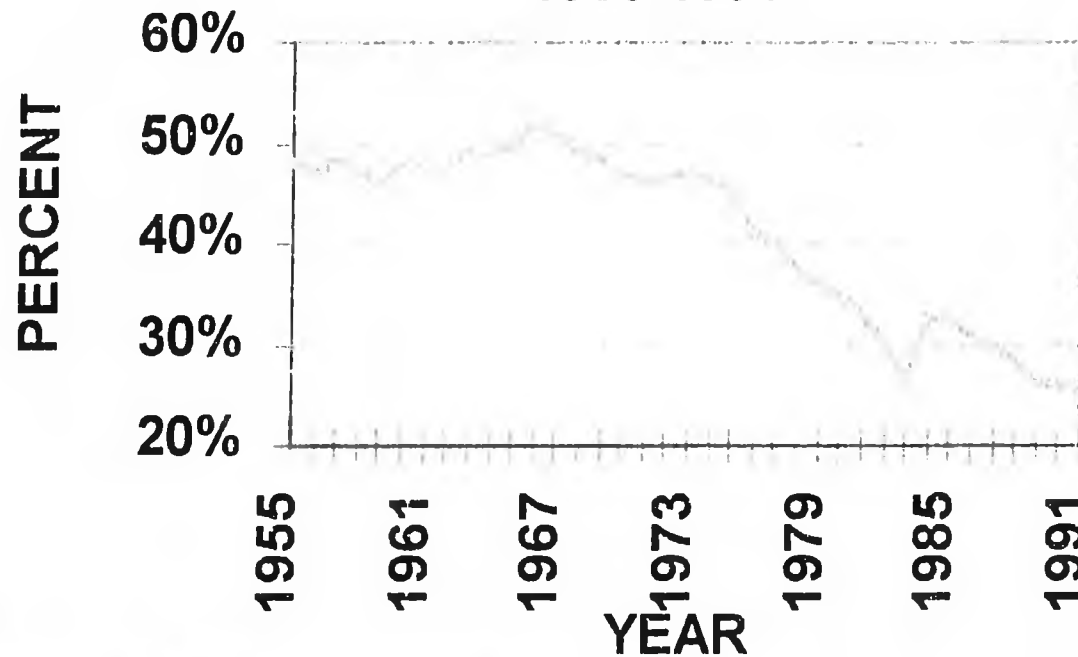
# Alaska Tobacco Tax History

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- The state of Alaska has taxed tobacco since territorial days, when a 5 cents per pack tax was levied on cigarettes to help fund school construction.
- The current tax level of 29 cents per pack has been in place since 1989.
- In 1989 Alaska ranked 17th among the 50 states and District of Columbia on the amount of tobacco tax levied.
- Currently Alaska is ranked 28th among the states on tobacco taxes levied.

# Tobacco Taxes in the US

**Tobacco Taxation in the US  
Average Cigarette Tax as a Percentage  
of Retail Price  
1955-1991**



# Impact of Tobacco Taxes

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- For every 10% increase in tobacco prices, youth tobacco consumption will fall by at least 10%.
- For every 10% increase in tobacco prices, general consumption will fall by 4%.
- **At current adult smoking rates**, approximately **18,000** of Alaskans currently under the age of 18 will die prematurely of a tobacco related illness.

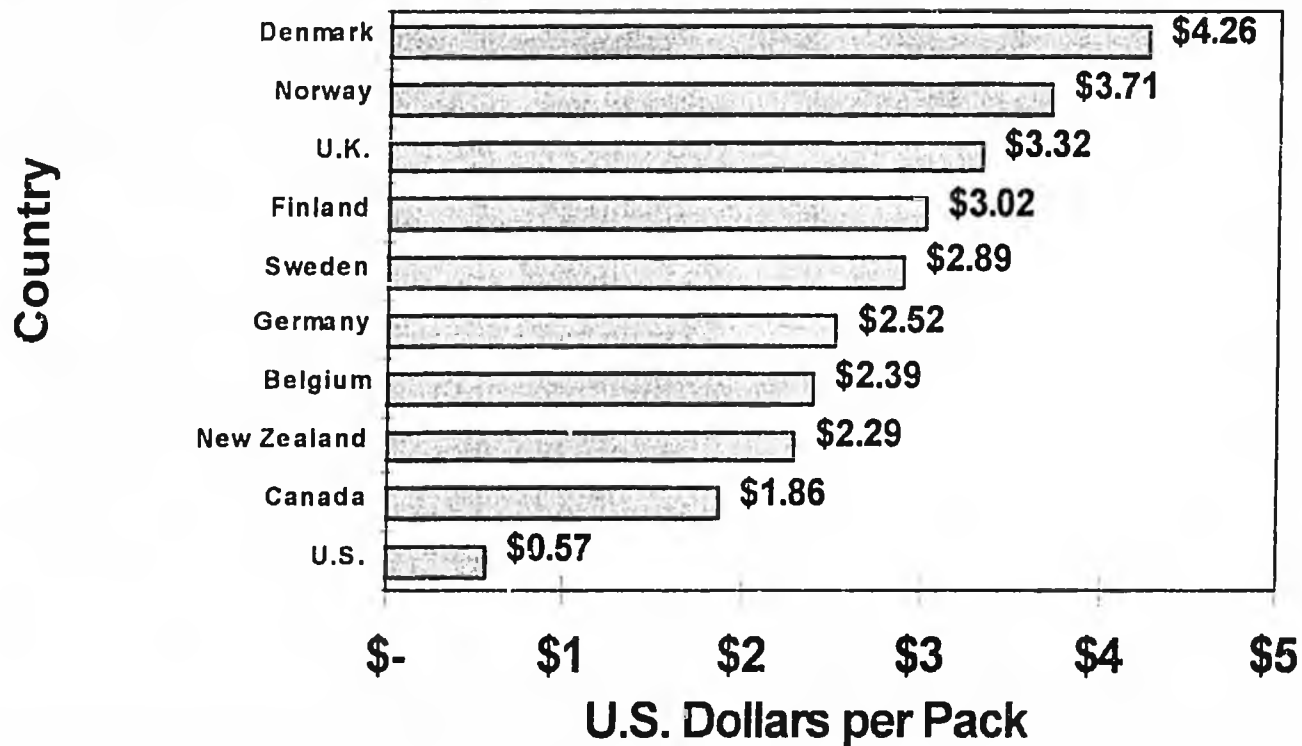
# Impact of Tobacco Taxes

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- A \$1.00 per pack tax increase would reduce youth smoking in Alaska by an estimated 32%.
- The tobacco tax would prevent 5,700 premature deaths among Alaskans currently under the age of 18.

# Tobacco Tax Rate Comparison

Taxes on Cigarettes  
in Major Industrialized Nations  
March 22, 1995



# The Time is Right

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- The groundwork is in place.
- There is broad public support. 75% of Alaskans surveyed support the \$1.00 per pack tax.
- This included: 75% of “conservatives”, 75% of “moderates”, 73% of “liberals” and **55% of smokers.**

# Community Support

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- The tax is also supported by: C. Everett Koop, MD., former Surgeon General, 280 individuals and over 50 organizations that make up the **Alaska Tobacco Control Alliance** including: the Alaska Native Health Board, the American Cancer Society, and the American Heart Association.

## SPONSOR STATEMENT

### SB 13- Increase Tobacco Taxes Senator Bert Sharp

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

Section 1 details the legislative intent and purposes of the bill. Section 1, item (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 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 \$1.00 per pack.

Section 5, increases the excise tax on tobacco products <non-cigarettes> from 25% of wholesale value to 100% of wholesale value.

Sections 6, 7 and 8 sets varying conditions and effective dates depending on possible court decisions.

The accompanying fiscal note breaks the estimated revenue from cigarettes and that from other tobacco products because of the 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 of our long range fiscal plan. I urge your careful consideration of the several extremely positive public policy elements of this proposal and the strong public support of this action statewide.

Thank you! I would be glad to answer questions that individual committee members may have. Mr. Jack Chenoweth is also here to explain the legal reasoning involved in sections 6, 7 and 8, and any other areas you may wish clarified.

# 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 409  
Juneau, Alaska 99801-2105

## 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

Senator Bert Sharp

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

**LEGAL SERVICES**  
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LEGISLATIVE AFFAIRS AGENCY  
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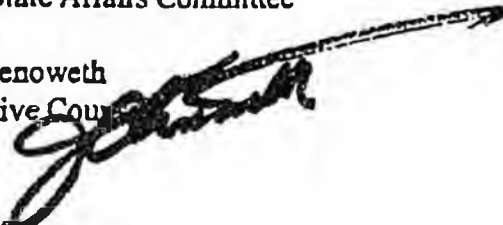
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

April 26, 1996

**SUBJECT:** Draft CSHB 431 ( ) (Work Order No. 9-LS1518F)

**TO:** Representative Jeannette James, Chair  
House State Affairs Committee

**FROM:** Jack Chenoweth  
Legislative Counsel 

This is drafted in the alternative.

Until a few weeks ago, based on a very old Opinion of the Attorney General, I would have advised as a matter of course that this proposal to dedicate the tax increment constituted a violation of the dedicated fund prohibition of article IX, section 7. Now, as a result of further research explained in Legislative Counsel Mike Ford's April 3 memorandum, I believe that conclusion is not so certain.

The drafting of the amendment reflects the possibility that the dedication might not be found unconstitutional for the reason given in that memo.

To repeat advice already provided to you:

Under AS 43.50.140, the proceeds derived from the original tobacco tax are required to be paid into the school fund. This fund avoids the constitutional prohibition against dedicated funds contained in Article IX, sec. 7, of the Alaska Constitution because the fund existed at the time the Alaska Constitution was ratified by the voters. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska." The two main motivations for the ban on dedicated funds are to maintain the potential of flexibility in budgeting and to ensure that the legislature does not abdicate its responsibility in making budget decisions. Fairbanks v. Convention & Visitors Bureau, 818 P.2d 1153, at 1158 (Alaska 1991).

A question was raised as to whether the Alaska Constitution allows the legislature to change the amount of the tax, without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued opinion No. 7, that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the

tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5. This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Barrie M. White. The following discussion with Delegate White and other delegates illustrates the intent of the framers of the Alaska Constitution:

R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

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WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

(Emphasis added). This discussion indicates a clear intent on the part of the delegates to allow a change to the rate of taxation without affecting the status of a dedication of the proceeds of the tax. While the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitution rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of tobacco taxation destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v. Hagglund, 374 P.2d 316, 319 (Alaska 1962), the court stated that

Representative Jeannette ~~Mc~~s

April 26, 1996

Page 4

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(Emphasis added) Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court.

Please contact me if you have further questions.

JBC:pl:glc:lmb

96-091.lmb

## LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
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STATE OF ALASKA

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FAX (907) 485-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2108

### MEMORANDUM

April 3, 1996

**SUBJECT:** Tobacco Tax - (Work Order No. 9-LS1832)

**TO:** Representative Jeannette James

**FROM:** Michael F. Ford  
Legislative Counsel

You have asked for an explanation of the effects of an increase of the tobacco tax (AS 43.50.090) on the dedicated fund provision contained in AS 43.50.140. As explained in this memo, it appears that the legislature may be able to increase the tax without affecting the dedicated status of the state school fund.

Under AS 43.50.140, the proceeds derived from the tobacco tax are required to be paid into the school fund. This fund avoids the constitutional prohibition against dedicated funds contained in Article IX, sec. 7, of the Alaska Constitution because the fund existed at the time the Alaska Constitution was ratified by the voters. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska." The two main motivations for the ban on dedicated funds are to maintain the potential of flexibility in budgeting and to ensure that the legislature does not abdicate its responsibility in making budget decisions. Fairbanks v. Convention & Visitor Bur., 818 P.2d 1153, at 1158 (Alaska 1991).

The precise question you have raised is whether the Alaska Constitution allows the legislature to change the amount of the tax, without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued opinion No. 7, that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5. This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Mr. Barrie M. White. The following discussion with Mr. White and other delegates illustrates the intent of the framers of the Alaska Constitution:

Representative Jeannette James

April 3, 1996

Page 2

R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year

Representative Jeannette James

April 3, 1996

Page 3

and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS. If they lowered it down to three could they then re-enact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

We believe that this discussion indicates a clear intent to allow a change to the rate of taxation, without affecting the status of a dedication of the proceeds of the tax. To this extent, we disagree with the 1959 opinion No. 7 issued by the Attorney General, that the framers of the constitution intended that a change to the rate of taxation would destroy the dedicated status of the fund.



It is important to note that while the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitutional rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of tobacco taxation destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v Haggund, 374 P.2d 316, 319 (Alaska 1962), the court stated that "opinions of individual members of the constitutional convention are not considered to be a safe guide in ascertaining the purpose of a majority of the convention when adopting a particular provision. But reports of committees and statements of chairmen of such committees stand on more solid footing and may be resorted to in determining the

Representative Jeanette James

April 3, 1996

Page 4

intent of the enacting body." (Emphasis added) Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court.

You have also asked if the rate of taxation is changed, does the additional revenue go into the school fund or the general fund? We believe that any increase in the tax imposed under AS 43.50.090 will not, by itself, affect the disposition of the proceeds of the tax. The increased revenues will still flow into the school fund as required under AS 43.50.140. It is also important to note that to maintain the status of the school fund as an exception to the dedicated fund rule, that disposition of the proceeds of the tobacco tax cannot be changed. To change the disposition of the proceeds of the tax as required under AS 43.50.140 would destroy the dedicated fund exemption granted to the school fund under Article IX, sec. 7, of the Alaska Constitution.

Please contact me if you have further questions.

MFF:klb

96-252.klb

By: Dan LaSota  
Guy Sattley  
Hank Bartos  
Karen Parr  
Cole Sonafrank  
Hank Hove  
Nancy Webb  
Cheryl Kilgore  
Jay Quakenbush

Introduced: 11/25/96  
Adopted: 11/25/96

**RESOLUTION NO. 96-081**

**A RESOLUTION URGING THE LEGISLATURE TO INTRODUCE AND PASS A BILL  
INCREASING STATE TAXES ON TOBACCO PRODUCTS**

**WHEREAS, it has been determined that use of tobacco products can be hazardous to a person's health, cause premature death and increase costs for employers in all categories because of illnesses caused by smoking; and**

**WHEREAS, tobacco is a unique product because of the staggering toll it takes on the lives of millions as shown by the fact that each year tobacco kills more Americans than A.I.D.S, alcohol, car accidents, fires, illegal drugs, murders, and suicides combined. It is responsible for over 400,000 American deaths each year and is the leading cause of preventable death in the country; and**

**WHEREAS, 84 % of Alaska's adult smokers started smoking between the ages of 10 and 20 and the state has the sixth highest rate of smoking in the United States along with the sixth highest rate of smoking -related deaths in the United States. Tobacco kills 1 out of 5 Alaskans; and**

**WHEREAS, throughout the United States, 3,000 children become regular smokers every day and most of those smokers begin by age 15 and are "addicted" by age 18. Children and teenagers constitute 90 % of all new smokers and as many as one-third of all children who become smokers will eventually die from smoking-related diseases; and**

WHEREAS, it is the responsibility of the government of Alaska to do everything in its power to blunt the negative impact of tobacco on our economy, but the government of Alaska passively encourages tobacco use among its citizens by maintaining its affordability through low taxation rates (Alaska has the 28th lowest state tobacco excise tax but ranks sixth in the amount of smokers by states); and

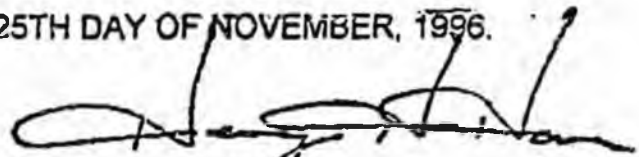
WHEREAS, higher tobacco prices have proven effective in reducing tobacco consumption particularly among youth and it is the responsibility of the government of Alaska to protect our youth from an addictive and deadly drug; and

WHEREAS, the federal government, recognizing the problems caused by tobacco products, has already increased the cost of tobacco products in commissaries throughout the nation. The cost has risen by \$4.00 per carton at some commissaries.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly calls upon the Alaska State Legislature to introduce and enact a significantly higher state excise tax on all forms of tobacco and to ensure that this higher tax rate is regularly increased to keep pace with inflation.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Tony Knowles, Governor, State of Alaska and all members of the Interior Delegation.

PASSED AND APPROVED THIS 25TH DAY OF NOVEMBER, 1996.



Henry "Hank" Hove  
Presiding Officer

ATTEST:



Mona Lisa Drexler, CMC/AAE  
Municipal Borough Clerk

Ayes: Bartos, Sattley, Quakenbush, Sonafank, Parr, Kilgore, Webb, St. John, McBride,  
LaSota and Hove

Noes: None

RESOLUTION NO. 96-081

Page 2 of 2

# Citizens To Protect Kids from Tobacco

1057 W. Fireweed Lane, Suite 204 • Anchorage, Alaska 99503 • (907) 277-8696 • Fax: (907) 263-2073

January 8, 1997

SB 13

The Honorable Gary Wilken  
The Alaska Senate  
State Capitol  
Juneau, Alaska 99801

Dear Senator Wilken:

Those of us working on the tobacco tax campaign would like to wish you a happy and productive new year and let you know that we look forward to working with you in 1997 to save thousands of lives in the years ahead.

Tobacco issues continue to make headlines in Alaska and around the country, with frequent news stories about proposed FDA regulation of tobacco and implementation of the Synar Amendment by state governments. This letter is intended to clarify that while such efforts are worthwhile, a major tobacco tax increase (\$1 per pack) is clearly the most effective tool we have to reduce tobacco use.

**There is no "silver bullet" for ending the tobacco epidemic.** A comprehensive approach that includes tax increases, media campaigns, innovative school programs, advertising restrictions, clean indoor air laws, and enforcement of youth access laws should be our goal.

**The \$1 per pack tobacco tax increase must be the cornerstone of a comprehensive tobacco control strategy, and should be enacted first.** In a report produced by a panel of experts, the National Cancer Institute concluded that "few measures exhibit the speed and magnitude of impact achieved by increasing taxation on tobacco products... Increasing tobacco excise taxes must be considered an essential and primary component of any comprehensive tobacco control program." The \$1 per pack tobacco tax increase will have immediate and dramatic impact on youth smoking and smokeless tobacco rates in every community in the state, without creating any financial drain on the state budget.

**While there should be continuing efforts to enforce existing laws against selling tobacco to minors, reducing youth access to tobacco is easier said than done.** The goal of the Division of Alcoholism and Drug Abuse is to increase vendor compliance to 80% (from the current rate of 64%), in keeping with the provisions of the federal "Synar" law. However, recent research conducted in Massachusetts shows that even when 80% of stores refuse to sell to minors, kids can still buy tobacco products. The researchers concluded that "compliance rates above 90% must be achieved before the youths in the community begin to have difficulty purchasing tobacco." While this is a worthwhile goal that we support, it is unlikely that we will be able to achieve it any time soon.



Likewise, restricting tobacco sales to liquor outlets only, as some have proposed, makes a lot of sense but will be extremely difficult to achieve. Convenience stores typically make more than half their profits from tobacco sales. Any change in the law will be met with extreme resistance, with the tobacco industry providing financial support to the opposition. Again, the best option to reduce teen smoking is to pass the \$1 per pack tobacco tax increase.

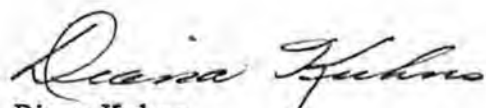
While valuable as part of a comprehensive effort, FDA regulation of tobacco products will not adequately address the tobacco epidemic in Alaska. Even if the regulations are implemented, they will not have the kind of dramatic impact on youth smoking that can be achieved through a major tobacco tax increase.

The proven effectiveness of tobacco taxation, the strong public support for the tax, and the fact that there is no cost to state government are all reasons to support the proposed \$1 per pack tax increase in Alaska. As the *Alaska Journal of Commerce* stated in an editorial last summer:

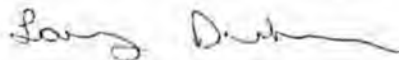
*We can save thousands of lives in Alaska by protecting our kids from tobacco, and the best way to do that is to increase the state cigarette tax...It should be an easy choice and a no-lose situation. We can decrease the deaths from smoking while decreasing the dollars taken from the state savings account to support the budget, and we can reduce our future expenditures on health care.*

Please feel free to contact us for more information. We look forward to talking with you soon.

Sincerely,



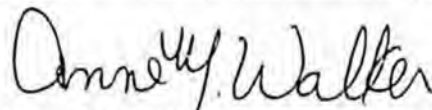
Diana Kuhns  
Chief Operating Officer  
American Cancer Society (Alaska)



Larry Dickerson  
Executive Director  
American Lung Association (Alaska)



Suzanne Meunier  
Executive Director  
American Heart Association (Alaska)



Anne M. Walker  
Executive Director  
Alaska Native Health Board



alaska academy of physician assistants

January 15, 1997

Citizens to Protect Kids from Tobacco  
1057 W. Fireweed Lane, Suite 204  
Anchorage, Ak 99503

The Alaska Academy of Physician Assistants supports SB234/HB442 which raises the tobacco tax in Alaska. Experience in California, Hong Kong, Britain, New Zealand and Canada reflect reduced smoking rates when higher cigarette taxes were imposed.

Alaska has the sixth highest rate of smoking in the U.S., the sixth highest rate of smoking related deaths in the U.S., and the 28th lowest state tobacco excise tax. By increasing cigarette taxes will reduce consumption, especially by the most price sensitive group, the teenagers. We also know that 84% of Alaskan adult smokers started smoking between the ages of 10 and 20.

The direct health care costs of smoking related diseases on the Alaskan economy were estimated to be \$45.6 million dollars in 1991. Each Alaskan underwrites these costs whether or not they are smokers. By increasing the tobacco tax, we can deter smoking especially in teens, decrease the overall costs of smoking to all Alaskans, and generate income to be used toward public education on the hazards of smoking.

The Academy supports the tobacco tax and would urge you to consider supporting these bills.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne M. Clark". The signature is fluid and cursive, written over a light-colored background.

Jeanne M. Clark, PA-C

Past President

Alaska Academy of Physician Assistants

## Letters

### Puff on these statistics

I have just received targeted mail from the Alaska Smokers' Rights asking me to contact my legislators to oppose the tobacco tax - however, on the contrary, I urge you to continue to support the tobacco tax and the higher the better.

My husband and I quit smoking years ago. In fact, half of Alaskan adults who have ever smoked have quit, and more than 70 percent of those who still smoke say they would like to quit.

Adults don't tend to choose to start smoking. Most adults, over 80 percent of them, started smoking in their teens, according to the Department of Health and Social Services. However, about 3,000 young people each day across the country are falling prey to the tobacco companies targeted campaigns to recruit new smokers to replace the people who have quit or died.

Smoking is an addiction. How dare the tobacco industry (I mean the Alaska Smokers' Rights) pretend to be concerned about my rights while protecting their own profits and preserving their exemptions from most consumer protection laws.

As the parent of a young child and a health advocate, I urge legislators to pass the tax.

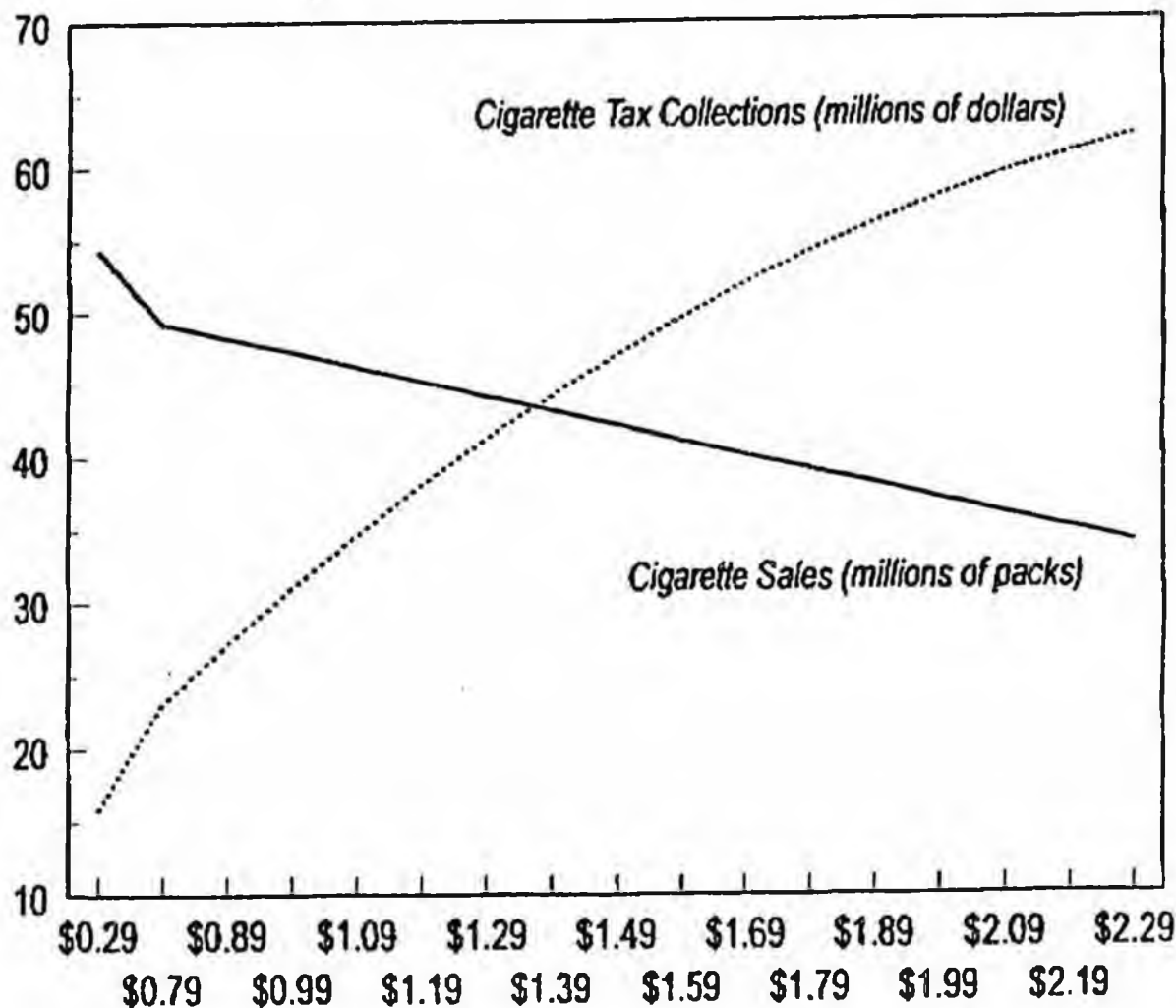
**Patty Owen**

# Tobacco Excise Taxes are a Reliable Source of Revenue for Alaska

- Tobacco taxes have the unusual ability to save lives while simultaneously raising millions of dollars.

The current state tobacco tax of \$0.29 raises about \$15.75 million every year.

- Raising the state tax by \$1.00 will reduce cigarette sales by more than 10 million packs while raising over \$41 million in new revenue.



The following economic analysis was prepared by the American Cancer Society in consultation with Dr. Frank Chaloupka, a professor at the University of Illinois-Chicago and a researcher with the National Bureau of Economic Research. Dr. Chaloupka is the foremost expert in the U.S. on the subject of tobacco consumption elasticity among youth. He just completed the most comprehensive study ever undertaken on the subject, sampling over 110,000 youths across the country over a two year period (1992-1994). By controlling for a variety of other determinants of youth smoking which had not been included in earlier analyses, Dr. Chaloupka's work both confirms and refines the body of research on economic disincentives as a tobacco use prevention measure.

## HEALTH AND REVENUE GAINS FROM A TOBACCO TAX INCREASE IN ALASKA<sup>1</sup>

<u>Tax Increase</u>	<u>Youth Reduction<sup>2</sup></u>	<u>Revenue Gained</u>	<u>Youth Lives Saved<sup>3</sup></u>
\$0.50	15.9%	\$23.1	2,852
\$0.60	19.0%	\$27.1	3,422
\$0.70	22.2%	\$30.9	3,993
\$0.80	25.4%	\$34.6	4,563
\$0.90	28.5%	\$38.0	5,133
\$1.00	31.7%	\$41.2	5,704
\$1.10	34.9%	\$44.1	6,274
\$1.20	38.0%	\$46.9	6,845
\$1.30	41.2%	\$49.5	7,415
\$1.40	44.4%	\$51.9	7,985
\$1.50	47.5%	\$54.1	8,556
\$1.60	50.7%	\$56.0	9,126
\$1.70	53.9%	\$57.8	9,696
\$1.80	57.0%	\$59.4	10,267
\$1.90	60.2%	\$60.7	10,837
\$2.00	63.4%	\$61.9	11,406

### Sources:

<sup>1</sup> Assumes an average price of \$2.13 per pack of 20 cigarettes in Alaska.

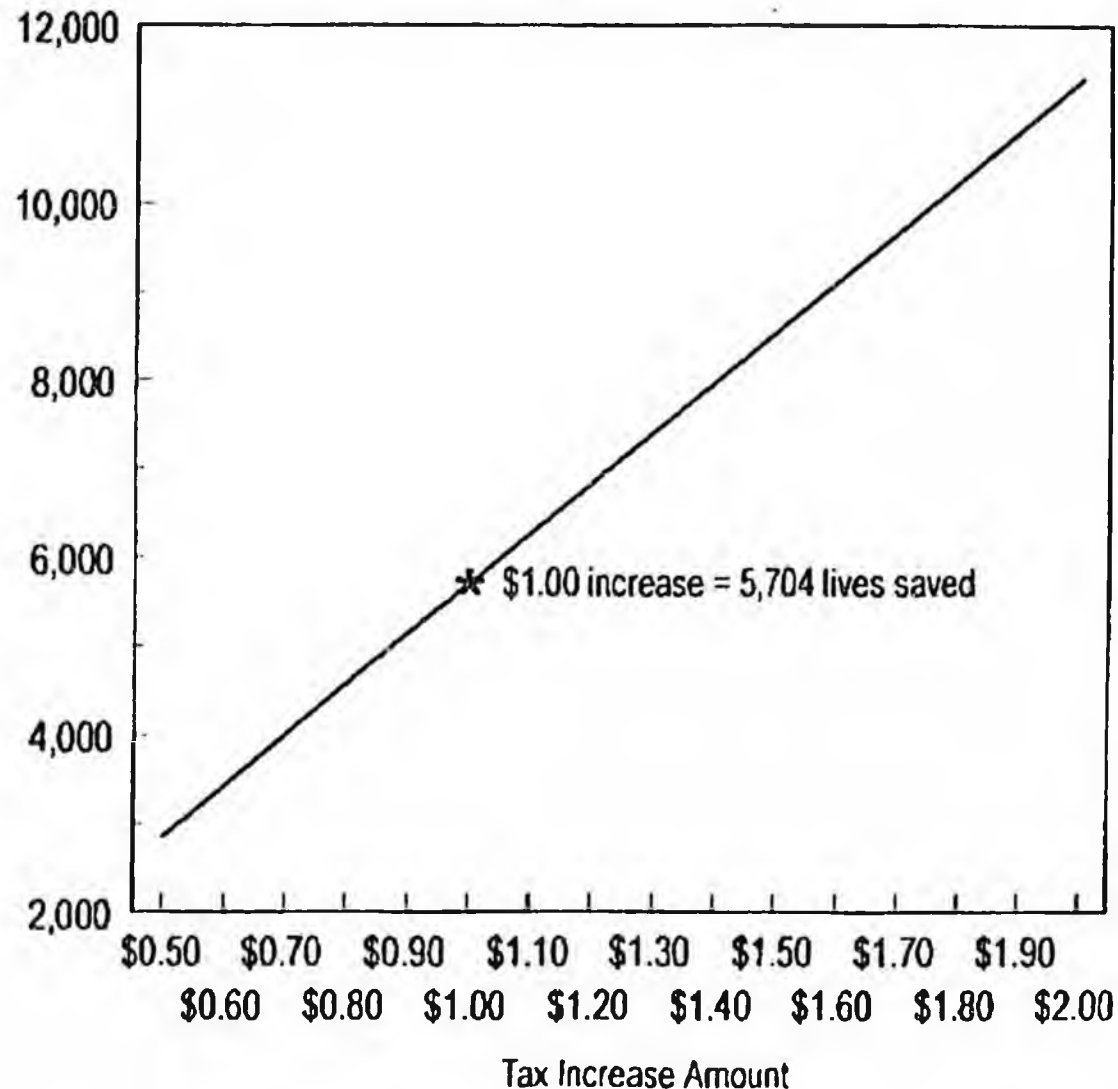
<sup>2</sup> The youth reduction estimate assumes an average youth smoking participation elasticity of -0.675. Chaloupka, F.J., Grossman, M. "Price, Tobacco Control Policies and Youth Smoking" June, 1996, unpublished data. This paper was prepared for the Economics of Substance Abuse II session of the 71st annual conference of the Western Economic Association International, July 1, 1996, San Francisco, CA.

<sup>3</sup> According to the Centers for Disease Control, approximately 56,246 of Alaska's youth will become regular smokers. The estimate of lives saved conservatively assumes that of those discouraged from smoking regularly, 32% will avoid dying prematurely as adults because of a smoking-related illness. Centers for Disease Control. Morbidity and Mortality Weekly Report "Projected Smoking-Related Deaths Among Youth - United States", Vol. 45, No. 44, Ps. 971-974, 1996.

# A Tobacco Tax Increase Will Save Thousands of Alaska's Children

According to the Centers for Disease Control, approximately 56,246 of Alaska's children will become smokers, and 17,999 will die prematurely as adults because of a smoking-related illness.

Raising the state tax by \$1.00 will save the lives of more than 5,700 of Alaska's children.





### INVESTING IN THE FUTURE

The maestros' mission includes creating programs for local schoolchildren

American Verdi, as it were—was pleasurable if derivative.

A priority for both men is improving the performing environment for their companies. Later this month, the Kennedy Center concert hall will close for extensive acoustic renovations, to reopen in the fall. As for the opera, it plans to move out of the Kennedy Center entirely. Thanks to an \$18 million gift from Mrs. Eugene B. Casey, chairman of the board, the company has acquired the old Woodward & Lothrop department store in downtown Washington. After some political wrangling, including a videotaped deposition from Domingo, the city approved a zoning variance so that the store could be converted into an opera house. Scheduled to open in 2001, it will cost more than \$100 million. "I hope that our opera house will rival the world's top houses," says city council member Charlene Drew Jarvis, who chairs the economic-development committee. "Paris has nothing on us for the future."

Just as in politics, the air in Washington these days is filled with talk of bipartisan cooperation, and no one would be surprised to see Domingo, who has thus far largely limited his conducting to opera, waving a baton in front of the National Symphony. Indeed, Slatkin has already agreed to conduct an as yet to be determined opera with Domingo's company next fall. "We will have many collaborations," notes Domingo, "with Leonard coming to the opera and me going to the orchestra. I hope that at the end of the Slatkin-Domingo era, something special has happened that we can be proud of. We are conscious that we have to deliver, and we will." That's exactly what Washingtonians have long been waiting to hear. —With reporting by Daniel S. Levy/Washington

# C'mon, Baby, Light My Fire

Cigarette giant Philip Morris goes after the youth market by starting its own record label

**W**E OFTEN ASSOCIATE MUSIC WITH the special times in our lives—the ballad that was playing at the close of our high school prom, the love melody at our wedding reception, the trip-hop song that was blaring as we picked up boxer shorts at Banana Republic...

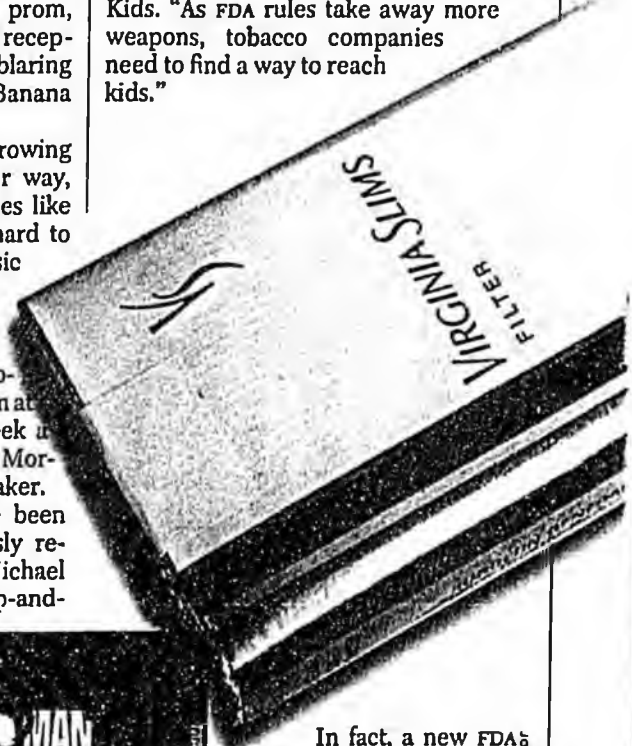
Banana Republic? Yes. If a growing number of companies have their way, there will be a lot more memories like that. Retail chains are working hard to link their brands with the music younger customers want to hear. In recent years the Gap, Banana Republic, Victoria's Secret, the Pottery Barn and others have produced their own CDs and sold them at their checkout counters. Last week a new player was announced: Philip Morris, the world's largest cigarette maker.

Most brand-name CDs have been uneven compilations of previously released songs by big-name stars (Michael Bolton for Victoria's Secret) or up-and-comers (folk singer Gillian Welch for Starbucks), selected because their style fits the image the company is trying to project. The CDs can be big business, luring customers who shun record stores. Some of Victoria's Secret's titles have sold 1 million copies.

Which is probably one reason Philip Morris has started a new record label, called Woman Thing Music, after the ad slogan for its Virginia Slims brand ("It's a woman thing"). The company intends to launch new female performers by underwriting their albums and sponsoring live performances. Its first release, due this spring, is a six-song mini-album by 27-year-old Martha Byrne (who plays Lily on the TV soap *As the World Turns*). But here's the catch: the album will be available only in a package along with two packs of Virginia Slims (cost: around \$5.00).

Critics say this is an attempt to get pop music-loving kids to smoke. "Nine-

ty percent of smokers began before age 18," says Brian Ruberry, spokesperson for the Campaign for Tobacco-Free Kids. "As FDA rules take away more weapons, tobacco companies need to find a way to reach kids."



**SMOKING GROOVES:** Soap actress, but nonsmoker, Martha Byrne is featured on the debut album

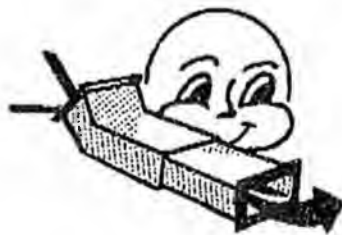


In fact, a new FDA rule scheduled to go into effect in August will prohibit tobacco companies from selling or giving away products with their brand names or logos on them. Philip Morris is challenging the rule in court. A hearing has been set for February, but appeals could drag on for more than a year.

And how is Byrne's CD? Most of the songs on the CD, produced by Nile Rodgers, sound like limp imitations of Alanis Morissette. An advertorial track, *It's a Woman Thing*, doesn't help either. Byrne is a nonsmoker, but recording for a cigarette company doesn't bother her. "The

exposure is tremendous," she says. Unfortunately for many young women, that exposure could be dangerous to their health.

—By Christopher John Farley.  
Reported by Elizabeth L. Bland/New York



## *Sun-Air* Sheet Metal, Inc.

3250 Easy Street  
Fairbanks, Alaska 99701-7734

February 10, 1997

Re: Pioneers' Home, proposed rate increases

Dear Senator Wilken:

I am a recent member of the Board of Directors of the Fairbanks Pioneers' Home Foundation and as a citizen of Fairbanks and Alaska for over forty years I am very aware of the changes to the Home since its inception. I recognize that some of these changes are due to court rulings, i.e. the Zobel decision, and as such the changes were mandated by others.

It is obvious that Alzheimers' care is very costly to provide. I was shocked to find that Medicare does not cover Alzheimers' care as they classify the disease as a "mental illness". Thus the cost burden of care is transferred to the other residents and this is very unfair. If indeed this disease can be classified as a "mental illness" shouldn't we be funding this care through the Mental Health Lands Trust?

Obviously we must do something, there has been an implied contract to our elderly pioneers and we can't just ignore the problems they are facing. They cannot act in their own behalf and it is our duty to find a solution to this problem.

I would appreciate your thoughts on this matter.

Thank you for your time and attention.

Sincerely,

Donna J. Brady-Robertson  
President



Distributed at the request of  
Representative Con Bunde

RECEIVED

FEB 13 1997

## NFIB/Alaska 1997 Ballot Results

The Alaska Chapter of the National Federation of Independent Business is comprised of 4,400 small and independent business owners. The typical NFIB/Alaska member employs five workers and rings up gross sales of about \$181,000 per year. In total, the organizations members employ more than 43,000 workers.

The legislative agenda of NFIB is determined by ballot. A majority vote of the members in response to the poll sets the policy and position on legislative issues. Ballots for the last 5 years are used to establish the full legislative agenda. Following are the ballot results for 1997.

### Environmental Self-Audit

1. Should the Alaska legislature adopt a procedure to allow a business to conduct a private self-audit of its compliance with environmental law and take corrective actions to address problems without fines or penalties?

79.8% YES                      10.1% NO                      10.1% Undecided

### Privatization

2. Should state legislation be passed to allow the construction of a new private prison through a lease-purchase program?

78.3% YES                      12.6% NO                      9.1% Undecided

### Balancing the Budget

3. NFIB already has a position to reduce state spending, but do you feel further spending cuts are warranted?

81.5% YES                      10.0% NO                      8.5% Undecided

4. Should some of the Permanent Fund profits be utilized to help close the fiscal gap?

16.2% YES      77.8% NO      6.0% Undecided

5. Should a state personal income tax be reinstated?

15.8% YES      76.7% NO      7.5% Undecided

6. If one or the other must be used to balance the budget, which would you prefer to be used first?

48.3% Permanent fund  
51.7% State personal income tax

7. Should a combination of Permanent Fund profits and personal income taxes be used?

18.6% YES      72.9% NO      8.5% Undecided

8. Would you prefer a state sales tax over a state personal income tax?

51.8% YES      39.8% NO      8.4% Undecided

9. Would you support an increase in the following consumption taxes?

a. Gasoline and diesel fuel tax

20.8% YES      72.8% NO      6.4% Undecided



b. Tobacco tax

62.7% YES      35.8% NO      1.5% Undecided

c. Alcoholic beverage tax

61.2% YES      37.8% NO      1.0% Undecided

***"Cigarette taxes ... are the most effective way to discourage tobacco use among young people. ... Increasing the cigarette tax could be one of the most important public health measures this country has ever taken."***

—former Surgeon General C. Everett Koop, appointed by President Ronald Reagan

NOTHING KILLS LIKE TOBACCO. In Alaska, one out of five deaths is caused by tobacco. In the United States, smoking kills almost 420,000 people per year—more than AIDS, alcohol, car accidents, fires, cocaine, heroin, murders, and suicides *combined*. Worldwide, tobacco kills 3 million people per year—someone every 10 seconds.

- **Tobacco use is the leading cause of death in Alaska.** When used as intended, tobacco kills.
- **Adults don't start smoking—kids do.** Almost all tobacco victims become addicted to nicotine as teens or younger. Nicotine is regarded by many authorities to be as addictive as heroin or cocaine. If we can stop kids from getting addicted, we can prevent needless disease and death later in life.
- **Tobacco companies spend over \$6 billion a year—about \$16.5 million each day—on advertising and promotion in the United States.** Tobacco industry advertising is very effective at reaching children. About 91% of 6 year olds recognize the Old Joe Camel cartoon character, about the same percentage that recognize the Disney Channel-Mickey Mouse logo.
- **Education alone does not work.** For many years, education has been the primary strategy to reduce tobacco use among children. Nevertheless, recent surveys show that smoking among youth is increasing.
- **Increasing tobacco taxes is widely recognized as the single most effective way to reduce tobacco consumption among children.** Children are price sensitive consumers. Research shows that a cigarette price increase of 10% can be expected to reduce consumption by an equal or greater amount by children. A \$1 per pack tax increase would reduce youth smoking in Alaska by an estimated 32%.
- **Tobacco taxation is an efficient and appropriate means to offset the enormous costs caused by tobacco.** Alaska's Long Range Financial Planning Commission concluded that a \$1 per pack increase in the state's cigarette tax would raise \$42 million in new revenues in the first year.
- **Alaska's current tobacco tax is below the national average, even though Alaska has one of the highest rates of tobacco-related death in the nation.** Nor have tobacco taxes in Alaska kept pace with inflation. In 1964, the year that the first Surgeon General's report on smoking and health was released, the state tax comprised 24% of the retail price of cigarettes. Today it is only 14%.
- **The public supports tobacco taxes.** A January 1996 statewide survey found that 74% of Alaskans support an increase of \$1 per pack in the state excise tax on cigarettes.

***"If, in the United States, five 727s with 200 people crashed every day of every week of every month of every year, sooner or later someone would say, 'We've got to do something about this.'"***

—Dr. John Allen (past president)  
American Lung Association

TOBACCO IS A UNIQUE PRODUCT BECAUSE OF THE STAGGERING TOLL IT TAKES ON THE LIVES OF MILLIONS. Each year, tobacco kills more Americans than AIDS, alcohol, car accidents, fires, illegal drugs, murders, and suicides *combined*. It is the only legal product that when consumed exactly as the manufacturer intends, causes addiction, disease, and death.

- **Tobacco is unique in the number of Americans it kills.** Each year 419,000 Americans die from smoking. That's 1,100 Americans each day, one every 75 seconds. One of every five deaths in the U.S.—and in Alaska—are caused by tobacco. Tobacco kills more than *one out of three long-term users*, half of whom die in middle age.
- **Virtually all new users of tobacco products are children.** Almost 90% of all smokers started before the age of 19. The average age of initiation is 14.5 years. Adults don't start smoking—kids do. The same is true of smokeless tobacco use.
- **Tobacco is unique because it is harmful to all users at all doses.** There is no safe level of tobacco use. Smoking just two cigarettes a day doubles one's risk of lung cancer and increases the risk of heart disease and stroke.
- **Tobacco use produces no health benefits.** Unlike some food products which provide nutritional benefit but also contribute to the risk of heart disease under certain circumstances, tobacco provides no nutritional benefit and is harmful under all circumstances. Unlike alcohol, tobacco kills even when used in "moderate" amounts.
- **Tobacco smoke kills users and non-users alike.** The American Heart Association estimates that 52,000 deaths a year are caused by exposure to second-hand smoke, making environmental tobacco smoke the third leading cause of death in the nation (behind active smoking and alcohol abuse). Viewed another way, this means that for every eight smokers that the tobacco industry kills, it takes one non-smoker with them.
- **Tobacco is unique because it contains nicotine, a highly addictive drug.** Researchers widely regard nicotine to be as addictive as heroin or cocaine. Withdrawal from nicotine addiction is like withdrawal from other highly addictive substances: difficult and painful. Seventy percent of smokers say they want to quit, and millions try to quit each year, but only 2.5% succeed in any given year.

Source: "Saving Lives and Raising Revenue - The case for major tobacco increases in Alaska"  
(A collaboration of the American Cancer Society, American Heart Association, American Lung Association and Alaska Native Health Board.)

TAX



**Alaska Association Secondary School Principals**  
Educational Leadership for Alaska's Future  
1720 Otter Street • Anchorage, Alaska 99504-2634  
(907) 333-9613 • Fax (907) 333-3060 • aassp@alaska.net

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Lou Matheson, President  
Southwest Region SD  
Dillingham

SC  
André Layral, Pres-Elect  
North Pole Middle School  
North Pole

Larry S. LeDoux, Past-Pres  
Kodiak Island BSD  
Kodiak

Keith Taton, Coordinator  
Central MS of Science  
Anchorage

**DIRECTORS**

Dennis Hoyt, Region I  
Noorvik School  
Noorvik

Todd Poage, Region II  
Minto School  
Minto

David Spence, Region III  
Kenai Central High School  
Kenai

Georgia Taton, Region IV  
Gruening Middle School  
Eagle River

Hal Spackman, Region V  
Mt. Edgecumbe High School  
Sitka

SC  
Marianne Carlson, Region VI  
West Valley High School  
Fairbanks

Barbara L. Dean, Region VII  
Dillingham Middle/High School  
Dillingham

Leslie VanderHoff  
Assistant Principal at Large  
Clark Middle School  
Anchorage

Laurence N. Graham  
Executive Director  
Anchorage

**RESOLUTION #96-9: SUPPORT FOR INCREASED TOBACCO TAX**

**SUBMITTED BY:** Alaska Association of Secondary School Principals

**WHEREAS** 3,000 children become regular smokers each and every day; and

**WHEREAS** most smokers begin by age 15 and are addicted by age 18 and 84% of Alaskan adult smokers started smoking between the ages of 10 and 20 ; and

**WHEREAS** children and teenagers nationwide constitute 90% of all new smokers; and

**WHEREAS** as many as one-third of all children who become smokers will eventually die from smoking-related diseases; and

**WHEREAS** 80% of teen smokers want to and have tried to quit, but only 1.2% succeed; and

**WHEREAS** use of smokeless tobacco among young men has increased nearly 300% in the past 20 years; and

**WHEREAS** smokeless tobacco causes cancers of the gums, mouth, pharynx, larynx, and esophagus; and

**WHEREAS** Alaskan Natives suffer disproportionately from the burden of tobacco addiction and illness; and

**WHEREAS** higher tobacco prices have proven effective in reducing tobacco consumption, particularly among youth; and

**WHEREAS** Alaska has the sixth highest rate of smoking in the U.S. and the sixth highest rate of smoking-related deaths in the U.S. but has the 28th lowest state tobacco tax; and

**WHEREAS** the U.S. General Accounting Office has concluded that a 10% increase in the price of tobacco results in a 4% decrease in consumption among adults and a 10-14% decrease in consumption among youth; and

**WHEREAS** smokeless tobacco users are disproportionately young and economically disadvantaged, and therefore especially sensitive to tax increases; and

**WHEREAS** smoking-related death and disease cost the Alaska economy \$127.6 MILLION DOLLARS in 1991;

**THEREFORE BE IT RESOLVED** that the Alaska Association of Secondary School Principals supports a significant increase in the Alaska state excise tax on cigarettes and on other tobacco products; and

**BE IT FURTHER RESOLVED** that the Alaska Association of Secondary School Principals calls upon the Alaska Legislature to enact a significantly higher state excise tax on all forms of tobacco, and to ensure that this higher tax rate is regularly increased to keep pace with inflation.

APPROVED: 10/22/96

**OFFICERS**

Kevin Fischer  
*President*  
Geneva Woods

Thad Woodard, MD  
*Vice President*  
Alaska Center for Pediatrics

Shari Boyd  
*Secretary*  
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Anchorage Sand & Gravel

George Stewart, MD  
*ALA Rep. Delegate*  
*ATS President*  
Internal Medicine Assoc.

1057 West Fireweed Lane, Ste 201  
Anchorage, AK 99503-1736  
(907) 276-LUNG (5864)  
Fax (907) 263-2090  
Statewide: 1-(800) LUNG-USA

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RESOLUTION

BOARD OF DIRECTORS

AMERICAN LUNG ASSOCIATION OF ALASKA

Be it resolved that the Board of Directors of the American Lung Association of Alaska supports the passage of a \$1.00 (one dollar) per pack tax on cigarettes and urges the State Legislature of Alaska to enact this tax in the 1997 legislative session to help prevent tobacco abuse in Alaska.

Kevin Fischer  
President, Board of Directors

January 21, 1997

**When You Can't  
Breathe,  
Nothing Else  
Matters®**

Since 1934, the American Lung Association of Alaska has been fighting lung disease through research, education, community service, and advocacy.



**JAN'S DISTRIBUTING, INC.**

Box 140856  
Anchorage, Alaska 99514  
243-JANS  
Fax 243-5744  
1-800-478-9898

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January 16, 1997

Senator Wilken  
1851 Fox Avenue  
Fairbanks, AK 99701  
465-4714

Dear Senator Wilken:

Enclosed please find for your information a letter to the editor concerning the proposed tobacco tax.

I have sent this letter to all the newspapers in the state and plan on sharing it with other retailers, distributors and concerned citizens.

As the letter states, I admire and agree with the need to end the use of tobacco by minors. However, I do believe there are better ways to accomplish this goal that would not punish adults who choose to smoke and would not put small business owners at risk of losing their livelihoods.

I urge you to please consider the consequences and impact of this flawed proposal and vote no!

Sincerely,  
Jan Marquiss  
Jan's Distributing, Inc.  
P.O. Box 140856  
Anchorage, AK 99514

P.S. I would be interested in a response back informing me of your stand on this issue.  
Thank you.

Anchorage Daily News  
P.O. Box 149001  
Anchorage, AK 99514-9001

January 16, 1997

Dear Editor,

I am the owner of a distributing company in Anchorage that distributes snacks, candy, gum, nuts and tobacco to retailers. Its a small company that employs 15 individuals. I, my employees and small retailers throughout Alaska would like to encourage the Governor and the State Legislature to really consider all the consequences and the effectiveness of raising the tax on tobacco products.

While we applaud your desire to end youth access to tobacco we question your method. Is increasing the tax on cigarettes by 345% -- from .29 cents a pack to \$1.29 an effective means of stopping youth access to tobacco? No, not if you look at the evidence from other states.

Government reported youth smoking incidence (the percentage of kids smoking cigarettes) collected from the 1993 and 1995 Youth Risk Behavior Surveys by the U.S. Centers for Disease Control clearly indicates that tax increases did not decrease youth smoking rates. In fact, the Government studies show that in some states that raised cigarette taxes, the percentage of kids that are smoking actually increased:

Illinois: Legislators in May 1993 raised the state cigarette tax more than 45%. Following the tax increase the incidence of youth smoking increased more than 22%, according to the Centers for Disease Control.

Hawaii: The state increased its cigarette tax to 60 cents a pack, one of the highest in the nation. What do federal government statistics show? Between 1993 and 1995, the percentage of kids smoking actually went up 14.9%.

Nebraska: Cigarette taxes were increased more than 25% in July 1993. In the two years following that tax hike, the percentage of youth smoking increased 11.3%.

Why the increases in youth smoking? First, high taxes encourage underground black markets, smuggling and crime -- suppliers of illegally distributed cigarettes will not ask for proper identification. Second, most if not all the money teenagers have in discretionary -- they are not making mortgage payments. Third and most important, increasing the tax does not address the root problems of peer pressure and parental involvement and responsibility for children.

Parents, Government officials, educators and the business community must work together to foster the sense of personal responsibility and self-worth in our young people. This is where our focus of resources and energies will be effective and meaningful in keeping tobacco from youngsters. Not a misleading monster tax that will be harmful to Alaska's economy, small businesses, the adult citizenry of Alaska and most importantly the youth of Alaska!

Sincerely,

Jan Marquiss  
Jan's Distributing, Inc.  
1807 West 47th  
Anchorage, AK 99517  
907-243-5267



SB 13

## Fairbanks/Interior Unit

1640 Baylor Boulevard • Fairbanks, Alaska 99709 • 1-907-455-8066 • Fax: 1-907-455-8066 winfax

January 13, 1997

Senator Gary Wilken  
Alaska State Senate  
Room 510, State Capital Building  
Juneau, AK 99801-1182

Dear Senator Wilken:

Thank you for meeting with Paul Barrett, Diana Kuhns, Erik Meyers, and myself this month regarding the proposed tobacco tax initiatives. It was generous of you to give your time. Paul Barrett is our local leader in representing the American Cancer Society in this area and will be in contact with you when appropriate.

The American Cancer Society Fairbanks/Interior Board of Directors appreciates the strong position taken by the you during the campaign and the fine leadership provided in the important public policy debate. It does appear very possible that this will be the year for Alaskans to make a great stride in reducing underage use of tobacco products by passing legislation to increase the cost.

If at anytime we can be of service to you please let me know. Thanks very much for being involved and making this part of our mission move forward.

Sincerely,

A handwritten signature in cursive script that reads "Richard Waller".

Richard Waller  
Volunteer Board President

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SB 13

## Television and Alcohol & Tobacco

While products that reduce pregnancy and STD's are forbidden in most media forums, products known to cause disease and death to thousands of people annually—cigarettes and alcohol—are abundant in the media. The alcohol and tobacco industries spend billions of dollars annually on the basis that advertising works. Strasburger<sup>3</sup> reviewed the extensive research, and among the findings:

- **Children and teenagers are exposed to 1,000 -2,000 beer and wine commercials annually.** Less than 2% of alcohol content ads contain messages about personal responsibility. A 1989 study identified 25-50 alcohol commercials for every Partnership for a Drug Free America ad. Another study found children were able to identify more brands of beer than American presidents.
- **Tobacco products are the most heavily advertised consumer product in the United States, despite the ban of tobacco advertising on TV in 1971.** Tobacco companies spend \$4 billion a year on advertising. Pre-school children in one study found the Joe Camel character was as well-known as Mickey Mouse.

Movies and television programming contain numerous alcohol and cigarette messages. Victor Strasburger in his research review of the affects of media on adolescent behavior found:

- **100% of the made-for-TV movies in 1986 contained drinking behavior or references to it.** Since 1984 references to alcohol have decreased from 10 per hour to 6 per hour in 1991.
- **Movies show cigarette smoking frequency three times that of the actual average use.** TV programming has shown a steady decrease of smoking by its characters since 1952. While only 2% of TV series stars smoke, very few are shown in situations expressing antismoking sentiments.

Many studies show correlations between viewing these products and using them. Studies reviewed by Strasburger<sup>3</sup> show:

- **Cigarette advertising appears to increase a teenager's risk of smoking** by affecting their image of smokers and smoking is the conclusion from studies by the Centers for Disease Control and Prevention.
- **The cigarettes most popular among teenagers smokers are the brands most heavily advertised.**

L  
Provided by John Davies

# SEARHC, tobacco users group battle addiction

by H.B. Colgrove

As a result of a new group co-facilitated by this school and SEARHC, students are receiving help in trying to kick the smoking habit.

"This new program is based on a national program called Tobacco Free Teens, which is put out by the American Lung Association," said John Delong, one of Mt. Edgecumbe's counselors.

"Giving the students the tools to quit is the key to a successful program. Equipped with the knowledge of how to quit the rest lies in the hands of the smoker. One of the top reasons people smoke is due to stress," stated Rick Mueller, a health service worker at SEARHC hospital in Sitka, which is associated with the program.

"So at this new class we will

teach relaxation skills to help them cope with their addiction. This will get them going in the right direction," commented Mueller.

Mueller also said, "This is a pilot program in Sitka, but has been tried in Juneau, although there have been no follow-up studies to document its effectiveness."

"Most of the past smoking classes or groups have proved to be unsuccessful in their attempts to help teens stop smoking, mostly because of the students being forced to attend," stated Delong.

This group is just getting started and its first meeting was November 12. The coordinators plan to meet once a week for the next six weeks. Each meeting lasts an hour and a half. The students who are currently signed up will be

excused from their classes to attend the meeting in the home economics room.

"Mueller is donating his time to facilitate this new class, therefore it does not cost us anything," remarked Delong.

"Currently there are eight students who are signed up to attend the class but it would be able to accommodate a maximum of fifteen," said Delong.

The real need for this new group arose to begin with, with Mount Edgecumbe's continued focus on healthy lifestyles over the previous three years, not forgetting of course our high percentage of students who smoke, slightly under twenty-five percent to be exact.

SEARHC got involved with Mount Edgecumbe during the

1995-1996 school year when MEHS's Wellness Coordinator, Bob Chastain, planned a wellness evaluation that was conducted in the beginning of this year by the entire student body. SEARHC agreed to conduct the smoking portion of the evaluation. Mueller offered his time to do the class after learning the number of students who smoked through surveys, which comes out to be about seventy-four percent of the student body.

This group is optional, no one is being forced to attend. The people who attend are those that wish to quit smoking "correlating to its high projected success rate," said Delong.

Students' attitude towards attending the group are high, and the first meeting has proven to be a

first step in the right direction.

Currently the punishment for getting caught smoking at Mt. Edgecumbe is seven to ten days of level one, level one being considered on probationary status. Then the student is reported to the authorities. Two years ago it was not illegal to possess tobacco but, due to a change in the state law, minors are finally being given citations for the possession of tobacco products, which means they are sent to court and face the possibility of receiving a fine.

When asked why they would give up their free time to attend the class, a common answer was simply, "I really need to quit smoking." !!!

## Election

Continued from Page 1

Both students and teachers were able to ask questions of candidates. When the debate ended the students broke back into their state groups to vote for president.

*Pictured at right: Students acted as senators in the lively debate on House Bill 1. The amendment proposed to*



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To STECCA P.	From MGH	
Co.	Co.	
Dept. PER OVL	Phone #	
Fax # CHAS.	Fax #	

Dear All (Eric,  
Here's what ha  
Compass Piece'  
call when you c

Since the beginning of my job at Alaska Native Health Board's Trampling Tobacco Project, I've been weaned on the mythical and sinister stories of our enemy, the Tobacco Industry. I heard about the ways they are pushing tobacco in third world countries and their slick image used to swoon lawmakers with all kinds of pomp. Up until recently, they were only stories. Last night I had the chance to see this force incarnate, and I only saw the tip of the iceberg.

I had been tipped off by one of my prevention comrades that there was a Smokers' Rights meeting at the Hilton last night. My boyfriend and I decided to go and get educated. We got cigarettes and smoked a couple, and I got that same nicotine rush hit that I used to get all the time when I was a smoker. I can't say it wasn't pleasurable.

The meeting was at the Hilton. I noticed a couple of teenagers smoking right outside of the front entrance. A big, burly fellow stood scanning the people who entered. We asked the front desk where the smokers' rights meeting was and they said, "Oh, you must mean the room reserved by R.J. Reynolds." We looked for the sign for the room where the meeting was to be held, but if the lights had been out, we would have had no trouble finding it by following the smell of smoke.

A few people and a strapping college looking fellow were in the hall to greet us and have us sign in with name, address, and phone. Tim used his real name and I played his submissive wife, Annie.

Because we were late we were left to sit in what amounted to the front pew of smokers. The room was a haze. These thirty some smokers seemed to be smoking furiously and passionately for their rights. Things settled down a little and the same burly fellow at the hotel entrance came in and took a back pew. The door was shut. At this point I was nervous enough that smoking another cigarette was admittedly more than a handy disguise.

A glossy folder with Smoker's Rights insignia (red, white and blue) rested neatly at each of our spots at the tables. Inside their were all sorts of informative brochures including an *Action Guide*, a *Guide to a Fair Workplace Smoking Policy*, some bumperstickers, and a free notepad and pen, all with a national 1-800 number to call. There were also free ashtrays

and lots of delicious, catered cookies with a full coffee service. Not shabby. I thought, for such an impromptu affair. I was trying to think of how I could make out of one of those ashtrays into a planter when the meeting started up.

Strapping College Fellow introduced himself as Steve Gibbs. Said he was from Seattle and relatively new here. He had the fresh look of a twenty-something year old and wore Doc Martins. Trendy shaved head, but no overboard pierced areas or anything like that. Jeans and a casual shirt. I noted no Copenhagen ring on his back pocket or cigs in his pocket and no smoker's voice. He lead the discussion from up in front of his smoking pupils. Later, he let us know that he himself wasn't a smoker, just an occasional cigar. I was reminded of the Winston executive who said that he himself didn't smoke. He said he "reserved that right for the young, the poor, the black, and the stupid." Steve also mentioned that his last tour was in Oregon to try an defeat their tobacco tax initiative.

At this point it occurred to me we had the wrong brand cigarettes—Marlboro Lights (the competition) to be at an R.J. Reynolds meeting but nobody said anything.

The direction of Strapping Steve's advocacy speech began vaguely about how smokers have slowly been marginalized by the "health zealouts," but he quickly honed into the topic at hand: The Tobacco Tax and how to fight it. I thought, here it is. I never quite believed the mythical Drug Thugs would pack up their circus and come to Alaska. In the winter!?

The comments from the fifty something age group crowd were sundried, navigating between phlegmy hacks, in and out of various convictions. One was sure that by having to stand outside to smoke (rather than inside) the subzero temperatures were surely putting her health in peril. Another smoker was convinced that by taking anti-oxidants(?) she could prevent herself from contracting cancer, and yet another contended that smoking can be good for you. I thought, these guys must be R.J. Reynolds Gold Card Club. As I listened to them, I realized these nicotine addicts with their sexless, deep smokers' voices and wrinkled faces had been successfully duped by their own dealer's propaganda.

My sister, who is in medical school, recently told me "pack years" is the medical term used to describe a cancer patient's smoking history. 1 pack a day for a year = 1 pack year. I wondered how many pack years were represented collectively in that room. A conservative guess would be somewhere in the range of 400. If one pack year equals more than \$1000

shelled out by one of these smokers, that means they had spent over \$400,000 for cigarettes, most of which went to Big Tobacco's coffers. Isn't it convenient that the tobacco industry frame the issue as the anti-smokers against the smokers, when it is they who are the cartel behind the scenes? I was reminded of something I read recently: having the tobacco industry organize to defend smokers' rights is like having the mafia defend heroin users.

Well this depressing scene led to the brass tacks of how to fight the tobacco tax, according to Steve. Retailers should be up in arms, he says, because 30% of their profits will go down the drain if this tax is implemented. Oh, and the state won't make a dime off the proposed revenue from the tax. Why? Because smokers will flock to the nearest military base and buy their drug in huge quantities. Black market vendors will be the rule of the road and teenage consumption will skyrocket. Nobody asked what R.J.'s economic interest might be in all of this. No one seemed to remember that military bases buy cigarettes from the tobacco industry, too.

The evening's performance seemed to be well orchestrated. But all was not smooth sailing for Mr. Gibbs. R.J. must have forgotten to brief him on the quirks we Alaskans have. There was a little confusion when some smokers asked about the Ketchikan based Northern Sales Distributors, who apparently sponsored an anti-tobacco tax petition that is being circulated around the state. I could tell they were excited by the illusion that their anti-tax comrades in Ketchikan were already so organized. Mr. Gibbs let his ego get the better of him and blurted out, "that was me who made that. I sent it from Seattle!"

His other mess-up with the proud Alaskan smokers was his misjudgment of just how big our state is. He suggested that people "just go down there" (to Juneau?) and have a face-to-face meeting with their legislator. One smoker facetiously stated they could all just drive down there and do that. Later on I learned that R.J. called a man in Soldotna to this same meeting. He thought it might be a little out of his way to drive the 3 1/2 hour stretch on icy roads. Does the tourist office have some free maps we could give this guy?

At the end of the meeting we were strongly urged to write a P.O.M. against the tobacco tax before leaving and told that if we wanted to testify at the hearing tomorrow, Strapping Steve would let us know how to phrase it. None of the literature we received had any local phone number to contact, as was the case with the supposed "Ketchikan" originated petition.

The stealth and efficiency of the Tobacco Industry's efforts to thwart the tax hike in Alaska are very impressive. I wish our tobacco prevention efforts had nearly the resources. The scene in Alaska is small potatoes for the tobacco industry. Profits from tobacco sales in our state amount to a miniscule amount of their total profits. In a matter of weeks they have made their presence be felt everywhere in Alaska; from Craig to Homer via petitions, phone calls, and letters. They are footing the bill to fly retailers to Juneau to testify against the tax en masse. If this is small potatoes, it is mind boggling to imagine their overall wealth and power as a worldwide industry. How many Steves and burly bouncers (and cookies) do you think they'd buy for waging battle somewhere where they have even more to lose?

I will leave you with a last snapshot of R.J.'s frontman Steve bending down to light a cigarette for an older woman who had chain smoked her way through the session. Her pre-maturely shriveled face and slouched-over frailty could only have been helped along by her lifetime of smoking. So this is what it comes down to, I thought: the druglord courteously helping his client—an old, addicted lady—to get her next nicotine hit. Steve must have been the one to pick the shortest straw when R.J. assigned him to go to Alaska in the depth of dark, cold winter. I wonder what his compensation will be for such an unappetizing job?

Don't let them fool you. Their sudden, valient concern for smoker's rights and retailers' well being in Alaska is based on their knowledge that Alaska's new tax will drastically reduce this state's pack years, along with their profits. Alaskans are generally pretty good at sizing up the long and the short of situations, and it doesn't take a genius to recognize an extremely powerful and manipulative outside force looking for a piece of Alaska. This time, though, the piece they want is Alaskan's lives for money. It will be up to you to stop them. Please call the local L.I.O. (258-8111) with your message of support to all 60 of our legislators in Juneau.

## RESOLUTION

WHEREAS, tobacco use is widely recognized as the leading cause of preventable death in Alaska and responsible for approximately 1 in 5 deaths in the United States; and

WHEREAS, in the U.S. alone, it is estimated that more than 400,000 deaths each year are attributable to tobacco use and in Alaska it is estimated that smoking is responsible for approximately 470 deaths per year; and

WHEREAS, the 1995 Youth Risk Behavior Survey (YRBS) determined that Alaska high school students have smoking rates higher than the national average; and

WHEREAS, nearly all new smokers start before the age of 19, with an average age of 14.5 years old; and

WHEREAS, despite enormous effort, experience has shown that education and enforcement efforts alone have not succeeded in preventing an increase in the number of new teen smokers; and

WHEREAS, the Jan/Feb/Mar 1996 edition of *Alaska Medicine*, the official journal of the Alaska State Medical Association, was devoted to "Tobacco: Alaska's Most Preventable Health Problem"; and

WHEREAS, as reported in that journal, a proven way to decrease adolescent use of tobacco products is raising the cost of tobacco through increased excise taxes; and

WHEREAS, the American Medical Association (AMA) has recognized and supported increased taxes as an effective means of preventing new teenagers from becoming addicted to tobacco; and

WHEREAS, experience in Canada and various states in the U.S. has demonstrated the effectiveness of increased taxes as a deterrent to teen smoking; and

WHEREAS, opinion surveys in Alaska have repeatedly shown that the general public strongly supports increased tobacco taxes, including a substantial portion of smokers; and

WHEREAS, former Surgeon General C. Everett Koop has specifically recognized and endorsed the effort of Alaskans to enact a \$1 per pack tax increase stating that "Alaska is in a position to lead the nation on this critical health issue [and could] set an example that could ultimately save millions of lives nationwide."

THEREFORE BE IT RESOLVED, that the Alaska State Medical Association reaffirm its support for a \$1 per pack state tobacco tax increase as an essential means to deter new young smokers from becoming addicted to tobacco products; and

BE IT FURTHER RESOLVED, that the Alaska State Medical Association encourage its members and all health care professionals to actively support this effort.



# Alaska State Legislature

Please enter into the record my testimony to the S H E S S  
committee name  
 committee on HB 9, dated 2-14-97.  
bill/subject

I feel if the tobacco tax does pass  
 an put into affect it ~~is~~ will discriminate  
 on a large class of the public. If the  
 bill is supposed to stop juveniles from smoking  
 it will not work, right now a lot of minors  
 steal cigarettes and if the bill passes  
 will only increase stealing of cigarettes.  
 Therefor raising juvenile crime. All the tax  
 does is infurge on peoples rights.

Signed: Jason Chapman  
Testifier

Jason Chapman  
Representing (Optional)

HC 31 BOX 5110 Wasilla 99654  
Address

376-5015  
Phone No.

typed 2-14-97



# Alaska State Legislature

Please enter into the record my testimony to the

Senate FESS  
committee name

committee on

Tobacco Tax

dated

March 4, 1997

bill/subject

Only the Governor + a handful of legislators believe this tax will stop kids from smoking! The taxpayers know it's a huge punitive tax on a minority of law abiding workers. It is not a legal way to tax the public. Even if there is only one smoker in the family, this tax affects the whole family + the kids will pay the price. I raised my kids not to smoke + other parents should do the same. I spent 6 1/2 yrs. in the USMC + they issued me cigarettes in every C-Ration. Now that I am addicted, you want to punish me more by adding additional taxes on cigarettes. "Get Real"! You just don't want to do your job! "Cut the budget"! But no, it's just easier to tax something. This is just a way to get more money into your budget. If you think for one minute that by taxing me a \$1000 or more a year, I will stop smoking + conform to your ideas of morality + beliefs, you are definitely living in another world but the real one. If you really think you can win elections on 1/3 less votes - go for it! I smoke, but my family doesn't - but in acc. vote. If you treat me like a second class citizen, you will suffer the consequences down the road. I will not pay this tax! I will buy my cigarette from the kids who steal them or anywhere else. I can obtain them. If this is illegal, then you can arrest me, jail me + feed me. I will not conform!

Signed:

Testifier

RICHARD H. ANDERSON

*Richard H. Anderson*

Representing (Optional)

P.O. Box 871015, Wailea, HI 96787

Address

376-2645

Phone No.



# Alaska State Legislature

Please enter into the record my testimony to the Senate HESS  
committee name

committee on Isacco Jover, dated March 4, 1997  
bill/subject

Our children (yours & mine) will die quicker from alcohol, drugs or gang related violence way before any smoking of cigarettes. The Alcoholics, Drug Addicts & Aid Victims are a severe drain on tax payers & society. They are unable to hold down a job or contribute to this country. Smokers are still a functional taxpayer. They are the everyday hard working families who keep this country going & now they will get a swift kick in the teeth for their efforts! Shame on you! You push families like mine over the edge. SBA said I could not qualify for a \$5000. loan at \$89/mo to help my business thru the Big Lake Recovery. Yet, this tax will cost my family more than \$1000 a year because my husband smokes. So, do your job now! Cut the budget! Enforce the laws already on the books! Better yet, go after the parents of the kids who smoke & the people who sell cigarettes to them. I raised my kids & grandkids not to smoke. I believe many, if not all of you, ran on the platform of no new taxes. Drugs, used among our 4<sup>th</sup>, 5<sup>th</sup> & 6<sup>th</sup> graders, have double in the last couple of years. These kids could care less about cigarettes, when there are drugs available on nearly every street corner. If you start taxing your idea of morality, you better look around your family & see what uses you have that should be taxed!

Signed: BONNIE J. ANDERSON  
Testifier Bonnie J. Anderson Non-Smoker  
Representing (optional)  
P.O. Box 877015 Waikiki, AK 99687  
Address  
376-2645  
Phone No.

See you at the voting booth!

## A \$1.00 INCREASE IN ALASKA'S TOBACCO TAX WILL RAISE OVER \$100 MILLION IN THE 1st THREE YEARS

Every state to enact a major cigarette tax increase has seen a gain in revenue. In Alaska, data show a \$1.00/pack tax increase will raise more than \$100 million in new revenue in the first three years. Virtually all mainstream economists agree that tobacco tax increases both raise new revenue and reduce smoking.

### Higher Cigarette Taxes Reduce Smoking and Yield Predictable, Increased Revenues

- In 1992, a panel of 12 independent economists from top American institutions were convened by the National Cancer Institute to review the existing research on the relationship between cigarette taxes and smoking, and to produce a consensus document on the subject. According to the panel, "the price elasticity of demand for cigarettes is usually found to be between -0.3 and -0.5. In other words, for every 10 percent increase in the price of cigarettes, we can expect a decline in smoking between 3 and 5 percent<sup>1</sup>."
- The Alaska Department of Revenue's use of a -0.4 price elasticity of demand falls squarely within the generally accepted range. The report produced by Peat Marwick for the Alaska Cabaret, Hotel, Restaurant and Retail Association, and backed by the tobacco industry, uses a -0.62 price elasticity of demand which falls well outside this range.
- Estimates by the State Long Range Financial Planning Commission, Alaska Department of Revenue, and NCI's panel of expert economists all project that a \$1.00/pack cigarette tax increase will yield well over \$100 million in new revenues in its first three years. Even the Peat Marwick report, which grossly underestimates the benefits of a tax increase, pegs the gains to the state at \$85 million.

**Estimated Additional Revenue Over Three Years from a \$1.00 Increase in the Cigarette Tax (millions)**

Year	Alaska Long Range Comm.	Alaska Dept. of Revenue	NCI Economists	Tobacco Industry
Year 1	\$58.0	\$57.0	\$55.0	\$48.0
Year 2	57.0	57.0	53.0	43.0
Year 3	56.0	57.0	52.0	39.0
<b>Total</b>	<b>\$171.0</b>	<b>\$171.0</b>	<b>\$160.0</b>	<b>\$130.0</b>
vs. Status Quo	48.0	48.0	48.0	48.0
<b>New Revenue</b>	<b>\$123.0</b>	<b>\$123.0</b>	<b>\$112.0</b>	<b>\$85.0</b>

### Alaska's OWN Record Shows Raising its Tobacco Tax Produced Major Revenue Gains

- In 1989 Alaska increased its state cigarette excise tax from 16 cents to 29 cents per pack. State revenue from cigarette sales doubled from \$8.1 million (fy '89) to \$16.4 million (fy '91), and have declined only marginally since then. In (fy) 1995 cigarette tax revenue totaled \$15.5 million.
- In the 5 fiscal years since the (fy) 1990 tax increase, Alaska's state treasury has collected \$40 million in additional revenue over what would have been earned without the increase. The table below compares actual state cigarette tax revenue for the period (fy) 1991 to (fy) 1995, to projected revenue based on a 16-cent tax<sup>2</sup> and a generally accepted baseline estimate of a 1 percent annual decline in smoking.

Revenue Gains from Alaska's 1990 Cigarette Tax Increase  
(millions)

Fiscal Year	Revenue if Tax Remained 16 cents	Actual Revenue (Tax Raised to 29 cents)	Net Gain to Alaska Treasury
1991	\$7.968	\$16.377	\$8.409
1992	7.889	15.812	7.923
1993	7.810	15.321	7.511
1994	7.732	15.548	7.816
1995	7.654	15.462	7.808
<b>Total</b>	<b>\$39.053</b>	<b>\$78.520</b>	<b>\$39.467</b>

### How Can a Higher Tax Reliably Generate Greater Revenue While Reducing Smoking?

- As tobacco taxes increase, some people quit smoking. However, tobacco is addictive enough that most can't quit. Thus tax revenues increase faster than sales decline. This "demand-inelastic" relationship has been observed in countless states (most recently California and Massachusetts) which have seen higher taxes reduce smoking and raise major new revenue.
- The 1995 Peat Marwick report claims the projected impact of tobacco tax revenue raised by the proposed tax increase will decline over time due to inflation. This is false. The Alaska Long Range Financial Planning Commission has proposed an increase every three years to protect the value of the new tax revenue against inflation.

#### Sources

1. National Cancer Institute. "The Impact of Cigarette Excise Taxes on Smoking Among Children and Adults: Summary Report of a National Cancer Institute Expert Panel," 1993.
2. Calculations based on data from The Tax Burden on Tobacco. The Tobacco Institute, Washington, DC, 1994, vol. 29.

## GAINS FROM ALASKA'S \$1 CIGARETTE TAX INCREASE NOT COMPROMISED BY UNAUTHORIZED SALES

When a state moves to increase tobacco taxes, the tobacco industry immediately raises the specter of organized illegal cigarette trafficking. Why is the tobacco industry nervous? Because the record shows *state tax increases reduce smoking AND raise new revenue.*

Numerous geographic, economic and political factors dictate that Alaska's cigarette tax increase will not substantially increase illegal sales. There are four forms of illegal cigarette trafficking: interstate smuggling, international smuggling, bootlegging from (tax-exempt) Indian reservations, and illegal sales from (tax-exempt) military bases. None of these possibilities threatens the projected revenue and health gains from Alaska's proposed tax increase.

1. Interstate smuggling from Washington is too costly. Washington has the highest state cigarette tax in the U.S. (81.5 cents/pack) and a state sales tax that adds 15 cents to the price of each pack. A \$1.00 Alaska tax increase will allow virtually no profit margin for smugglers. In addition, the cost of shipping from Seattle to Alaska and the substantial time and capital required offer no realistic possibility of interstate smuggling.
2. International smuggling from Canada also makes no economic sense. According to a Peat Marwick report prepared for the Alaska Cabaret, Hotel, Restaurant and Retail Association (and backed by the tobacco industry), "Although Alaska has a long border with Canada, two of its major cities (Anchorage and Fairbanks) are not in close proximity to it. Moreover, cigarette taxes in the two bordering jurisdictions (Yukon Territory and British Columbia) would remain higher than in Alaska, even with the proposed tax change." For example, the tax in the province of British Columbia is \$2.59 (US). Consequently, there would be no incentive for international smuggling.
3. Boot-legging from Indian reservations poses virtually no threat. According to the industry's own consultant, "There is only one Indian reservation in Alaska (tribal land on Annette Island) where state and federal taxes are not levied. However, this jurisdiction is relatively small and isolated and would not be a major source of cigarettes." (Emphasis added.)
4. Limited trafficking from military bases can be controlled by the Department of Defense. Tobacco sales on military bases can be controlled by the DoD in Alaska. Entry to commissaries is restricted to authorized patrons. Furthermore, DoD policy limits the purchase of tax free cigarettes to no more than four cartons. If problems ensue, this can be further restricted. After Hawaii's state cigarette tax increase, DoD imposed a one carton limit on tax-exempt sales to avoid unauthorized re-sales.

The tobacco industry, its allies and front groups claim that our servicemen and women are lawbreakers. The report they back alleges: "Although sales to nonfamily civilians are illegal, military personnel might sell bootleg cigarettes to civilians off-base. Indeed, bootlegging appears to be widespread in Alaska and elsewhere." To suggest that US military personnel and their families will violate the law and reap profits at the expense of Alaska's state government slanders the honest, committed and hardworking members of our Armed Forces and is truly repugnant to everything they work for.

**The tobacco industry used the same arguments to oppose Alaska's last tax increase.**

Alaska's FY 1990 cigarette tax increase, which raised the tax from 16 to 29 cents/pack, did not result in a sharp decline in revenue. To the contrary, while cigarette smoking declined modestly, revenues doubled and have since held steady. The industry's claims of major illegal cigarette trafficking killing revenue gains were proven unfounded.

YEAR (FY)	TAX	PACKS SOLD	REVENUE
1987	16 cents	59,394,000	\$9,503,000
1988	16	55,406,000	8,865,000
1989	16	50,813,000	8,130,000
1990	16 - 29	--	13,450,000
1991	29	56,472,000	16,377,000
1992	29	54,524,000	15,812,000
1993	29	52,831,000	15,321,000
1994	29	53,614,000	15,548,000
1995	29	53,317,000	15,462,000

**The tobacco industry also used these arguments to fight tax increases in other states.**

When California raised its cigarette tax from 10 cents to 35 cents, revenue jumped over 200% from \$252 million (fy '88) to \$778 million (fy '90) despite industry's gloomy predictions. Over the same two-year period, cigarette consumption per person dropped 13.6 percent.

Since 1992, when the Massachusetts cigarette tax was raised from 26 to 51 cents, state cigarette tax revenue increased by 67 percent, from \$142 million (fy '92) to \$238 million (fy '94). During the same period, smoking fell by 18 percent.

Mime-Version: 1.0  
Date: Sat, 1 Feb 1997 12:52:12 -0900  
To: shickey@ptialaska.net  
From: amholen@Alaska.NET (Anne Marie Holen)  
Subject: Re: Tobacco Wars in Alaska

>Date: Mon, 27 Jan 1997 18:49:34 -0500 (EST)  
>From: Ken Warner <kwarner@umich.edu>  
>To: Anne Marie Holen <amholen@alaska.net>  
>cc: Ron Davis <RDAVIS1@SMTPGW.IS.HFH.EDU>  
>Subject: Re: Tobacco Wars in Alaska  
>X-Sender: kwarner@sph.umich.edu  
>MIME-Version: 1.0

>  
>

>Ron faxed me your materials and said you might be contacting me. Please  
>feel free to quote the following wherever you like. (For the record, my  
>full name is Kenneth E. Warner. I am the Richard D. Remington Collegiate  
>Professor of Public Health here. I'm an economist and have done research  
>on the economic and policy aspects of tobacco for two decades. That body  
>of work, reflected in about 100 professional publications, includes  
>several contributions on the effects of taxation on cigarette consumption.  
>For credential purposes, Dr. Koop selected me to serve as Senior  
>Scientific Editor of the 25th anniversary Surgeon General's report on  
>smoking and health (released Jan. 1989). More recently, I was asked to  
>author the chapter on the economics of smoking for the first edition of  
>the Handbook of Health Economics. I have been awarded the Surgeon  
>General's Medallion and elected to the Institute of Medicine of the  
>National Academy of Sciences. [Enough credentialing; use as you see  
>fit.]

>

>The evidence linking higher cigarette prices to reduced consumption is  
>substantial in volume, strong in quality, and of long-standing, dating  
>back at least three decades. There is NO debate among professional  
>economists who have studied the matter about whether tax-induced increases  
>in cigarette prices reduce the demand for cigarettes; ALL agree that the  
>standard law of demand is operative with cigarettes, as it is with all  
>other commodities. "All" here includes both economists oriented toward  
>public health and economists who work for the tobacco industry. (The  
>industry's own documents actually have indicated a greater response to  
>price than is found in much of the professional literature.)

>

>In the early 1980s, two highly-regarded, widely-cited analyses by Eugene  
>Lewit and his colleagues at the National Bureau of Economic Research  
>concluded that children are more price-responsive than adults with regard  
>to cigarette consumption, and that younger adults are more price  
>responsive than older adults. These findings are logical: children would  
>tend to have less discretionary income to spend on cigarettes and they  
>>would tend to be less addicted; hence their greater price responsiveness.  
>Lewit et al. concluded that for all adults, the overall price elasticity  
>of demand was -0.4, meaning that a 10% increase in price would reduce  
>quantity demanded by 4%. In one study, Lewit et al. found that children's  
>price elasticity of demand was -1.4, meaning that a 10% price increase  
>>would decrease quantity demanded by 14%, with most of the effect an impact  
>on the decision of whether or not to smoke at all, rather than a change in  
>the quantity of cigarettes per smoker per day. In the other study, which  
>employed a smaller less satisfactory data set, the authors found an  
>elasticity of -0.89 for kids, still substantially larger than the figure  
>for adults. (I believe that's the right figure. It was between -0.8 and  
>-0.9.) Reviewing this and other research evidence, the federal General  
>Accounting Office concluded that taxes discourage smoking more among  
>children than among adults.

>

>In the ensuing decade, two later studies failed to find a higher  
>elasticity for kids than for adults. Note that this does NOT mean that