

**HB**

**429**

# LEGAL SERVICES

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

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Juneau, Alaska 99801-1182  
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## MEMORANDUM

April 16, 2002

**SUBJECT:** Regulation of tobacco sales (CSHB 429(L&C))

**TO:** Representative Lisa Murkowski  
Attn: Amy

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

The CS you requested is enclosed. I wanted to bring two issues to your attention. First, in section 1 the Department of Revenue is given broad authority to adopt regulations regarding tobacco wholesaler-distributor licenses. This authority is so broad it raises an issue regarding impermissible delegation of legislative authority. This issue could be minimized if the regulatory authority were qualified by some standard such as "necessary for protection of the public" or "necessary for collection of cigarette taxes." Second, in Sec. 43.50.640(b) and 43.50.650(b), new language is added to make certain illegal sale, distribution, ownership or possession of tobacco a separate violation of law each time it occurs. However, while there can certainly be separate instances of sale or distribution, it is difficult to understand how there could be separate instances of ownership or possession.

I would suggest both of these issues be reviewed in the next committee of referral.

Please contact me if you have further questions.

MF:lmb  
02-065.lmb

Enclosure

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 110400  
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Representative Norman Rokeberg  
Chairman, House Judiciary Committee  
Alaska State Legislature  
State Capitol, Room 118

April 24, 2002

Dear Representative Rokeberg:

I want to thank you for scheduling a hearing this week for House Bill 429, which would assist the state in enforcing its tobacco tax laws by requiring the use of tax stamps on cigarette packs — just as 46 other states require.

Requiring the use of tax stamps would make it easier to spot untaxed cigarettes coming into Alaska and could add to state revenues by giving the Department of Revenue another tool in stopping the sale and importation of untaxed cigarettes. Alaska's cigarette tax rate of \$1 per pack is an incentive for consumers to look for ways to avoid the tax. Although we do not know how many untaxed cigarettes are coming into Alaska for personal consumption and resale, we believe it is an issue that could grow in time — and we believe it is better to confront the potential before it becomes a serious problem.

This legislation would provide compensation for businesses for the additional expense of affixing the tax stamps to cigarette packs, allowing them a discount on the cost of the stamps. As part of the legislation, the department also proposes stepping up its tobacco tax enforcement efforts with two additional staff members. We believe the additional tax revenue that would be generated by improved enforcement with the tax stamps would likely more than cover the additional costs and stamp discount paid to businesses. The state would gain an additional \$400,000 a year in cigarette tax revenue for every 1% increase in tax receipts. Michigan, for example, reported an 8.7% gain in cigarette tax revenues the first year of its stamp program in 1999. Although we do not expect a similar revenue gain in Alaska, we believe there would be an increase.

Please contact me or Deputy Commissioner Neil Slotnick if you have any questions about this legislation. Thank you for your consideration.

Sincerely,



Larry Persily  
Deputy Commissioner

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB429(L&C)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title: Tobacco Taxation, Licensing BRU: Revenue Operations  
Component: Tax Division  
Sponsor: Rules Committee  
Requester: House Judiciary Committee Component Number: 2476

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	109.5	109.5	109.5	109.5	109.5	109.5
Travel	5.0	5.0	5.0	5.0	5.0	5.0
Contractual	41.0	38.0	38.0	38.0	38.0	38.0
Supplies	2.0	2.0	2.0	2.0	2.0	2.0
Equipment	21.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>178.5</b>	<b>154.5</b>	<b>154.5</b>	<b>154.5</b>	<b>154.5</b>	<b>154.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	**	**	**	**	**	**
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	178.5	154.5	154.5	154.5	154.5	154.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>178.5</b>	<b>154.5</b>	<b>154.5</b>	<b>154.5</b>	<b>154.5</b>	<b>154.5</b>

Estimate of any current year (FY2002) cost: 0.0

**POSITIONS**

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

\*\* There will be a decrease in state revenues due to the higher commission paid to licensees (in the form of a discount on the state cigarette tax remittance) to compensate them for the cost of affixing the stamp to cigarette packages, collecting the tax and remitting it to the department.

However, there will be an indeterminate revenue gain to the state from this legislation, likely equal to or greater than the lost revenue.

The department anticipates that a cigarette stamp program will increase compliance with the state's cigarette tax laws, and therefore will result in higher tax revenues to the state. Unfortunately, it is not possible to predict how much additional revenue might be generated for the state from the tax stamp program. (See second page for additional analysis)

Prepared by: Johanna Bales Phone 269-6628  
Division: Tax Division Date/Time 4/12/02 12:30 PM  
Approved by: Larry Persily, Deputy Commissioner Date 4/15/2002  
Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

**CSHB429(L&C)**  
**Department of Revenue**

**Assumptions:** The fiscal effect assumes that 40 million to 50 million packs of cigarettes will be sold each year.

**Program Summary:** The program will consist of the annual purchase of tax stamps from a stamp manufacturer. The stamps will be secured in fireproof safes by the Department of Revenue.

**Positions:** The department expects that it will need two additional positions to handle the purchase, sale, administration and enforcement of the new tax stamp program. Enforcement includes conducting audits and other investigations to ensure that stamps are properly affixed to cigarettes. These positions will also be responsible for the seizure and security of unstamped product and its ultimate destruction. For this type of work, the department expects it will need a full-time Revenue Auditor III (Range 18) at an expected annual cost of \$62,100 and a full-time Tax Technician III (Range 14) at an expected annual cost of \$47,400.

**Other Operating Expenditures:** In the first year, approximately \$10,000 will be needed for two fireproof safes; \$11,000 for two computers, software and work stations; \$5,000 for travel expenses; \$2,000 for supplies; \$3,000 for advertising costs and IT charges; and \$38,000 for stamp design and printing. Printing of stamps in all future years will cost approximately \$35,000, with supplies at \$2,000, travel at \$5,000 and IT and phone charges at \$3,000.

**Revenue:** The department is unable to estimate the amount of additional revenue that may be generated as a result of the tax stamp. Other states that recently adopted a cigarette tax stamp program have found that the stamps significantly increased their tax revenues. Michigan reported an 8.7 percent increase in cigarette taxes in the first year of its program, 1999. Initial reports from Hawaii indicate an amazing 25 percent increase in tax collections. Although these results from other states are encouraging, we do not have a reliable basis to predict the size of the effect of cigarette tax stamps on revenue in Alaska. However, for every 1% increase in cigarette tax collections, Alaska revenue would increase by approximately \$400,000. An increase of 1.25% in tax collections would be enough to cover the Department of Revenue costs of this legislation.

**Commission (discount to licensees):** All other states, except Hawaii, allow licensees to purchase stamps at a discount. The current national average discount is 3.05%. This bill allows for a discount of 3% on the first 1 million stamps purchased by each licensee, 2% on the second 1 million stamps purchased by each licensee, and 0.5% on the next 3 million stamps purchased by each licensee. There is no discount on for purchases in excess of 5 million stamps. The current tobacco statute allows a commission of 4% to licensees as compensation for collecting the tax and remitting it to the department. Based on FY 2001 tax filings, we estimate that the increase in the discount as a result of this bill would be approximately \$371,000 annually.

**Cost Increase to Licensees:** Licensees will incur increased costs to place stamps on cigarette packages. It is estimated that licensees could incur costs between \$4,000 and \$74,000 annually, after taking into consideration the discount, to comply with this bill.

### Effect of Discount Allowed Licensees

Alaska currently has 61 cigarette licensees. Of the 61, 49 are distinct companies that would be entitled to a 3% discount on the first 1,000,000 cigarettes sold; a 2% discount on the second 1,000,000 cigarettes sold; and a 0.5% discount on the next 3,000,000 cigarettes sold. The following estimated decrease in cigarette revenue due to the increase in the discount is based on FY 2001 cigarette tax filings. The calculation shows what the discount would have been if the new discount rates had been in effect.

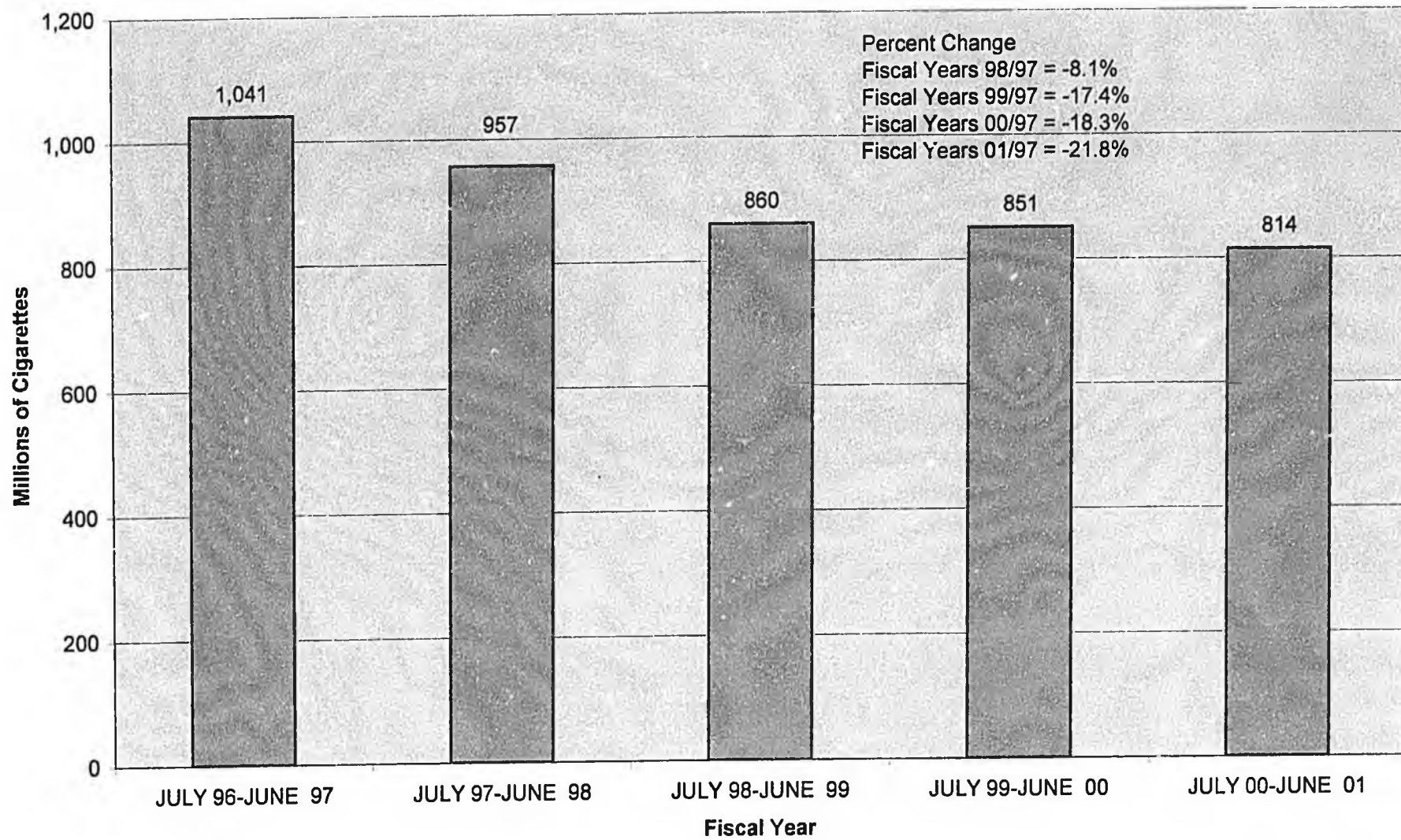
#### Total Taxable Cigarettes

Effect on Revenue	Total Taxable Cigarettes	Packages	Total Discount
Cigarettes eligible for 3% disc	228,098,220	11,404,911	\$ 342,147
Cigarettes eligible for 2% disc	130,828,400	6,541,420	\$ 130,828
Cigarettes eligible for 0.5% disc	250,665,340	12,533,267	\$ 62,666
Cigarettes eligible for 0% disc	214,255,246	10,712,762	\$ -
Total discount based on 2001 data	823,847,206	41,192,360	\$ 535,642
Less 0.4% commission currently allowed			\$ (164,769)
Effect on allowing 3%/2%/0.5% discount on stamp purchases			<u>\$ 370,873</u>

NOTE: Other states give discounts between 0.3% up to 10% of the value of the stamp. Hawaii actually charges licensees a 1.7% fee to purchase the stamps. The average discount allowed by all states is 3.05%.

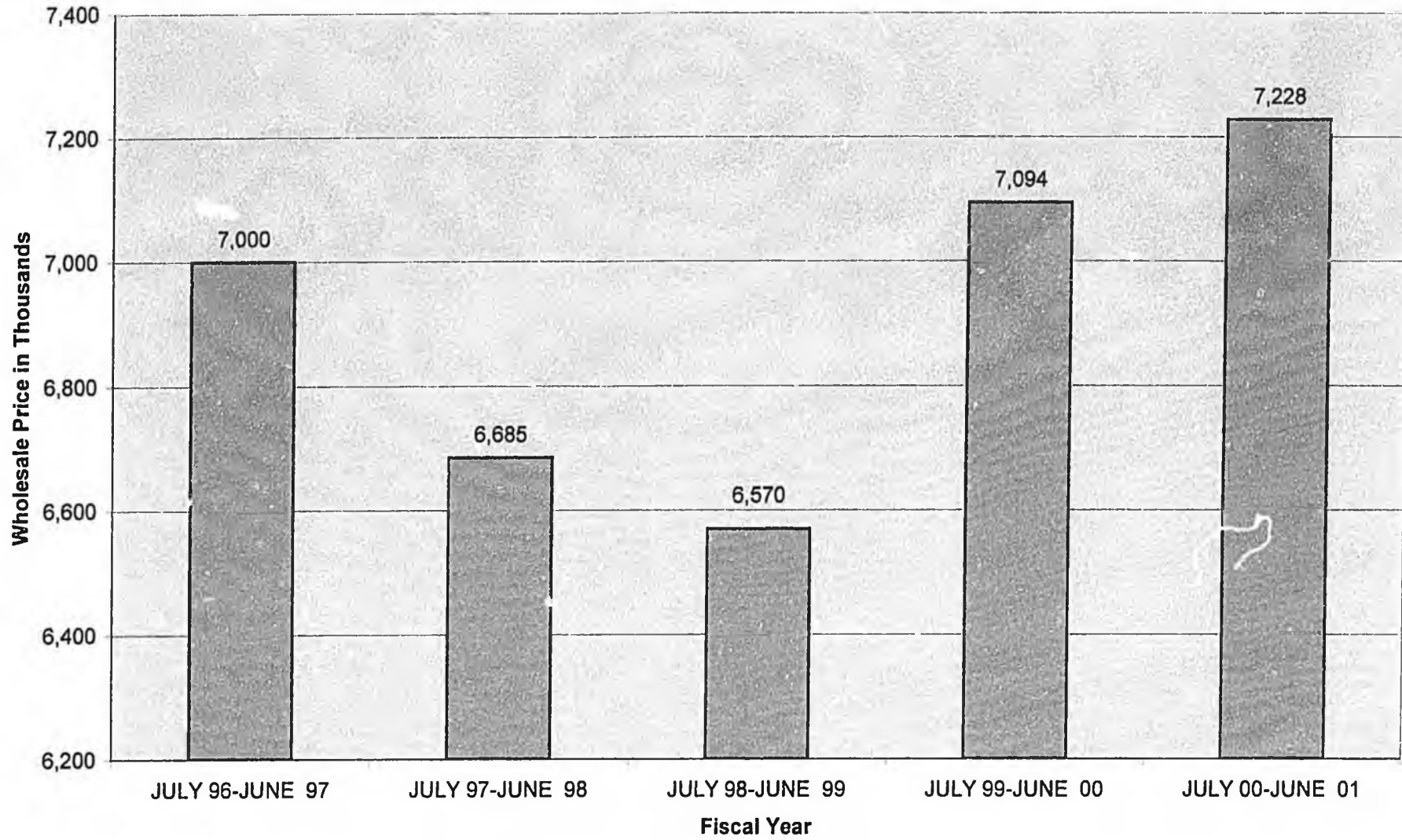
### Reported Taxable Cigarettes

Note: Tax increased from \$.29/pack to \$1.00/pack on 10/1/97



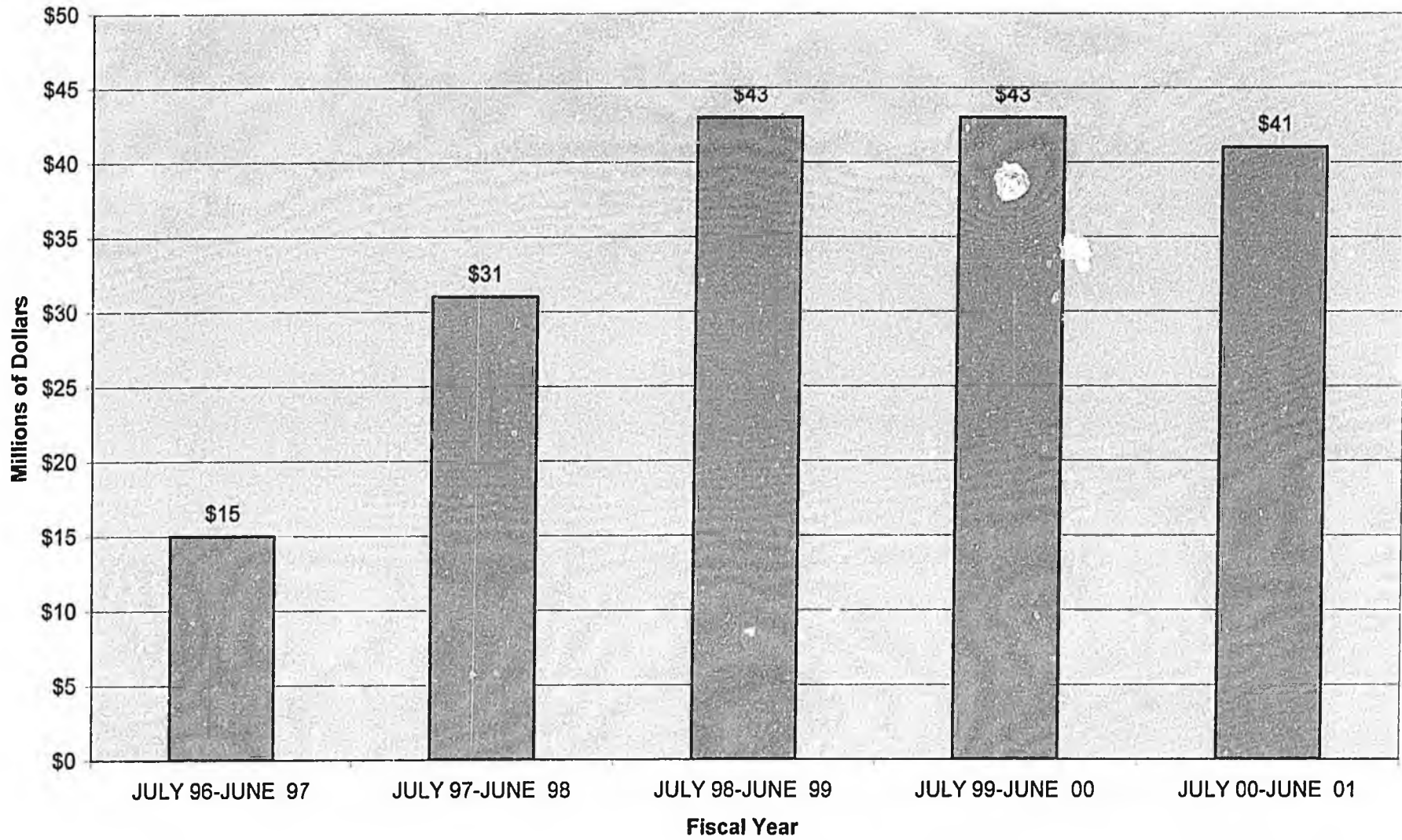
### Reported Taxable Value of Other Tobacco Products (OTP)

Note: Tax increased from 25% to 75% of Wholesale Price on 10/1/97



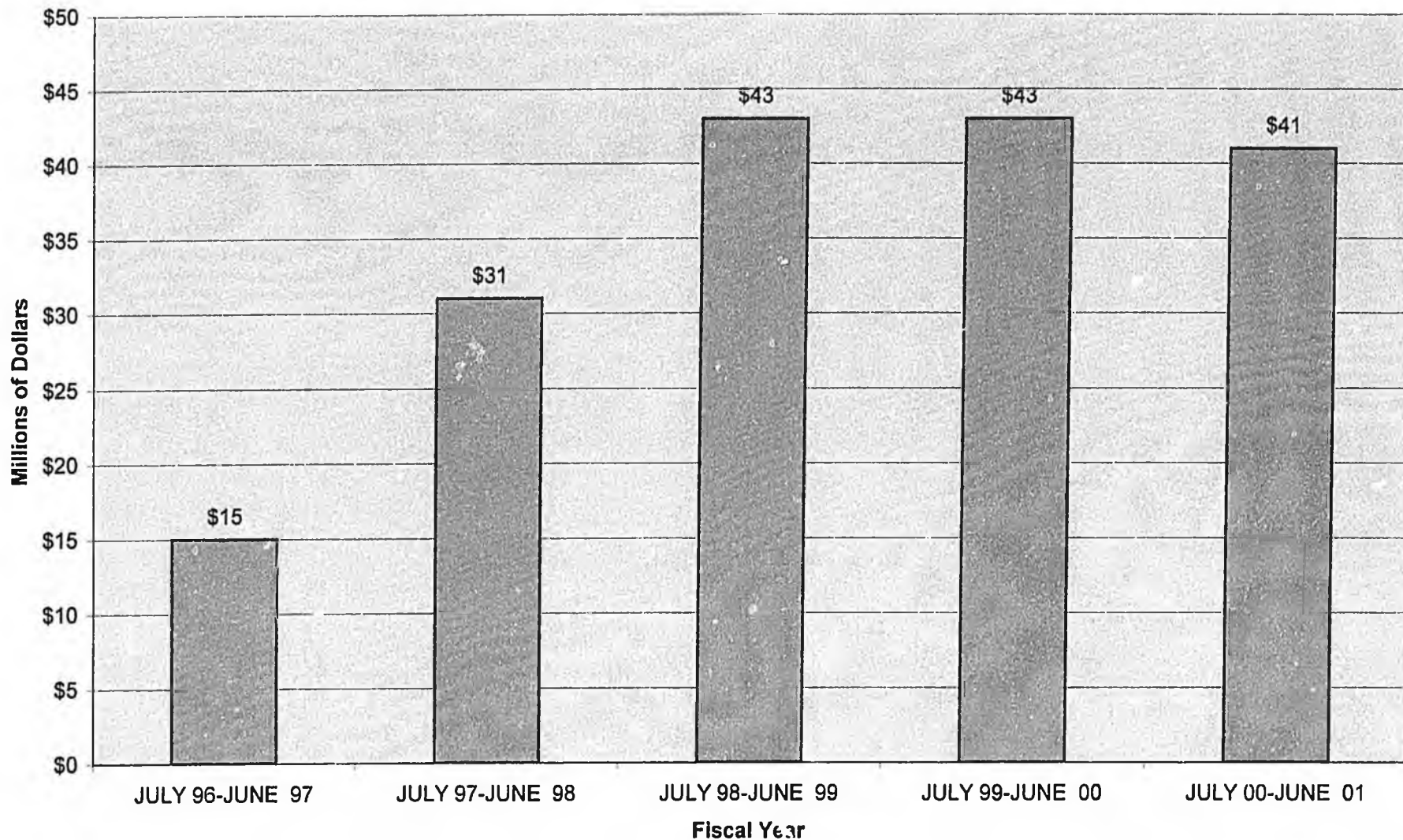
### Actual Cigarette Excise Tax Revenues

Note: Tax increased from \$.29/pack to \$1.00/pack on 10/1/97

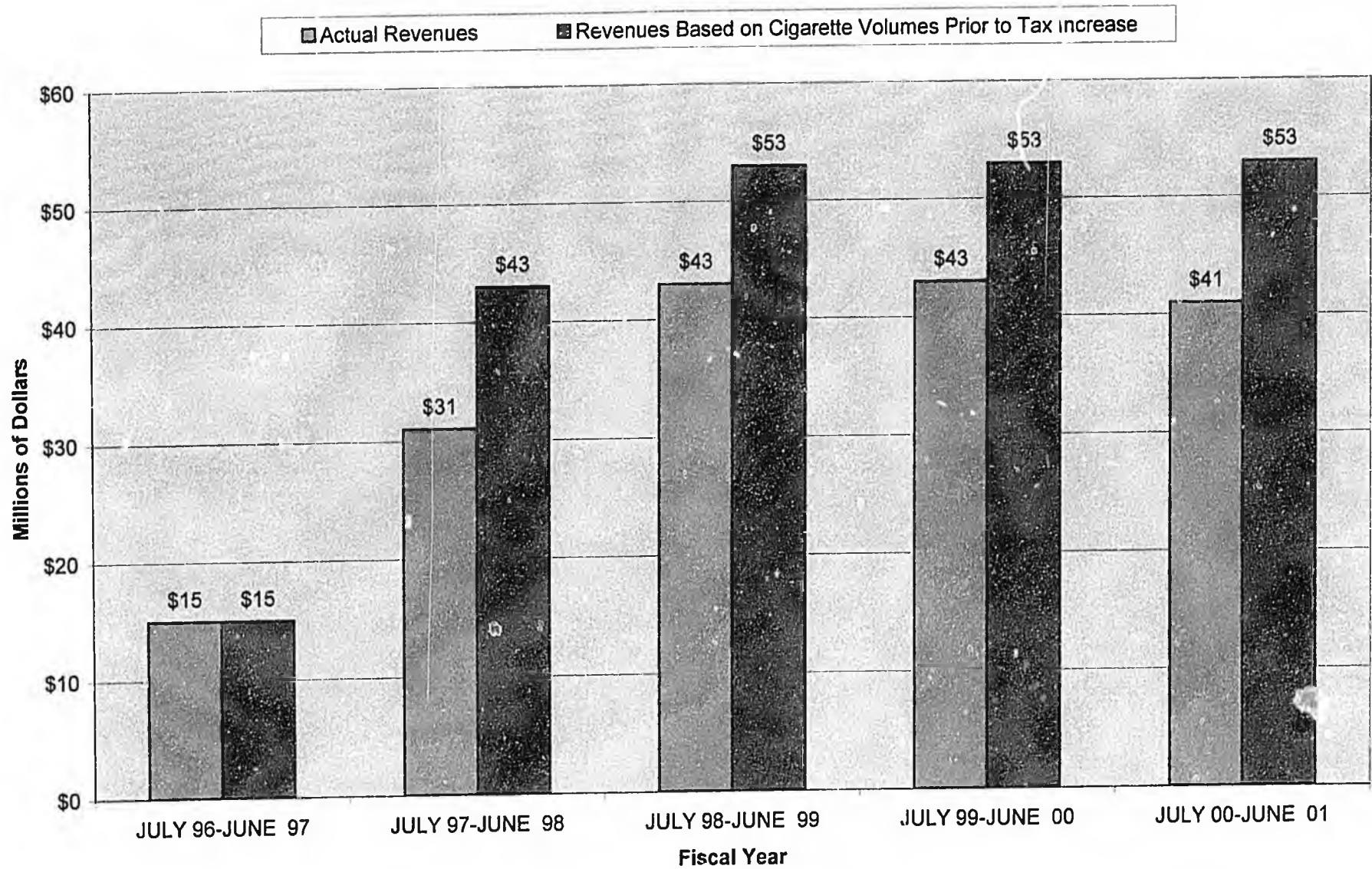


### Actual Cigarette Excise Tax Revenues

Note: Tax increased from \$.29/pack to \$1.00/pack on 10/1/97



### Comparison of Cigarette Excise Tax Revenues



CIG CHART DATA

CIGS. JUNE-JANUARY 4 YEARS			OTP JUNE-JANUARY 4 YEARS		
	(mill. of cigs.)			(thousands \$)	
96	94	94,344,762	1996-06	613	613,428
97	107	106,663,442	1997-06	787	786,515
98	85	84,618,601	1998-06	613	612,528
99	86	86,160,415	1999-06	693	693,180
00	76	75,916,490	2000-06	702	701,766
01	72	72,288,194	2001-06	742	741,518
96	105	104,642,869	1996-07	712	712,376
97	127	126,691,590	1997-07	703	703,353
98	81	80,688,524	1998-07	606	606,088
99	80	80,376,545	1999-07	605	605,362
00	72	72,147,900	2000-07	694	693,536
01	76	75,611,791	2001-07	772	771,538
96	96	95,518,636	1996-08	606	606,433
97	133	133,171,088	1997-08	608	608,242
98	76	76,215,845	1998-08	593	593,315
99	87	87,330,038	1999-08	721	721,406
00	79	78,843,433	2000-08	614	614,147
01	77	77,375,115	2001-08	696	696,035
96	83	83,185,867	1996-09	590	589,823
97	215	214,539,962	1997-09	1,111	1,111,231
98	77	77,528,014	1998-09	580	580,048
99	69	68,811,968	1999-09	672	671,876
00	65	65,030,546	2000-09	652	651,833
01	64	63,766,460	2001-09	619	619,025
96	88	88,117,835	1996-10	547	546,677
97	26	26,526,045	1997-10	457	457,100
98	70	70,092,887	1998-10	476	475,528
99	70	69,538,072	1999-10	555	555,191
00	76	76,412,859	2000-10	604	604,392
01	71	71,046,792	2001-10	757	757,415
96	77	77,354,500	1996-11	504	504,129
97	31	30,713,190	1997-11	354	354,045
98	76	75,803,577	1998-11	556	556,328
99	73	73,099,104	1999-11	593	593,155
00	61	60,668,106	2000-11	539	539,107
01	68	67,545,590	2001-11	572	571,793
96	79	78,909,154	1996-12	510	510,060
97	45	44,753,576	1997-12	462	462,030
98	71	70,754,744	1998-12	443	443,052
99	59	59,043,809	1999-12	533	533,217
00	69	69,470,776	2000-12	467	467,096
01	53	52,725,710	2001-12	575	575,143
97	79	79,377,355	1997-1	465	465,203

CIG CHART DATA

98	46	46,334,443	1998-1	429	429,128
99	54	54,357,026	1999-1	471	471,189
00	68	68,457,233	2000-1	558	558,197
01	65	64,963,321	2001-1	560	560,256
02	75	74,801,340	2002-1	576	576,121
97	71	70,885,314	1997-2	480	480,286
98	46	46,062,218	1998-2	452	451,907
99	60	60,130,008	1999-2	471	470,514
00	55	55,021,063	2000-2	487	487,243
01	56	55,797,200	2001-2	553	552,553
97	85	84,778,728	1997-3	572	572,233
98	59	59,140,802	1998-3	522	522,178
99	76	76,028,654	1999-3	595	594,865
00	75	74,924,052	2000-3	569	569,297
01	66	65,778,146	2001-3	544	544,026
97	83	83,391,887	1997-4	595	595,051
98	56	65,993,502	1998-4	469	468,728
99	62	62,335,961	1999-4	509	508,517
00	61	60,752,280	2000-4	517	517,190
01	64	63,786,651	2001-4	621	620,692
97	88	87,710,606	1997-5	632	632,419
98	78	78,286,670	1998-5	505	505,250
99	71	71,181,496	1999-5	577	577,122
00	78	77,907,804	2000-5	582	581,581
01	69	68,637,988	2001-5	638	637,542

JULY 96-JUNE 97	1,041	1,040,536,193	JULY 96-JUNE 97	7,000	7,001,205
JULY 97-JUNE 98	957	956,831,687	JULY 97-JUNE 98	6,685	6,685,720
JULY 98-JUNE 99	860	861,277,151	JULY 98-JUNE 99	6,570	6,569,746
JULY 99-JUNE 00	851	851,178,458	JULY 99-JUNE 00	7,094	7,095,481
JULY 00-JUNE 01	814	813,831,120	JULY 00-JUNE 01	7,228	7,226,698

Percent Change FY 98/97	-8.1%	-8.0%			
Percent Change FY 99/97	-17.4%	-17.2%	perc. diff fy 99/fy97		-6.2%
Percent Change FY 00/97	-18.3%	-18.2%	perc. diff fy 00/fy99		1.3%
Percent Change FY 01/97	-21.8%	-21.8%	perc. Diff fy 01/fy00		3.2%

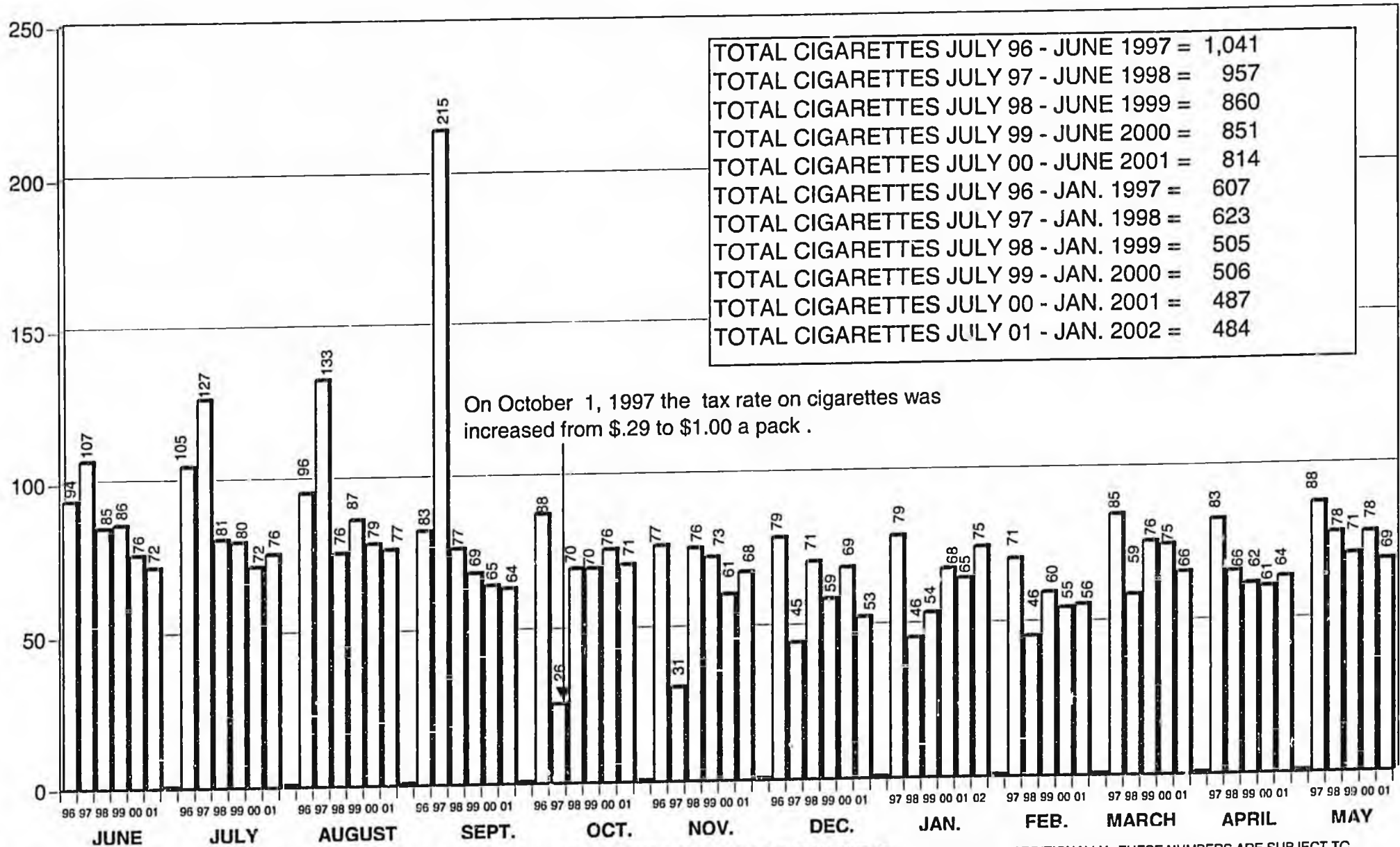
JULY 96-JAN. 97	607	607,106,216	JULY 96-JAN. 97	3,934	3,934,701
JULY 97-JAN. 98	623	622,729,894	JULY 97-JAN. 98	4,124	4,125,129
JULY 98-JAN. 99	505	505,440,617	JULY 98-JAN. 99	3,725	3,725,548
JULY 99-JAN. 00	506	506,656,769	JULY 99-JAN. 00	4,237	4,238,404
JULY 00-JAN. 01	487	487,542,941	JULY 00-JAN. 01	4,130	4,130,367

CIG CHART DATA

JULY 01-JAN. 02	484	482,872,798	JULY 01-JAN. 02	4,567	4,567,070
perc. diff jul-dec. 98/96		-16.7%	perc. diff jul-dec. 98/96		-5.3%
perc. diff jul-dec. 99/96		-16.5%	perc. diff jul-dec. 99/96		7.7%
perc. diff jul-oct. 00/96		-19.7%	perc. diff jul-oct. 00/96		5.0%
perc. diff jul-oct. 01/96		-20.5%	perc. diff jul-oct. 01/96		16.1%

ALASKA DEPARTMENT OF REVENUE  
TAX DIVISION

NUMBER OF TAXABLE CIGARETTES: ACTUALS JULY 1996 - JAN. 2002  
MILLIONS OF CIGARETTES



TOTAL CIGARETTES JULY 96 - JUNE 1997 =	1,041
TOTAL CIGARETTES JULY 97 - JUNE 1998 =	957
TOTAL CIGARETTES JULY 98 - JUNE 1999 =	860
TOTAL CIGARETTES JULY 99 - JUNE 2000 =	851
TOTAL CIGARETTES JULY 00 - JUNE 2001 =	814
TOTAL CIGARETTES JULY 96 - JAN. 1997 =	607
TOTAL CIGARETTES JULY 97 - JAN. 1998 =	623
TOTAL CIGARETTES JULY 98 - JAN. 1999 =	505
TOTAL CIGARETTES JULY 99 - JAN. 2000 =	506
TOTAL CIGARETTES JULY 00 - JAN. 2001 =	487
TOTAL CIGARETTES JULY 01 - JAN. 2002 =	484

CAUTION: COMPARISONS SHOULD BE DONE WITH CARE BECAUSE OF THE EXTENSIVE STOCKPILING THAT TOOK PLACE FROM JUNE -SEPTEMBER 1997. ADDITIONALLY, THESE NUMBERS ARE SUBJECT TO CHANGE DUE TO LATE OR AMMENDED RETURNS.

OTP CHART DATA

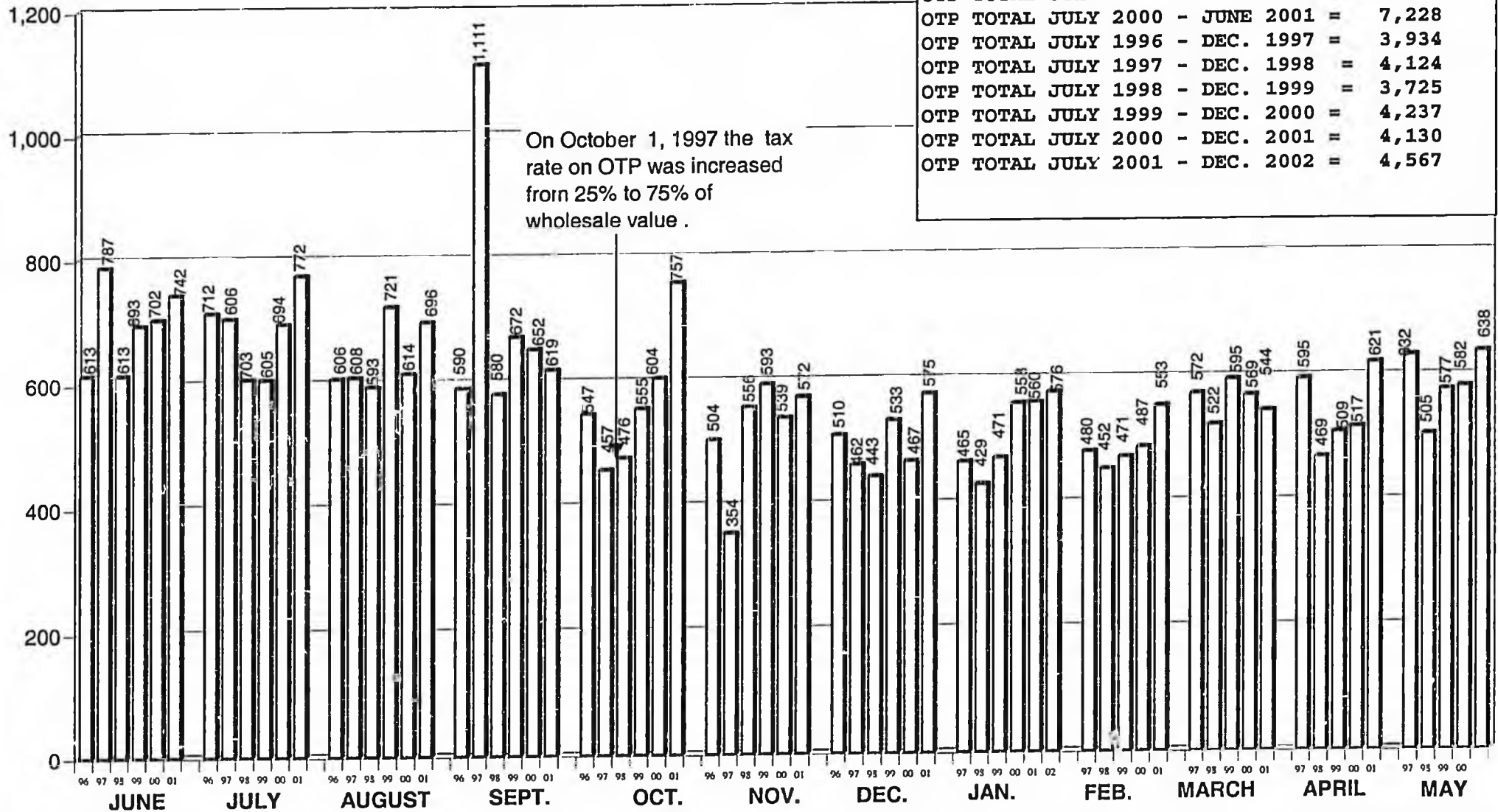
96	613	613,428	June	\$151,006
97	787	786,515		\$196,629
98	613	612,528		\$459,396
99	693	693,180		\$519,886
00	702	701,766		\$526,437
01	742	741,518		\$555,878
96	712	712,376	July	\$178,094
97	703	703,353		\$175,838
98	606	606,088		\$454,566
99	605	605,362		\$454,022
00	694	693,536		\$520,247
01	772	771,538		
96	606	606,433	August	\$151,608
97	608	608,242		\$152,061
98	593	593,315		\$445,118
99	721	721,406		\$541,055
00	614	614,147		\$460,679
01	696	696,035		
96	590	589,823	September	\$147,457
97	1,111	1,111,231		\$277,237
98	580	580,048		\$435,036
99	672	671,876		\$503,907
00	652	651,833		\$489,005
01	619	619,025		
96	547	546,677	October	\$136,670
97	457	457,100		\$343,242
98	476	475,528		\$356,181
99	555	555,191		\$416,397
00	604	604,392		\$515,631
01	757	757,415		
96	504	504,129	November	\$126,032
97	354	354,045		\$268,550
98	556	556,328		\$416,609
99	593	593,155		\$444,866
00	539	539,107		\$404,330
01	572	571,793		
96	510	510,060	December	\$127,515
97	462	462,030		\$346,522
98	443	443,052		\$332,009
99	533	533,217		\$399,914
00	467	467,096		\$350,426
01	575	575,143		
97	465	465,203	January	\$116,301
98	429	429,128		\$318,640

OTP CHART DATA

99	471	471,189		\$353,252
00	558	558,197		\$418,648
01	560	560,256		\$420,729
02	576	576,121		
97	480	480,286	February	\$120,072
98	452	451,907		\$338,944
99	471	470,514		\$353,112
00	487	487,243		\$365,432
01	553	552,553		\$415,246
97	572	572,233	March	\$143,058
98	522	522,178		\$391,270
99	595	594,865		\$446,148
00	569	569,297		\$426,973
01	544	544,026		\$408,420
97	595	595,051	April	\$148,763
98	469	468,728		\$351,026
99	509	508,517		\$381,321
00	517	517,190		\$387,893
01	621	620,692		\$465,200
97	632	632,419	May	\$158,105
98	505	505,250		\$374,888
99	577	577,122		\$425,149
00	582	581,581		\$436,186
01	638	637,542		\$478,157
JULY 96-JUNE 97	7,000	7,001,205	JULY 96-JUNE 97	\$1.8 \$1,750,304
JULY 97-JUNE 98	6,685	6,685,720	JULY 97-JUNE 98	\$3.8 \$3,797,614
JULY 98-JUNE 99	6,570	6,569,746	JULY 98-JUNE 99	\$4.9 \$4,918,387
JULY 99-JUNE 00	7,094	7,095,481	JULY 99-JUNE 00	\$5.3 \$5,321,730
JULY 00-JUNE 01	7,228	7,226,698	JULY 00-JUNE 01	\$5.5 \$5,483,948
perc. diff fy 99/fy97		-6.2%		
perc. diff fy 00/fy99		1.3%		
perc. Diff fy 01/fy00		3.2%		
JULY 96-DEC. 96	3,934	3,934,701		
JULY 97-DEC. 97	4,124	4,125,129		
JULY 98-DEC. 98	3,725	3,725,548		
JULY 99-DEC. 99	4,237	4,238,404		
JULY 00-DEC. 01	4,130	4,130,367		
JULY 01-DEC. 01	4,567	4,567,070		

**ALASKA DEPARTMENT OF REVENUE**  
Tax Division

**WHOLESALE VALUE OF OTHER TOBACCO PRODUCTS: ACTUALS FOR JULY 1996- JAN. 2002**  
(\$ THOUSANDS)



CAUTION: COMPARISONS SHOULD BE DONE WITH CARE BECAUSE OF THE EXTENSIVE STOCKPILING THAT TOOK PLACE FROM JUNE - SEPTEMBER 1997. ADDITIONALLY, THESE NUMBERS ARE SUBJECT TO CHANGE DUE TO LATE OR AMMENDED RETURNS.