

SB

1001

HFIN

FILE

Adopted

HOUSE CS FOR ~~CS~~ FOR SENATE BILL NO: ¹⁰⁰¹~~368~~(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 5/11/04

Referred: Rules

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to taxes on cigarettes and tobacco products, to tax stamps on
2 cigarettes, to forfeiture of cigarettes and of property used in the manufacture,
3 transportation, facilitation of transportation, possession, offering for sale, or sale of
4 unstamped cigarettes, to accounting for and use of part of the proceeds of the additional
5 cigarette tax, and to licenses and licensees under the Cigarette Tax Act; relating to
6 unfair cigarette sales; relating to supercedas bonds in certain tobacco-related litigation;
7 amending Rules 204 and 205, Alaska Rules of Appellate Procedure; and providing for
8 an effective date."

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

10 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
11 to read:

12 INTENT. It is the intent of the legislature to provide aggregate funding to meet the

1 minimum amount of tobacco control programs recommended by the United States
 2 Department of Health and Human Services, Centers for Disease Control and Prevention, from
 3 tobacco taxes and other revenue sources accounted for in the tobacco use education and
 4 cessation fund established in AS 37.05.580.

5 * Sec. 2. AS 43.50.030(a) is amended to read:

6 (a) For each license issued to a manufacturer, and for each renewal, the fee is
 7 \$50 [\$5].

8 * Sec. 3. AS 43.50.030(c) is amended to read:

9 (c) For each license issued to a vending machine operator, and for each
 10 renewal, the fee is \$50 [\$25].

11 * Sec. 4. AS 43.50.030(d) is amended to read:

12 (d) For each license issued to a direct-buying retailer, and for each renewal,
 13 the fee is \$50 [\$25].

14 * Sec. 5. AS 43.50.035 is repealed and reenacted to read:

15 Sec. 43.50.035. Wholesaler-distributor license. (a) A person outside of this
 16 state who sells or distributes cigarettes into this state and is not required to be licensed
 17 under AS 43.50.010 may apply for a wholesaler-distributor license.

18 (b) A person outside of this state who sells or distributes cigarettes into this
 19 state, who is not required to be licensed under AS 43.50.010, and who wishes to
 20 purchase stamps under this chapter is required to be licensed as a wholesaler-
 21 distributor.

22 (c) The department shall adopt reasonable regulations necessary for the
 23 collection of cigarette taxes on cigarette sales or distributions made by a wholesaler-
 24 distributor licensee into this state and standards for

25 (1) application and issuance of the license; and

26 (2) refusal to issue the license.

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

28 (a) There is levied an excise tax of 38 mills on each cigarette imported or
 29 acquired in the state. The tax shall be paid through the use of stamps as provided in
 30 AS 43.50.500 - 43.50.700. A person who imports or acquires cigarettes in the
 31 state upon which a stamp required by this chapter has not been affixed in

1 accordance with AS 43.50.500 - 43.50.700, who fails to apply to purchase stamps
 2 as required by AS 43.50.540(a), and who fails to pay the tax through the use of
 3 stamps is not relieved [THE FAILURE TO PAY THE TAX THROUGH THE USE
 4 OF STAMPS DOES NOT RELIEVE A PERSON] of the obligation to pay taxes due
 5 under this chapter. The person shall still pay the tax, and the tax is due on or before
 6 the end of the month following the month in which cigarettes were manufactured,
 7 imported, acquired, or sold in this state. Cigarettes upon which the excise is imposed
 8 are not again subject to the excise when acquired by another person.

9 * Sec. 7. AS 43.50.090(d) is amended to read:

10 (d) The tax imposed under (a) of this section does not apply to the first 400
 11 cigarettes personally transported into the state by an individual for that
 12 individual's personal consumption [100 CIGARETTES IMPORTED BY AN
 13 INDIVIDUAL FOR PERSONAL CONSUMPTION] during the calendar month.

14 * Sec. 8. AS 43.50.105(g) is amended to read:

15 (g) A person who violates the provisions of this section is guilty of a

16 (1) class A misdemeanor if the person unlawfully ships, causes to be
 17 shipped, or transports at least one but fewer than 5,000 [1,000] cigarettes;

18 (2) class C felony if the person unlawfully ships, causes to be shipped,
 19 or transports 5,000 [1,000] or more cigarettes.

20 * Sec. 9. AS 43.50.105 is amended by adding a new subsection to read:

21 (i) A person who violates the provisions of this section is jointly and severally
 22 liable for the taxes imposed by AS 43.50.090 and 43.50.190. To the fullest extent
 23 permitted by the Constitution of the United States, a person who violates the
 24 provisions of this section is required to collect the taxes and pay them to the
 25 department.

26 * Sec. 10. AS 43.50.170(1) is amended to read:

27 (1) "buyer" means a person who imports or acquires cigarettes for the
 28 person's own consumption from any source other than a manufacturer, distributor,
 29 direct-buying retailer, [OR] retailer, or wholesaler-distributor;

30 * Sec. 11. AS 43.50.170(3) is amended to read:

31 (3) "direct-buying retailer" means a person who is engaged in the sale

1 of cigarettes at retail in this state, and who brings cigarettes or causes cigarettes to be
 2 brought [CIGARETTES] into the state that are not purchased from a wholesaler-
 3 distributor;

4 * Sec. 12. AS 43.50.170(4) is amended to read:

5 (4) "distributor" means a person who brings cigarettes that are not
 6 purchased from a wholesaler-distributor, or has cigarettes that are not purchased
 7 from a wholesaler-distributor brought into the state, and who sells or distributes at
 8 least 75 percent [PER CENT] of the cigarettes to others for resale in the state;

9 * Sec. 13. AS 43.50.170(12) is amended to read:

10 (12) "wholesaler-distributor" means a person outside this state who
 11 sells or distributes cigarettes into this state, [AND] who is not required to be licensed
 12 under AS 43.50.010, and who is licensed under AS 43.50.035.

13 * Sec. 14. AS 43.50.190(a) is repealed and reenacted to read:

14 (a) There is levied an excise tax on each cigarette imported or acquired in this
 15 state,

16 (1) after June 30, 2004, but before July 1, 2006, 42 mills;

17 (2) after June 30, 2006, but before July 1, 2007, 52 mills;

18 (3) after June 30, 2007, 62 mills.

19 * Sec. 15. AS 43.50.190(c) is amended to read:

20 (c) The tax imposed under (a) of this section does not apply to the first 400
 21 cigarettes personally transported into the state by an individual for that
 22 individual's personal consumption [100 CIGARETTES IMPORTED BY AN
 23 INDIVIDUAL FOR PERSONAL CONSUMPTION] during the calendar month.

24 * Sec. 16. AS 43.50.190 is amended by adding a new subsection to read:

25 (d) A portion of the annual proceeds of the tax levied under (a) of this section
 26 equal to 8.9 percent of the total proceeds of the tax shall be deposited into the tobacco
 27 use education and cessation fund established in AS 37.05.580. This deposit shall be in
 28 addition to any sums deposited into the fund under AS 37.05.580(a).

29 * Sec. 17. AS 43.50 is amended by adding a new section to read:

30 **Sec. 43.50.200. Nonparticipating manufacturer equity excise tax. (a)**
 31 There is levied an excise tax of 12.5 mills on each cigarette imported or acquired in

1 this state from a nonparticipating manufacturer.

2 (b) The tax levied by this section is in addition to the taxes levied by
3 AS 43.50.010 - 43.50.190. The tax shall be administered and collected in the same
4 manner as the taxes levied by AS 43.50.010 - 43.50.180, except that receipts from the
5 tax shall be deposited in the general fund. The penalties provided in AS 43.05 and this
6 chapter apply to the tax levied in this section.

7 (c) In this section, "nonparticipating manufacturer" means a tobacco product
8 manufacturer as defined in AS 45.53.100 that is not a participating manufacturer as
9 that term is defined in sec. II(jj) of the Master Settlement Agreement.

10 * Sec. 18. AS 43.50.500 is amended to read:

11 Sec. 43.50.500. Tax payment by use of stamps. A licensee shall pay the tax
12 imposed under AS 43.50.090(a), [AND] 43.50.190(a), and 43.50.200 through the use
13 of stamps issued under AS 43.50.500 - 43.50.700.

14 * Sec. 19. AS 43.50.530 is amended by adding a new subsection to read:

15 (c) The department may limit the number of stamps sold to a licensee during
16 the three months immediately preceding the effective date of a tax increase under
17 AS 43.50.090, 43.50.190, or 43.50.200 to minimize the amount of cigarette
18 stockpiling by a licensee. The department may not set the limit of stamps that a
19 licensee may purchase during that three-month period below an amount equal to three
20 times the average monthly stamp purchases made by the licensee during the 12-month
21 period immediately preceding that three-month period.

22 * Sec. 20. AS 43.50.540(f) is amended to read:

23 (f) Title to the stamps passes immediately to the licensee at the time the
24 stamps are obtained in person or, if the stamps are shipped or transported, at the time
25 the stamps are placed in the United States mail or received by the common or private
26 carrier. The licensee bears all costs associated with shipping or transporting the
27 stamps. The department may replace stamps lost or damaged in transit if the
28 licensee provides proof acceptable to the department verifying that the loss or
29 damage occurred while the stamps were in the possession of the shipping
30 company and the shipping company substantiates the loss or damage. Damaged
31 stamps must be returned to the department before the department may replace

1 them [AND ALL RISKS OF POSSIBLE LOSS OR DAMAGE WHILE IN
2 TRANSIT].

3 * Sec. 21. AS 43.50.550(b) is amended to read:

4 (b) A licensee who submits an application for the purchase of stamps on a
5 deferred-payment basis shall, as a condition of approval of the application, post a
6 bond acceptable to the department in an amount equal to

7 (1) 200 percent of the maximum dollar amount of allowed monthly
8 purchases under this section ; or

9 (2) 100 percent of the maximum dollar amount of allowed monthly
10 purchases under this section if the licensee

11 (A) holds a license issued under AS 43.50.010 for a physical
12 location in this state; and

13 (B) has been in full compliance with the provisions of this
14 title and regulations adopted under this title during the preceding 60
15 months [AS A CONDITION OF APPROVAL OF THE APPLICATION].

16 * Sec. 22. AS 43.50.580(b) is amended to read:

17 (b) A licensee may possess unstamped cigarettes in this state if

18 (1) the licensee posts a surety bond in an amount satisfactory to the
19 department to ensure performance of its duties under this chapter; and

20 (2) unstamped cigarettes are necessary for the conduct of the licensee's
21 business in making sales or distributions

22 (A) to an instrumentality of the federal government or an
23 Indian tribal organization authorized by law to possess cigarettes not taxed
24 under this chapter; or

25 (B) to customers outside the state and the licensee provides
26 proof acceptable to the department that the licensee is properly licensed in
27 the jurisdictions outside the state where the sales or distributions are
28 made.

29 * Sec. 23. AS 43.50.590(a) is amended to read:

30 (a) The department shall adopt procedures for a refund or credit to a licensee
31 in the amount of the denominated value, less the discount given under AS 43.50.540,

1 for

2 (1) unused or damaged stamps; [OR]

3 (2) stamps affixed to cigarette packages that have become unfit for use
4 or sale, are destroyed, or are returned to the manufacturer for credit or replacement if
5 the licensee provides proof acceptable to the department that the cigarettes have not
6 been and will not be consumed in this state; or

7 (3) stamps affixed to cigarette packages that are sold or
8 distributed outside the state if the licensee provides proof acceptable to the
9 department that the cigarettes have not been and will not be consumed in this
10 state and the licensee is properly licensed in the jurisdictions outside the state
11 where the sales or distributions are made.

12 * Sec. 24. AS 43.50 is amended by adding a new section to read:

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

17 (1) material and equipment used in the manufacture, sale, offering for
18 sale, or possession for sale of cigarettes in this state in violation of AS 43.50.500 -
19 43.50.640 or 43.50.660 - 43.50.700;

20 (2) aircraft, vehicles, or vessels used to transport or facilitate the
21 transportation of cigarettes manufactured, sold, offered for sale, or possessed for sale
22 in this state in violation of AS 43.50.500 - 43.50.640 or 43.50.660 - 43.50.700;

23 (3) money, securities, negotiable instruments, or other things of value
24 used in financial transactions derived from activity prohibited under AS 43.50.500 -
25 43.50.640 or 43.50.660 - 43.50.700.

26 (b) Property subject to forfeiture under this section may be actually or
27 constructively seized under an order issued by the superior court upon a showing of
28 probable cause that the property is subject to forfeiture under this section.
29 Constructive seizure is effected upon posting a signed notice of seizure on the item to
30 be forfeited, stating the violation and the date and place of seizure. Seizure without a
31 court order may be made if

1 (1) the seizure is incident to a valid arrest or search;
 2 (2) the property subject to seizure is the subject of a prior judgment in
 3 favor of the state; or

4 (3) there is probable cause to believe that the property is subject to
 5 forfeiture under (a) of this section; property seized under this paragraph may be held
 6 for not more than 48 hours unless an order of forfeiture is issued by the court before
 7 the end of that time period.

8 (c) Within 30 days after a seizure under this section, the Department of Public
 9 Safety shall make reasonable efforts to ascertain the identity and whereabouts of any
 10 person holding an interest, or an assignee of a person holding an interest, in the
 11 property seized, including a right to possession, or a lien, mortgage, or conditional
 12 sales contract. The Department of Public Safety shall notify the person ascertained to
 13 have an interest in the seized property of the impending forfeiture, and, before
 14 forfeiture, the Department of Public Safety shall publish, once a week for four
 15 consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of
 16 general circulation in the judicial district in which the seizure was made, or if a
 17 newspaper is not published in that judicial district, in a newspaper published in the
 18 state and distributed in that judicial district.

19 (d) Property subject to forfeiture under (a) of this section may be forfeited

20 (1) upon conviction of a person for a violation of AS 43.50.640; or

21 (2) upon judgment by the superior court in a proceeding in rem that the
 22 property was used in a manner subjecting it to forfeiture under (a) of this section.

23 (e) The owner of property subject to forfeiture under (a) of this section is
 24 entitled to relief from the forfeiture in the nature of remission of the forfeiture if, in an
 25 action under (d) of this section, the owner shows that the owner

26 (1) was not a party to the violation;

27 (2) did not have actual knowledge or reasonable cause to believe that
 28 the property was used or was to be used in violation of the law; and

29 (3) did not have actual knowledge or reasonable cause to believe that
 30 the person committing the violation had, within the last 10 years,

31 (A) a criminal record for violating this chapter; or

1 (B) committed other violations of this chapter.

2 (f) The court may allow the owner of property that is subject to forfeiture
3 under (a) of this section to redeem the property by paying an amount determined by
4 the court to be the fair market value of the property.

5 (g) A person other than the owner holding, or the assignee of, a lien,
6 mortgage, or conditional sales contract on, or the right to possession of property
7 subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in
8 the nature of remission of the forfeiture if, in an action under (d) of this section, the
9 person shows that the person

10 (1) was not a party to the violation subjecting the property to
11 forfeiture;

12 (2) did not have actual knowledge or reasonable cause to believe that
13 the property was used or was to be used in violation of the law; and

14 (3) did not have actual knowledge or reasonable cause to believe that
15 the person committing the violation had, within the last 10 years,

16 (A) a criminal record for violating this chapter; or

17 (B) committed other violations of this chapter.

18 (h) It is not a defense in an in rem forfeiture proceeding brought under (d)(2)
19 of this section that a criminal proceeding is pending or has resulted in conviction or
20 acquittal of a person charged with violating AS 43.50.640.

21 (i) Property forfeited under this section shall be placed in the custody of the
22 commissioner of public safety for disposition according to an order entered by the
23 court. The court shall order destroyed any property forfeited under this section that is
24 harmful to the public and may order any property forfeited under this section that was
25 seized in a municipality to be transferred to the municipality in which the property was
26 seized or to another municipality affected by the crime for which the property was
27 forfeited. The state shall notify all municipalities affected by the crime of the
28 forfeiture proceeding. Other property shall be ordered sold and the proceeds used for
29 payment of expenses of the proceedings for forfeiture and sale, including expenses of
30 seizure, custody, and court costs. The remainder of the proceeds shall be deposited in
31 the general fund.

1 (j) The title to a vehicle or vessel forfeited to the state under this section may
 2 be transferred by the state to a municipality or the local governing body of a village
 3 for official use by the municipality or village, on condition that the vehicle or vessel
 4 not be available for use by the defendant.

5 * Sec. 25. AS 43.50.640(a) is amended to read:

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

8 (1) with reckless disregard that the cigarettes are unstamped

9 (A) sells or distributes 5,000 [1,000] or more unstamped
 10 cigarettes in a single transaction;

11 (B) owns or possesses 5,000 [1,000] or more unstamped
 12 cigarettes with the intent to sell; or

13 (C) acquires, holds, transports, imports, or possesses 10,000 or
 14 more unstamped cigarettes; or

15 (2) with reckless disregard that the stamp was previously affixed to
 16 another cigarette package [.]

17 (A) affixes a previously used stamp to a cigarette package; or

18 (B) possesses, sells, or distributes a previously used stamp.

19 * Sec. 26. AS 43.50.650(a) is amended to read:

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

22 (1) with reckless disregard that the cigarettes are unstamped

23 (A) sells or distributes at least one but fewer than 5,000 [1,000]
 24 unstamped cigarettes in a single transaction;

25 (B) owns or possesses at least one but fewer than 5,000 [1,000]
 26 unstamped cigarettes with intent to sell; [OR]

27 (C) acquires, holds, transports, imports, or possesses at least
 28 601 [ONE] but fewer than 10,000 unstamped cigarettes; or

29 (D) acquires, holds, transports, imports, or possesses at
 30 least one but fewer than 601 unstamped cigarettes that are not for
 31 personal consumption; or

1 (2) is not licensed under this chapter or otherwise authorized by the
2 department to possess stamps and possesses a stamp that is not affixed to a cigarette
3 package.

4 * Sec. 27. AS 43.50.700(9) is amended to read:

5 (9) "unstamped cigarettes" means a package containing cigarettes that
6 is not affixed with the stamp required by AS 43.50.500 - 43.50.700 or is affixed with
7 a stamp in a denomination less than the tax levied under this chapter.

8 * Sec. 28. AS 43.50.710 is amended by adding a new subsection to read:

9 (e) Nothing in this section prohibits a manufacturer from offering promotions
10 to a wholesaler or a retailer provided the wholesale promotion is the same for all
11 participating wholesalers and the retail promotion is the same for all participating
12 retailers.

13 * Sec. 29. AS 43.50.720 is amended to read:

14 Sec. 43.50.720. Sale at less than cost; with gift or concession. In all
15 advertisements, offers for sale, or sales involving two or more items when at least one
16 of the items is cigarettes at a combined price, and in all advertisements, offers for sale,
17 or sales involving the giving of any gift, concession, or coupon of any kind in
18 conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling
19 price may not be below the actual cost to the wholesaler or the actual cost to the
20 retailer, respectively, of the total of all articles, products, commodities, gifts, and
21 concessions included in the transactions, except that, if any articles, products,
22 commodities, gifts, or concessions are not cigarettes, the actual [BASIC] cost shall be
23 determined as provided under AS 43.50.800.

24 * Sec. 30. AS 43.50.760(b) is amended to read:

25 (b) The presumptive actual [WHOLESALE AND PRESUMPTIVE RETAIL]
26 cost of cigarettes as determined by the department under AS 43.50.800 [FROM THE
27 MANUFACTURER'S PRICE LIST] is considered competent evidence in a court
28 action or proceeding as tending to prove actual cost to the wholesaler or retailer
29 complained against. A party against whom the presumptive actual [WHOLESALE
30 OR PRESUMPTIVE RETAIL] cost as determined by the department is introduced in
31 evidence has the right to offer evidence tending to prove any inaccuracy of the

1 presumptive actual [WHOLESALE OR PRESUMPTIVE RETAIL] cost or any
2 statement of facts that would impair its probative value.

3 * Sec. 31. AS 43.50.770 is amended to read:

4 **Sec. 43.50.770. Determination of cost of cigarettes purchased outside of**
5 **ordinary channels of trade.** In establishing the actual [BASIC] cost of cigarettes to
6 a wholesaler or retailer, the invoice cost [OR THE ACTUAL COST] of cigarettes
7 purchased at a forced, bankrupt, or closeout sale, or other sale outside the ordinary
8 channels of trade may not be used.

9 * Sec. 32. AS 43.50.790(a) is amended to read:

10 (a) The department

11 (1) shall administer AS 43.50.710 - 43.50.849;

12 (2) may adopt regulations relating to the administration and
13 enforcement of AS 43.50.710 - 43.50.849;

14 (3) may determine the actual [BASIC] cost of cigarettes to a
15 wholesaler or retailer as provided in AS 43.50.800 [FROM INFORMATION
16 OBTAINED FROM A MANUFACTURER];

17 (4) may, after reasonable notice and hearing, revoke or suspend a
18 license issued under AS 43.50.010 or 43.50.035 to a person who refuses or neglects to
19 comply with a provision of AS 43.50.710 - 43.50.849.

20 * Sec. 33. AS 43.50.800 is repealed and reenacted to read:

21 **Sec. 43.50.800. Presumptions applicable to determination of cost.** (a) The
22 presumptive actual cost of cigarettes to a wholesaler is, for purposes of AS 43.50.710 -
23 43.50.849, the presumptive wholesale cost as calculated by the department plus an
24 amount equal to four and one-half percent of the presumptive wholesale cost to
25 account for business costs. For purposes of this section, the presumptive wholesale
26 cost is the manufacturer's list price, less trade discounts, plus the full face value of all
27 cigarette taxes.

28 (b) The presumptive actual cost of cigarettes to a retailer is, for purposes of
29 AS 43.50.710 - 43.50.849, the presumptive actual cost of cigarettes to the wholesaler
30 as calculated by the department under (a) of this section, plus an amount equal to six
31 percent of the presumptive actual cost of cigarettes to the wholesaler to account for

1 business costs.

2 (c) A wholesaler or retailer that wishes to advertise, offer to sell, or sell
3 cigarettes at less than the presumptive actual cost to the wholesaler or retailer as
4 calculated under (a) or (b) of this section must first obtain approval from the
5 department. The department may grant approval only if the wholesaler or retailer
6 provides proof satisfactory to the department that the wholesaler or retailer's actual
7 cost is lower than presumed. Approval for cigarette sales at less than the presumptive
8 actual cost as determined under (a) or (b) of this section may not be granted for a
9 period longer than one year. In reviewing proof of actual wholesale or retail cost, the
10 department may consider the costs reflected on the actual invoice, but may not
11 consider cash discounts. In reviewing proof of actual costs, the department may
12 consider the standards and methods of accounting regularly employed, and must
13 include labor costs, rent, depreciation, selling costs, maintenance of equipment,
14 delivery costs, all types of licenses, taxes, insurance, advertising, preopening
15 expenses, provision for impaired assets and closing costs, interest expenses, and
16 provision for merger and restructuring expenses. The department shall adopt
17 regulations to determine the actual costs for the wholesaler and retailer for the
18 purposes of AS 43.50.710 - 43.50.849.

19 * Sec. 34. AS 45.53 is amended by adding a new section to read:

20 Sec. 45.53.050. Stays pending appeal in civil cases. (a) Except as provided
21 in (b) of this section, in order to secure and protect the money to be received as a result
22 of the Master Settlement Agreement, in civil tobacco-related litigation under any legal
23 theory involving a signatory, a successor of a signatory, or an affiliate of a signatory to
24 the Master Settlement Agreement, the supersedeas bond to be furnished in order to
25 stay the execution of the judgment during the entire course of appellate review shall be
26 set in accordance with applicable laws or court rules, except that the total bond that is
27 required of all appellants collectively may not exceed \$100,000,000, regardless of the
28 value of the judgment.

29 (b) If an appellee proves by a preponderance of the evidence that an appellant
30 is dissipating assets to avoid the payment of a judgment, a court may require the
31 appellant to post a bond in an amount up to the full amount of the judgment.

1 * Sec. 35. The uncodified law of the State of Alaska enacted in sec. 4, ch. 48, SLA 1997, is
2 repealed and reenacted to read:

3 Sec. 4. AS 43.50.190(a) is repealed and reenacted to read:

4 (a) There is levied an excise tax on each cigarette imported or acquired in this
5 state,

6 (1) after June 30, 2004, but before July 1, 2006, 77.5 mills;

7 (2) after June 30, 2006, but before July 1, 2007, 87.5 mills;

8 (3) after June 30, 2007, 97.5 mills.

9 * Sec. 36. AS 43.50.740(b), 43.50.849(1), 43.50.849(6), and 43.50.849(7) are repealed.

10 * Sec. 37. The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 INDIRECT COURT RULE AMENDMENT. AS 45.53.050, added by sec. 34 of this
13 Act, has the effect of changing Rules 204 and 205, Alaska Rules of Appellate Procedure, by
14 limiting the court's discretion to determine the amount of a supersedeas bond in certain cases.

15 * Sec. 38. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 APPLICABILITY. Section 34 of this Act applies to all cases pending on or filed on
18 or after the effective date of this Act.

19 * Sec. 39. The uncodified law of the State of Alaska is amended by adding a new section to
20 read:

21 SEVERABILITY. Under AS 01.10.030, if any provision of this Act or the application
22 of it to any person or circumstance is held invalid, the remainder of this Act and the
23 application to other persons or circumstances are not affected.

24 * Sec. 40. The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
27 heading of Article 2 in AS 43.50 from "Additional Cigarette Tax" to "Additional Cigarette
28 Taxes."

29 * Sec. 41. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 CONDITIONAL EFFECT. AS 45.53.050, added by sec. 34 of this Act, takes effect

- 1 only if sec. 37 of this Act receives the two-thirds majority vote of each house required by art.
- 2 IV, sec. 15, Constitution of the State of Alaska.
- 3 * Sec. 42. This Act takes effect ~~July 1, 2004.~~

2005

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HCS SB 1001 (FIN)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Various
 Title "An Act relating to Tobacco Tax..." BRU _____
 Component _____
 Sponsor (R.L.S) by Request of the Governor
 Requester House Finance Committee Component No. _____

E. expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: W.K. Williams Phone 465-3424
Rep. Williams, Co-Chair Date/Time 6/24/04 2:48 PM
Rep. Harris, Co-Chair Date 6/24/2004

failed

Foster

23-GH2170A.2
Kurtz
6/22/04

AMENDMENT 3

OFFERED IN THE HOUSE
TO: HB 1001

BY REPRESENTATIVE ROKEBERG

1 Page 2, following line 1:

2 Insert new bill sections to read:

3 ** Sec. 2. AS 29.10.200(51) is amended to read:

4 (51) AS 29.45.650(c), (d), (e), (f), (i), [AND] (j), and (k) (borough
5 sales and use tax);

6 * Sec. 3. AS 29.10.200(52) is amended to read:

7 (52) AS 29.45.700(d), [AND] (e), and (g) (city sales and use tax);

8 * Sec. 4. AS 29.45.650(a) is amended to read:

9 (a) Except as provided in AS 04.21.010(c), AS 29.45.750, and in (f), (h), (i),
10 [AND] (j), and (k) of this section, a borough may levy and collect a sales tax on sales,
11 rents, and on services provided in the borough. The sales tax may apply to any or all of
12 these sources. Exemptions may be granted by ordinance.

13 * Sec. 5. AS 29.45.650 is amended by adding a new subsection to read:

14 (k) A borough may not levy or collect a tax on cigarettes or other tobacco
15 products except under an ordinance adopted before September 1, 2004. A borough
16 may not increase the rate of levy of a tax on cigarettes or other tobacco products
17 imposed under an ordinance adopted before September 1, 2004. This subsection
18 applies to home rule and general law boroughs.

19 * Sec. 6. AS 29.45.700(a) is amended to read:

20 (a) A city in a borough that levies and collects areawide sales and use taxes
21 may levy sales and use taxes on all sources taxed by the borough in the manner
22 provided for boroughs. Except as provided in (d), [AND] (e), and (g) of this section,
23 the assembly may by ordinance authorize a city to levy and collect sales and use taxes

1 on other sources.

2 * **Sec. 7.** AS 29.45.700 is amended by adding a new subsection to read:

3 (g) A city may not levy or collect a tax on cigarettes or other tobacco products
4 except under an ordinance adopted before September 1, 2004. A city may not increase
5 the rate of levy of a tax on cigarettes or other tobacco products imposed under an
6 ordinance adopted before September 1, 2004. This subsection applies to home rule
7 and general law cities."
8

9 Renumber the following bill sections accordingly.

10
11 Page 14, following line 7:

12 Insert new bill sections to read:

13 "* **Sec. 45.** The uncodified law of the State of Alaska enacted in sec. 4, ch. 48, SLA 1997,
14 is repealed and reenacted to read:

15 Sec. 4. AS 43.50.190(a) is repealed and reenacted to read:

16 (a) There is levied an excise tax of 97.5 mills on each cigarette imported or
17 acquired in this state.

18 * **Sec. 46.** The uncodified law of the State of Alaska enacted in sec. 4, ch. 100, SLA 2002,
19 as amended by sec. 9, ch. 117, SLA 2003, is repealed and reenacted to read:

20 Sec. 4. AS 29.45.650(a) is amended to read:

21 (a) Except as provided in AS 04.21.010(c) [, AS 29.45.750,] and in (f), (h), (i),
22 (j), and (k) of this section, a borough may levy and collect a sales tax on sales, rents,
23 and on services provided in the borough. The sales tax may apply to any or all of
24 these sources. Exemptions may be granted by ordinance."
25

26 Renumber the following bill sections accordingly.

27
28 Page 14, line 12:

29 Delete "SECS. 2 - 39"

30 Insert "SECS. 8 - 47"
31

- 1 Page 14, line 14:
- 2 Delete "secs. 2 - 39"
- 3 Insert "secs. 8 - 47"
- 4
- 5 Page 14, lines 15 - 16:
- 6 Delete "secs. 2 - 39"
- 7 Insert "secs. 8 - 47"
- 8
- 9 Page 14, line 17:
- 10 Delete "sec. 14"
- 11 Insert "sec. 20"
- 12
- 13 Page 14, line 18:
- 14 Delete "secs. 2 - 39"
- 15 Insert "secs. 8 - 47"
- 16
- 17 Page 14, line 19:
- 18 Delete "secs. 2 - 39"
- 19 Insert "secs. 8 - 47"
- 20
- 21 Page 14, line 21:
- 22 Delete "secs. 2 - 39"
- 23 Insert "secs. 8 - 47"
- 24
- 25 Page 14, line 25:
- 26 Delete "secs. 2 - 39"
- 27 Insert "secs. 8 - 47"
- 28
- 29 Page 14, line 28:
- 30 Delete "secs. 2 - 39"
- 31 Insert "secs. 8 - 47"

1

2 Page 15, line 2:

3 Delete "secs. 2 - 40"

4 Insert "secs. 8 - 48"

5

6 Page 15, line 4:

7 Delete "secs. 2 - 40"

8 Insert "secs. 8 - 48"

9

10 Page 15, line 5:

11 Delete "Section 41"

12 Insert "Section 49"

13

14 Page 15, line 6:

15 Delete "sec. 42"

16 Insert "sec. 50"

Adopted

AMENDMENT

2

Page 3

OFFERED IN THE HOUSE

BY REPRESENTATIVE CHENAULT

TO: CSSB 368(FIN) am

1 Page 1, line 4, following "Act;":

2 Insert "relating to restrictions on shipping or transporting cigarettes;"

3

4 Page 2, following line 19:

5 Insert new bill sections to read:

6 "* Sec. 4. AS 43.50.105(b) is amended to read:

7 (b) A person who is licensed under this chapter may not ship or cause to be
8 shipped cigarettes to a person in this state unless the person receiving the cigarettes

9 (1) is licensed under this chapter;

10 (2) holds a tobacco endorsement under AS 43.70.075;

11 (3) is an operator of a customs bonded warehouse under 19 U.S.C.
12 1311 or 19 U.S.C. 1555; [OR]

13 (4) is an instrumentality of the federal government or an Indian tribal
14 organization authorized by law to possess cigarettes not taxed under this chapter; or

15 (5) is an individual ^{"19 yrs of age or older"} receiving the cigarettes for personal
16 consumption and the tax imposed on the cigarettes under this chapter has been
17 paid.

18 * Sec. 5. AS 43.50.105(c) is amended to read:

19 (c) A common or contract carrier may not knowingly transport cigarettes to a
20 person in this state unless the person

21 (1) shipping the cigarettes is licensed under this chapter and, before
22 shipment, provides the common or contract carrier with a copy of the person's current
23 license issued by the department and an affidavit from the intended recipient
24 certifying that the person receiving the cigarettes is a person described under (b)(1) -

1 (5) [(b)(1) - (4)] of this section; or

2 (2) receiving the cigarettes is a person described under (a)(2) or (3) of
3 this section or is licensed under this chapter and, before receipt, provides the common
4 or contract carrier with a copy of the person's current license issued by the department.

5 * Sec. 6. AS 43.50.105(d) is amended to read:

6 (d) If the cigarettes are transported by a common or contract carrier to a home
7 or residence, it is rebuttably presumed that the common or contract carrier knew that
8 the person receiving the cigarettes was not a person described under (b)(1) - (5) [(b)(1)
9 - (4)] of this section. unless the person shipping the cigarettes has satisfied the
10 requirements in (c)(1) of this section.

11 * Sec. 7. AS 43.50.105(e) is amended to read:

12 (e) A person, other than a common or contract carrier, may not knowingly
13 transport cigarettes to a person in this state, unless the person receiving the cigarettes
14 is a person described under (b)(1) - (5) [(b)(1) - (4)] of this section."

15

16 Renumber the following bill sections accordingly.

17

18 Page 12, lines 23, 24, 26 (the second occurrence), 28, and 29:

19 Delete "Act"

20 Insert "section"

21

22 Page 12, line 26:

23 Delete "sec. 8"

24 Insert "sec. 12"

25

26 Page 13, line 4:

27 Delete "the Act"

28 Insert "this section"

29

30 Page 13, line 6:

31 Delete all material.

1 Insert new bill sections to read:

2 "* Sec. 35. Sections 4 - 7 of this Act take effect immediately under AS 01.10.070(c).

3 ~~* Sec. 36. Except as provided in sec. 35 of this Act, this Act takes effect July 1, 2004.~~ "54"

STATE OF ALASKA

DEPARTMENT OF REVENUE

Tax Division

FRANK MURKOWSKI, GOVERNOR

State Office Building
PO Box 110420
Juneau, AK 99811-0420
907.465.2320

550 W Seventh, Suite 500
Anchorage, AK 99501-3566
907.269.6620

www.tax.state.ak.us

Comparison of Major Differences Between Special Session Tobacco Tax Bill SB/HB 1001 and House Finance CS for CS for SB 368, Version W

The following major provisions are found in Special Session Tobacco Tax Bill SB/HB 1001, but not in House CS for CSSB 368 (as adopted by House Finance):

- Increases the tax on cigarettes by \$1.00 per pack of twenty. The entire \$1.00 increase would be implemented on the effective date of the bill.
- Increases other tobacco products (OTP) tax from 75% to 100% of the wholesale cost.
- Requires individuals who import other tobacco products (OTP) into Alaska for personal consumption to pay the OTP tax. This bill also requires individuals to obtain an OTP buyer's license; pay a fee of \$25 for a buyer's license; renew a buyer's license for a \$25 fee each year; and file a tax return each month.
- Requires a floor stock tax be paid on cigarettes held for sale in the state on the date of the tax rate increase.

The following major provisions are found in House CS for CSSB 368 (as adopted by House Finance), but not in Special Session Tobacco Tax Bill SB/HB 1001:

- Increases the tax on a pack of 20 cigarettes by \$.60 on the effective date of the bill (July 1, 2004) and by an additional \$.20 on July 1, 2006 and July 1, 2007, for a total increase of \$1.00 per pack by July 1, 2007.
- Levies an additional excise tax of 12.5 mills (\$.25 per pack of 20) on brands of cigarettes manufactured by companies that did not sign the tobacco Master Settlement Agreement.
- Limits the number of cigarette tax stamps that a licensee can purchase from the Department of Revenue within the three months preceding a tax increase. (Language was inserted in an attempt to limit the effects of stockpiling since the floor stock language was removed from this version of the bill.)
- Caps appeal bonds for signatories of the Master Settlement Agreement (MSA) at \$100 million. This provision is in response to tobacco litigation in Illinois and Florida in which the judgments against the tobacco manufacturers were so large that they had the potential of bankrupting the manufacturer, which, in turn, would put the states' MSA revenue payments at risk.

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
Section 1. This section outlines the intent by the legislature to provide funding to tobacco control programs at minimum levels recommended by the U.S. Department of Health and Human Services from tobacco tax revenues collected by the state.	Section 1. This section outlines the intent by the legislature to provide funding to tobacco control programs at minimum levels recommended by the U.S. Department of Health and Human Services from tobacco tax revenues collected by the state.
Section 2. This section increases the cigarette license fee for manufacturers from \$5 to \$50.	Section 2. This section increases the cigarette license fee for manufacturers from \$5 to \$50.
Section 3. This section increases the cigarette license fee for vending machine operators from \$25 to \$50.	Section 3. This section increases the cigarette license fee for vending machine operators from \$25 to \$50.
Section 4. This section increases the cigarette license fee for direct-buying retailers from \$25 to \$50. This increase makes the license fee the same for distributors and direct-buying retailers who are engaged in substantially similar activities.	Section 4. This section increases the cigarette license fee for direct-buying retailers from \$25 to \$50. This increase makes the license fee the same for distributors and direct-buying retailers who are engaged in substantially similar activities.
Section 5. This section is a technical correction to the wholesaler-distributor cigarette license type. This correction ensures that in-state individuals and retailers are not double taxed on product that is sold to them by an entity holding a wholesaler-distributor license.	Section 5. This section is a technical correction to the wholesaler-distributor cigarette license type. This correction ensures that in-state individuals and retailers are not double taxed on product that is sold to them by an entity holding a wholesaler-distributor license.
Section 6. This section requires unlicensed entities that bring cigarettes into the state upon which a tax stamp is not affixed to pay the cigarette excise tax and remit it to the department each month.	Section 6. This section requires unlicensed entities that bring cigarettes into the state upon which a tax stamp is not affixed to pay the cigarette excise tax and remit it to the department each month.
Section 7. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.090.	Section 7. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.090.
Section 8. This section changes the definition of a class A misdemeanor for violations of the cigarette shipping restrictions from one but fewer than 1,000 cigarettes to one but fewer than 5,000 cigarettes. This section changes the definition of a class C felony for violations of the cigarette shipping restrictions from 1,000 or more cigarettes to 5,000 or more cigarettes. The intention in raising the threshold for the class C felony is to make it consistent with the threshold for C felony theft (theft in the 2 nd degree), which requires a value of \$500. The tax due on 5,000 cigarettes under this bill (\$1.00 per pack increase) would be \$500.	Section 8. This section changes the definition of a class A misdemeanor for violations of the cigarette shipping restrictions from one but fewer than 1,000 cigarettes to one but fewer than 5,000 cigarettes. This section changes the definition of a class C felony for violations of the cigarette shipping restrictions from 1,000 or more cigarettes to 5,000 or more cigarettes. The intention in raising the threshold for the class C felony is to make it consistent with the threshold for C felony theft (theft in the 2 nd degree), which requires a value of \$500. The tax due on 5,000 cigarettes under this bill would eventually be \$500.

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
<p>Section 9. This section provides that any person who violates the cigarette shipping restrictions is jointly and severally liable for the cigarette excise taxes and is required, as permitted by the U.S. Constitution, to collect and remit the cigarette excise taxes to the department. This section will enhance the ability of the Department to collect taxes from out-of-state sellers who violate the state's shipping laws. Current U.S. Supreme Court precedent (<i>Quill Corp. v. North Dakota</i>) requires some in-state physical presence before states can impose excise tax collection requirements on sellers. At some point in the future, however, Congress may overrule the <i>Quill</i> decision or the Court may reconsider it, at which point the State will be in a position to be able to collect tobacco taxes from out-of-state sellers that violate the state's shipping law, even if such shippers have no physical presence in the state.</p>	<p>Section 9. This section provides that any person who violates the cigarette shipping restrictions is jointly and severally liable for the cigarette excise taxes and is required, as permitted by the U.S. Constitution, to collect and remit the cigarette excise taxes to the department. This section will enhance the ability of the Department to collect taxes from out-of-state sellers who violate the state's shipping laws. Current U.S. Supreme Court precedent (<i>Quill Corp. v. North Dakota</i>) requires some in-state physical presence before states can impose excise tax collection requirements on sellers. At some point in the future, however, Congress may overrule the <i>Quill</i> decision or the Court may reconsider it, at which point the State will be in a position to be able to collect tobacco taxes from out-of-state sellers that violate the state's shipping law, even if such shippers have no physical presence in the state.</p>
<p>Section 10. This section is a technical correction to the definition of a "buyer" that ensures that an individual bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>	<p>Section 10. This section is a technical correction to the definition of a "buyer" that ensures that an individual bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>
<p>Section 11. This section is a technical correction to the definition of "direct-buying retailer" that ensures that a retailer bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>	<p>Section 11. This section is a technical correction to the definition of "direct-buying retailer" that ensures that a retailer bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>
<p>Section 12. This section is a technical correction to the definition of "distributor" that ensures that a distributor bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>	<p>Section 12. This section is a technical correction to the definition of "distributor" that ensures that a distributor bringing cigarettes into the state that were purchased from a licensed wholesaler-distributor are not again subject to tax.</p>
<p>Section 13. This section is a technical correction to the definition of "wholesaler-distributor" that ensures that entities outside the state who make sales of cigarettes into the state are properly licensed.</p>	<p>Section 13. This section is a technical correction to the definition of "wholesaler-distributor" that ensures that entities outside the state who make sales of cigarettes into the state are properly licensed.</p>

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
Section 14. This section increases the tax on cigarettes by 50 mills or \$1.00 per pack of 20. The increase in this tax will all go into the general fund.	Section 14. This section increases the tax on cigarettes by 30 mills or \$.60 per pack of 20 in on July 1, 2004; by 10 mills or \$.20 per pack of 20 on July 1, 2006; and by 10 mills or \$.20 per pack of 20 on July 1, 2007; for a total increase of \$1.00 per pack of 20 over the current excise tax rate. These increases in the tax will all go into the general fund.
Section 15. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.190.	Section 15. This section allows individuals to personally transport up to 400 cigarettes (2 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.190.
Section 16. This section requires 8.9% of annual cigarette tax revenues levied under AS 43.50.190(a) to be deposited in the tobacco use education and cessation fund.	Section 16. This section requires the legislature to deposit 8.9% of the annual cigarette taxes deposited in the General Fund into the tobacco use education and cessation fund.
	Section 17. This section levies an additional excise tax of 12.5 mills or \$.25 per pack of 20 cigarettes on brands of cigarettes manufactured by manufacturers that did not sign the tobacco Master Settlement Agreement. This additional tax would be deposited into the General Fund.
	Section 18. This section requires that the additional tax levied under Section 17 must be paid through the use of tax stamps.
	Section 19. This section allows the Department of Revenue to limit the number of tax stamps purchased by a license during the 3 months immediately preceding a tax rate increase.
Section 17. This section increases the tax on other tobacco products from 75% to 100% of the wholesale cost and also levies the tax on other tobacco products sold or imported into the state for personal consumption.	
Section 18. This section requires that individuals that import other tobacco products into the state must have a license as a "buyer".	
Section 19. This section requires that a fee of \$25 must be paid for a tobacco products "buyer" license.	
Section 20. This section requires distributors to provide information about the type of tobacco business they are conducting to the Department of Revenue.	

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
Section 21. This section allows distributors and buyers to renew their tobacco products license each year for a fee of \$50 and \$25, respectively.	
Section 22. This section requires individuals who import tobacco products for personal consumption to file a return each month indicating the amount and purchase price of the tobacco products and the tax due on those tobacco products.	
Section 23. This section changes the definition of a "distributor" to include entities that sell cigarettes to individuals for personal consumption.	
Section 24. This section changes the definition of "licensee" in the tobacco products statutes to include the new "buyer" license type.	
Section 25. This section provides a definition for "buyer" in the tobacco products statutes.	
Section 26. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.	Section 20. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.
Section 27. This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of stamps when payment is made on a deferred payment basis.	Section 21. This section allows licensees with a physical location in the state and who have been in full compliance with cigarette tax statutes for the preceding 5 years to reduce their bond requirement from 200% to 100% of their monthly purchases of stamps when payment is made on a deferred payment basis.
Section 28. This section allows in-state cigarette licensees to maintain unstamped cigarette inventories if the licensee is in the business of making cigarette sales to customers outside the state and the licensee is properly licensed in the other states where it makes sales.	Section 22. This section allows in-state cigarette licensees to maintain unstamped cigarette inventories if the licensee is in the business of making cigarette sales to customers outside the state and the licensee is properly licensed in the other states where it makes sales.
Section 29. This section allows in-state cigarette licensees to claim a credit for cigarette tax stamps affixed to packages of cigarettes that are sold outside the state provided the licensee is properly licensed in the other states where it makes sales and the licensee provides proof acceptable to the department that the stamped cigarettes were not consumed in Alaska.	Section 23. This section allows in-state cigarette licensees to claim a credit for cigarette tax stamps affixed to packages of cigarettes that are sold outside the state provided the licensee is properly licensed in the other states where it makes sales and the licensee provides proof acceptable to the department that the stamped cigarettes were not consumed in Alaska.

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
<p>Section 30. This section allows for the seizure of assets used by a person when the person commits, or the state has probable cause to believe that the person has committed, the felony of misconduct involving unstamped cigarettes or stamps in the first degree. This section further outlines the types of assets that may be seized, procedures for seizing assets, and procedures for the disposition of assets after they are seized.</p>	<p>Section 24. This section allows for the seizure of assets used by a person when the person commits, or the state has probable cause to believe that the person has committed, the felony of misconduct involving unstamped cigarettes or stamps in the first degree. This section further outlines the types of assets that may be seized, procedures for seizing assets, and procedures for the disposition of assets after they are seized.</p>
<p>Section 31. This section changes the definition of misconduct involving unstamped cigarettes in the first degree from sales of or possession with intent to sell 1,000 or more unstamped cigarettes to sales of or possession with intent to sell 5,000 or more unstamped cigarettes.</p>	<p>Section 25. This section changes the definition of misconduct involving unstamped cigarettes in the first degree from sales of or possession with intent to sell 1,000 or more unstamped cigarettes to sales of or possession with intent to sell 5,000 or more unstamped cigarettes.</p>
<p>Section 32. This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of one but fewer than 1,000 unstamped cigarettes to sales of one but fewer than 5,000 unstamped cigarettes and from possession of one but fewer than 10,000 unstamped cigarettes to possession of <u>401</u> but fewer than 10,000 unstamped cigarettes. This section also includes importation or possession of one but fewer than <u>401</u> unstamped cigarettes as misconduct involving unstamped cigarettes in the first degree if the cigarettes are not possessed for personal consumption.</p>	<p>Section 26. This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of one but fewer than 1,000 unstamped cigarettes to sales of one but fewer than 5,000 unstamped cigarettes and from possession of one but fewer than 10,000 unstamped cigarettes to possession of <u>601</u> but fewer than 10,000 unstamped cigarettes. This section also includes importation or possession of one but fewer than <u>601</u> unstamped cigarettes as misconduct involving unstamped cigarettes in the first degree if the cigarettes are not possessed for personal consumption.</p>
	<p>Section 27. This section makes a pack of cigarettes bearing a stamp in a denomination less than the total tax required by law, contraband. Language is needed because of additional \$.25 per pack tax on NPM product.</p>
<p>Section 33. This section allows manufacturers to offer cigarette promotions in the state provided the promotion offered at the wholesale level is the same for all wholesalers who participate in the promotion and the promotion offered at the retail level is the same for all retailers who participate in the promotion.</p>	<p>Section 28. This section allows manufacturers to offer cigarette promotions in the state provided the promotion offered at the wholesale level is the same for all wholesalers who participate in the promotion and the promotion offered at the retail level is the same for all retailers who participate in the promotion.</p>
<p>Section 34. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 33 of this bill.</p>	<p>Section 29. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 33 of this bill.</p>

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
Section 35. This section makes a technical change to AS 43.50.760(b) so that the language in that statute conforms to changes made in Section 38 of this bill.	Section 30. This section makes a technical change to AS 43.50.760(b) so that the language in that statute conforms to changes made in Section 33 of this bill.
Section 36. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 38 of this bill.	Section 31. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 33 of this bill.
Section 37. This section makes a technical change to AS 43.50.790(a) so that the language in that statute conforms to changes made in Section 38 of this bill.	Section 32. This section makes a technical change to AS 43.50.790(a) so that the language in that statute conforms to changes made in Section 33 of this bill.
Section 38. This section changes the calculation of cost of cigarettes as defined in the Unfair Cigarette Sales Act that went into effect January 1, 2004 as the result of the passage last session of SB 168. The Unfair Cigarette Sales Act prohibits all cigarette wholesalers and retailers from selling cigarettes below cost. This section modifies the Unfair Cigarette Sales Act by prohibiting wholesalers and retailers from reducing their cost by cash discounts received from the manufacturers. This section also requires wholesalers and retailers to obtain prior approval from the Department of Revenue before selling cigarettes at a cost below the amount posted by the Department of Revenue.	Section 33. This section changes the calculation of cost of cigarettes as defined in the Unfair Cigarette Sales Act that went into effect January 1, 2004 as the result of the passage last session of SB 168. The Unfair Cigarette Sales Act prohibits all cigarette wholesalers and retailers from selling cigarettes below cost. This section modifies the Unfair Cigarette Sales Act by prohibiting wholesalers and retailers from reducing their cost by cash discounts received from the manufacturers. This section also requires wholesalers and retailers to obtain prior approval from the Department of Revenue before selling cigarettes at a cost below the amount posted by the Department of Revenue.
	Section 34. This section, along with Sections 37 & 38, are taken from CSHB 468(IJD), which caps appeal bonds for signatories of the Master Settlement Agreement at \$100 million. This provision is in response to tobacco litigation in Illinois and Florida in which the judgments against the tobacco manufacturers were so large that they had the potential of bankrupting the manufacturer, which would put the states' MSA revenue payments at risk. This provision preserves such manufacturers' right to appeal while still securing any judgment in favor of a plaintiff injured by a manufacturers' tobacco products.

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
	Section 35. This section makes a conforming amendment to a contingent provision in the session law from 1997 that increased Alaska's cigarette tax to \$1.00. That contingent provision has yet to be triggered.
Section 39. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 38.	Section 36. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 33.
	Section 37. This section, along with Sections 34 & 38, are taken from CSHB 468(JUD), which caps appeal bonds for signatories of the Master Settlement Agreement at \$100 million. This provision is in response to tobacco litigation in Illinois and Florida in which the judgments against the tobacco manufacturers were so large that they had the potential of bankrupting the manufacturer, which would put the states' MSA revenue payments at risk. This provision preserves such manufacturers' right to appeal while still securing any judgment in favor of a plaintiff injured by a manufacturers' tobacco products.
	Section 38. This section, along with Sections 34 & 37, are taken from CSHB 468(JUD), which caps appeal bonds for signatories of the Master Settlement Agreement at \$100 million. This provision is in response to tobacco litigation in Illinois and Florida in which the judgments against the tobacco manufacturers were so large that they had the potential of bankrupting the manufacturer, which would put the states' MSA revenue payments at risk. This provision preserves such manufacturers' right to appeal while still securing any judgment in favor of a plaintiff injured by a manufacturers' tobacco products.
	Section 39. This section is a general severability clause.
	Section 40. This section is a minor revisor's instruction.
	Section 41. This section provides that Section 34 of this Act only takes effect if Section 37 receives the two-thirds majority vote of each house.

Comparison of Special Session Tobacco Tax Bill SB/HB 1001 & CS for CSSB 368, Version W
 Prepared: June 24, 2004, 11:45 AM

Special Session Tobacco Tax Bill SB/HB 1001	House CS for CSSB 368 Version W (As drafted by House Finance)
<p>Section 40. This section requires that a floor stock tax be paid by all persons in control or possession of cigarettes for resale at the effective date of this bill. A floor stock tax is the difference between the tax paid at the old rate and the tax due at the new tax rate. The floor stock tax applies to cigarettes only. The floor stock tax must be remitted to the Department of Revenue in six sequential monthly installments with the first installment due no later than 30 days after the effective date of this bill. The floor stock tax is needed to reduce the amount of stockpiling by retailers and distributors and the windfall they will get by collecting but not paying tax at the new rate on the stockpiled cigarettes.</p>	
<p>Section 41. This section allows the Department of Revenue to proceed to adopt regulations prior to the effective date of the bill.</p>	
<p>Section 42. This section provides an immediate effective date for Section 41.</p>	
<p>Section 43. The section provides an effective date for the remainder of the sections of the bill of September 1, 2004.</p>	<p>Section 42. The section provides an effective date of July 1, 2004.</p>

failed
Foster

AMENDMENT 3

OFFERED IN THE HOUSE
TO: HB 1001

BY REPRESENTATIVE ROKEBERG

1 Page 2, following line 1:

2 Insert new bill sections to read:

3 **** Sec. 2.** AS 29.10.200(51) is amended to read:

4 (51) AS 29.45.650(c), (d), (e), (f), (i), [AND] (j), and (k) (borough
5 sales and use tax);

6 *** Sec. 3.** AS 29.10.200(52) is amended to read:

7 (52) AS 29.45.700(d), [AND] (e), and (g) (city sales and use tax);

8 *** Sec. 4.** AS 29.45.650(a) is amended to read:

9 (a) Except as provided in AS 04.21.010(c), AS 29.45.750, and in (f), (h), (i),
10 [AND] (j), and (k) of this section, a borough may levy and collect a sales tax on sales,
11 rents, and on services provided in the borough. The sales tax may apply to any or all of
12 these sources. Exemptions may be granted by ordinance.

13 *** Sec. 5.** AS 29.45.650 is amended by adding a new subsection to read:

14 (k) A borough may not levy or collect a tax on cigarettes or other tobacco
15 products except under an ordinance adopted before September 1, 2004. A borough
16 may not increase the rate of levy of a tax on cigarettes or other tobacco products
17 imposed under an ordinance adopted before September 1, 2004. This subsection
18 applies to home rule and general law boroughs.

19 *** Sec. 6.** AS 29.45.700(a) is amended to read:

20 (a) A city in a borough that levies and collects areawide sales and use taxes
21 may levy sales and use taxes on all sources taxed by the borough in the manner
22 provided for boroughs. Except as provided in (d), [AND] (e), and (g) of this section,
23 the assembly may by ordinance authorize a city to levy and collect sales and use taxes

1 on other sources.

2 * Sec. 7. AS 29.45.700 is amended by adding a new subsection to read:

3 (g) A city may not levy or collect a tax on cigarettes or other tobacco products
4 except under an ordinance adopted before September 1, 2004. A city may not increase
5 the rate of levy of a tax on cigarettes or other tobacco products imposed under an
6 ordinance adopted before September 1, 2004. This subsection applies to home rule
7 and general law cities."

8

9 Renumber the following bill sections accordingly.

10

11 Page 14, following line 7:

12 Insert new bill sections to read:

13 ** Sec. 45. The uncodified law of the State of Alaska enacted in sec. 4, ch. 48, SLA 1997,
14 is repealed and reenacted to read:

15 Sec. 4. AS 43.50.190(a) is repealed and reenacted to read:

16 (a) There is levied an excise tax of 97.5 mills on each cigarette imported or
17 acquired in this state.

18 * Sec. 46. The uncodified law of the State of Alaska enacted in sec. 4, ch. 100, SLA 2002,
19 as amended by sec. 9, ch. 117, SLA 2003, is repealed and reenacted to read:

20 Sec. 4. AS 29.45.650(a) is amended to read:

21 (a) Except as provided in AS 04.21.010(c) [, AS 29.45.750,] and in (f), (h), (i),
22 (j), and (k) of this section, a borough may levy and collect a sales tax on sales, rents,
23 and on services provided in the borough. The sales tax may apply to any or all of
24 these sources. Exemptions may be granted by ordinance."

25

26 Renumber the following bill sections accordingly.

27

28 Page 14, line 12:

29 Delete "SECS. 2 - 39"

30 Insert "SECS. 8 - 47"

31

- 1 Page 14, line 14:
- 2 Delete "secs. 2 - 39"
- 3 Insert "secs. 8 - 47"
- 4
- 5 Page 14, lines 15 - 16:
- 6 Delete "secs. 2 - 39"
- 7 Insert "secs. 8 - 47"
- 8
- 9 Page 14, line 17:
- 10 Delete "sec. 14"
- 11 Insert "sec. 20"
- 12
- 13 Page 14, line 18:
- 14 Delete "secs. 2 - 39"
- 15 Insert "secs. 8 - 47"
- 16
- 17 Page 14, line 19:
- 18 Delete "secs. 2 - 39"
- 19 Insert "secs. 8 - 47"
- 20
- 21 Page 14, line 21:
- 22 Delete "secs. 2 - 39"
- 23 Insert "secs. 8 - 47"
- 24
- 25 Page 14, line 25:
- 26 Delete "secs. 2 - 39"
- 27 Insert "secs. 8 - 47"
- 28
- 29 Page 14, line 28:
- 30 Delete "secs. 2 - 39"
- 31 Insert "secs. 8 - 47"

1

2 Page 15, line 2:

3 Delete "secs. 2 - 40"

4 Insert "secs. 8 - 48"

5

6 Page 15, line 4:

7 Delete "secs. 2 - 40"

8 Insert "secs. 8 - 48"

9

10 Page 15, line 5:

11 Delete "Section 41"

12 Insert "Section 49"

13

14 Page 15, line 6:

15 Delete "sec. 42"

16 Insert "sec. 50"

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 1001
(S) Publish Date: 6/22/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Cigarette and Tobacco Products Tax Increase RDU Revenue Programs & Services
Component Tax Division
Sponsor Governor
Requester Rules Component No. 2476

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	466.1	466.1	466.1	466.1	466.1	466.1
Travel	60.0	60.0	60.0	60.0	60.0	60.0
Contractual	248.0	246.8	246.8	246.8	246.8	246.8
Supplies	6.0	6.0	6.0	6.0	6.0	6.0
Equipment	48.0	0.0	0.0	0.0		0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	828.1	778.9	778.9	778.9	778.9	778.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	29,100.0	35,000.0	35,000.0	35,000.0	35,000.0	35,000.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	828.1	778.9	778.9	778.9	778.9	778.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	828.1	778.9	778.9	778.9	778.9	778.9

Estimate of any current year (FY2004) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	6	6	6	6	6	6
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Cigarette and Tobacco Products Tax Increase - Bill Analysis (December 24, 2003)

Bill Language: This bill will increase the cigarette tax from \$1 per pack of twenty cigarettes to \$2 per pack and the tobacco products tax (OTP) from 75% to 100% of the wholesale cost. This bill will also institute a floor stock tax on existing cigarette inventories held for sale in an attempt to reduce the amount of stockpiling of cigarettes on the effective date. In an attempt to reduce the amount of cigarette smuggling and tax evasion, this bill will also allow the Department of Public Safety to seize and dispose of equipment, vehicles, monies and other assets used in activities which violate the cigarette and tobacco products statutes.

(cont. on page 2)

Prepared by: Johanna Bales Phono 269-6628
Division Tax Division Date/Time 6/15/04 9:53 AM
Approved by: Steve Porter, Deputy Commissioner Date 6/15/2004
Agency Department of Revenue

FISCAL NOTE #1

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB 1001

ANALYSIS CONTINUATION

Assumptions: The Department of Revenue (DOR) will have primary enforcement responsibility for the cigarette and tobacco products excise tax program. However, DOR will work with the Department of Public Safety (DPS) and Department of Law (DOL) as part of a task force responsible for cigarette tax stamp enforcement in the state. DPS, at the request of DOR, will provide investigative support through a reimbursable services agreement (RSA). The amount of this RSA has been estimated by DPS. Monies for the RSA are included in the Contractual costs requested in this fiscal note. This fiscal note does not include additional costs that may be incurred by DOL as a result of this legislation. From information obtained from other states with cigarette tax rates of \$1.50 to \$2.05 per pack, DOR expects that the increase in the tax rates will result in a significant increase in incidents of cigarette smuggling and tax evasion.

Program Summary: DOR will conduct periodic inspections of cigarette and tobacco products licensees as well as retailers who hold tobacco endorsements with the Department of Community and Economic Development for unstamped cigarettes. In addition, DOR will be the primary contact for complaints from the public and compliant retailers regarding unstamped cigarettes. DOR will work with DPS and DOL to develop cases against cigarette smugglers, including seizing unstamped product and assets used in activities that violate the cigarette and tobacco products statutes. DOR will prepare assessments for unstamped cigarettes and untaxed cigarettes and OTP imported into the state by individuals for personal use and/or resale and work with federal agencies to stop out-of-state entities, specifically Internet sellers, from shipping cigarettes into the state in violation of existing statutes.

Positions: DOR expects that it will need 6 additional positions, 1 Revenue Auditor Supervisor II, 2 Investigator II's, 1 Revenue Auditor III, 1 Accounting Technician III and 1 Appeals Officer (Revenue Auditor V), to manage the workload of the task force, conduct investigations, prepare assessments, and work appeals filed in disputes involving assessments, seized cigarettes, and seized assets. These six positions, along with the two existing investigator positions already assigned to tobacco cases, will represent DOR as part of the task force explained above. DOR estimates the total cost of these additional positions to be \$466,100 each year.

Other Operating Expenditures: (1) Travel - DOR estimates it will need \$60,000 for travel costs for investigators to conduct routine inspections of the approximate 1,600 known cigarette retail establishments throughout the state each year. DOR estimates that each investigator will need to conduct, at a minimum, ten separate inspections/investigations in villages within the state each year to insure an effective enforcement program and respond to complaints from the public of unstamped product. (2) Contractual - Contractual costs in the amount of \$248,000 in the first year and \$246,800 each year thereafter are primarily to fund an RSA between DOR and DPS and for the lease, operation and maintenance of two vehicles to be used by investigators to conduct inspections/investigations in the Anchorage, Mat-Su and Kenai Peninsula areas of the state where most cigarette retail establishments are located. Investigators must be able to respond to complaints of unstamped product quickly and perform unscheduled inspections of retail establishments on an ongoing basis. Contractual costs also include leasing office space and providing phone service for 6 additional employees and renting storage facilities for seized cigarettes and other assets. (3) Supplies - DOR estimates \$1,000 per each FTE each year (a total of \$6,000) for supplies needed to perform the duties of these positions. (4) Equipment - DOR expects equipment expense of \$8,000 per FTE (a total of \$48,000) in the first year for computers, telephones, cubicle parts, software, and other one-time purchases of office equipment needed to perform the duties of these positions.

Revenue: DOR estimates cigarette and tobacco products revenues to increase between \$33 and \$37 million each year. However, DOR believes these revenues will be much smaller unless we institute an aggressive investigation and enforcement program. Although we believe the provision for cigarette tax stamps, which took effect January 1, 2004, will be an effective tool in enforcement of the cigarette excise tax, its success depends upon aggressive enforcement. Even at \$1.00 per pack, the incentive for smuggling and tax evasion is great. At \$2.00 per pack, it will be much more attractive. An aggressive enforcement program will help protect the projected revenue increases.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 1001
(S) Publish Date: 6/22/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title: Act Relating to Tobacco Tax RDU: Alaska State Troopers
Sponsor: Rules Committee Component: Bureau of Alcohol and Drug Enforcement
Requester: Governor Component No.: 2745

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	171.4	171.4	171.4	171.4	171.4	171.4
Travel	20.0	20.0	20.0	20.0	20.0	20.0
Contractual	15.0	15.0	15.0	15.0	15.0	15.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	206.4	206.4	206.4	206.4	206.4	206.4

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Inter-Agency Receipts	206.4	206.4	206.4	206.4	206.4	206.4
TOTAL	206.4	206.4	206.4	206.4	206.4	206.4

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will increase the cigarette tax from \$1 per pack of twenty to \$2 per pack and the other tobacco products (OTP) tax from 75% to 100% of the wholesale costs. The Department of Public Safety (DPS) will be required to seize and dispose of assets used in illegal activities related to tobacco products statutes.

The DPS will provide investigative support to the Department of Revenue through a reimbursable services agreement. The DPS estimates the services of two full-time investigators and associated field travel, training, communication and vehicle usage will be needed to implement this legislation. The use of these investigative assets and any, as yet unidentified expenses associated with cigarette tax stamp enforcement, will be coordinated between the two agencies and reimbursed at actual cost.

Prepared by: Captain Al Storey Phone: 269-5682
Division: Alaska State Troopers Date/Time: 6/14/04 9:26 AM
Approved by: Commissioner William Tandeske Date: 6/14/2004
Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: SB 1001
 (S) Publish Date: 6/23/04
 Dept. Affected: Health & Social Services
 RDU Public Health
 Component Tobacco Prevention and Control

Revision Date/Time (Note if correction):
 Title TOBACCO TAXES AND RELATED MATTERS

Sponsor (RLS) BY REQUEST OF THE GOVERNOR

Requester _____ Component No. 2384

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual		2,600.0	2,600.0	2,600.0	2,600.0	2,600.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims		1,400.0	1,400.0	1,400.0	1,400.0	1,400.0
Miscellaneous						
TOTAL OPERATING	0.0	4,000.0	4,000.0	4,000.0	4,000.0	4,000.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (0)						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
1168 Tobacco Educ/Cess Fund		4,000.0	4,000.0	4,000.0	4,000.0	4,000.0
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	4,000.0	4,000.0	4,000.0	4,000.0	4,000.0

Estimate of any current year (FY2004) cost: _____
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part time						
Temporary						

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

Funding for the Tobacco Control Program is authorized and appropriated by the Alaska Legislature each year. The Legislature established the Tobacco Use Education and Cessation Fund as AS 37.05.580, and a portion of Tobacco Master Settlement Agreement revenues are deposited into the Tobacco Fund in April of each year to support the Tobacco Control Program. The program faced a serious cash flow problem in FY04 that continues as it heads into FY05. The Department of Health and Social Services projects that the fund will have only \$397,000 of carry forward revenue at the start of FY05. The FY 2005 budget passed by the legislature authorized a budget of \$4,669,200. The projected \$4,300,000 Master Settlement revenue will not be deposited to the (continued next page)

Prepared by: Sherry Hill, Special Assistant Phone 465-1618
 Division: Office of the Commissioner Date/Time 06/21/2004
 Approved by: Joel S. Gilbertson, Commissioner Date 06/22/2004
 Agency: Department of Health and Social Services

FISCAL NOTE
FN # 3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB 1001

ANALYSIS CONTINUATION

Analysis Continued:

State until April 2005. As a result, the program will have to "borrow" from other Public Health programs in the interim to allow the Tobacco Control program to operate. This can be seen in the attached table showing Cash Flow without Tobacco Tax as a negative cash flow from July 2004 until April 2005 (attachment A).

Passing the proposed increase in tobacco excise taxes and including the proposed provision that 3.9 percent of the total proceeds of the tax shall be deposited into the Tobacco Use Education and Cessation Fund established in AS 37.05.580 will fix the existing cash flow problem as well as increase prevention funding. This fiscal note reflects an increase of \$4,000,000 Tobacco Education/Cessation Fund spending authorization for the Tobacco Prevention and Control component of the Public Health RDU. Additional authorization of this amount will result in expanded tobacco program activities as well as allow for sufficient carryforward to support program activities in the next fiscal year until Master Settlement revenues are deposited. See attached table showing cash flow with Tobacco Tax (attachment B).

These funds will also help offset a projected decrease in the Tobacco Master Settlement Agreement revenues, according to the latest forecast by the National Association of Attorneys General. This fiscal note also assumes that the current authorization for \$500,000 Tobacco Education/Cessation Fund in the Community Health Grants component would be switched to General Funds in the FY06 budget. If this does not occur, the funds available to the Tobacco Prevention and Control component would be reduced by \$500,000 to remain within the projected revenues. The net increase to the Tobacco Prevention and Control component will be approximately \$3,330,000. See attachment C for summary of Tobacco Program revenues and authorization.

The increased spending authorization is based on the Department of Revenue's projection that the amount of cigarette tax revenue deposited into the Tobacco Use Education and Cessation Fund would be \$4,000,000 annually. All revenues are reported on the Department of Revenue fiscal note.

Critical to the ongoing fiscal integrity of the program will be action by the legislature every year to provide for carry forward of unexpended Tobacco Use Education and Cessation Funds from the current State Fiscal Year to the following one. Because the Master Settlement revenues are not deposited until April each year, legislative action to authorize carry forward is essential so the State can avoid a negative cash flow situation.

The State Tobacco Control Program develops its annual management plan every year depending on the level of appropriations authorized by the legislature. The Tobacco Control Program staff, Alaska Division of Public Health (ADPH), work on an on-going basis closely with members of the Alaska Tobacco Control Alliance (ATCA) to monitor the burden of

FISCAL NOTE

FN # 3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB 1001

ANALYSIS CONTINUATION

Analysis Continued:

tobacco on Alaskans, evaluate existing program activities, assess "Best Practices Guidelines" from the National Centers for Disease Control and Prevention, and identify new opportunities to target prevention programs. Working together, the ATCA and Tobacco Control Program staff develops detailed recommendations to the Director, ADPH and Commissioner, Department of Health and Social Services for allocating appropriated resources.

If the legislature passes the proposed tobacco excise tax increase and authorizes 8.9 percent of annual proceeds to be deposited to the Tobacco Use Education and Cessation Fund, then the program will be able to significantly increase prevention program activities. To do so, the Tobacco Control Program staff will meet with our colleagues of the Alaska Tobacco Control Alliance to plan for ramping up the program beginning in FY06. We propose maintaining program spending in FY05 at the currently authorized level of \$4,669,200. This will allow the program to achieve a positive cash flow situation in FY05 with adequate funding to carry forward in FY06 to assure a continued positive cash flow.

We propose a FY06 and FY07 budget at a level of \$7,500,000 with an annual carry forward of \$2,600,000. This level of funding will protect the program from negative cash flow. This will bring us closer to, the Center for Disease Control's Best Practices minimum recommended expenditure level of \$8,100,000. Actual revenues and expenditures will be monitored to possibly allow for increased program funding to this recommended level in FY08 or beyond.

See attachments A-E.

Tobacco Use, Education and Cessation Fund Cash Flow Without Tobacco Tax

FY05	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY05 Total
Projected Carryforward of Revenue from FY04	397.0												397.0
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										4,300.0			4,300.0
Projected Monthly Expenditures **	531.0	257.2	257.2	689.4	235.4	235.4	627.0	235.4	235.4	622.0	302.9	312.9	4,541.2
Cash Balance in Tobacco Fund w/out Tax ***	(134.0)	(391.2)	(648.4)	(1,337.8)	(1,573.2)	(1,808.6)	(2,435.6)	(2,671.0)	(2,906.4)	771.6	468.7	155.8	

FY06	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY06 Total
Projected Carryforward from FY05	155.8												155.8
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										3,500.0			3,500.0
Projected Monthly Expenditures **	427.5	207.1	207.1	555.0	189.5	189.5	504.8	189.5	189.5	500.7	243.8	251.9	3,655.8
Cash Balance in Tobacco Fund w/out Tax ***	(271.7)	(478.7)	(685.8)	(1,240.8)	(1,430.3)	(1,619.8)	(2,124.5)	(2,314.0)	(2,503.5)	495.7	251.9	(0.0)	

FY07	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY07 Total
Projected Carryforward from FY06	(0.0)												(0.0)
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										3,500.0			3,500.0
Projected Monthly Expenditures **	409.3	198.2	198.2	531.3	181.4	181.4	483.2	181.4	181.4	479.4	233.5	241.2	3,500.0
Cash Balance in Tobacco Fund w/out Tax ***	(409.3)	(607.5)	(805.7)	(1,337.0)	(1,518.5)	(1,699.9)	(2,183.1)	(2,364.6)	(2,546.0)	474.6	241.2	(0.0)	

* Dept of Law revenue estimate based on the National Association of Attorneys General estimate for Alaska's Master Settlement Revenues. The official Dept of Revenue forecast for FY05 is \$4.4 million.

** Projected Monthly Expenditures based on normal cash flow for grants/contracts/staff costs. FY05 total expenditures based on current program management plan. FY06 & FY07 total expenditures equal to total revenue projected for year. These projections also assume that Tobacco Educ/Cess Funding for Community Health Grants (\$500.0 in FY05) is switched to GF in FY06 budget, leaving all Tobacco Funds in direct support of the Tobacco Program.

*** No payments can be made from the Tobacco Use, Education and Cessation Fund when there is zero or negative cash balance. When a negative balance is shown above, another source of funding must be utilized until a revenue deposit is made into the Tobacco Educ/Cess Fund. This would likely delay the scheduled monthly expenditures and possibly impact the total expenditure level in the Tobacco Control Program.

Tobacco Use, Education and Cessation Fund Cash Flow With Proposed Tobacco Tax Receipts

FY05	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY05 Total
Projected Carryforward of Revenue from FY04	397.0												397.0
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										4,300.0			4,300.0
Projected Cigarette Tax Deposits to Tobacco Educ/Cess Fund**					379.2	377.1	341.5	267.3	300.5	293.7	329.7	293.3	2,582.3
Total Monthly Tobacco Educ/Cess Fund Revenue	397.0	0.0	0.0	0.0	379.2	377.1	341.5	267.3	300.5	4,593.7	329.7	293.3	7,279.3
Projected Monthly Expenditures ***	546.0	264.4	264.4	708.8	242.0	242.0	644.7	242.0	242.0	639.5	311.4	321.7	4,669.2
Cash Balance In Tobacco Fund with Tax ****	(149.0)	(413.4)	(677.9)	(1,386.7)	(1,249.5)	(1,114.5)	(1,417.6)	(1,392.4)	(1,333.9)	2,620.3	2,638.5	2,610.1	

FY06	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY06 Total
Projected Carryforward from FY05	2,610.1												2,610.1
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										3,500.0			3,500.0
Projected Cigarette Tax Deposits to Tobacco Educ/Cess Fund**	286.6	348.9	374.3	407.9	379.2	377.1	341.5	267.3	300.5	293.7	329.7	293.3	4,000.0
Total Monthly Tobacco Educ/Cess Fund Revenue	2,896.7	348.9	374.3	407.9	379.2	377.1	341.5	267.3	300.5	3,793.7	329.7	293.3	10,110.1
Projected Monthly Expenditures ***	877.6	425.1	425.1	1,139.3	389.0	389.0	1,036.2	389.0	389.0	1,028.0	500.6	517.1	7,505.1
Cash Balance In Tobacco Fund with Tax ****	2,019.1	1,943.0	1,892.2	1,160.7	1,150.9	1,139.0	444.3	322.5	234.0	2,999.7	2,828.8	2,605.0	

FY07	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	FY07 Total
Projected Carryforward from FY06	2,605.0												2,605.0
Dept of Law Estimated Tobacco Settlement Deposit to Tobacco Educ/Cess Fund *										3,500.0			3,500.0
Projected Cigarette Tax Deposits to Tobacco Educ/Cess Fund**	286.6	348.9	374.3	407.9	379.2	377.1	341.5	267.3	300.5	293.7	329.7	293.3	4,000.0
Total Monthly Tobacco Educ/Cess Fund Revenue	2,891.6	348.9	374.3	407.9	379.2	377.1	341.5	267.3	300.5	3,793.7	329.7	293.3	10,105.0
Projected Monthly Expenditures ***	877.6	425.1	425.1	1,139.3	389.0	389.0	1,036.2	389.0	389.0	1,027.9	500.6	517.1	7,505.0
Cash Balance In Tobacco Fund with Tax ****	2,014.0	1,937.9	1,887.1	1,155.7	1,145.9	1,133.9	439.2	317.5	228.9	2,994.7	2,823.8	2,100.0	

* Dept of Law revenue estimate based on the National Association of Attorneys General estimate for Alaska's Master Settlement Revenues. The official Dept of Revenue forecast for FY05 is \$4.4 million.

** Cigarette Tax Deposits based on Dept of Revenue estimate with 2 month lag after effective date of tax bill before first deposit made to Tobacco Educ/Cess Fund.

*** Projected Monthly Expenditures based on normal cash flow for grants/contracts/staff costs. FY05 total expenditures based on total authorized by Legislature. FY06 & FY07 total expenditures assume a cash balance in the Fund at the end of the fiscal year sufficient to maintain positive cash flow in the Tobacco Educ/Cess Fund until the Master Settlement deposit the following April. These projections also assume that Tobacco Educ/Cess Funding for Community Health Grants (\$500.0 in FY05) is switched to GF in FY06 budget, leaving all Tobacco Funds in direct support of the Tobacco Program.

This projection does not show expenditures equal to the CDC recommended minimum Tobacco Prevention and Control Program of \$8.1 million for Alaska. However, if expansion of the Tobacco Program in FY06 is slower than projected, this would result in additional carryforward (in excess of \$2.6 million as shown), which could potentially allow for increased program expenditures in future years.

**** No payments can be made from the Tobacco Use, Education and Cessation Fund when there is zero or negative cash balance. When a negative balance is shown above in FY05, another source of funding must be utilized until a revenue deposit is made into the Tobacco Educ/Cess Fund.

Proposed FY06-07 Tobacco Education/Cessation Fund Budgets/Revenues with Tobacco Tax

	Tobacco Use, Education and Cessation Fund
<i>FY2005 Conference Committee Tobacco EduclCess Fund Budget:</i>	
Public Health: Tobacco Prevention and Control	3,315.3
Public Health: Epidemiology	242.7
Public Health: Community Health Grants	500.0
Behavioral Health: Behavioral Health Admin (Enforcement)	611.2
Total FY2005 Budget	4,669.2
<i>FY2005 Revenues:</i>	
Dept of Law revenue estimate from Nat'l Assoc of Attorneys General *	4,300.0
Carryforward of FY04 Revenue	397.0
Cigarette Tax Deposits to Tobacco Fund (Estimated to be Rcvd by June 30, 2005)	2,582.3
Total Estimated FY2005 Revenue	7,279.3
Net Revenue Available to Carryforward to FY06	2,610.1

* Dept of Revenue Spring 2004 Revenue Forecast is \$4.4 million. Dept of Law reports that the National Assoc of Attorneys General that administer the settlement are forecasting a decrease in revenues in FY05-06.

	Tobacco Use, Education and Cessation Fund
<i>FY2006 Proposed Tobacco EduclCess Fund Budget: **</i>	
Public Health: Tobacco Prevention and Control (current funding)	3,315.3
Public Health: Tobacco Prevention and Control (net effect of decrease in Master Settlement revenue) ***	(670.3)
Public Health: Tobacco Prevention and Control (proposed increase)	4,000.0
Public Health: Epidemiology	245.0
Behavioral Health: Behavioral Health Admin (Enforcement)	615.0
Total Proposed FY2006 Budget	7,505.0
<i>FY2006 Revenues</i>	
Dept of Law Revenue Estimate from Nat'l Assoc of Attorneys General	3,500.0
Carryforward of FY05 Revenue	2,610.1
Cigarette Tax Deposits to Tobacco Fund (Estimated to be Rcvd 7/1/05-6/30/06)	4,000.0
Total Estimated FY2006 Revenue	10,110.1
Net Revenue Available to Carryforward to FY07	2,605.1

** FY06 and FY07 Proposed Budgets are based on eliminating Tobacco Educ/Cess funding from the Community Health Grants component by replacing that source with General Funds (\$500.0).

*** The latest revenue estimates from the Nat'l Assoc of Attorneys General forecast a decrease in Tobacco Settlement revenue. This decrease in expenditure authority keeps the DHSS program in balance with the total revenue anticipated.)

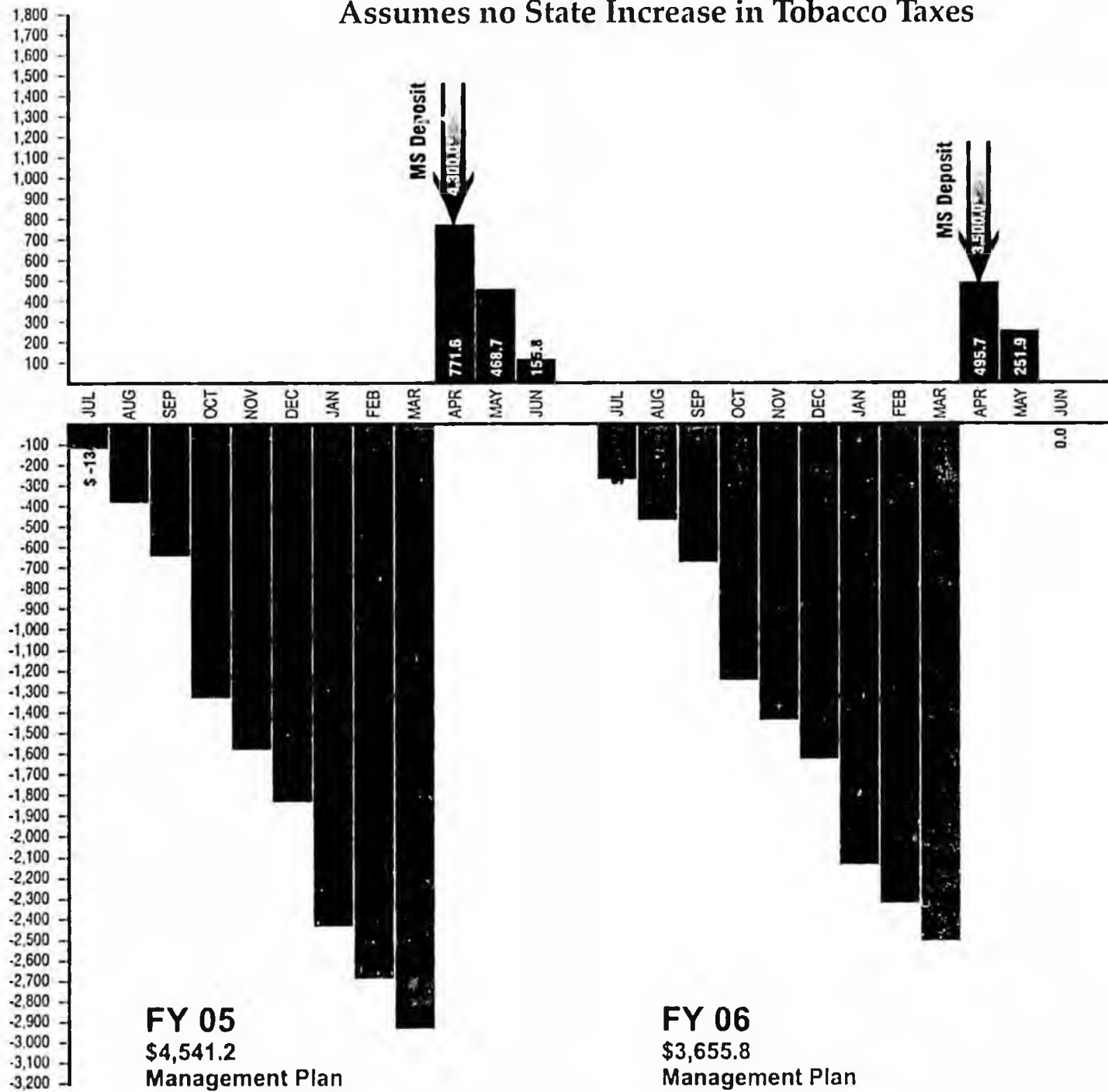
	Tobacco Use, Education and Cessation Fund
<i>FY2007 Proposed Tobacco Educ/Cess Fund Budget: **</i>	
Public Health: Tobacco Prevention and Control (current funding)	3,315.3
Public Health: Tobacco Prevention and Control (net effect of decrease in Master Settlement revenue) ***	(670.3)
Public Health: Tobacco Prevention and Control (proposed FY06 Tobacco Tax increase)	4,000.0
Public Health: Epidemiology	245.0
Behavioral Health: Behavioral Health Admin (Enforcement)	615.0
Total Proposed FY2007 Budget	7,505.0
<i>FY2007 Revenues</i>	
Dept of Law Revenue Estimate from Nat'l Assoc of Attorneys General	3,500.0
Carryforward of FY06 Revenue	2,605.1
Cigarette Tax Deposits to Tobacco Fund (Estimated to be Rcvd 7/1/06-6/30/07)	4,000.0
Total Estimated FY2006 Revenue	10,105.1
Net Revenue Available to Carryforward to FY08	2,600.1

** FY06 and FY07 Proposed Budgets are based on eliminating Tobacco Educ/Cess funding from the Community Health Grants component by replacing that source with General Funds (\$500.0).

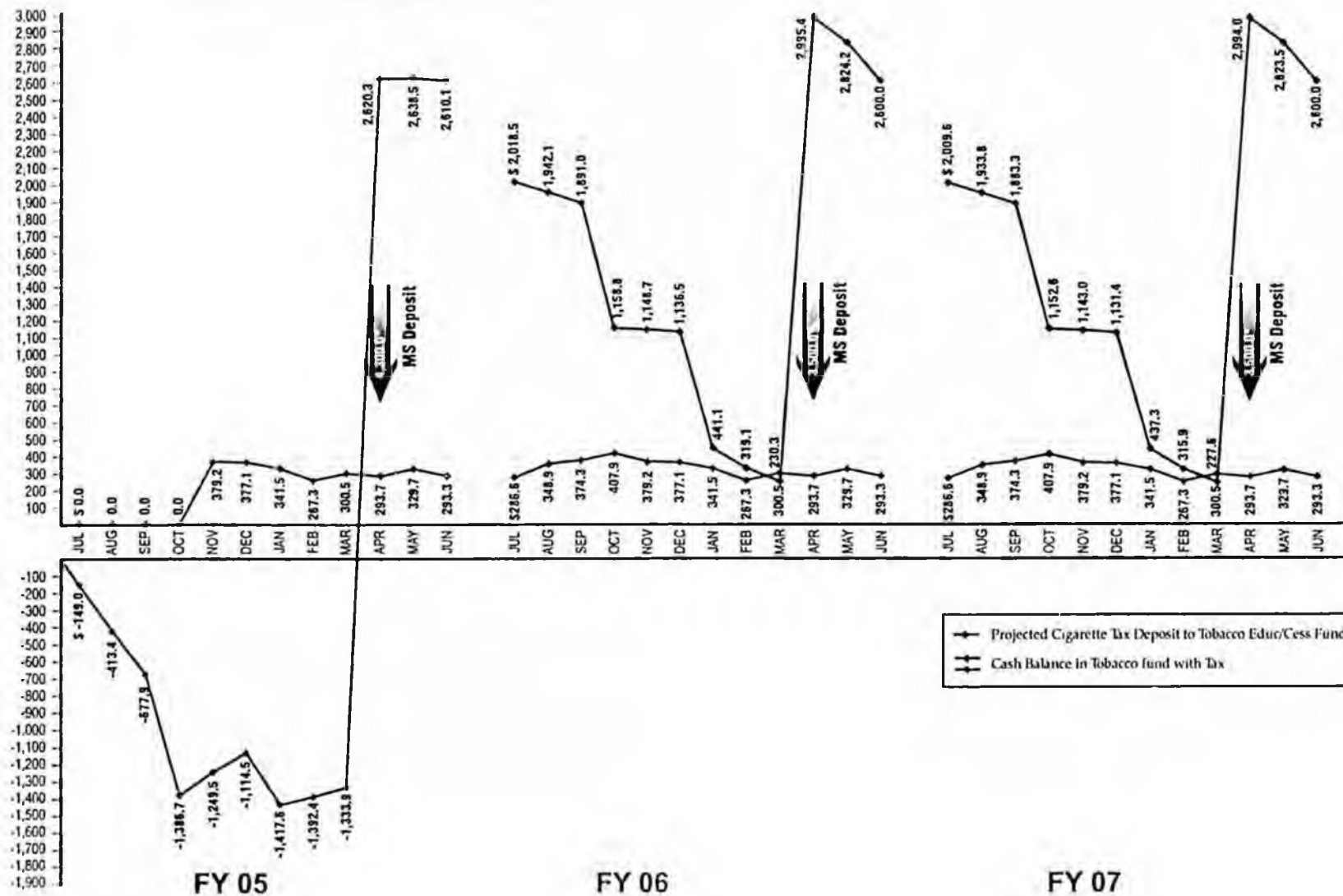
*** The latest revenue estimates from the Nat'l Assoc of Attorneys General forecast a decrease in Tobacco Settlement revenue. This decrease in expenditure authority keeps the DHSS program in balance with the total revenue anticipated.)

Tobacco Revenue Cash Flow 2005-06

Assumes no State Increase in Tobacco Taxes



Tobacco Revenue Cash Flow 2005-07 with State Increase in Tobacco Tax



Additional Backup is
contained in the
binders provided by
the Governor under
HB 1001



June 22, 2004

The Honorable Pete Kott
Speaker of the House of Representatives
716 W. 4th Ave.
Anchorage, AK 99501

Dear Speaker Kott:

The American Cancer Society strongly supports the governor's call to pass a full and immediate one-dollar per pack increase in Alaska's cigarette tax, along with an accompanying increase in the non-cigarette tobacco product tax, during the special session.

The Society recognizes tobacco taxes as one of the most effective ways to reduce youth smoking and save lives. We have seen evidence of this fact across the nation as well as here in Alaska. There is no longer any doubt that tobacco taxes are a proven means to reduce tobacco use and save lives. Now is the time to act on this crucial policy issue.

The mission of the American Cancer Society is to eliminate cancer as a major health problem by preventing cancer, saving lives, and diminishing suffering from cancer. We clearly recognize the devastating impact of cancer on Alaskans. Cancer is currently the second leading cause of death for all Alaskans and the leading cause of death for Alaska Natives. Research shows that one-third of all cancers are tobacco-related and almost all tobacco-users first become addicted as children. By increasing the state's tobacco tax, with its known correlation to reducing youth smoking, we are taking a critical step in stemming the tide of rising health care costs to the state and needless death and disability in our communities.

The American Cancer Society urges the legislature to adopt this critical public health measure as soon as possible to save lives and protect the health of our children.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily E. Nenon", with a long horizontal line extending to the right.

Emily E. Nenon
Alaska Advocacy Manager

1057 West Fireweed Lane, Suite 204 • Anchorage, AK • 99503
(907) 277-8696 • (800) 478-9355 • Fax (907) 263-2073

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(907) 276-LUNG
1-800-LUNGUSA
500 W. Int'l Airport Rd., #7A
Anchorage, Alaska 99518-1105
www.aklung.org
Fax: (907) 565-5587

June 22, 2004

Representative Pete Kott
State Capitol, Room 208
Juneau, AK 99801-1182

Fax: 907-465-2819

Re: Increasing the State Tobacco Tax

Dear Representative Kott:

The American Lung Association of Alaska is pleased to support Governor Murkowski's bill to raise Alaska's Tobacco Tax. This measure represents a win, win, win solution for Alaska that reduces smoking, raises much-needed revenue and has strong support from voters.

Studies show that higher cigarette taxes are one of the most effective ways to reduce smoking among both youth and adults. A Department of Revenue study shows Alaska's tobacco consumption dropped substantially in response to the 1997 tobacco price increase. Among younger children the report estimated a 30 percent reduction in smoking.

At the same time the 1997 tobacco tax increase generated approximately 30 million per year in new state revenue. The 2004 **\$1 tax increase would generate approximately 36 million per year.**

There is **strong public support** for substantially increased state tobacco taxes. A recent poll completed for Alaskans for Tobacco-Free Kids shows 67 percent support among Alaskan voters for a \$1.00 per pack increase in tobacco taxes.

The tobacco tax increase would **save thousands of Alaska lives**, reduce health care costs and generate much needed revenue. All measures of success the American Lung Association of Alaska can enthusiastically support.

Sincerely,

Christie Garbe, CEO
American Lung Association of Alaska