

SB

368

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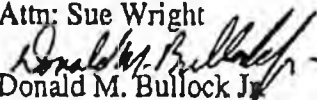
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

May 9, 2004

SUBJECT: Title change requires a concurrent resolution to waive the rules (CSSB 368(FIN)am)

TO: Representative Mike Chenault
Attn: Sue Wright

FROM: 
Donald M. Bullock Jr.
Legislative Counsel

Enclosed with this memorandum is the amendment you requested for the bill identified above. Please note that the amendment would change the title of the bill and will require a waiver of the rules that prohibit a title change in the second house. Please let me know whether you would like a concurrent resolution drafted to waive the rules for the purpose of amending the title.

If I may be of further assistance, please advise.

DMB:mdr
04-230.mdr

Enclosure

Mike

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS2011A
Bullock
5/9/04

**HOUSE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

BY

**Introduced:
Referred:**

A RESOLUTION

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**
2 **Legislature, concerning Senate Bill No. 368, relating to taxes on cigarettes and tobacco**
3 **products, to tax stamps on cigarettes, to forfeiture of cigarettes and of property used in**
4 **the manufacture, transportation, or sale of unstamped cigarettes, and to licenses and**
5 **licensees under the Cigarette Tax Act.**

6 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

7 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of
8 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding
9 changes to the title of a bill, are suspended in consideration of Senate Bill No. 368, relating to
10 taxes on cigarettes and tobacco products, to tax stamps on cigarettes, to forfeiture of cigarettes
11 and of property used in the manufacture, transportation, or sale of unstamped cigarettes, and
12 to licenses and licensees under the Cigarette Tax Act.

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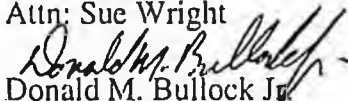
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04-230.mdr

Enclosure

AMENDMENT

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 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."

*Amended
page 5*

23-GS2116V
Bullock
5/10/04

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

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

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

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(B) committed other violations of this chapter.

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

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

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

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

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

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

(B) committed other violations of this chapter.

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

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

STATE OF ALASKA

DEPARTMENT OF REVENUE

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STATE TOBACCO TAXES & REVENUES

Analysis of Tobacco Taxes Per Fund Before and After Proposed Increases

Tax Components

	<u>Current Law</u>	<u>With SB 368/HB 538</u>
Cigarette Tax		
Number of Taxable Cigarettes ⁽¹⁾	804,000,000	737,000,000
AS 43.50.090(a) – School Fund	\$.76 (38 mills)	\$.76 (38 mills)
AS 43.50.190(a) – General Fund	\$.24 (12 mills)	\$1.24 (62 mills)
 Other Tobacco Products Tax		
Wholesale price of tobacco products ⁽²⁾	\$8,933,333	\$8,793,749
	75% of wholesale price	100% of wholesale price
AS 43.50.300 – General Fund		

Revenue Components

(Annual Basis)⁽³⁾

	<u>Current Law</u>	<u>With SB 368/HB 538</u>
Cigarette Tax		
AS 43.50.090(a) – School Fund	\$30.6 million	\$28 million
AS 43.50.190(a) – General Fund	\$9.6 million	\$41.7 million
AS 43.50.190(a) – General Fund with appropriation to tobacco education and cessation fund (AS 37.05.580) ⁽⁴⁾	\$0	\$4.0 million (HB 538 only)
 Other Tobacco Products Tax		
AS 43.50.300 – General Fund	\$6.7 million	\$8.7 million
 Total Tobacco Taxes Revenue	 \$46.9 million	 \$82.4 million

⁽¹⁾Assumes an 8.3% decrease in total cigarette consumption.

⁽²⁾Assumes a 1.5% decrease in total other tobacco products consumption.

⁽³⁾Sources: Fall 2003 Revenue Sources Book (FY 2005 Projected) & DOR Fiscal Note

⁽⁴⁾Although no tobacco excise taxes are currently appropriated to the tobacco education and cessation fund, approximately \$5 million of annual Tobacco Master Settlement Agreement (MSA) payments is appropriated.

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Cigarette Consumption and Cigarette Tax Rates in Alaska

Prepared by: Johanna Bales, Program Manager, Cigarette and Tobacco Products Tax

Alaska's cigarette excise tax dates back to 1949 when the legislature first enacted a tax of 3 cents per pack of 20 cigarettes. In 1951, the legislature increased the cigarette tax to 5 cents per pack. Cigarette tax increases were passed again in 1961, 1985, and in 1989. From 1989 until September 30, 1997, the cigarette tax was 29 cents per pack. Effective October 1, 1997, the legislature increased the cigarette tax rate to \$1.00 per pack of 20 cigarettes. During the months of June through September, 1997, Alaskans stockpiled significant amounts of cigarettes in an attempt to delay the new tax rate. Despite stockpiling, cigarette consumption between fiscal year 1997 and 1998 decreased 4.6 percent. Cigarette consumption continued to decline during fiscal years 1999 through 2002. In fiscal year 2003, cigarette consumption leveled out and increased slightly. During fiscal years 1993 through 2003, reported taxable cigarettes and cigarette tax rates were as follows:

<u>Fiscal Year</u>	<u>Number of Cigarettes</u>	<u>Tax Rate Per Pack of 20 Cigarettes</u>
1993	1,079,000,000	29 cents
1994	1,072,000,000	29 cents
1995	1,086,000,000	29 cents
1996	1,053,000,000	29 cents
1997	1,023,000,000	29 cents
1998	976,000,000	29 cents until 10/1/1997; then \$1.00
1999	858,000,000	\$1.00
2000	862,000,000	\$1.00
2001	818,000,000	\$1.00
2002	800,000,000	\$1.00
2003	801,000,000	\$1.00

(See Chart 1 - "Alaska Cigarette Consumption by Fiscal Year" attached.)

During fiscal years 1993 through 1997, Alaskans smoked, on average, 1,062,600,000 cigarettes each year. During fiscal years 1998 through 2003, Alaskans smoked, on average, 852,000,000 cigarettes each year; a decrease of approximately 20 percent from the average consumption during fiscal years 1993 through 1997. (See Chart 2 - "Alaska Average Annual Cigarette Consumption Before & After 1997 Tax Increase" attached.) The number of cigarettes reported in fiscal year 2003 is nearly 22 percent less than the number of cigarettes reported in fiscal year 1997.

The Department of Revenue expects that the proposed tax increase of \$1.00 per pack will reduce smoking an additional 8 to 10 percent from 2003 levels.

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CSSB 368
House Finance
May 9, 2004

Prepared by: Johanna Bales, Revenue Auditor

Thank you Mr. Chairman. My name is Johanna Bales. I am employed by the Alaska Department of Revenue as a Revenue Auditor in the Tax Division. I am the program manager of the Tax Division's cigarette and tobacco products excise tax program. The following outlines the administration's support of SB 368, the bill before you.

For a period of time, Alaska's current excise tax rate on cigarettes and other tobacco products (OTP) was the highest in the nation. After a flurry of legislative activity in other states, Alaska's excise tax rate on cigarettes is now the 12th highest and the excise tax rate on OTP is the 3rd highest. Currently, the highest excise tax rate on cigarettes is New Jersey's rate of \$2.05 per pack of 20. The highest excise tax rate on OTP is Washington's rate of 129% of the wholesale price. At the current excise tax rate, Alaska's fiscal year revenues from cigarette and tobacco products are approximately \$40 million and \$6.5 million, respectively.

Although Alaska receives nearly \$47 million in cigarette and tobacco products tax revenues, this amount doesn't even begin to cover the economic and social costs associated with smoking-related illnesses. The Centers for Disease Control (CDC) estimates that smoking-attributable direct medical expenditures in Alaska in 1998 were \$132 million. More recent data indicates that these numbers are on the rise. Therefore, smoking-related costs in Alaska are believed to be significantly higher than \$132 million each year.

If Alaska's cigarette excise tax was doubled to \$2.00 per pack of 20 cigarettes (\$.10 per cigarette) and the OTP tax was increased to 100% of the wholesale cost, Alaska would rank number 2 in total taxes charged on cigarettes and OTP as compared to the other states. If the cigarette and tobacco products excise taxes were increased as proposed in the attached bill, Alaska can expect to see an increase in cigarette and OTP excise taxes of \$33 to \$38 million each year. Estimated total cigarette and tobacco tax revenues would then be between \$80 and \$84 million each year. Even at these levels, cigarette and tobacco tax revenues would not cover smoking-related costs in Alaska. However, this tax increase proposal is a step in the right direction in offsetting some of these costs. Furthermore, discouraging smoking through a tax increase will improve the economic health of our society as a whole which, in turn, will decrease smoking-related costs in Alaska in the future.

Although we estimate cigarette and tobacco products revenues would increase between \$33 and \$38 million each year, we can expect revenues to 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 would be much more attractive. Therefore, in addition to increasing the tax rate, this bill would allow the Departments of Revenue and Public Safety to seize and dispose of equipment, vehicles, monies and other assets used in cigarette smuggling and tax evasion activities. We believe these types of seizures will make cigarette smuggling and tax evasion less attractive and protect State revenues.

This version of the bill will also require individuals who import tobacco products, other than cigarettes, for personal consumption to pay the tax on those products. Since 1949, individuals who import cigarettes for personal consumption have been required to pay the cigarette tax. Since that time, manufacturers have begun making tobacco products which are similar to cigarettes, such as roll-your-own tobacco and machine made little cigars. These products are sold as substitutes for cigarettes. However, since current Alaska law does not require individuals to pay the tax on tobacco products imported for personal consumption, these types of products have been increasing in popularity since they are significantly less expensive than cigarettes. This provision will close the loophole between the cost of cigarettes and other tobacco products and further act as an incentive for individuals to quit smoking.

This bill will also institute a floor stock tax on all existing cigarette inventories held in the state for sale. This portion of the bill will require all cigarette distributors and retailers to take an inventory of their cigarettes on the effective date of the statute and pay the difference between the old tax rate and the new tax rate to the Department of Revenue in six monthly installments. When the tax rate on cigarettes increased in 1997, a significant number of retailers stockpiled large amounts of cigarettes prior to the tax rate increase. We estimate that over 200 million cigarettes were stockpiled resulting in lost revenues to the state of approximately 7 million dollars. Most other states and the federal government institute a floor stock tax on the date of a tax rate increase which is paid by all entities engaged in the sale of cigarettes. This provision will not prohibit individuals from stockpiling cigarettes for personal consumption.

This bill also includes changes to 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 bill modifies the Unfair Cigarette Sales Act by prohibiting wholesalers and retailers from reducing their cost by cash discounts received from the manufacturers. The language in this bill is supported by in-state cigarette retailers who have found themselves at a disadvantage when competing with multi-state, multi-national corporations that also sell cigarettes in the state. This provision will aid in-state businesses in competing with out-of-state businesses in a highly regulated industry.

The Department of Revenue urges your support of this important bill. It will enhance compliance with the state's revenue laws while providing an important public health benefit.

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Comparison of Major Differences Between CS for SB 368, Version I.A and CS for HB 538, Version S

The following major provisions are found in CS SB 368, but not in CS HB 538:

- 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.

The following major provisions are found in CS HB 538, but not in CS SB 368:

- 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 and directs the legislature to deposit 8.9% (approximately \$4 million) of annual cigarette tax revenues into the tobacco use education and cessation fund.
- Increases the annual cigarette license fee for manufacturers from \$5 to \$50 and for vending machine operators from \$25 to \$50.
- Allows individuals to personally transport up to 600 cigarettes (3 cartons) each month without incurring cigarette tax liability.
- Changes the definition of a class A misdemeanor for violations of the cigarette shipping restrictions.
- 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 of Revenue.
- Provides that possession of less than 601 unstamped cigarettes is not a violation of the cigarette tax act if the cigarettes were personally transported into the state for personal consumption.

A section-by-section analysis of all differences between the two bills is attached.

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
	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.	No provision in SB 368.
	Section 2. This section increases the cigarette license fee for manufacturers from \$5 to \$50.	No provision in SB 368.
	Section 3. This section increases the cigarette license fee for vending machine operators from \$25 to \$50.	No provision in SB 368.
Section 1. 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.	Same
Section 2. 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.	Same
Section 3. 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.	Same
	Section 7. This section allows individuals to personally transport up to 600 cigarettes (3 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.090.	No provision in SB 368.

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
	<p>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 2nd degree), which requires a value of \$500. The tax due on 5,000 cigarettes under this bill would be \$500.</p>	<p>No provision in SB 368.</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>No provision in SB 368.</p>

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
Section 4. 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.	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.	Same
Section 5. 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.	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.	Same
Section 6. 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.	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.	Same
Section 7. 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.	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.	Same
Section 8. 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 50 mills or \$1.00 per pack of 20. The increase in this tax will all go into the general fund.	Same
	Section 15. This section allows individuals to personally transport up to 600 cigarettes (3 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.190.	No provision in SB 368.
	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.	No provision in SB 368.

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
Section 9. 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 17. This section increases the tax on other tobacco products from 75% to 100% of the wholesale cost.	SB 368 requires that OTP sold or imported into the state for personal consumption is subject to tax. No provision in HB 538.
Section 10. This section requires that individuals that import other tobacco products into the state must have a license as a "buyer".		No provision in HB 538.
Section 11. This section requires that a fee of \$25 must be paid for a tobacco products "buyer" license.		No provision in HB 538.
Section 12. This section requires distributors to provide information about the type of tobacco business they are conducting to the Department of Revenue.		No provision in HB 538.
Section 13. This section allows distributors and buyers to renew their tobacco products license each year for a fee of \$50 and \$25, respectively.		No provision in HB 538.
Section 14. 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.		No provision in HB 538.
Section 15. This section changes the definition of "licensee" in the tobacco products statutes to include the new "buyer" license type.		No provision in HB 538.
Section 16. This section provides a definition for "buyer" in the tobacco products statutes.		No provision in HB 538.
Section 17. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.	Section 18. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.	Same

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
<p>Section 18. 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 cigarette tax stamps when payment is made on a deferred payment basis.</p>	<p>Section 19. 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.</p>	<p>Same</p>
<p>Section 19. 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.</p>	<p>Section 20. 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.</p>	<p>Same</p>
<p>Section 20. 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.</p>	<p>Section 21. 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.</p>	<p>Same</p>
<p>Section 21. 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, a violation of the Cigarette Tax Act. 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. This section further provides that assets used as sole transportation in a village cannot be seized.</p>	<p>Section 22. 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>The language that states that an asset used as sole transportation in a village cannot be seized has been removed from HB 538.</p>

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
<p>Section 22. 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 23. 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>Same</p>
<p>Section 23. This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of, or possession with the intent to sell, one but fewer than 1,000 unstamped cigarettes to sales of, or possession with the intent to sell, one but fewer than 5,000 unstamped cigarettes.</p>	<p>Section 24. 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 601 but fewer than 10,000 unstamped cigarettes. This section also includes importation or possession of one but fewer than 601 unstamped cigarettes as misconduct involving unstamped cigarettes in the first degree if the cigarettes are not possessed for personal consumption.</p>	<p>HB 538 provides that possession of less than 601 cigarettes is not a violation if the cigarettes were personally transported into the state for personal consumption. This provision is not in SB 368.</p>
<p>Section 24. 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 25. 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>Same</p>
<p>Section 25. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 28 of this bill.</p>	<p>Section 26. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 30 of this bill.</p>	<p>Same</p>

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
Section 26. 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 28 of this bill.	Section 27. 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 30 of this bill.	Same
Section 27. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 28 of this bill.	Section 28. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 30 of this bill.	Same
	Section 29. 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 30 of this bill.	Not in SB 368, however, it is not a critical change and does not change the meaning in either bill.
Section 28. 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 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 30. 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.	Language in each bill is slightly different from each other. Language in HB 538 should be corrected to properly reflect the intent of the amendment.
Section 29. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 28.	Section 31. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 30.	Different sections are repealed in each bill version.

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
<p>Section 30. 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 32. 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>Same</p>
<p>Section 31. The section provides an effective date of July 1, 2004.</p>	<p>Section 33. The section provides an effective date of July 1, 2004.</p>	<p>Same</p>

CS FOR SENATE BILL NO. 368 (FIN)
Version I.A
TOBACCO TAX; LICENSING; PENALTIES

BILL ANALYSIS
OFFICE OF THE ATTORNEY GENERAL

Section 1. 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 2. 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 3. 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 4. 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.

Section 5. 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.

Section 6. 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.

Section 7. 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.

Section 8. 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 9. 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 10. This section requires that individuals that import other tobacco products into the state must have a license as a "buyer".

Section 11. This section requires that a fee of \$25 must be paid for a tobacco products "buyer" license.

Section 12. This section requires distributors to provide information about the type of tobacco business they are conducting to the Department of Revenue.

Section 13. This section allows distributors and buyers to renew their tobacco products license each year for a fee of \$50 and \$25, respectively.

Section 14. 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 15. This section changes the definition of "licensee" in the tobacco products statutes to include the new "buyer" license type.

Section 16. This section provides a definition for "buyer" in the tobacco products statutes.

Section 17. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.

Section 18. 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 cigarette tax stamps when payment is made on a deferred payment basis.

Section 19. 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 20. 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 21. 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, a violation of the Cigarette Tax Act. 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.

Section 22. 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.

Section 23. This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of, or possession with the intent to sell, one but fewer than 1,000 unstamped cigarettes to sales of, or possession with the intent to sell, one but fewer than 5,000 unstamped cigarettes.

Section 24. 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.

Section 25. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 28 of this bill.

Section 26. 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 28 of this bill.

Section 27. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 28 of this bill.

Section 28. 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 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 29. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 28.

Section 30. 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.

Section 31. The section provides an effective date of July 1, 2004.

STATE OF ALASKA

DEPARTMENT OF REVENUE

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Cigarette Consumption and Cigarette Tax Rates in Alaska

Prepared by: Johanna Bales, Program Manager, Cigarette and Tobacco Products Tax

Alaska's cigarette excise tax dates back to 1949 when the legislature first enacted a tax of 3 cents per pack of 20 cigarettes. In 1951, the legislature increased the cigarette tax to 5 cents per pack. Cigarette tax increases were passed again in 1961, 1985 and in 1989. From 1989 until September 30, 1997, the cigarette tax was 29 cents per pack. Effective October 1, 1997, the legislature increased the cigarette tax rate to \$1.00 per pack of 20 cigarettes. During the months of June through September, 1997, Alaskans stockpiled significant amounts of cigarettes in an attempt to delay the new tax rate. Despite stockpiling, cigarette consumption between fiscal year 1997 and 1998 decreased 4.6 percent. Cigarette consumption continued to decline during fiscal years 1999 through 2002. In fiscal year 2003, cigarette consumption leveled out and increased slightly. During fiscal years 1993 through 2003, reported taxable cigarettes and cigarette tax rates were as follows:

<u>Fiscal Year</u>	<u>Number of Cigarettes</u>	<u>Tax Rate Per Pack of 20 Cigarettes</u>
1993	1,079,000,000	29 cents
1994	1,072,000,000	29 cents
1995	1,086,000,000	29 cents
1996	1,053,000,000	29 cents
1997	1,023,000,000	29 cents
1998	976,000,000	29 cents until 10/1/1997; then \$1.00
1999	858,000,000	\$1.00
2000	862,000,000	\$1.00
2001	818,000,000	\$1.00
2002	800,000,000	\$1.00
2003	801,000,000	\$1.00

(See Chart 1 - "Alaska Cigarette Consumption by Fiscal Year" attached.)

During fiscal years 1993 through 1997, Alaskans smoked, on average, 1,062,600,000 cigarettes each year. During fiscal years 1998 through 2003, Alaskans smoked, on average, 852,000,000 cigarettes each year; a decrease of approximately 20 percent from the average consumption during fiscal years 1993 through 1997. (See Chart 2 - "Alaska Average Annual Cigarette Consumption Before & After 1997 Tax Increase" attached.) The number of cigarettes reported in fiscal year 2003 is nearly 22 percent less than the number of cigarettes reported in fiscal year 1997.

The Department of Revenue expects that the proposed tax increase of \$1.00 per pack will reduce smoking an additional 8 to 10 percent from 2003 levels.

Alaska Cigarette Consumption by Fiscal Year
Source: Alaska Department of Revenue

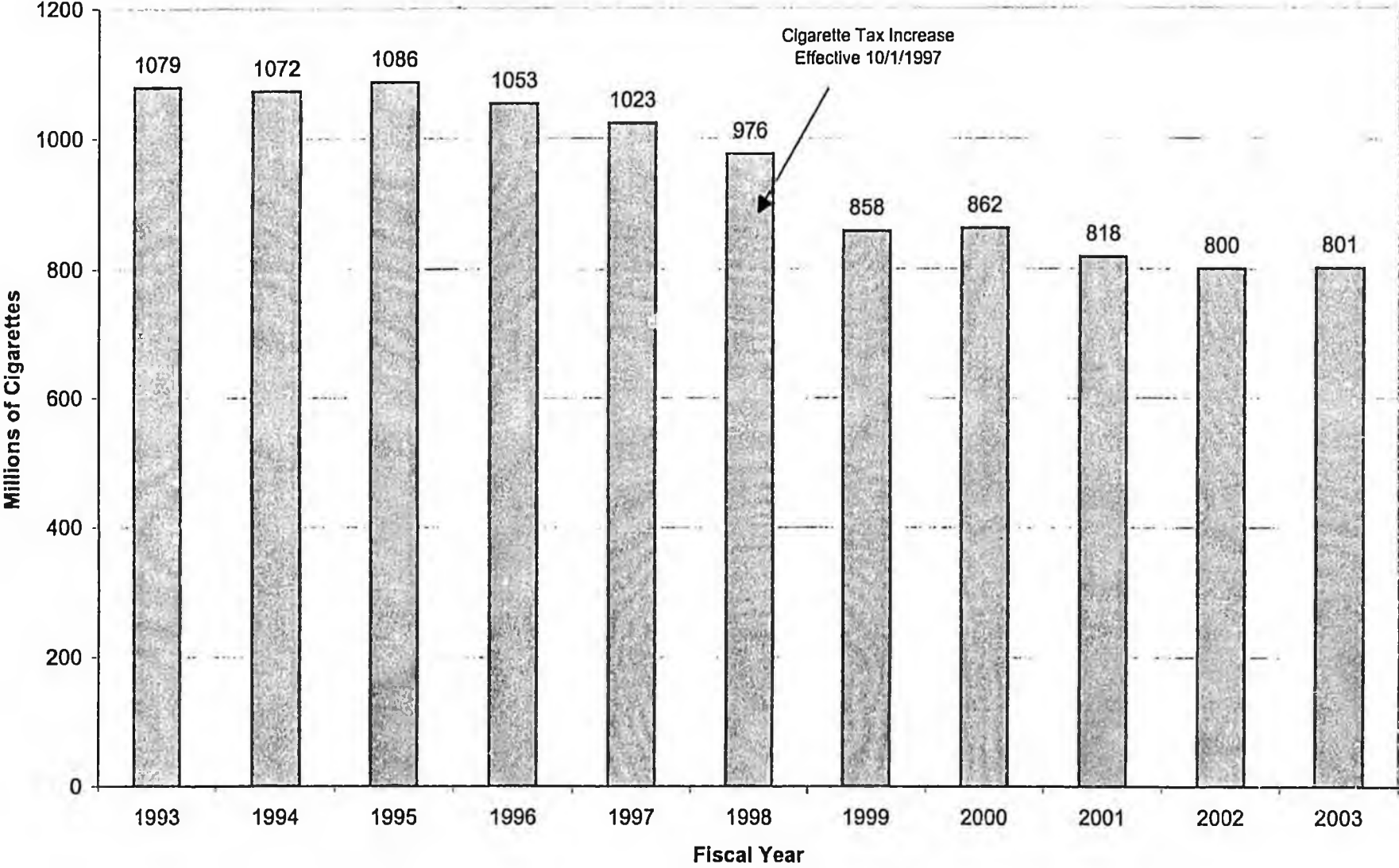


Chart 1

Alaska Average Annual Cigarette Consumption Before & After 1997 Tax Increase

Source: Alaska Department of Revenue

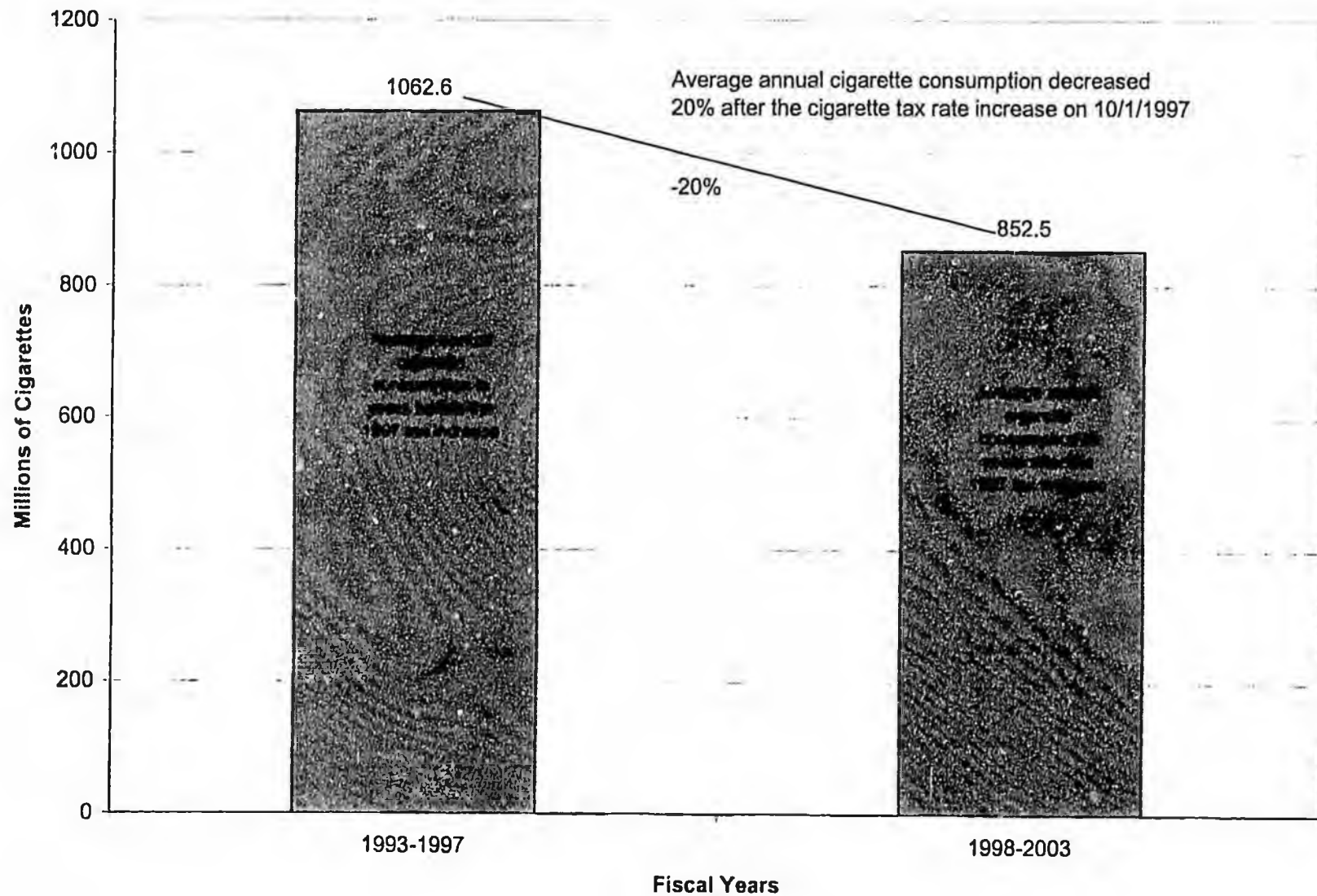


Chart 2

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March 16, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of article III, section 18 of the Alaska Constitution, I am transmitting a bill that would increase the cigarette excise tax from five cents per cigarette to ten cents per cigarette. The tax on "other tobacco products" such as smokeless tobacco would be increased from 75 percent to 100 percent of the wholesale cost.

This bill provides the multiple benefits of saving Alaskan lives, reducing health related expenditures, and raising state revenue. Increasing the price of tobacco is one of the most effective ways of reducing tobacco use, especially among youths. It is well substantiated that as the price of cigarette increases, rates of smoking decline. As youths are especially sensitive to such price increases, we can expect the proposed \$1.00 per pack cigarette tax increase will add to the 50 percent drop in youths smoking rates we have seen in Alaska since 1995. A further drop in youths smoking rates of just 15 percent from current levels would translate into 1,800 lives saved from premature death due to tobacco addiction among Alaska high school students alive today.

Among current adult smokers, 3,500 will quit smoking because of the tax, and of those, 800 will be saved from a smoking-caused death. Smoking among expectant mothers would also be reduced significantly, resulting in 850 babies being spared from exposure to maternal smoking while in utero during the next five years. The impact of tobacco taxes on health is not unprecedented in Alaska. Within a year of the implementation of the \$1.00 per pack cigarette tax in October 1997, the number of cigarettes consumed in Alaska had dropped by 15 percent, and sales have not rebounded since then.

Alaska Natives should particularly see the benefits from reduced smoking. While smoking rates are declining within the U.S. general population, the rate of smoking is unchanged among Alaska Native adults and, at 44 percent, is almost double that of non-Natives. Currently, 44 percent of

The Honorable Gene Therriault
March 16, 2004
Page 2

Alaska Native high school students smoke, almost four times the rate among non-Native students. One-third of Alaska Native high school boys use smokeless tobacco, as do one-sixth of their female counterparts. Use of smokeless tobacco among Alaska Native girls is nine times higher than the national rate. Lung cancer, the leading cause of cancer deaths, is increasing at an alarming rate among Alaska Natives of both sexes. Cardiovascular disease, including heart disease and stroke, is also linked with tobacco use, and kills approximately 120 Alaska Natives each year.

In addition to the devastating health impacts, smoking is a fiscal disaster for Alaska. The state receives nearly \$47 million in cigarette and other tobacco product tax revenues, but this amount doesn't even begin to cover the economic and social costs associated with smoking-related illnesses. The Centers for Disease Control and Prevention (CDCP) estimates that in 1998 the cost for direct medical expenses attributed to smoking-related disease and death in Alaska was nearly \$133 million. In addition, CDCP estimates Alaska's total cost of lost productivity due to early tobacco-related deaths in 2001 was \$137 million.

Alaska can expect to see fiscal savings relatively soon following implementation of this proposed tax. Within five years, the health care savings from fewer smoking affected pregnancies and births will amount to \$1.6 million, according to the Campaign for Tobacco-Free Kids. This group estimates that the savings in the state from fewer smoking-related heart attacks and strokes will be \$1.8 million, and the long-term health care savings from adult and youth smoking declines will be \$146.3 million.

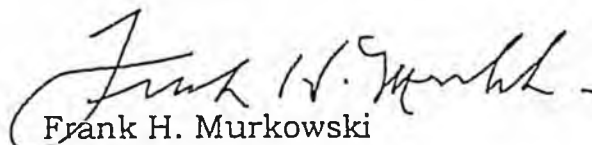
While saving in medical and lost-productivity expenditures, the proposed tax would also generate an estimated \$35.5 million in new tax revenues for the state annually. In addition, an estimated \$350,000 in new revenues will be generated for those municipalities in the state that levy a sales tax on the retail price of cigarettes.

With cigarette taxes at \$2.00 a pack, there will be incentive for tax evasion and smuggling. The new tobacco tax stamp, as passed into law last year, will help address this issue by serving to identify illegal cigarettes. To further advance this enforcement effort, my proposed bill allows the Department of Public Safety to seize and dispose of equipment, vehicles, money, and other assets used in cigarette smuggling and tax evasion activities. These types of seizures will make cigarette smuggling and tax evasion less attractive and protect state revenues.

The Honorable Gene Therriault
March 16, 2004
Page 3

Given the health impact, cost savings, and revenue to be generated from the proposed tobacco tax, I urge your support for this legislation.

Sincerely yours,


Frank H. Murkowski
Governor

Enclosure

STATE OF ALASKA

DEPARTMENT OF REVENUE

Tax Division

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STATE TOBACCO TAXES & REVENUES

Analysis of Tobacco Taxes Per Fund Before and After Proposed Increases

Tax Components

	<u>Current Law</u>	<u>With SB 368/HB 538</u>
Cigarette Tax		
Number of Taxable Cigarettes ⁽¹⁾	804,000,000	737,000,000
AS 43.50.090(a) – School Fund	\$.76 (38 mills)	\$.76 (38 mills)
AS 43.50.190(a) – General Fund	\$.24 (12 mills)	\$1.24 (62 mills)
Other Tobacco Products Tax		
Wholesale price of tobacco products ⁽²⁾	\$8,933,333	\$8,793,749
	75% of wholesale price	100% of wholesale price
AS 43.50.300 – General Fund		

Revenue Components (Annual Basis)⁽³⁾

	<u>Current Law</u>	<u>With SB 368/HB 538</u>
Cigarette Tax		
AS 43.50.090(a) – School Fund	\$30.6 million	\$28 million
AS 43.50.190(a) – General Fund	\$9.6 million	\$41.7 million
AS 43.50.190(a) – General Fund with appropriation to tobacco education and cessation fund (AS 37.05.580) ⁽⁴⁾	\$0	\$4.0 million
Other Tobacco Products Tax		
AS 43.50.300 – General Fund	\$6.7 million	\$8.7 million
Total Tobacco Taxes Revenue	\$46.9 million	\$82.4 million

⁽¹⁾Assumes an 8.3% decrease in total cigarette consumption.

⁽²⁾Assumes a 1.5% decrease in total other tobacco products consumption.

⁽³⁾Sources: Fall 2003 Revenue Sources Book (FY 2005 Projected) & DOR Fiscal Note

⁽⁴⁾Although no tobacco excise taxes are currently appropriated to the tobacco education and cessation fund, approximately \$5 million of annual Tobacco Master Settlement Agreement (MSA) payments is appropriated.

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
	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.	No provision in SB 368.
	Section 2. This section increases the cigarette license fee for manufacturers from \$5 to \$50.	No provision in SB 368.
	Section 3. This section increases the cigarette license fee for vending machine operators from \$25 to \$50.	No provision in SB 368.
Section 1. 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.	Same
Section 2. 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.	Same
Section 3. 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.	Same
	Section 7. This section allows individuals to personally transport up to 600 cigarettes (3 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.090.	No provision in SB 368.

SB 368	HB 538	Comments
	<p>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 2nd degree), which requires a value of \$500. The tax due on 5,000 cigarettes under this bill would be \$500.</p>	<p>No provision in SB 368.</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>No provision in SB 368.</p>

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
Section 4. 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.	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.	Same
Section 5. 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.	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.	Same
Section 6. 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.	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.	Same
Section 7. 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.	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.	Same
Section 8. 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 50 mills or \$1.00 per pack of 20. The increase in this tax will all go into the general fund.	Same
	Section 15. This section allows individuals to personally transport up to 600 cigarettes (3 cartons) each month without incurring cigarette tax liability imposed by AS 43.50.190.	No provision in SB 368.
	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.	No provision in SB 368.

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
Section 9. 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 17. This section increases the tax on other tobacco products from 75% to 100% of the wholesale cost.	SB 368 requires that OTP sold or imported into the state for personal consumption is subject to tax. No provision in HB 538.
Section 10. This section requires that individuals that import other tobacco products into the state must have a license as a "buyer".		No provision in HB 538.
Section 11. This section requires that a fee of \$25 must be paid for a tobacco products "buyer" license.		No provision in HB 538.
Section 12. This section requires distributors to provide information about the type of tobacco business they are conducting to the Department of Revenue.		No provision in HB 538.
Section 13. This section allows distributors and buyers to renew their tobacco products license each year for a fee of \$50 and \$25, respectively.		No provision in HB 538.
Section 14. 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.		No provision in HB 538.
Section 15. This section changes the definition of "licensee" in the tobacco products statutes to include the new "buyer" license type.		No provision in HB 538.
Section 16. This section provides a definition for "buyer" in the tobacco products statutes.		No provision in HB 538.
Section 17. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.	Section 18. This section allows a licensee to request that the department replace cigarette tax stamps that were lost or damaged in transit.	Same

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
<p>Section 18. 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 cigarette tax stamps when payment is made on a deferred payment basis.</p>	<p>Section 19. 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.</p>	<p>Same</p>
<p>Section 19. 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.</p>	<p>Section 20. 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.</p>	<p>Same</p>
<p>Section 20. 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.</p>	<p>Section 21. 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.</p>	<p>Same</p>
<p>Section 21. 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, a violation of the Cigarette Tax Act. 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. This section further provides that assets used as sole transportation in a village cannot be seized.</p>	<p>Section 22. 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>The language that states that an asset used as sole transportation in a village cannot be seized has been removed from HB 538.</p>

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
<p>Section 22. 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 23. 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>Same</p>
<p>Section 23. This section changes the definition of misconduct involving unstamped cigarettes in the second degree from sales of, or possession with the intent to sell, one but fewer than 1,000 unstamped cigarettes to sales of, or possession with the intent to sell, one but fewer than 5,000 unstamped cigarettes.</p>	<p>Section 24. 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 601 but fewer than 10,000 unstamped cigarettes. This section also includes importation or possession of one but fewer than 601 unstamped cigarettes as misconduct involving unstamped cigarettes in the first degree if the cigarettes are not possessed for personal consumption.</p>	<p>HB 538 provides that possession of less than 601 cigarettes is not a violation if the cigarettes were personally transported into the state for personal consumption. This provision is not in SB 368.</p>
<p>Section 24. 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 25. 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>Same</p>
<p>Section 25. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 28 of this bill.</p>	<p>Section 26. This section makes a technical change to AS 43.50.720 so that the language in that statute conforms to changes made in Section 30 of this bill.</p>	<p>Same</p>

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
Section 26. 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 28 of this bill.	Section 27. 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 30 of this bill.	Same
Section 27. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 28 of this bill.	Section 28. This section makes a technical change to AS 43.50.770 so that the language in that statute conforms to changes made in Section 30 of this bill.	Same
	Section 29. 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 30 of this bill.	Not in SB 368, however, it is not a critical change and does not change the meaning in either bill.
Section 28. 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 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 30. 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.	Language in each bill is slightly different from each other. Language in HB 538 should be corrected to properly reflect the intent of the amendment.
Section 29. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 28.	Section 31. This section repeals sections of the Unfair Cigarette Sales Act that conflict with the new language inserted in Section 30.	Different sections are repealed in each bill version.

Comparison of CS SB 368 version I.A to CS HB 538, version S
 Prepared: May 4, 2004, 1:45 PM

SB 368	HB 538	Comments
<p>Section 30. 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 32. 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>Same</p>
<p>Section 31. The section provides an effective date of July 1, 2004.</p>	<p>Section 33. The section provides an effective date of July 1, 2004.</p>	<p>Same</p>

STATE OF ALASKA

DEPARTMENT OF REVENUE

Tax Division

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STATE TOBACCO TAXES & REVENUES Analysis of Tobacco Taxes Per Fund Before and After Proposed Increases

Tax Components

	<u>Current Law</u>	<u>With SB 368</u>
Cigarette Tax		
Number of Taxable Cigarettes ⁽¹⁾	804,000,000	737,000,000
AS 43.50.090(a) – School Fund	\$.76 (38 mills)	\$.76 (38 mills)
AS 43.50.190(a) – General Fund	\$.24 (12 mills)	\$1.24 (62 mills)
Other Tobacco Products Tax		
Wholesale price of tobacco products ⁽²⁾	\$8,933,333	\$8,793,749
AS 43.50.300 – General Fund	75% of wholesale price	100% of wholesale price

Revenue Components (Annual Basis)*

	<u>Current Law</u>	<u>With SB 368</u>
Cigarette Tax		
AS 43.50.090(a) – School Fund	\$30.6 million	\$28 million
AS 43.50.190(a) – General Fund	\$9.6 million	\$45.7 million
Other Tobacco Products Tax		
AS 43.50.300 – General Fund	\$6.7 million	\$8.7 million
Total Tobacco Taxes Revenue	\$46.9 million	\$82.4 million

⁽¹⁾Assumes an 8.3% decrease in total cigarette consumption.

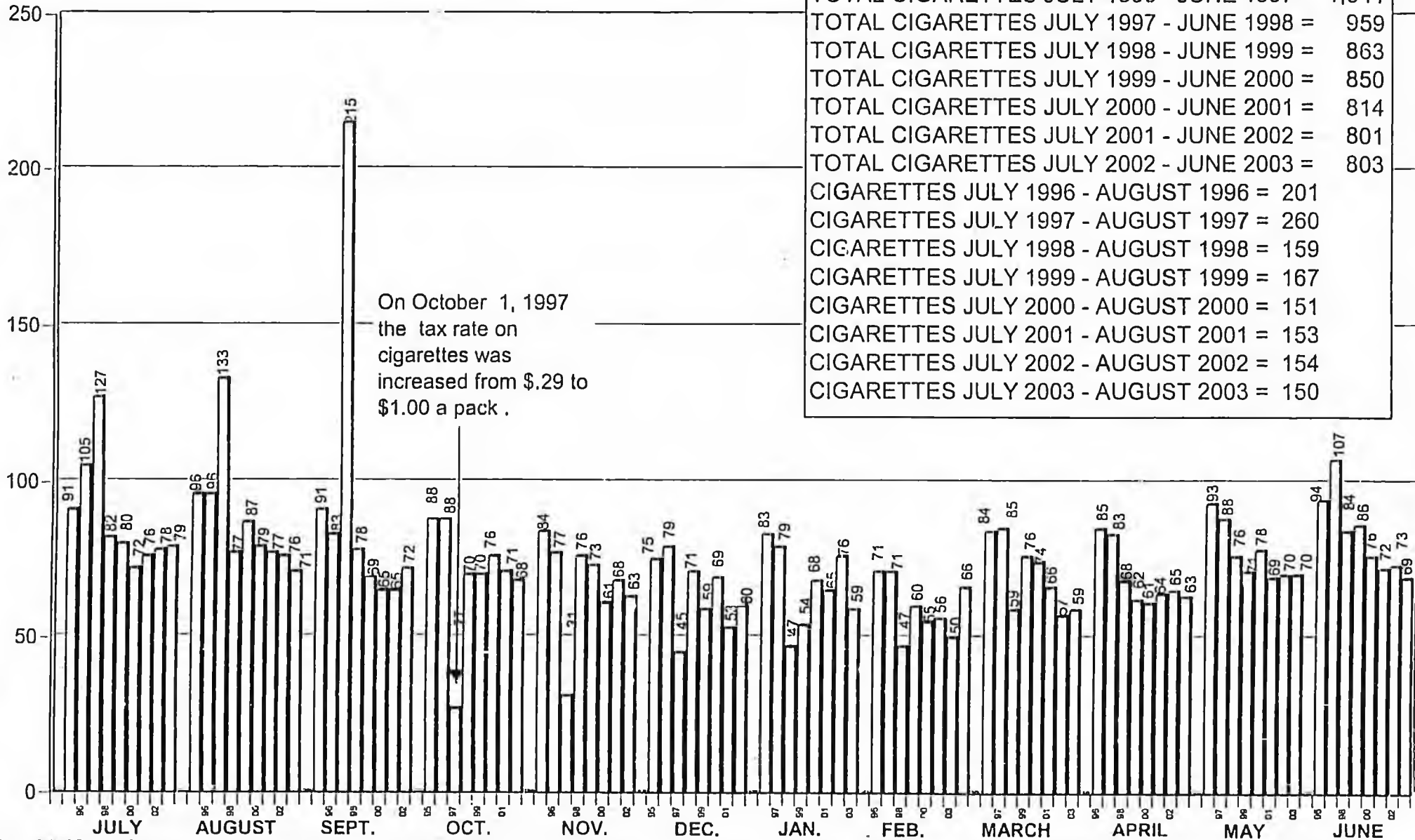
⁽²⁾Assumes a 1.5% decrease in total other tobacco products consumption.

*Sources: Fall 2003 Revenue Sources Book (Fy 2005 Projected)
DOR SB 368 Fiscal Note

ALASKA DEPARTMENT OF REVENUE
TAX DIVISION

NUMBER OF TAXABLE CIGARETTES: ACTUALS JULY 1995 - AUGUST 2003

MILLIONS OF CIGARETTES



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

https://ancmail1.state.ak.us/attach/cigotppublicgraphs.xls?sid=hWSoxD7M2jQ&mbox=INBOX&charset=escaped_unicode&uid=13587&number=4&filename=cigotppublicgraphs 3/23/2004 2:08 PM



Chicago cigarette tax second highest

Tax hike aimed at helping smokers quit

Story
Tools

CHICAGO, Illinois (AP) — An 82-cent-a-pack county tax increase on cigarettes went into effect Thursday, bringing the per-pack cost to about \$6 — the second highest in the nation.

New York state last year increased its cigarette tax to \$1.50 per pack, and New York City imposed another \$1.50 tax, bringing the cost there to more than \$7.

County and health officials hope the increase, approved by the Cook County Board in February, will encourage people to stop -- and prevent children from starting.

The hike will also help the county: The combination of federal, county and city taxes will add \$2.53 to the cost of a pack. The county's portion is \$1.

"I'm convinced that we will save many thousands of kids and adults from smoking," said Cook County Commissioner Robert Maldonado.

He says he'll consider another hike later this year.

Tobacco giant Philip Morris USA Inc. warned of "unintended consequences."

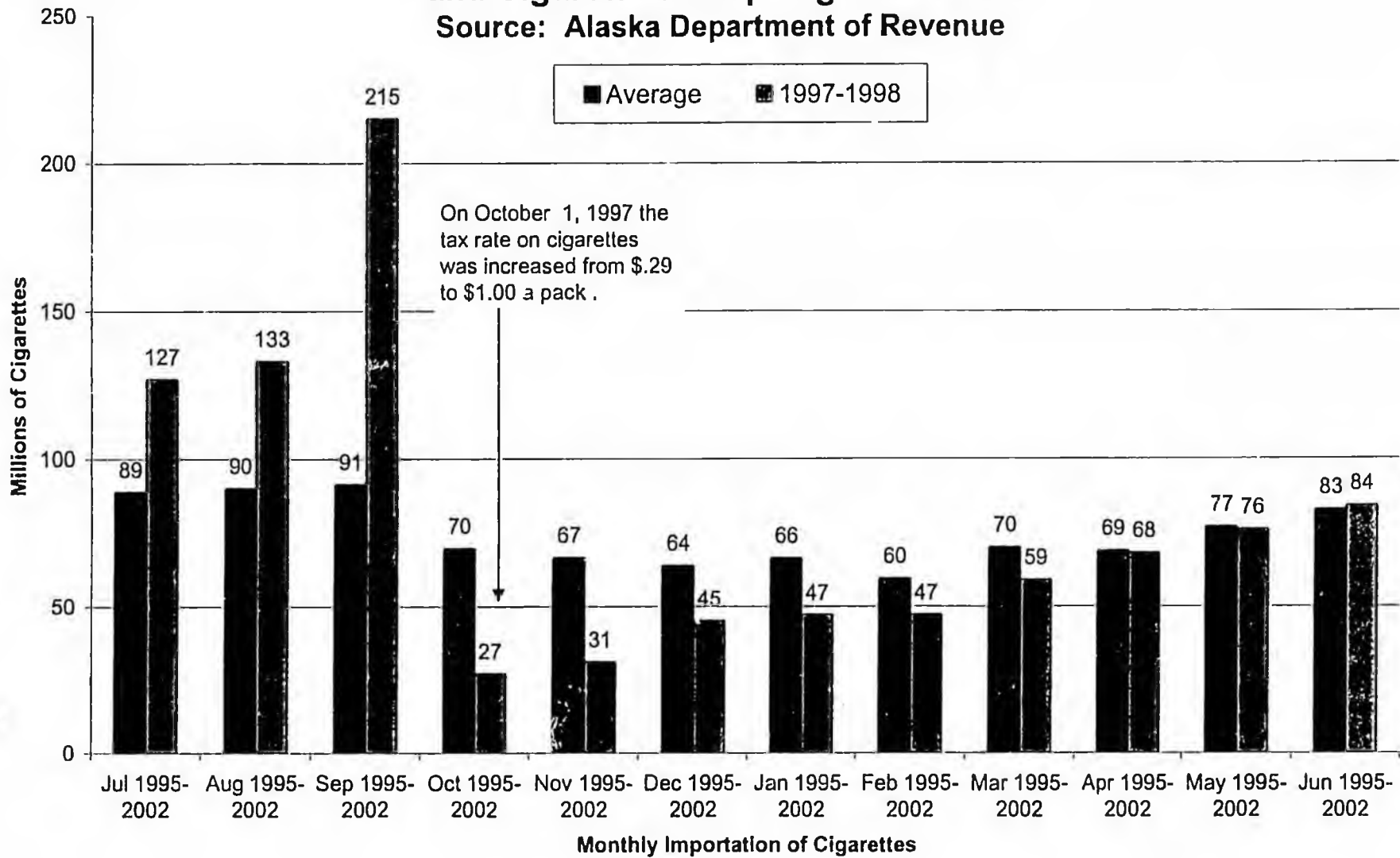
"Over the past two years, as a record number of states have sought to address budget issues by using increases in excise taxes, there's been an increase of illegal or contraband activity in cigarette sales," spokeswoman Jamie Drogin said.

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Provided by the Dept. of Revenue

Cigarette Importations FY 1996 - FY 2002 and Cigarette Stockpiling in FY 1998

Source: Alaska Department of Revenue



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MEMORANDUM

April 26, 1996

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

TO: Representative Jeannette James, Chair
House State Affairs Committee

FROM: Jack Chenoweth
Legislative Council



This is drafted in the alternative.

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

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

To repeat advice already provided to you:

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

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

Representative Jeannette James

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

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

PRESIDENT EGAN: Mr. McCutcheon.

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

PRESIDENT EGAN: Mr. Victor Rivers.

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

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

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

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

WHITE: Certainly they could.

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

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

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

WHITE: That is right.

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

WHITE: That would mean that.

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

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

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

Please contact me if you have further questions.

JBC:pl:glc:hmb

96-091.lmb

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Juneau, Alaska 99801-2105

MEMORANDUM

April 3, 1996

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

TO: Representative Jeannette James

FROM: Michael F. Ford
Legislative Counsel

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

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

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

Representative Jeannette James

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

PRESIDENT EGAN: Mr. McCutcheon.

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

PRESIDENT EGAN: Mr. Victor Rivers.

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

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

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

Representative Jeannette James

April 3, 1996

Page 3

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

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

WHITE: Certainly they could.

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

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

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

WHITE: That is right.

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

WHITE: That would mean that.

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

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

Representative Jcannette James

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Page 4

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

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

Please contact me if you have further questions.

MFF:klb
96-252.klb

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MEMORANDUM

October 29, 1996

SUBJECT: Interrelationship between the Cigarette Tax Act (AS 43.50) with its levy on cigarettes and the School Fund (AS 43.50.140). (Work Order No. OLS-0126A)

TO: Senator Johnny Ellis
ATTN: Lynn Kenney

FROM: Jack Chenoweth
Legislative Counsel

You have asked whether the legislature may require that the proceeds of the Cigarette Tax Act (AS 43.50), a levy on cigarettes, and the companion tax on tobacco products, may be directed to the School Fund (AS 43.50.140). Since the legislature clearly has the authority to deposit all proceeds from this levy to the fund through an appropriation, I take your question to ask whether the amounts raised by the levy may be dedicated to the School Fund.

The answer turns, in part, on the product subject to tax. The chapter distinguishes between the tax on cigarettes (Cigarette Tax Act, AS 43.50.010 - 43.50.180) and the excise tax levied on other tobacco products (AS 43.50.300 - 43.50.390).

+

AS 43.50.140 directs payment of money raised by levy made on cigarettes by the Cigarette Tax into the School Fund. The fund is a pre-Stathood Act dedication that survives under the exception to the prohibition set out in article IX, section 7, Constitution of the State of Alaska. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska."

Your inquiry suggests consideration of the question of whether the Alaska Constitution allows the legislature to change the amount of the cigarette tax without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued Opinion No. 7 that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5.

Senator Johnny Ellis

October 29, 1996

Page 2

This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Barrie M. White. The following discussion with Delegate White and other delegates illustrates the intent of the framers of the Alaska Constitution:

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

PRESIDENT EGAN: Mr. McCutcheon.

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

PRESIDENT EGAN: Mr. Victor Rivers.

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

Senator Johnny Ellis
October 29, 1996
Page 3

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

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

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

WHITE: Certainly they could.

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

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

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

WHITE: That is right.

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

WHITE: That would mean that.

Minutes of the Alaska Constitutional Convention, 56th Day, January 17, 1956, at pp. 2404-2405; (emphasis added). This discussion indicates, in my judgment, a clear intent on the part of the delegates to allow a change to the rate of taxation without affecting the status of a dedication of the proceeds of the tax.

While the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitution rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of taxation of cigarettes destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional

Senator Johnny Ellis
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Page 4

convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v. Hagglund, 374 P.2d 316, 319 (Alaska 1962), the court stated that

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

(Emphasis added). Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court as to this legislature's ability to raise the rate of the dedicated cigarette tax without destroying the dedication of the proceeds to the School Fund.

The tax on tobacco products other than cigarettes does not fall within the limitations of the Cigarette Tax Act as it existed in 1955-56. Money derived from the tax on tobacco products other than cigarettes may not be dedicated. To do so would constitute a violation of the proscription of article IX, section 7, Constitution of the State of Alaska.

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April 4, 2004

Senator Gary Wilken
Alaska State Senate
State Capitol Building- Room 518
Juneau, AK 99801

RE: SB 368 An Act Relating to Taxes on Cigarettes & Tobacco Products

Dear Senator Wilken

The purpose of this letter is to express my concern regarding the above referenced bill. While we are a state licensed wholesale tobacco distributor we neither promote nor encourage tobacco consumption. We do however; offer cigarettes and tobacco products for sale to our state licensed customers who choose to sell these products. In compliance with state law we collect and remit tobacco excise tax to the State. Last year we collected and paid the state in excess of \$4,000,000 in tobacco excise tax. Our business is impacted by tobacco legislation. We want to make sure that as state licensed tobacco dealers that we participate in the public process during legislative deliberations considering tobacco issues and taxation.

I understand that HB 538 is a companion bill to SB 368. During committee hearings in the House Ways & Means committee several amendments were offered to HB 538, which addressed concerns that we had regarding this measure. However, when consulting BASIS for the latest version of HB 538 I did not find an updated version of the bill with the committee amendments. Two amendments that were offered in the House, which are critical to the continued economic viability of our enterprise, are as follows:

1. Bonding Requirements. Alaska distributors are required to post a 200% bond to insure payment to the DOR of all tobacco excise tax. A doubling of the state excise tax from \$1.00 per pack to \$2.00 per pack will effectively require distributors to double their performance bond. Due to conditions in the Alaska insurance market performance bonds are difficult to obtain. We need the state to put limits on the bonding requirement to insure that we will be able to comply with state law.
2. Floor Tax: The language in SB 538 mandates that a floor tax will be imposed on tobacco dealers based on inventory on hand after passage of this bill. The payment of this tax is due 30 days after the effective date of this measure. By proposing a doubling of the excise tax the state will severely test the price elasticity of tobacco purchases. My belief is that "in-state" tobacco purchases will immediately and dramatically decline in the short term after the passage of this measure. The result is that distributors would not have a means to collect and remit the floor tax in a timely manner. The state either needs to extend the due date or eliminate the floor tax altogether.

Doubling the cigarette excise tax will provide ample incentive for Alaska consumers to seek out alternate distribution channels to source cigarettes at a cheaper price. Many, perhaps most of the



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alternate distribution channels will transfer the responsibility to remit the state excise tax to the consumer. It is highly unlikely that average consumer will be aware that Alaska law requires the consumer to remit state excise tax on the importation of cigarettes. The end result will be as follows:

1. The state will not collect the cigarette excise taxes due
2. Alaska businesses charged with assessing the tax will loose sales
3. The consumer will be rewarded with lower cigarette costs.

Effective enforcement of Alaska's tobacco laws must discourage smuggling and tax evasion by consumers and licensed business operators, alike. The penalty phase of tax enforcement must be sufficient to discourage both the consumer and the business entity from evading the state excise tax.

In my opinion the state needs to hold the individual to the same standard that the law is requiring businesses to operate under. If the penalty phase of this measure differentiates the incidental violation of the law by the consumer versus a violation of the law by a business then the state is encouraging individuals to find non-licensed distribution channels to evade state tobacco excise taxes. Tax evasion and illegal bootlegging of these products harms both the state and legitimate business interests. The whole concept that higher tax rates discourage consumption would be lost if the state exempts the consumer from remitting excise tax on cigarettes they purchase from out of state vendors or internet providers. AS 43.50.190.c contemplates the innocent consumer who inadvertently imports cigarettes into the state and exempts the consumer who imports 100 cigarettes per month from paying the state excise tax. This provision is sufficient to accommodate incidental importation of cigarettes by a consumer and contemplation of any higher exemption is a gross disservice to Alaska's licensed tobacco businesses and state tax revenues.

SB 538 proposes to increase the OTP (other tobacco products i.e. cigars) tax from 75% to 100% of the wholesale list price. There is a problem with how the OTP tax is currently administered and collected. If a non-licensed out of state seller of OTP sells cigars to an Alaskan consumer the state excise tax is not paid and no law has been broken. This loophole puts Alaska licensed distributors at a price disadvantage and more importantly it denies the state the ability to collect excise tax on these products. The state needs to require the importer of OTP to pay the tobacco excise tax and treat the importation of OTP just like they treat the importation of cigarettes. The DOR fiscal note attached to SB 538 acknowledges that at the current tax rate the incentive for smuggling and tax evasion is great and based on a significant tax increase the incentive to cheat will be that much more attractive. Our position is that if the state fails to close the loophole on the collection of OTP tax the proposed tax increase will only drive consumers to alternate distribution channels for these products thereby assuring the state and business of lost revenues. We are opposed to any OTP tax increase and feel that the state can increase revenues by leaving the tax rate at its current 75% level and closing the existing loophole in state law.

Finally, in my opinion SB 368 could be strengthened and improved if the Senate Finance Committee offered two amendments to this bill. The first amendment would be for the State of Alaska to issue a moratorium on local governments ability to assess excise taxes on tobacco products. Currently the communities of Juneau, Anchorage, and Fairbanks impose a municipal excise tax on cigarettes and OTP. The jurisdictional issue allowing local governments to tax these products limits the states ability



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to set policy in matters regarding tobacco legislation. I would like to request the Senate Finance committee issue an amendment to SB 368 proposing a moratorium on further taxation of tobacco products by local governments. The second amendment would be offered on behalf of Alaska based wholesale distributors and would strengthen the language from last year's passage of SB 168. Based on the Governor's transmittal letter of 3/16/04 it is inconceivable to me that the state continues to allow the practice of using a pricing scheme to promote the consumption of cigarettes based on below cost or at cost sales of cigarette products. On behalf of Alaska-based distributors we have been working on draft language for an amendment that would ban this practice. We will be able to present this amendment to you for consideration before the weeks end.

We are not opposed to a reasonable tax increase in the tobacco excise tax; we just want to make sure that we are going to be able to live with the changes contemplated by this legislation. There are presently many laws on the books that if enforced and prosecuted will act as a deterrent to prevent under age access to cigarettes. I urge the legislature to exercise caution and restraint before unleashing another round of exorbitant taxes on Alaska's adult smokers. I will be out of town for the Senate Finance Committee hearing scheduled for 4/5/04. However, I will be listening to the committee deliberations via the live video stream from KTOO and can be reached at 206-850-5250 if you have any questions or require additional information. My hope is that you can express my concerns to the committee regarding this measure and that we can work together to amend this bill. Thank you for your consideration.

Sincerely yours,

Michael J. Elerding
President



April 4, 2004

The Honorable Lyda Green, Co-Chair
Senate Finance Committee
Alaska Capitol, Room 516
Juneau, AK 99801-1182

The Honorable Gary Wilken, Co-Chair
Senate Finance Committee
Alaska Capitol, Room 518
Juneau, AK 99801-1182

RE: SB 368 (Governor Mukowski) - Support

Dear Co-Chairs Green and Wilken:

On behalf of the AARP members in Alaska, we ask that you and your colleagues on the Senate Finance Committee support SB 368, the proposal by Governor Murkowski to increase the tobacco tax for cigarettes and other tobacco products.

As the Governor's transmittal letter clearly points out, the cost of smoking-related illnesses to the Alaska state budget far outweighs the revenue from the current taxes. Indeed, the tax increase proposed in SB 368 will still fall far below government costs.

Tobacco companies will argue that tobacco taxes are regressive because they take a higher percentage of income from low-income people. It is AARP's position that increased tobacco taxes that discourage consumption of harmful commodities serve a useful social purpose. In addition, the funds brought in from tobacco taxes are less regressive if they are used to finance programs such as health care for those with low incomes, e.g., Medicaid.

AARP recently sent a copy of a survey of Alaskans over age 18 to you and your colleagues in the Legislature. Although we asked about a 50 cents per pack increase in our survey, admittedly below the Governor's \$1.00 per pack increase, 56% strongly supported it and another 15% somewhat supported the tax increase. Other AARP research indicates that the public overall does object less to tobacco taxes because they are a tax that can be avoided.

We encourage an appropriate amount of the new revenue from this tax increase be applied to smoking-cessation programs. As the Governor points out, Alaska Native adults and high school students are much more likely to use tobacco than

non-Natives. AARP recommends special targeted cessation efforts in our Native community, particularly for Native youth.

We are aware that, if the tax partnered with cessation programming is successful, this will be a diminishing revenue stream. Unfortunately tobacco tax increases will not provide a "magic pill" to make the fiscal gap disappear. AARP still encourages you and your colleagues to aggressively pursue a comprehensive solution to our fiscal problems.

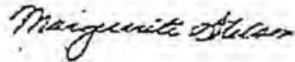
SB 368 does provide a part of the solution to our fiscal problems. Even more importantly, it provides a significant solution to at least part of Alaska citizens' health problems.

AARP recommends an "AYE" vote on SB 368.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,



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CC: Vice-Chair Con Bunde
Senator Fred Dyson
Senator Ben Stevens
Senator Lyman Hoffman
Senator Donny Olson
Governor Frank Murkowski
Marie Darlin
Patrick Luby

State of Alaska
Epidemiology



Bulletin

Recommendations
and
Reports

Department of Health and Social Services
Joel Gilbertson, Commissioner

Division of Public Health
Doug Bruce, Director

Section of Epidemiology
John Middaugh, MD, Editor

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Volume No. 7 Number 4
November 4, 2003

Youth Tobacco Use Falls

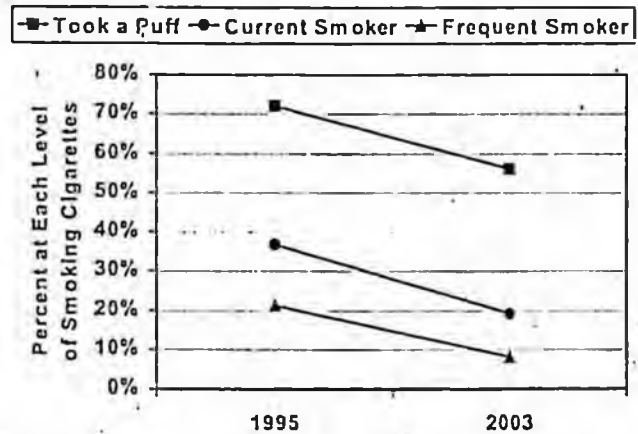
Results From the
2003 Youth Risk Behavior Survey

Smoking among Alaskan high school students has been cut in half since 1995, according to results of the 2003 Youth Risk Behavior Survey (YRBS).

Only 19 percent of the state's high school students say they have smoked at least one cigarette in the past month, down from 37 percent in 1995 (Figure 1). Frequent smoking, in which students report using cigarettes on at least 20 days in the previous month, fell from 21 percent in 1995 to just 8 percent. Just 56 percent of high school youth say they have even taken a single puff on a cigarette, down from 72 percent in 1995.

Figure 1. Percentage of High School Youth Who Ever Took a Puff or Are Current or Frequent Smokers By Year, Alaska YRBS, 2003

	1995	2003
Took a Puff	72%	56%
Current Smoker	37%	19%
Frequent Smoker	21%	8%



*"Took a Puff" = took at least a puff of a cigarette in lifetime; "Current Smoker" = smoked on at least 1 out of the last 30 days; "Frequent Smoker" = smoked on at least 20 out of the last 30 days

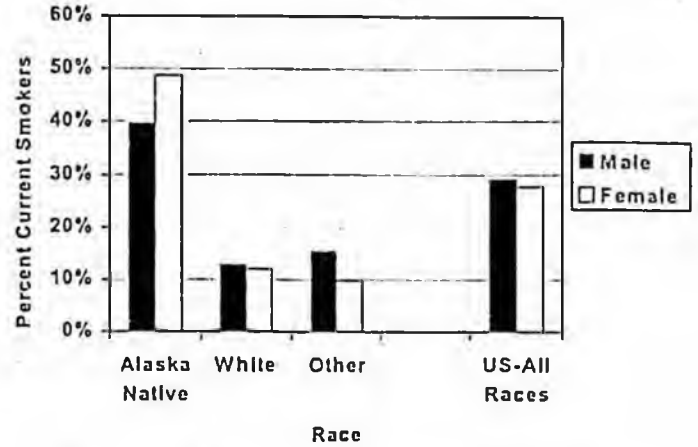
The YRBS, conducted jointly in Alaska by the Department of Health and Social Services and the Department of Education and Early Development, was administered to 1,500 Alaskan high school students who were randomly chosen from nearly every school district in the state. The 2003 YRBS is the first statistically valid statewide health survey of Alaskan youth since 1995.

While smoking rates have declined overall, the YRBS shows that smoking among Alaska Native youth far exceeds that seen in all other races. Approximately 49 percent of Alaska Native females and 40 percent of Alaska Native males say they have smoked at least once during the previous month (Figure 2). About one in five Alaska Native students of both sexes report smoking at least 20 days per month.

Figure 2. Percentage of High School Youth Who Are Current Smokers, By Sex and Race
Alaska YRBS (2003), US YRBS (2001)

	Alaska Native	White	Other Race
Male	40%	13%	15%
Female	49%	12%	10%

US YRBS, 2001 (all races)
males = 29%, females = 28%

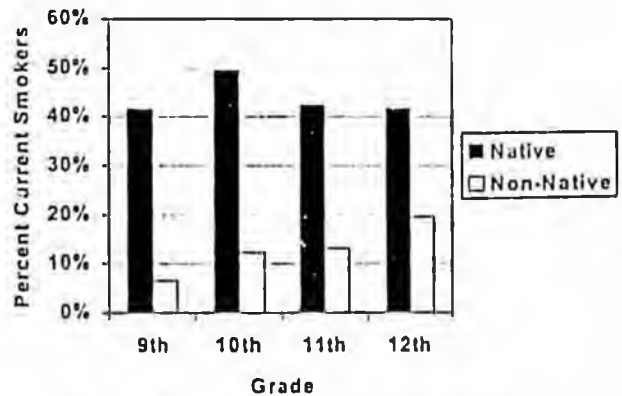


"Current Smoker" = smoked on at least 1 out of the last 30 days

Smoking among Alaska Native youth surpasses that of non-native youth at every grade level (Figure 3). While the likelihood of smoking increases among non-native youths as they progress through high school, it is already near maximum levels by the 9th grade among Alaska Natives.

Figure 3. Percentage of High School Youth Who Are Current Smokers By Race and Grade
Alaska YRBS, 2003

	9th	10th	11th	12th
Native	42%	50%	42%	42%
Non-Native	7%	12%	13%	20%

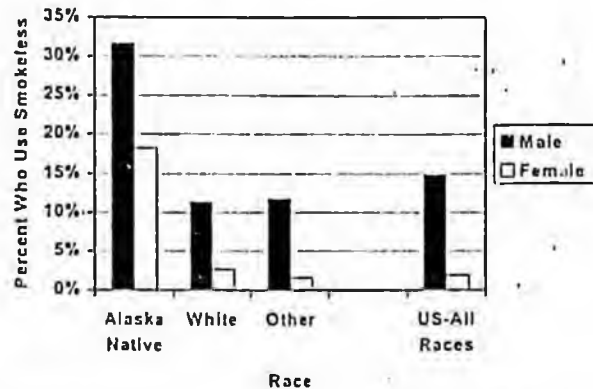


"Current Smoker" = smoked on at least 1 out of the last 30 days

The YRBS also shows that about 11 percent of Alaskan youth have used smokeless tobacco in the previous month. Smokeless tobacco use is especially high among Alaska Natives, where rates among boys are double the national average and rates among girls are nine times higher than the national norm (Figure 4).

Figure 4. Percentage of High School Youth Who Use Smokeless Tobacco, By Sex and Race
Alaska YRBS (2003), US YRBS (2001)

	Alaska Native	White	Other Race
Male	32%	11%	12%
Female	18%	3%	2%
US YRBS, 2001 (all races) males = 15%, females = 2%			

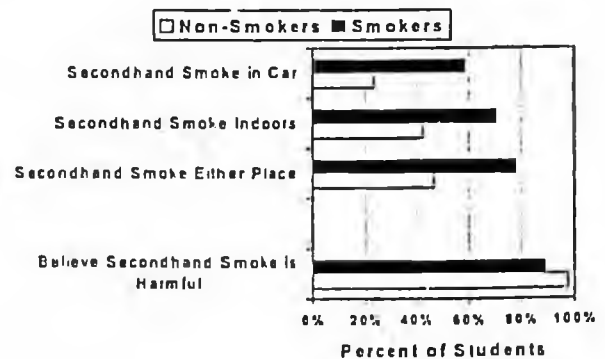


"Use Smokeless Tobacco" = used any smokeless tobacco product on at least 1 of the last 30 days

The YRBS confirms that youth exposure to environmental tobacco smoke in Alaska remains high, despite increased restrictions on smoking in public places. Nearly 50 percent of Alaskan youth who do not smoke say they have been exposed in the past week to secondhand smoke inside of buildings or cars (Figure 5). More than 95 percent of youth say they believe that secondhand smoke is harmful. This view was even expressed by 89 percent of those who smoke.

Figure 5. Percentage of High School Smokers and Non-Smokers Exposed to Secondhand Smoke in Past Week
Alaska YRBS, 2003

	Non-Smokers	Smokers
Secondhand Smoke in Car	24%	59%
Secondhand Smoke Indoors	43%	70%
Secondhand Smoke Either Place	47%	78%
Believe Secondhand Smoke is Harmful	98%	89%



Other findings from the 2003 YRBS bring to light important social and behavioral risk factors associated with youth smoking:

- Students who report that their parents never talk to them about school are almost twice as likely to smoke as students whose parents do talk with them about school (32 percent vs. 18 percent).
- Students who get mostly C's or worse in school are four times as likely to smoke as those who get mostly A's (32 percent vs. 8 percent).
- Students who do not participate in after-school activities are almost twice as likely to smoke as students who participate in one or more such activities per week (26 percent vs. 14 percent).
- Students older than 16 years of age who smoke are twice as likely to have used alcohol in the past month, and are four times as likely to have used marijuana during that time, compared to those who do not smoke (70 percent vs. 36 percent, and 62 percent vs. 16 percent, respectively.)
- Students older than 16 years of age who smoke are three times as likely to have ever used inhalants, and four times as likely to have ever tried cocaine, heroin, methamphetamine or ecstasy, compared to those who do not smoke (24 percent vs. 8 percent, and 43 percent vs. 11 percent, respectively.)
- Students older than 16 years of age who smoke are almost twice as likely to have had sex in the previous three months, compared to those who do not smoke (55 percent vs. 29 percent).
- Students who smoke are twice as likely to have been in a physical fight in the past year, and four times as likely to have been driving while intoxicated during the past 30 days, compared to those who do not smoke (46 percent vs. 22 percent, and 28 percent vs. 7 percent, respectively).

The steep drop in youth smoking was achieved after Alaska invested heavily in a comprehensive tobacco prevention and control program. This program thrives on the strong partnership between state government and the Alaska Tobacco Control Alliance, whose members include the Alaska Native Health Board, the American Cancer Society, the American Heart Association, and the American Lung Association of Alaska.

Components of the state tobacco program include:

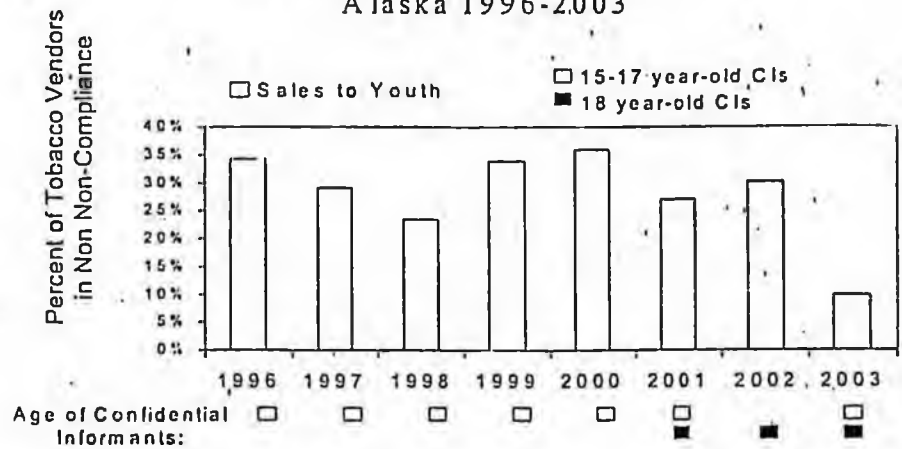
- An aggressive anti-tobacco media campaign aimed especially at curbing tobacco use by youth.
- A statewide excise tax designed to put tobacco products out of the reach of kids by boosting the price of cigarettes by \$1 per pack.
- Community-based advocacy programs that discourage the initiation of tobacco use by youth and promote the enactment of local ordinances that reduce environmental tobacco smoke exposure.
- Renewed efforts to reduce illegal sales of tobacco to youth through improved vendor training and increased enforcement actions across Alaska.

Last year, undercover sting operations found that more than 30 percent of Alaskan tobacco outlets were unlawfully selling cigarettes and other tobacco products to minors. During 2003, illegal sales to youth fell to 10 percent (Figure 6). Clean indoor air ordinances are now in force in Anchorage,

Juneau, Bethel, Barrow, Dillingham, Kenai and Soldotna. Many other smaller communities have adopted informal non-smoking policies.

Figure 6. Illegal Tobacco Sales to Youth and Age of Confidential Informants Alaska 1996-2003

Percent of Tobacco Vendors in Non-Compliance	
1996	34%
1997	29%
1998	24%
1999	34%
2000	36%
2001	27%
2002	30%
2003	10%



Tobacco-attributable disease in Alaska accounts for approximately 600 deaths per year, more than five times as many deaths as those caused by motor vehicle crashes, and nearly 100 times as many deaths as those caused by AIDS. Of the death toll due to tobacco, 120 lives are lost each year because of secondhand smoke. Beyond this, tobacco use accounts for more than \$260 million in direct and indirect medical costs in Alaska each year.

The persistently high levels of smoking among Alaska Native youth do not bode well for reducing racial disparities in the burden of chronic disease in Alaska. Lung cancer mortality among Alaska Natives, once rare, now exceeds that of non-natives (Figures 7 and 8). The high levels of smokeless tobacco use among Alaska Native youth are also worrisome, as continued use into adulthood will increase the likelihood of developing oral cancers, periodontal disease and other disorders.

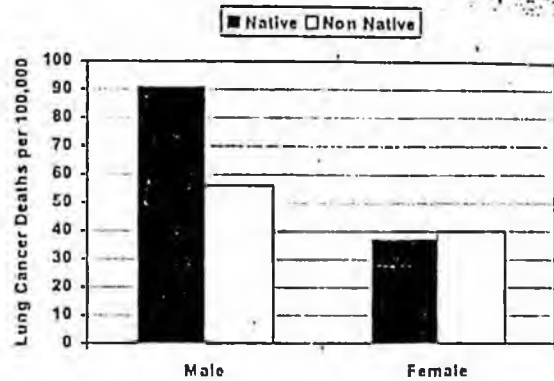
Reductions in youth smoking are critical in decreasing the long-term burden of heart disease, stroke, cancer and other chronic diseases in Alaska. Approximately three-quarters of smokers initiate tobacco use as adolescents.¹ Young people who are refusing to use tobacco today are unlikely to start smoking later in life.

Investments in tobacco prevention and control programs have a strong effect on reducing tobacco use, as long as programs can continue to dedicate significant and sustained resources to prevention activities.² Alaska currently spends approximately \$5.2 million per year on tobacco prevention and control, including \$3.1 million provided by the 1998 Master Settlement Agreement between states and the tobacco industry. This total falls short of the \$8.1 million minimum budget recommended by the federal Centers for Disease Control and Prevention for Alaska, and is well below the CDC's recommended spending level of \$16.5 million.

Figure 7. Lung Cancer Mortality Rates (per 100,000)
by Race and Sex
Alaska 1996-1999

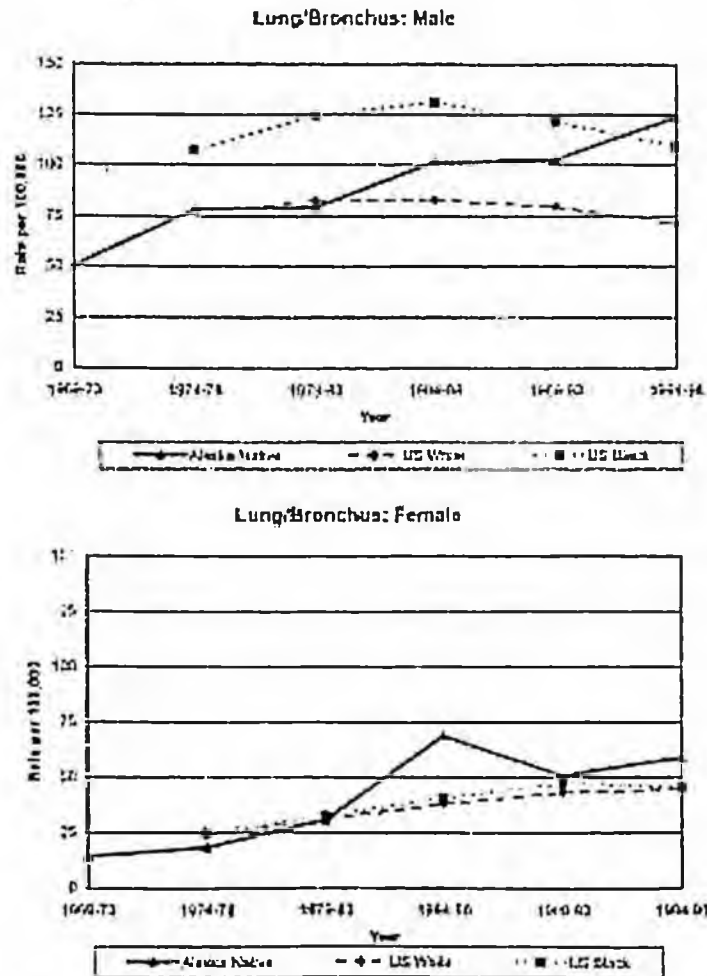
	Male	Female
Native	91.0	37.2
Non-Native	56.1	39.9

Data Source: Alaska Cancer Registry



Data Source: Alaska Cancer Registry

Figure 8. Cancer of Lung/Bronchus
Average Annual Age-Adjusted Cancer Incidence Rates
Alaska Natives 1969-1998 and US 1974-1997



(This figure provided by the Alaska Native Tribal Health Consortium Alaska Native Tumor Registry.)

¹ Substance Abuse and Mental Health Services Administration. (2003). *Results from the 2002 National Survey on Drug Use and Health: National Findings* (Office of Applied Studies, NHSDA Series H-22, DHHS Publication No. SMA 03-3836). Rockville, MD.

² Farrelly MC, Pechacek TF, Chaloupka FJ. The impact of tobacco control program expenditures on aggregate cigarette sales: 1981-2000. *J Health Economics*. 2003;22:843-859.

State of Alaska
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SB 368
Senate Finance Committee
April 5, 2004
9:00 a.m.

Testimony of Johanna Bales, Revenue Auditor

Thank you Mr. Chairman. My name is Johanna Bales. I am employed by the Alaska Department of Revenue as a Revenue Auditor in the Tax Division. I am the program manager of the Tax Division's cigarette and tobacco products excise tax program. I am pleased to testify on behalf of the administration in support of SB 368, the bill before you.

For a period of time, Alaska's current excise tax rate on cigarettes and other tobacco products (OTP) was the highest in the nation. After a flurry of legislative activity in other states, Alaska's excise tax rate on cigarettes is now the 12th highest and the excise tax rate on OTP is the 3rd highest. Currently, the highest excise tax rate on cigarettes is New Jersey's rate of \$2.05 per pack of 20. However, effective July 1, 2004, Rhode Island's tax rate is scheduled to increase to \$2.45 per pack of 20. The highest excise tax rate on OTP is Washington's rate of 129% of the wholesale price. At the current excise tax rate, Alaska's fiscal year revenues from cigarette and tobacco products are approximately \$40 million and \$6.5 million, respectively.

Although Alaska receives nearly \$47 million in cigarette and tobacco products tax revenues, this amount doesn't even begin to cover the economic and social costs associated with smoking-related illnesses. The Centers for Disease Control (CDC) estimates that smoking-attributable direct medical expenditures in Alaska in 1998 were \$132 million. More recent data indicates that these numbers are on the rise. Therefore, smoking-related costs in Alaska are believed to be significantly higher than \$132 million each year.

If Alaska's cigarette excise tax was doubled to \$2.00 per pack of 20 cigarettes (\$.10 per cigarette) and the OTP tax was increased to 100% of the wholesale cost, Alaska would rank number 3 and number 2 in total taxes charged on cigarettes and OTP, respectively as compared to the other states. If the cigarette and tobacco products excise taxes were increased as proposed in the attached bill, Alaska can expect to see an increase in cigarette and OTP excise taxes of \$33 to \$38 million each year. Estimated total cigarette and tobacco tax revenues would then be between \$80 and \$84 million each year. Even at these levels, cigarette and tobacco tax revenues would not cover smoking-related costs in Alaska. However, this tax increase proposal is a step in the right direction in offsetting some of these costs. Furthermore, discouraging smoking

through a tax increase will improve the economic health of our society as a whole which, in turn, will decrease smoking-related costs in Alaska in the future.

Although we estimate cigarette and tobacco products revenues would increase between \$33 and \$38 million each year, we can expect revenues to 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 would be much more attractive. Therefore, in addition to increasing the tax rate, this bill would allow the Departments of Revenue and Public Safety to seize and dispose of equipment, vehicles, monies and other assets used in cigarette smuggling and tax evasion activities. We believe these types of seizures will make cigarette smuggling and tax evasion less attractive and protect State revenues.

This bill will also institute a floor stock tax on all existing cigarette inventories held in the state for sale. This portion of the bill will require all cigarette distributors and retailers to take an inventory of their cigarettes on the effective date of the statute and pay the difference between the old tax rate and the new tax rate to the Department of Revenue within 30 days. When the tax rate on cigarettes increased in 1997, a significant number of retailers stockpiled large amounts of cigarettes prior to the tax rate increase. We estimate that over 200 million cigarettes were stockpiled resulting in lost revenues to the state of approximately 7 million dollars. (See the attached chart that illustrates cigarette stockpiling that took place in 1997.) On October 1, 1997, the effective date of the increase, instead of passing the tax savings on to the consumer, most of the retailers increased their prices to reflect the increased tax rate, a tax they never paid to the State. They then blamed their price increase on the tax rate increase. The Department of Revenue received many complaints from consumers who realized that these retailers were, in essence, pocketing state revenues. Most other states and the federal government institute a floor stock tax on the date of a tax rate increase which is paid by all entities engaged in the sale of cigarettes. This provision will not prohibit individuals from stockpiling cigarettes for personal consumption.

In addition to the tax stamp provisions, the bill would also make several changes to improve the cigarette licensing statutes.

The Department of Revenue urges your support of this important bill. It will enhance compliance with the state's revenue laws while providing an important public health benefit.

I would be happy to answer any questions the committee might have. Thank you.

John W. Bitney

From: Michael F. Ford [counsel@gci.net]
Sent: Friday, April 16, 2004 11:04 AM
To: John Bitney
Subject: Summary of amendment changes (4-16-04)

Michael F. Ford
Law Offices

4489 Hillcrest Ave.
Juneau, AK 99801

April 16, 2004

Mr. John Bitney
P.O. Box 2784
Palmer, AK 99645

Dear John,

This letter will explain the changes made in the attached amendment to HB 538. Under existing law (AS 43.50.710 – 43.50.849), certain limitations are placed on the sale of cigarettes. This amendment is intended to provide a simpler and more effective way of controlling the sales price of cigarettes.

Under existing law, there are three terms that regulate the sales price of cigarettes. Those terms are “actual cost”, “basic cost”, and “presumptive cost.” Under the amendment, the terms “actual cost” and “presumptive cost” are repealed and the term “basic cost” is used to determine the minimum legal price of cigarettes. This change eliminates overlapping definitions and is intended to provide a clear method to determine the legal minimum price of cigarettes.

Turning the amendment, the following is a section by section analysis of the changes proposed:

Section 15 - Replaces the term “actual” cost with the phrase “basic” cost. The results are that a wholesaler or retailer is prohibited from advertising or selling cigarettes at less than the “basic” to the wholesaler or retailer.

Section 16 - Replaces the term “actual” cost with the phrase “basic” cost and prohibits a retailer from attempting to buy cigarettes at less than the “basic” to the wholesaler.

Section 17 - Replaces the term “actual” cost with the phrase “basic” cost and provides that evidence of cigarette sales at less than the basic cost is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

Section 18 - Replaces the term “actual” cost with the phrase “basic” cost and provides that certain types of cigarette sales that are combined with other items, the combined price may not be below the basic cost to the wholesaler or retailer.

Section 19 - Replaces the term “actual” cost with the phrase “basic” cost and provides that certain types

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of cigarette sales between wholesalers can occur without including the basic cost of the selling wholesaler. A purchasing wholesaler is required to include basic cost, upon resale to a retailer.

Section 20 - Replaces the term "actual" cost with the phrase "basic" cost in provisions relating the determination of cost to a wholesaler or retailer by the department.

Section 21 - Replaces the term "actual" cost with the phrase "basic" cost in provisions relating the determination of cost to a wholesaler or retailer by a court or by the department.

Section 22 - Technical amendment relating to establishing the basic cost of cigarettes to a wholesaler or retailer. Provides that the invoice cost of certain closeout sales outside ordinary channels of trade cannot be used.

Section 23 - Repeals and reenacts certain presumptions applicable to the determination of the cost of cigarettes, for a wholesaler or retailer. Establishes the legal minimum cost of cigarettes for a wholesaler and for a retailer, known as the "basic" cost of cigarettes.

Section 24 - Repeals AS 43.50.849(1), a definition of the term "basic wholesale cost", repeals AS 43.50.849(6), a definition of the term "presumptive retail cost", repeals AS 43.50.849(7) a definition of the term "presumptive wholesale cost", and AS 43.50.849(12), a definition of the term "trade discount." The definitions being repealed are obsolete given the other changes in the amendment.

I hope this explanation is helpful, please contact if you have further questions.

Sincerely,

Michael F. Ford

AMENDMENT

To: HB 538

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

Insert "relating to regulation of cigarette sales;"

Page 8, following line 9:

Insert new bill sections to read:

**** Sec. 15.** AS 43.50.710(a) is amended to read:

(a) A wholesaler or retailer may not, with intent to injure competitors or destroy or substantially lessen competition,

(1) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than basic [ACTUAL] cost to the wholesaler or retailer; or

(2) offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a concession of any kind or nature in connection with the sale of cigarettes.

*** Sec. 16.** AS 43.50.710(b) is amended to read:

(b) A retailer may not induce or attempt to induce or procure or attempt to procure

(1) the purchase of cigarettes at a price less than the basic [ACTUAL] cost to a wholesaler;

(2) a rebate or concession of any kind or nature in connection with the purchase of cigarettes.

*** Sec. 17.** AS 43.50.710(c) is amended to read:

(c) Evidence of advertisement, offering to sell, or sale of cigarettes by a wholesaler or retailer at less than basic [ACTUAL] cost, or evidence of an offer of a rebate in the price, the giving of a rebate in price, offer of a concession, or the giving of a concession of any kind or nature in connection with the sale of cigarettes, or the inducing, attempt to induce, the procuring, or the attempt to procure the purchase of cigarettes at a price less than basic [ACTUAL] cost to a wholesaler or retailer is prima facie evidence of intent to injure competitors and to destroy or substantially lessen competition.

*** Sec. 18.** AS 43.50.720 is amended to read:

Sec. 43.50.720. Sale at less than cost; with gift or concession.

In all advertisements, offers for sale, or sales involving two or more items when at least one of the items is cigarettes at a combined price, and in all advertisements, offers for sale, or sales involving the giving of any gift, concession, or coupon of any kind in conjunction with the sale of cigarettes, the wholesaler's or retailer's combined selling price may not be below the basic [ACTUAL] cost to the wholesaler or the basic [ACTUAL] cost to the retailer, respectively, of the total of all articles, products, commodities, gifts, and concessions included in the transactions, except that, if any articles, products, commodities, gifts, or concessions are not cigarettes, the basic cost shall be determined as provided under AS 43.50.800.

* Sec. 19. AS 43.50.730 is amended to read:

Sec. 43.50.730. Sale to another wholesaler.

When one wholesaler sells cigarettes to another wholesaler, the seller is not required to include the basic [ACTUAL] cost of the selling wholesaler. Upon resale to a retailer, the purchasing wholesaler is required to include the basic [ACTUAL] cost of the purchasing wholesaler or the basic [ACTUAL] cost of the selling wholesaler, whichever is greater, in the selling price.

* Sec. 20. AS 43.50.740(b) is amended to read:

(b) In the absence of proof of the basic [ACTUAL] cost to a competing wholesaler or the competing retailer, basic [ACTUAL] cost may be [PRESUMED TO BE THE PRESUMPTIVE WHOLESALE COST TO THE WHOLESALER OR THE PRESUMPTIVE RETAIL COST TO THE RETAILER AS] determined by the department from the manufacturer's price list.

* Sec. 21. AS 43.50.760 is amended to read:

Sec. 43.50.760. Determination of cost. (a) In determining basic [ACTUAL] cost to the wholesaler or retailer, a court shall consider as establishing the cost evidence tending to show that a wholesaler or retailer complained against under a provision of AS 43.50.710 - 43.50.849 purchased the cigarettes involved in the complaint at a fictitious price, or upon terms, in a manner, or under invoices, in a manner that conceals the true cost, discounts, or terms of purchase. The court shall also consider evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of a similar nature in the state.

(b) The basic [PRESUMPTIVE WHOLESALE AND PRESUMPTIVE RETAIL] cost of cigarettes as determined by the department from the manufacturer's price list is considered competent evidence in a court action or proceeding as tending to prove [ACTUAL] cost to the wholesaler or retailer complained against. A party against whom the basic [PRESUMPTIVE WHOLESALE AND PRESUMPTIVE RETAIL] cost as determined by the department is introduced in evidence has the right to offer evidence tending to prove any inaccuracy of the basic [PRESUMPTIVE WHOLESALE AND

PRESUMPTIVE RETAIL] cost or any statement of facts that would impair its probative value.

* **Sec. 22.** AS 43.50.770 is amended to read:

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

* **Sec. 23.** AS 43.50.800 is repealed and reenacted to read:

(a) For purposes of AS 43.50.710 - 43.50.849, the basic cost of cigarettes to a

(1) wholesaler is equal to the manufacturer's list price plus four and one-half percent of the list price and the full face value of any tax required by this chapter, less trade discounts; and

(2) retailer is equal to the wholesale cost of the cigarettes calculated under (1) of this subsection, plus six percent of the wholesale cost calculated under (1) of this subsection.

(b) In the absence of a manufacturer's list price for a particular brand of cigarettes, the department may determine the basic wholesale or basic retail cost of the cigarettes from the average price of cigarettes for other similar brands for which the department has the manufacturer's list price.

(c) In this section, "trade discount" means a price reduction that is offered by a cigarette manufacturer on the date of sale, is reflected on the invoice as a deduction from the manufacturer's list price, and is fully earned and determinable on the date of sale;

* **Sec. 24.** AS 43.50.849(1), (6), (7), and (12) are repealed."

Renumber the following bill sections accordingly.

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

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

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

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

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

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

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