

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1190

2007 HOUSE FINANCE AND TAXATION

HB 1190

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1190

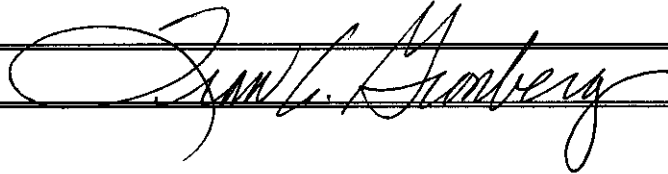
House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: 1-24-07

Recorder Job Number: 1793

Committee Clerk Signature



Minutes:

**Chairman Belter** opened the hearing on HB 1190.

**Rep Weiler, Dist 30:** This law was changed back in 2001 when I was a freshman. I don't like what we did. There are many people here from the industry who are going to talk about this bill.

**Al Stenehjem, representing Conwood Company a subsidiary of Reynolds American:**

(testimony used displays and graphs that he referred to in his testimony) I traveled around the state this summer talking to legislators about this issue. Almost everyone couldn't figure out why they did that. Conwood didn't come in and offer testimony in 2001 - they were remiss. We're here to tell you how it affects the consumer. He talked about the brands and the tiers of their products (smokeless tobacco). Some products get a break through the tax policy and the consumer is picking up the difference. Our position is that it is not fair to the consumer. The other side of this is when you look at the growth as you take in revenue and taxes it stays about the same under the current 28%, but once it changes over to a weight based, no matter how much the price of that product increases no receive no more revenue.

As legislators, you need to look at a revenue increase that is automatic. At this point , and I talked to the tax department, they said that when it went into effect in 2001, they based the 60

cents per ounce on four year market. Knowing that at the end of four years, you to back to the 28% or you increase the tax from 60 cents to a little bit more because of the increases. Reynolds has announced that they are increasing their prices. I imagine that the other companies are going to follow suit in order to increase their bottom line.

**Stan Arnold, representing Reynolds American, Inc. and its subsidiary Conwood**

**Company:** (testimony attached)

**Rep Froelich:** Can you give me the definition between Copenhagen snuff and chewing tobacco? When do we draw the line between chewing tobacco and snuff?

**Arnold:** I'm not a tobacco expert. The industry itself has divided it self into the three tiers.

OPPOSITION

**Rep Carlson:** I have a special interest in this bill. Many of you were here in 2001 when we changed to go to the weight based system rather than on a sales price system. Back then there were many arguments for and against the change. But I'm sure that you all know that to have an excise tax based on a unit price is not unusual. You have to remember that on top of this there still is a sales tax charge. Most of you are aware that we as a state have been the recipient of a large number of settlement dollars from tobacco companies over the last suit that was settled in ND. There were two different types of settlements - one was for smoking tobacco and one was for chewing tobacco. And they are distributed in different ways. One sends cash back to the general fund (tobacco side) and then the smokeless side was put into a foundation - that foundation funnels that money back here. There is only one fund that pays into that fund - and the company that was here today in favor of changing the regulation, does not pay into that fund. We have both participating companies and nonparticipating companies. I don't think this is an unfair tax. The wholesalers collect the tax for us. They like this system.

Senator Stenehjem was a driving force in passing this tax last time in the Senate. I think it's fair to leave it the way it is. Other states are looking at what we did and are considering doing the same thing - a weight based formula.

**Robert Shepard, partner in a national tax consulting firm specializing in tobacco taxes and regulations:** (testimony attached)

**John Job, Division Manager, AMCON Distributing Company:** (attachments #3 and #4)

**Rep Weiler:** On the second draft , at the bottom, since 2002, it says that smokeless moist tobacco sales have increased every year.

**Shepard:** It's true that sales have gone up every year. It is for someone else to decide whether it is a good or bad thing.

**Bruce Keiser, owner and operator of a family business-distributing company in**

**Williston:** Things are working really well right now. It is easy to operate and collect the tax for ND. Changes would be costly.

**Mike Rud, ND Retailers Association:** (attachments #5and #6)

**Rep Pinkerton:** Do you know what the other states in our area are charging for excise tax?

**Rud:** I do not.

**Rep Pinkerton:** Can we find out?

**Chairman Belter:** Well we can certainly try.

**Terry Paulson, USTPA:** (attachment #7) We make Copenhagen and Scoll, they are our premium products. We're talking about an excise tax that's applied across the board. It was a real pioneer effort. Many states have followed your lead (9) and many more are going to follow. The sales tax takes care of the differential. You are collecting more excise tax revenue

under the weight based system and more smokeless tobacco products are being sold. (went over attachment #7)

**Rep Headland:** You mentioned that ND has been a leader in changing tax policy. Are you aware of any state that has followed and switched to a weight based policy and then in turn switched back?

**Paulson:** No state that has changed has switched back. The federal government also taxes by weight the same as ND.

**Rep Weiler:** Wyoming did on Monday. They defeated the weight based bill.

**Paulson:** For the question on tax rates - ND is lower than SD, lower than Minnesota, and Montana you're lower by 15 cents. Montana also taxes by weight. The bill in front of you seeks to go back to an old system. It doesn't address the tax rate other than to say that it's going to lower your rate on some tobacco products. The federal government defines the different products so there is a difference in tax by weight between snuff and chew. Chew is the common term used, but for tax purposes there is a difference between snuff and chew.

**Rep Weiler:** We were told by the legislative council that we're going to have to do an amendment to change the definition from what we have from chewing to something else. I will give you a copy. On this chart you handed out, it would appear that Conwood Tobacco Company is the largest tobacco in the world according to it's market share. Can you tell me if RJ Reynolds only has smokeless tobacco or do they have cigarettes as well.

**Paulson:** Yes, they have cigarettes and now they have smokeless tobacco since the purchase of Conwood. Conwood was a privately held company before and Reynolds bought them for \$3.5M. There is no such thing as little tobacco - they are all big.

**Rep Kelsh:** There was a comment that Conwood may be an offshore company. Is it?

**Page 5**

**House Finance and Tax Committee**

**Bill/Resolution No. HB 1190**

**Hearing Date: 1-24-07**

**Paulson:** Conwood is not. It is an American company.

**Scott Ripplinger, Grand Forks:** Create unfair competition - the premium brands pay very well. This would be an increase for one company and a decrease for another.

Neutral

**John Quinlan, ND State Tax Dept:** We have a neutral position and will be willing to answer any technical questions.

**Chairman Belter** closed the hearing on HB 1190.

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1190 B

House Finance and Taxation Committee

Check here for Conference Committee

Hearing Date: January 31, 2007

Recorder Job Number: 2375

Committee Clerk Signature

*Mickie Schmidt*

Minutes:

Chairman Belter opened the hearing on HB 1190 and asked for the committee's wishes.

**Representative Weiler:** I have some amendments that the Tax Dept. asked me to address this situation. What it is, is some definitions that describe other types of tobacco. It doesn't change the Bill at all, other than add some definitions. They felt that it was necessary to put this on. (See attachment #1)

**Representative Weiler:** I'll move the amendments.

**Vice Chairman Drovdal:** Second it.

**Chairman Belter:** These are basically technical corrections. Is there any discussion? All those in favor of the proposed amendments signify by saying aye. The motion carries. I will entertain a motion on the Bill

**Representative Froseth:** I move a Do Not Pass as Amended.

**Representative Brandenburg:** Second it.

**Chairman Belter:** Is there any discussion? Will the clerk read the roll; 8-y, 5-n, 1-absent; Rep. Froseth will carry HB 1190. Close the hearing on HB 1190.



**FISCAL NOTE**  
**Requested by Legislative Council**  
02/02/2007

Amendment to: HB 1190

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Eng. HB 1190 changes the method of computing the excise tax on certain tobacco products.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

In a previous session, the Legislature changed the excise tax on "snuff" and "chewing" tobacco to the current, weight-based method where the tax is computed per ounce of product. Eng. HB 1190 changes it back to 28% of the wholesale purchase price of the product. (Eng. HB 1190 also makes a technical definition change.)

In 2006, there were 3.911 million ounces of "snuff" and 184,000 ounces of "chewing" tobacco on which the excise tax was paid. The total tax collected on these products - which was based on ounces - was \$2.376 million.

The fiscal impact of switching back from the weight-based to the percentage of wholesale price method would depend on the relative "market share" of each of the various-priced products. Information on wholesale prices and market share have been supplied to us by industry representatives. The market share information varies, and the estimated fiscal effect using this industry supplied data, ranges from a possible loss of \$417,000 to a possible gain of \$283,000 for the biennium. The actual biennial fiscal impact of this bill, although unknown, likely falls between these two estimates: -\$417,000 and +\$283,000.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	02/05/2007

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/08/2007

Bill/Resolution No.: HB 1190

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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HB 1190 changes the method of computing the excise tax on certain tobacco products.

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In a previous session, the Legislature changed the excise tax on "snuff" and "chewing" tobacco to the current, weight-based method where the tax is computed per ounce of product. HB 1190 changes it back to 28% of the wholesale purchase price of the product.

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*continuing appropriation.*

<b>Name:</b>	Kathryn L. Strombeck	<b>Agency:</b>	Office of Tax Commissioner
<b>Phone Number:</b>	328-3402	<b>Date Prepared:</b>	01/23/2007

**House Amendments to HB 1190 (70326.0101) - Finance and Taxation Committee  
01/31/2007**

Page 1, line 15, remove the overstrike over "~~ether~~", remove "chewing", and remove the overstrike over "~~products~~"

Page 1, line 18, remove the overstrike over "~~ether~~"

Page 1, line 19, remove "chewing" and remove the overstrike over "~~products~~"

Page 1, line 21, remove the overstrike over "~~ether~~"

Page 1, line 22, remove "chewing" and remove the overstrike over "~~products~~"

Page 1, line 23, remove the overstrike over "~~ether~~", remove "chewing", and remove the overstrike over "~~products~~"

**House Amendments to HB 1190 (70326.0101) - Finance and Taxation Committee  
01/31/2007**

Page 2, line 4, remove the overstrike over "~~Other tobacco products~~ means", after the second "~~tobacco~~" insert "any product except cigarettes and roll-your-own tobacco, including cigars, snuff, cigarette papers or rolling tubes, hookah pipe tobacco, blunt wraps, or any product that is made up or composed of tobacco, in whole or in part", and remove the overstrike over the overstruck period

Page 2, line 5, remove the overstrike over "~~10.~~"

Page 2, line 7, remove the overstrike over "~~11.~~" and remove "10."

Page 2, line 10, remove the overstrike over "~~12.~~" and remove "11."

Page 2, line 11, remove the overstrike over "~~13.~~" and remove "12."

Page 2, line 13, remove the overstrike over "~~14.~~" and remove "13."

Page 2, line 14, remove the overstrike over "~~other~~", remove "chewing", and remove the overstrike over "~~products~~"

Page 2, line 15, remove the overstrike over "~~15.~~" and remove "14."

Page 2, line 16, remove the overstrike over "~~other~~" and remove "chewing"

Page 2, line 17, remove the overstrike over "~~products~~"

Page 2, line 22, remove the overstrike over "~~other~~", remove "chewing", and remove the overstrike over "~~products~~"

Page 2, line 25, remove the overstrike over "~~other~~", remove "chewing", and remove the overstrike over "~~products~~"

Page 2, line 26, remove the overstrike over "~~other~~"

Page 2, line 27, remove "chewing" and remove the overstrike over "~~products~~"

**House Amendments to HB 1190 (70326.0101) - Finance and Taxation Committee  
01/31/2007**

Page 3, line 3, remove the overstrike over "~~other~~", remove "chewing", and remove the overstrike over "~~products~~"

Page 3, line 10, remove the overstrike over "~~other~~", remove "chewing", and remove the overstrike over "~~products~~"

Page 3, line 27, remove "and" and after "tobacco" insert ", and other tobacco products"

Page 3, line 31, replace "chewing" with "other" and after "tobacco" insert "products"

**House Amendments to HB 1190 (70326.0101) - Finance and Taxation Committee  
01/31/2007**

Page 4, line 2, replace "chewing" with "other" and after "tobacco" insert "products"

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**House Amendments to HB 1190 (70326.0101) - Finance and Taxation Committee  
01/31/2007**

Page 5, line 9, replace "chewing" with "other" and after "tobacco" insert "products"

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Page 5, line 29, remove the overstrike over "~~ether~~", remove "chewing", and remove the overstrike over "~~products~~"

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Page 6, line 6, remove the overstrike over "~~ether~~", remove "chewing", and remove the overstrike over "~~products~~"

Page 6, line 24, remove the overstrike over "~~ether~~", remove "chewing", and remove the overstrike over "~~products~~"

Page 6, line 28, remove the overstrike over "~~ether~~" and remove "chewing"

Page 6, line 29, remove the overstrike over "~~products~~"

**House Amendments to HB 1190 (70326.0101) - Finance and Taxation Committee  
01/31/2007**

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Page 7, line 28, remove "chewing" and remove the overstrike over "~~products~~"

**House Amendments to HB 1190 (70326.0101) - Finance and Taxation Committee  
01/31/2007**

Page 8, line 5, remove the overstrike over "~~ether~~" and remove "chewing"

Page 8, line 6, remove the overstrike over "~~products~~"

Renumber accordingly

Date: 1-31-07 AM  
Roll Call Vote #: 1190 B

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Finance & Tax Committee

Check here for Conference Committee

Legislative Council Amendment  
Number \_\_\_\_\_

Action Taken Do Not Pass AS amended

Motion Made By Rep. Froseth Seconded By Rep. Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Chairman Belter	✓		Rep. Froelich		✓
Vice Chairman Drovdal		✓	Rep. Kelsh		✓
Rep. Brandenburg	✓		Rep. Pinkerton	✓	
Rep. Froseth	✓		Rep. Schmidt		✓
Rep. Grande			Rep. Vig	✓	
Rep. Headland	✓				
Rep. Owens	✓				
Rep. Weiler		✓			
Rep. Wrangham	✓				

Total (Yes) 8 No 5

Absent 1

Floor Assignment Rep. Froseth

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**HB 1190: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1190 was placed on the Sixth order on the calendar.

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Page 8, line 6, remove the overstrike over "~~products~~"

Renumber accordingly

2007 TESTIMONY

HB 1190

HB 1190

#1 1-24-07

North Dakota House Finance and Taxation Committee

Public Hearing on House Bill 1190

Statement of Stanley R. Arnold on behalf of

Reynolds American and Conwood Company, LLC

January 24, 2007

Good Morning,

For the record, my name is Stan Arnold and I am representing Reynolds American, Inc. and its subsidiary Conwood Company, a manufacturer of moist snuff, in support of HB 1190. This bill asks you to revisit and reverse a decision that was made in 2001. We are asking you to revisit that decision because we believe that you did not have all of the information you needed to make an informed decision. There was testimony, and questions were asked, but the information provided was designed to support the view of the largest manufacturer of moist snuff in the United States, UST. The arguments made at the time you made the change on how moist snuff is taxed in ND are not supported by accepted economic theory or good tax policy.

I have over 30 years of experience in the state and local tax field. I have prepared returns for individuals and businesses, I have been a state auditor, and I managed a department of revenue in New Hampshire for 14 years. I have worked with five governors and numerous legislative committees in developing sound tax policy decisions to meet the revenue needs of the state. Since leaving state service, I have continued to work in the

tax policy area and have testified in Congress and before several State Tax Study Commissions.

There are three important points that I wish to make today. First, this is an issue all about competition; it is the former monopoly trying to protect its market leading position. Second, excise taxes are not a targeted tax. And finally, changing back to the original ad valorem system is not intended to raise additional revenue, it is simply a return to the normal revenue growth that North Dakota was experiencing prior to the change to the weight based method.

United States Smokeless Tobacco was a monopoly until 1970. From 1970 until now, three competitors have entered the market and are competing with the giant. All products in a competitive market have a life cycle and this works well to prevent the formation of monopolies. For example, when Apple came out with the I-pod music player, it quickly took close to 100 percent of the market because every kid in America seemed to want one. Well, that brought competitors into the market and they competed on alternative designs and/or on price. That is what happened to USST. The competitors emphasized lower prices and volume and they made inroads into the former monopoly. USST wants to maintain its dominant market position by raising the entry barriers for competitors and is attempting to turn good market theory on its head by claiming that excise taxes are somehow a special type of tax.

Simply stated, excise taxes are legacy taxes.<sup>1</sup> Excise taxes were enacted for one reason; to raise revenue. And one popular target for applying excise taxes were on monopoly or near monopolistic industries such as snuff, tobacco, big oil, etc. State tax systems have generally followed the federal model and many of North Dakota's excise tax systems have been around a long time. At the start of World War I, 90 percent of federal government revenue came from excise taxes. Excise taxes were popular with the both the state and federal government because there was no direct interaction with citizens.

Arguments can be made as to whether or not any tax should remain on the books, but if a state is going to impose a tax, it should be based on sound tax policy principles. All citizens, businesses and government exist in a market economy. The U.S. system is based on supply and demand. The currency of a market system is price or value and tax policy should attempt to follow that model where possible.

A key tax principal is economic neutrality-the tax system should not alter economic choices that would otherwise be made in the economy. In our U.S. economy price or value is the common denominator for competing in economic markets. The weight based system does not follow that principle. It puts a higher proportional burden on the competitors wishing to enter the market. UST doesn't want this excise tax to go away; it wants it to remain with the greater burden on its competitors.

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<sup>1</sup> There is an interesting discussion of excise taxes on the U.S. Treasury web site about the History of the U.S. Tax System (<http://www.ustreas.gov/education/fact-sheets/>).

Finally, as Allen pointed out, you have capped your tax revenue by converting to the weight system. We are not seeing the dramatic decrease in the premium brands that were forecast when ND made the change to weight based and all tier levels have been raising prices from 4 to 6 percent a year, but ND's cap does not capture that increase. The premium brands have maintained their prominent position in ND and it will likely continue with this change. It is important for me to point out that my client competes in all three tiers and is confident that changing back to an ad valorem method will not prevent it from competing at any level.

Thank you for the opportunity to testify today and I am prepared to answer your tax questions.

# *North Dakota*

## **Moist Smokeless Tobacco**

DRAFT

HR 1190  
#2-12407

ND:  
MST Tax Rate  
60¢/oz

Why a Weight Based Tax on Moist Smokeless Tobacco  
(MST) Was the Right Way to Go

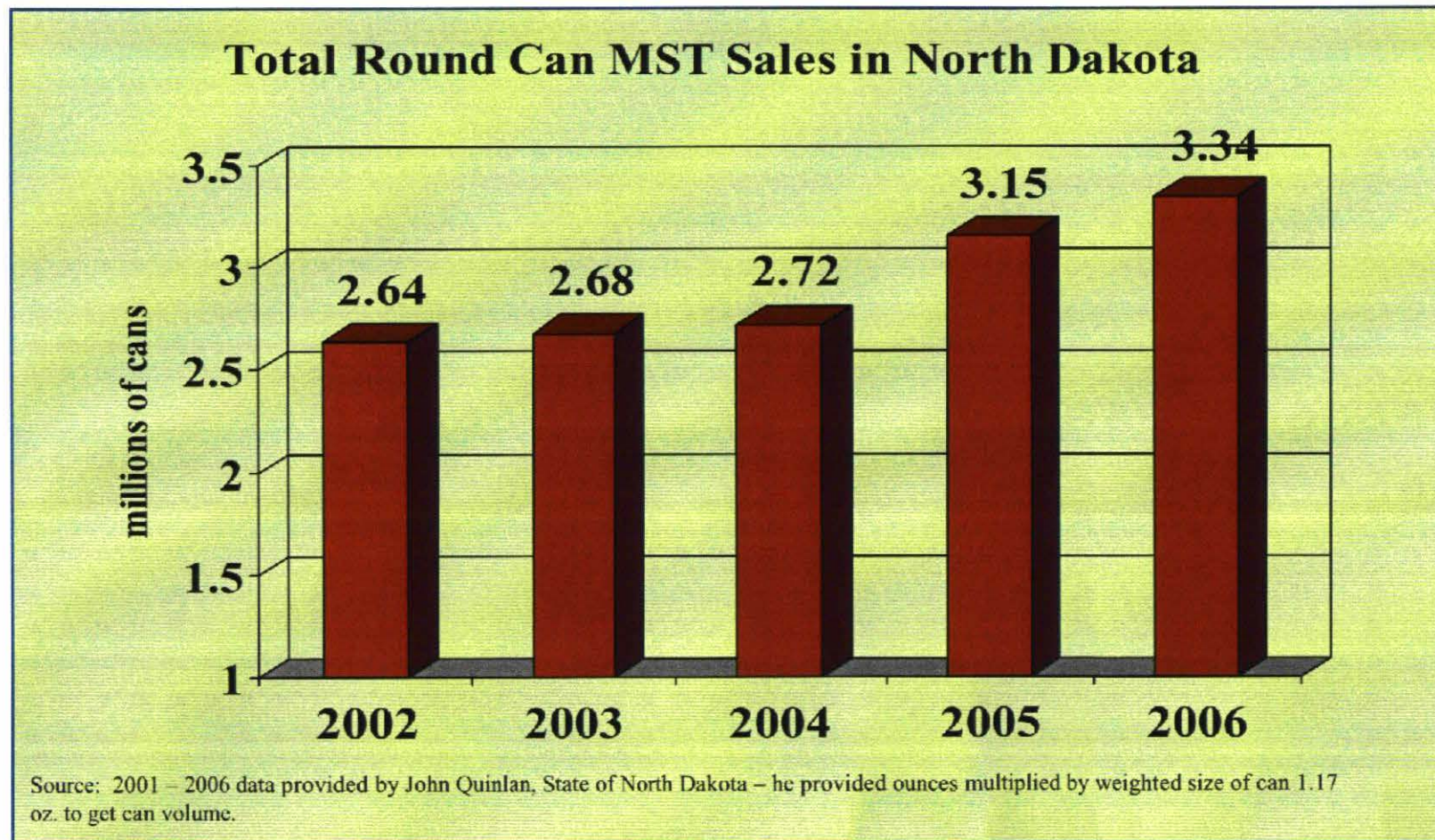
1/11/07

from Robert Shuppard



# The MST Category in North Dakota

In July 2001, the State of North Dakota changed the method of taxation on MST from 28% to 60¢/oz.

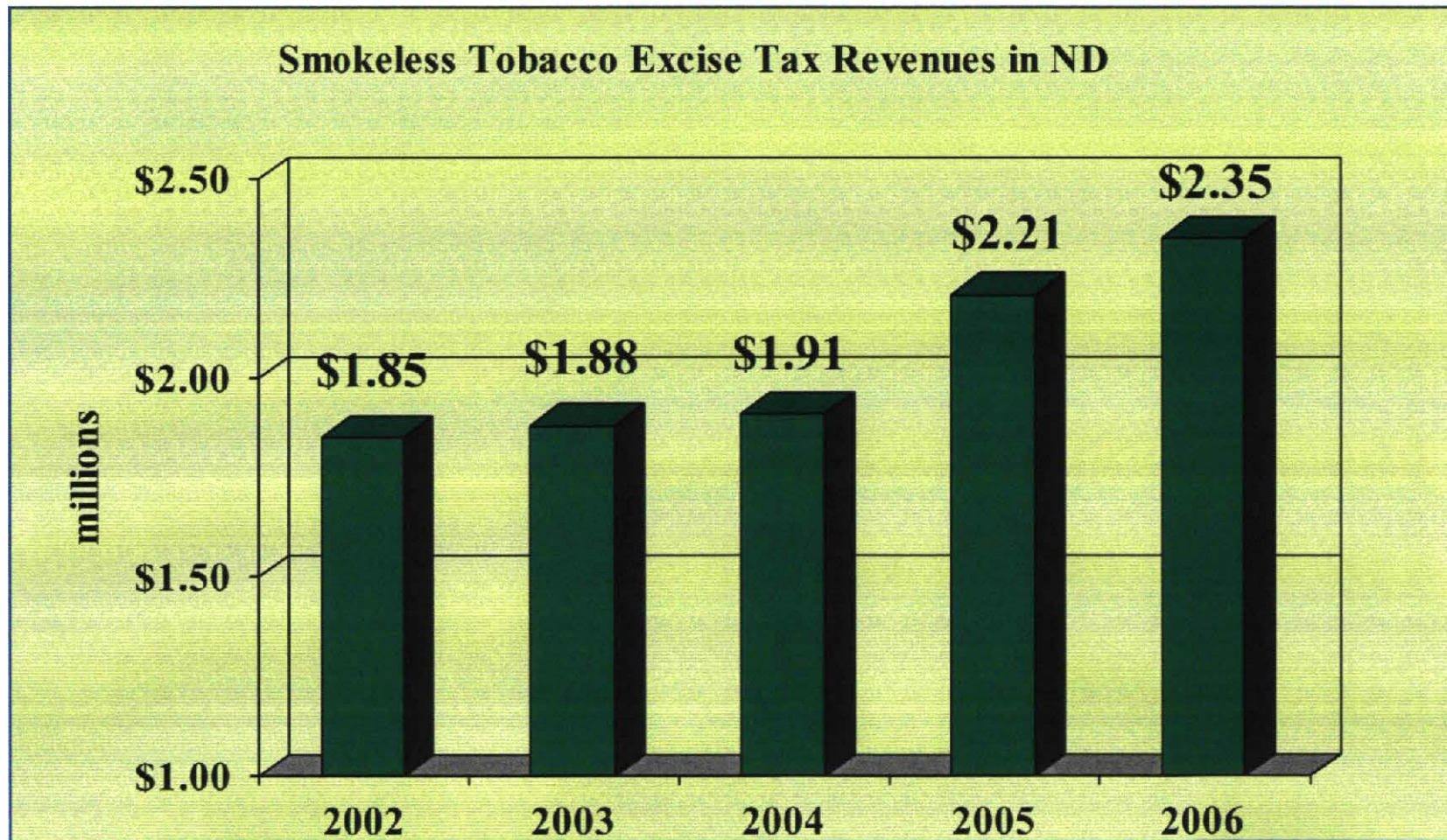


Since 2002, total MST can sales have increased every year.

# North Dakota Smokeless Tobacco Excise Tax Revenues Increased

DRAFT

Because the state has a weight based tax on MST, tax revenues increased.

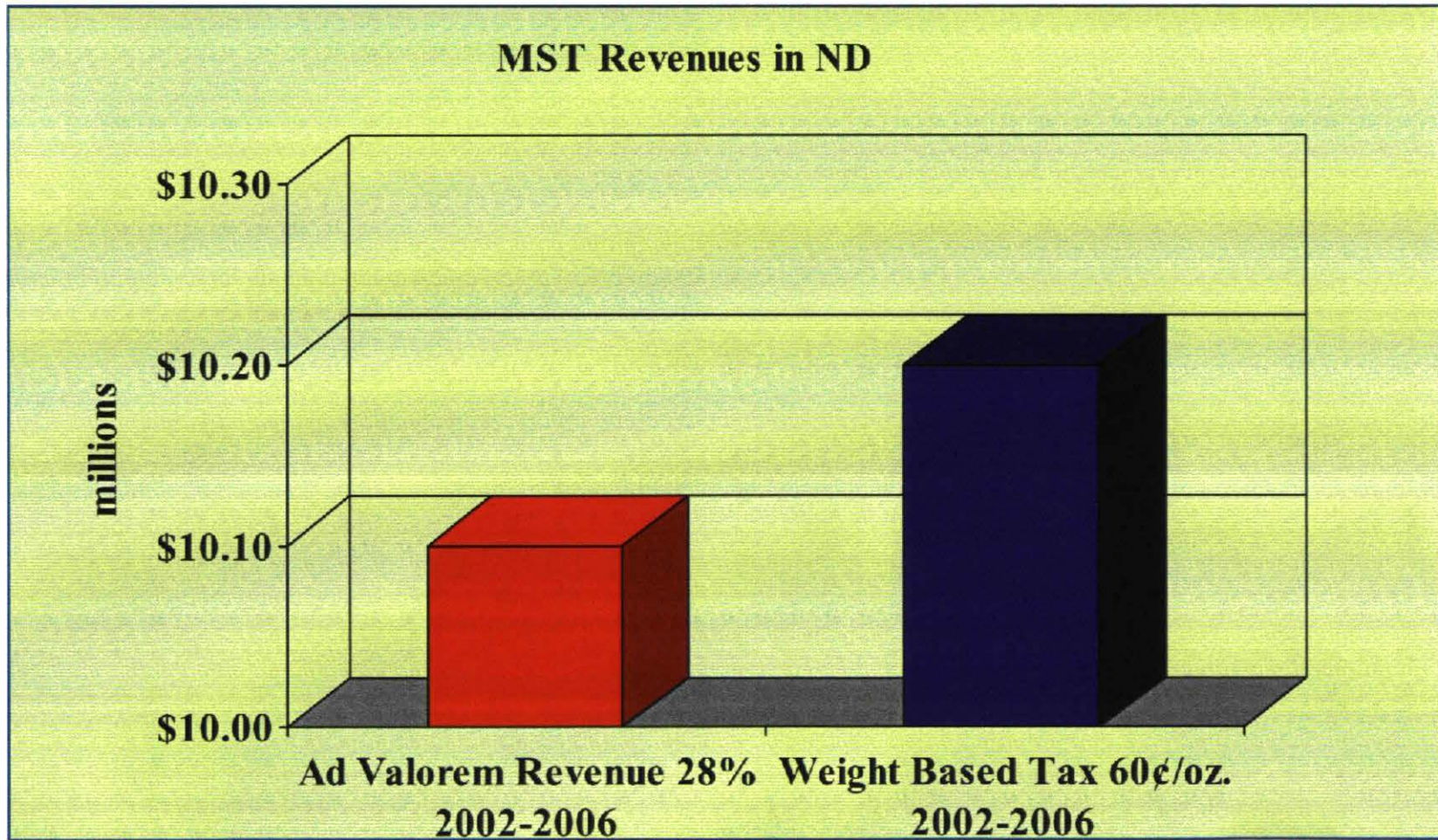


Source: Ounces sold in ND provided by John Quinlan, State of ND. Revenue figured by multiplying ounces by tax rate 60¢ per ounce.

# *North Dakota Smokeless Tobacco Excise Tax Revenue Comparison*

DRAFT

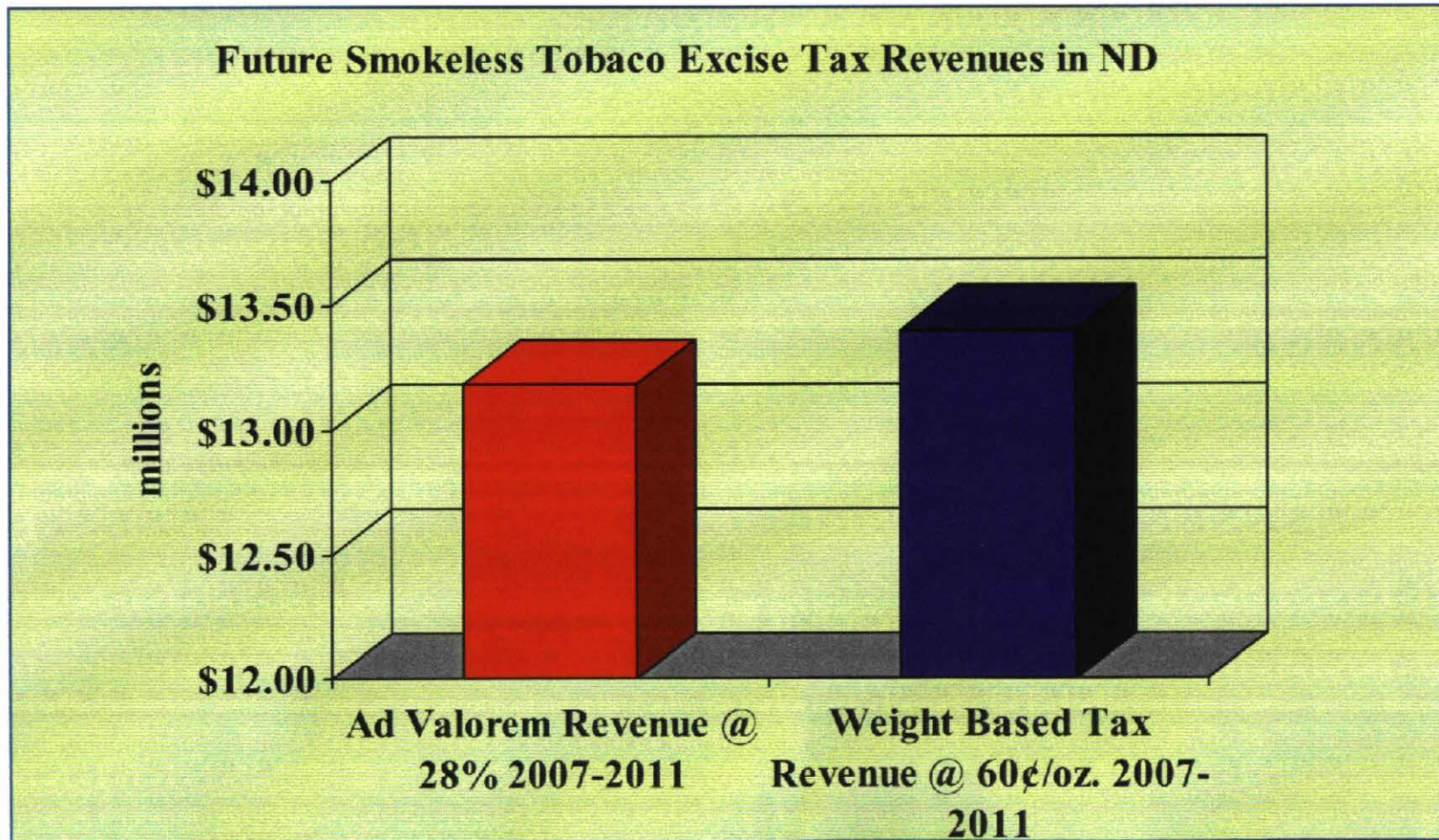
The State has received more revenue from a weight based tax than an ad valorem.



Source: From the MSA, Inc. simulator.

# North Dakota Smokeless Tobacco Excise Tax Revenue Comparison DRAFT

The State would continue to see more revenue under a weight based tax.



Source: From the MSA, Inc. simulator.

**Why Ad Valorem  
Would Not & Will Not  
Work in North Dakota**



# ***MST Category Development***

**DRAFT**

Since North Dakota changed to a weight based tax, the MST category has developed into three tiers and 1 manufacturer has reduced its price on its product. An ad valorem tax method of taxation would have resulted in revenue loss for the State with these developments.

➤ **Emergence of Tier 3 or sub-price MST products**

**Grizzly introduced in 2002.**

**Current Wholesale Price \$1.20.**

**TAX CUT: 38¢ per can.**

**Longhorn introduced in 2003.**

**Current Wholesale Price \$.81.**

**TAX CUT: 56¢ per can.**

**Kayak introduced in 2003.**

**Current Wholesale Price \$.81.**

**TAX CUT: 49¢ per can.**

➤ **Swedish Match cut the wholesale price of Timberwolf.**

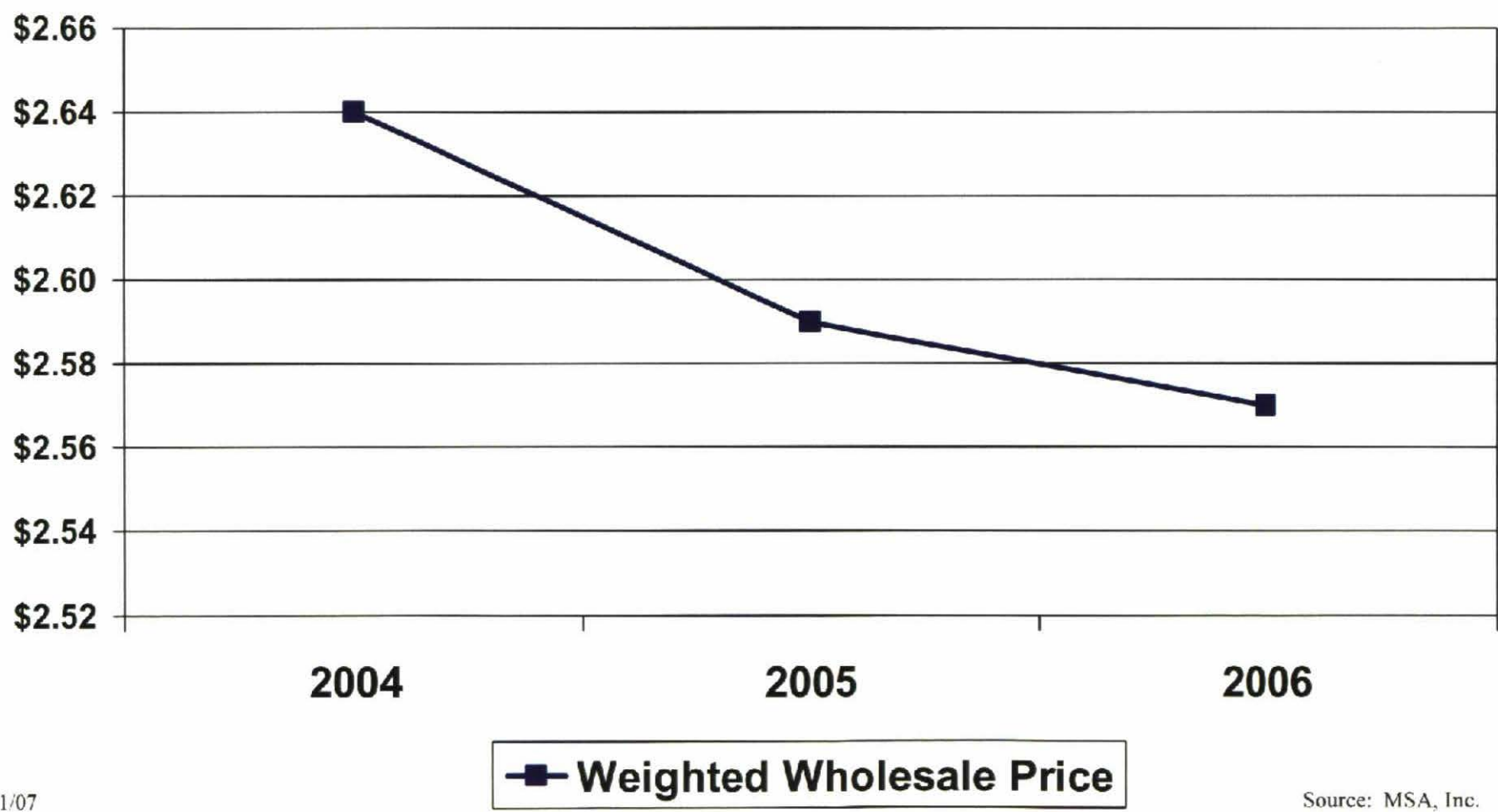
**November 2004: \$1.87 to \$1.30.**

**TAX CUT: 30% Tax Cut**

DRAFT

# North Dakota Protected its MST Excise Tax Revenues

Since 2004, MST tax revenue would have declined under an ad valorem tax system because the weighted wholesale price has been decreasing. This is with current share trends.



# *Most Products will Pay Less Excise Tax Under an Ad Valorem Tax System*

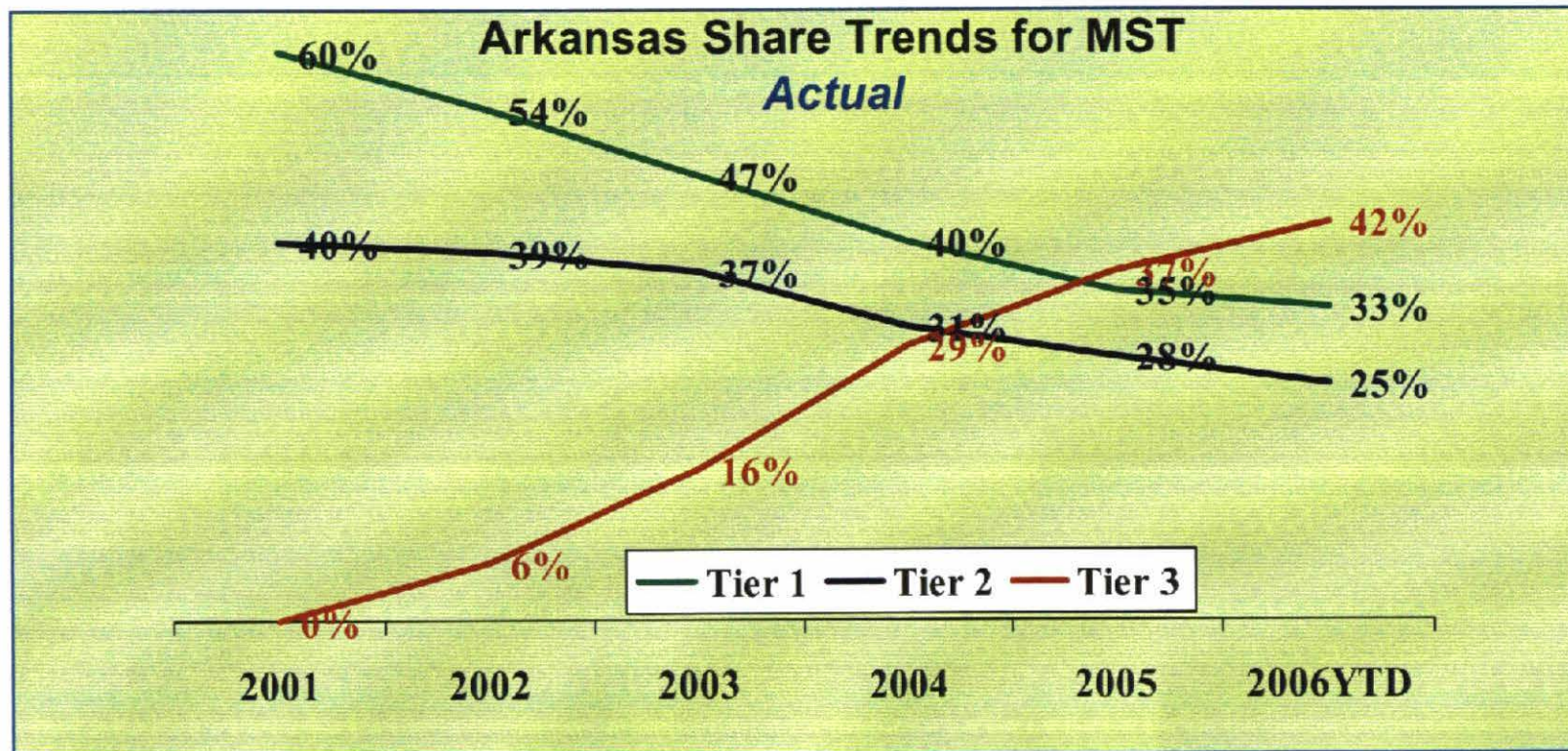
<u>Brand</u>	<u>ND Excise Tax Loss Per Can</u>	<u>% Tax Loss</u>
Longhorn	- 56¢	- 71 %
Kayak	- 49¢	- 68 %
Timberwolf	- 43¢	- 54 %
Grizzly	- 38¢	- 53 %
Husky	- 38¢	- 53 %
Red Seal	- 35¢	- 38 %
Cougar	- 17¢	- 24 %
Silver Creek	- 10¢	-17 %

Source: From the MSA, Inc. simulator.



## Arkansas Share Trends

Arkansas has an excise tax rate of 32%, which is close to the proposed ad valorem tax in North Dakota.

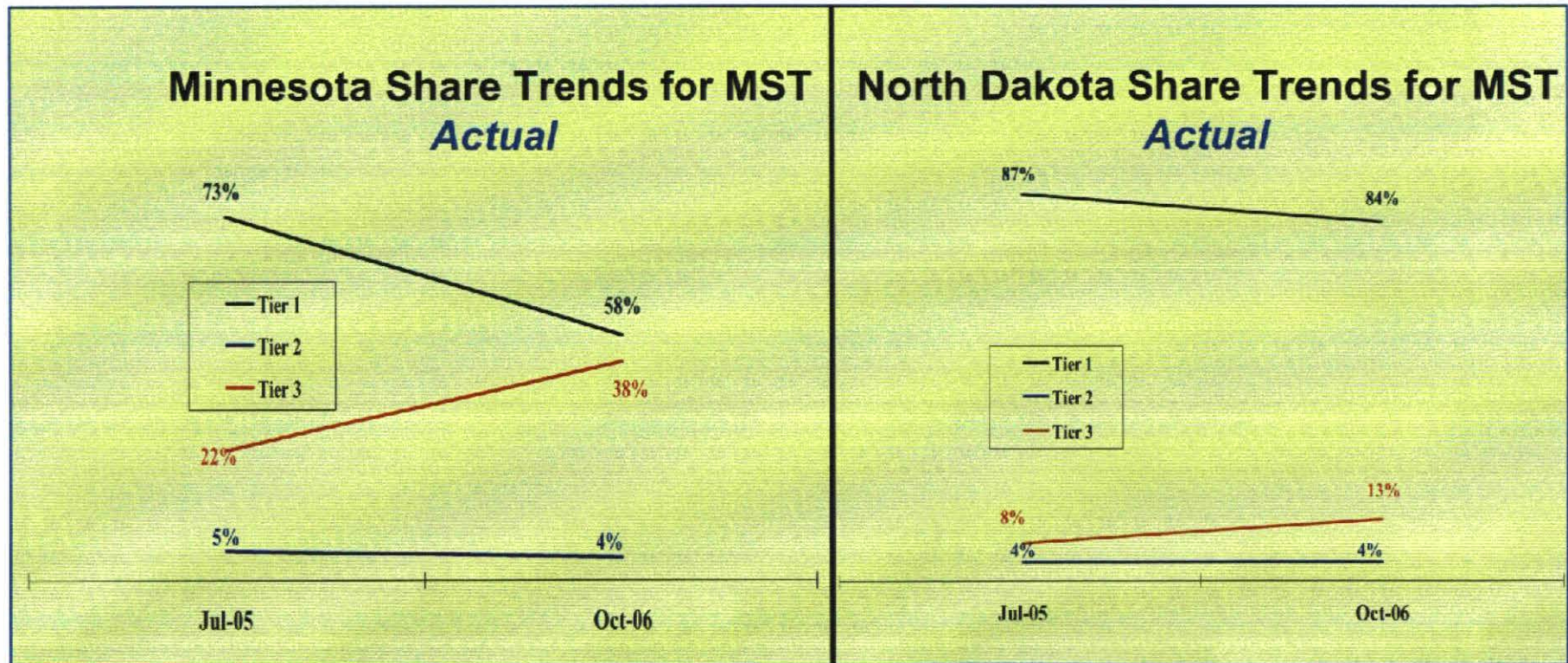


This is the type of erosion of the tax base, and less tax per can that North Dakota COULD experience

Source: USSTC RAD SVT sales database.

## Minnesota Increased MST tax from 35% to 70%

On August 1, 2005, Minnesota increased their MST tax from 35% to 70%. Since July tier 3 sales have risen dramatically, while tier 2 and tier 1 have decreased. Minnesota is forfeiting revenue as a result of their ad valorem tax.



Source: USSTC RAD SVT sales database. Above chart compares share trends for the month of July 2005 to the month April 2006.

HB 1190-A

1-24-07

February 12, 2001

COPY

The present North Dakota statutes that tax smokeless tobacco products have created a potential unfair situation in the retail marketplace in North Dakota.

Under our existing "excise tax" system, there is a great deal of confusion as to where and when the tax is to be applied. You also will have equal weighted items taxed at different rates based on the wholesaler cost of the item, not based on the size or weight of the product. In the case of our company, as well as other wholesalers, the present system could lead to confusion and potential long-term issues surrounding the application and collection of Other Tobacco Product taxes.

Senate Bill 2408 addresses the problems of our existing system by changing our state's statutes on Other Tobacco Products to a weight-based structure. A weight-based structure would provide uniformity that would allow the wholesaler to much more easily determine the tax on OTP. I also understand that this proposal would not impact revenues to the state.

On behalf of AMCON Distributing Company, I want to express our company's full support of a weight-based taxation system, which I do believe would provide the state with fairer solution for solving the present inequity in the marketplace and prevent future administrative problems. Additionally, it would be in line with the excise taxes imposed on other consumer products in the state, such as gasoline, wine, beer and cigarettes.

A weight-based tax system would benefit the state of North Dakota as well as the state's distributors, retailers and consumers.

Testimony for SB 2408.

John F. Job, Division Manager, AMCON Distributing Company, 3125 East Thayer, Bismarck, ND 58501.

Home Address: 3115 Arizona Drive, Bismarck, ND 58503

Telephone: 701-258-3618 work, 701-258-8167 home, 701-220-5977 cell.

# 4 HB 1190-A  
1-2407



3125 East Thayer Bismarck, ND 58501 (701)258-3618 fax (701)258-0945

Mr. Chairman and members of the House Finance and Taxation committee, my name is John Job. I am the Division Manager for AMCON Distributing Company located in Bismarck. AMCON is a wholesale distributing company that distributes consumer products to retailers. From the Bismarck distribution center we serve customers in SD, MT, MN, WI, and all over ND. We specialize in distributing to convenience stores.

We are opposed to this bill for the following reasons:

- We would return to the confusion that existed prior to the weight based legislation that passed the ND legislature as SB 2408 in 2001. Prior to 2001 most of the confusion was created by promotional products. Some manufacturers will promote with buy some get some free or dramatically reduced pricing. With the tax assessed on wholesale cost, reduced priced products pay little or no tax as in the case of free goods. At the present time AMCON Distributing Company pays the tax to the state of ND on how many ounces we receive and distribute in ND. That means all price categories of moist tobacco products are taxed at the same level.
- Cigarettes, gasoline, beer, and wine excise taxes are all unit based. All of these consumer products have premium categories and low price categories and yet the tax per unit is calculated at identical amounts by units. This is the same principal that our present weight based moist tobacco is taxed on.
- Enacting HB 1190 will create a larger difference between low priced product and premium priced product just by the differences between the excise taxes assessed. It will also make the excise tax more like a sales tax. Enacting HB 1190 would give some manufacturers a larger pricing competitive advantage over another manufacturer.
- We have a concern that a large amount of business would shift to the low price category. This shift would sharply reduce the amount of taxes collected. We have a major concern that we will be back here in two years discussing a tax increase.
- The ND wholesalers did not ask for the change in moist tobacco excise tax calculation. This change to moist tobacco calculation is manufacturer driven. The ND wholesalers do not support this change and we were not asked about HB 1190 prior to it's introduction to the sixtieth legislative assembly. We only discovered it's existence after it was introduced.

To recap, passing HB 1190 will raise less taxes as it shifts business. This bill will create excise tax confusion on promotional products. It will change from level taxing by unit to creating a competitive advantage of certain manufacturers over other manufacturers. This legislation was not asked for or supported by anyone in the ND tobacco wholesale distribution community. We are asking for your vote to defeat HB 1190.

#5

1190 A  
1-24-07

January 24, 2007

North Dakota House of Representatives  
Finance and Tax Committee  
State Capitol  
Bismarck, North Dakota 58505

Re: HB 1190 (Repeal of weight based tobacco excise tax)

Dear Chairman Belter and Committee Members:


HB 1190 unravels SB 2408 that was passed in the 2001 Session that began to tax smokeless tobacco by weight putting all smokeless tobacco at par with each other.

Before 2001, discount brands (the proponents of HB 1190) enjoyed an unfair tax advantage allowing them to sell at discounts because of their tax status. As a result, of the old tax scheme we saw "2 for 1" and "3 for 1" sales promotions of discount products directed at our youths, based upon tax advantages rather than quality or price.


HB 1190 takes us back in time to 2001, and would restore an excise tax structure that was unfair, and created inappropriate tax policy, that favors one product over another. In North Dakota we should assess an excise tax based upon the same measure (in this case weight), and then assess a sales tax, based upon price.


We changed that excise tax structure by passing SB 2408 in 2001. It was a good choice then. It remains a good choice. HB 1190 reverses that public policy and turns us back to the old system. Our members want sound tax policy on the products our members use, or sell. HB 1190 does not serve that function as you will hear in testimony during the hearing. We urge a DO NOT PASS recommendation on the bill.

Sincerely,

  
Nicki Weissman,  
ND Hospitality Association

  
Mike Ruud  
ND Retailers Association

  
Dave McIvor  
ND Chamber of Commerce

  
Tom Woodmansee  
ND Grocers Association

#6 1190 A  
1-24-07



ND Petroleum Marketers Association  
ND Retail Association



**Testimony HB 1190**

**January 24, 2007 – House Finance and Tax Committee**

Chairman Belter & members of the committee:

For the record, my name is Mike Rud. I'm the President of the North Dakota Petroleum Marketers Association. NDPMA members urge a "DO NOT PASS" recommendation on HB 1190.

North Dakota convenience stores stock and sell a wide variety of branded and generic products, many with the same tax structure. For example, an 18-pack of Budweiser or Miller Lite carries the same amount of excise tax. When it comes to gasoline, it doesn't matter if the product is branded or unbranded, the tax is the same. So why should smokeless tobacco be any different?

NDPMA can see no reason why North Dakota should move smokeless tobacco away from a system which is easy to track and administer.

In addition, HB 1190 could have a negative impact on profits for ND retailers and wholesalers. By lowering the tobacco excise taxes, we would be creating a tobacco subsidy for cheap smokeless tobacco. That's not fair. A product should stand on its reputation and quality.

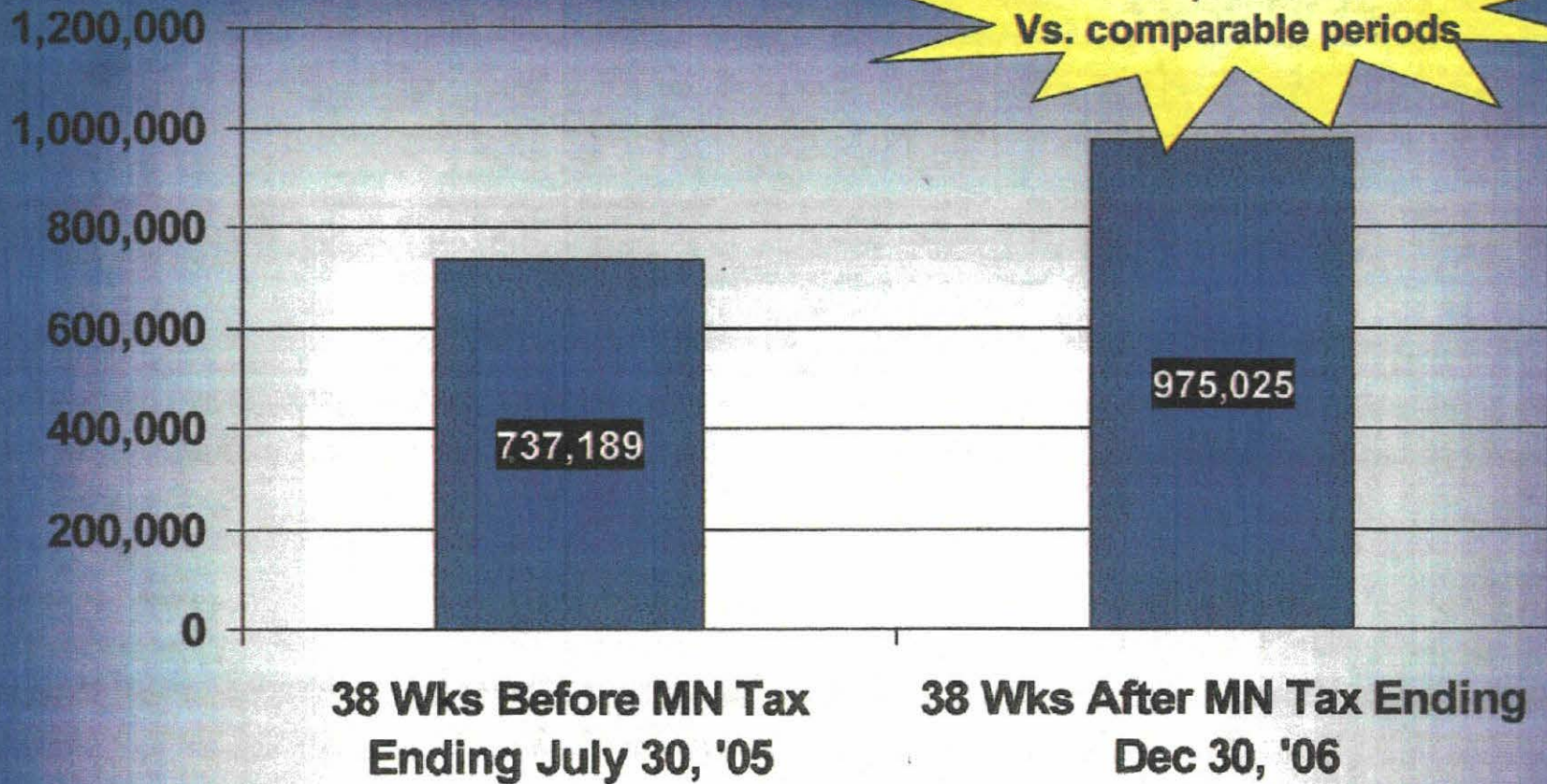
Again, NDPMA urges a "DO NOT PASS" recommendation on HB 1190.

#7  
HB 1190  
1-24-07

<p><b>Conwood Tobacco Company, L.P.</b> A Tobacco company subsidiary of Reynolds-American, Inc.</p>	<p><b>Swedish Match AB</b> U.S. tobacco company subsidiary <b>Swedish Match NA</b> (a.k.a. Pinkerton Tobacco Company)</p>	<p><b>Swisher International Group Inc.</b> Tobacco company subsidiary: <b>Swisher International, Inc.</b></p>	<p><b>UST Inc.</b> Tobacco company subsidiary: <b>U.S. Smokeless Tobacco Company (USSTC)</b></p>
<p>Purchased in May 2005 for \$3.5 billion by Reynolds Tobacco Company, the second largest tobacco company in the world</p> <p><u>Headquarters:</u> Winston-Salem, N.C.</p> <p>Market Cap \$19B</p> <p><b>Major Snuff Brands:</b> Kodiak Grizzly</p> <p><b><u>Grizzly is the fastest growing brand of snuff in the world.</u></b></p> <p>Other major holdings of R.J.Reynolds:</p> <p>Brown &amp; Williamson Tobacco Co. Lane Limited Tobacco</p> <ul style="list-style-type: none"> <li>• Signatory to the Smokeless Tobacco Master Settlement Agreement with the State of North Dakota? <b>NO.</b></li> </ul> <p>Sources: www.hooversonline.com</p>	<p>Publicly-held</p> <p><u>Headquarters:</u> Stockholm, Sweden</p> <p>2005 Sales: 13,311 MSEK (approx. \$1.7 billion USD)</p> <p>Market Cap \$4.9B</p> <p><b>Major Snuff Brands:</b> Timber Wolf Longhorn</p> <ul style="list-style-type: none"> <li>• Swedish Match is the world's leading smokeless tobacco marketer in the world with sales in more than 130 countries worldwide.</li> <li>• Swedish Match ranks #2 in terms of sales value in the world cigar market.</li> <li>• Signatory to the Smokeless Tobacco Master Settlement Agreement with the State of North Dakota? <b>NO.</b></li> </ul> <p>Source: www.marketguide.com, www.swedishmatch.com, www.morningstar.com</p>	<p>Privately-held.</p> <p><u>Headquarters:</u> Jacksonville, FL</p> <p>Swisher International, Inc. ships billions of cigars each year to over 60 countries around the world.</p> <p><b>Major Snuff Brands:</b> Silver Creek Kayak</p> <ul style="list-style-type: none"> <li>• Swisher International, Inc. is the world's largest cigar manufacturer with the highest gross profit margins in the cigar industry.</li> <li>• Signatory to the Smokeless Tobacco Master Settlement Agreement with the State of North Dakota? <b>NO.</b></li> </ul> <p>Sources: www.hooversonline.com and www.marketguide.com</p>	<p>Publicly-held.</p> <p><u>Headquarters:</u> Greenwich, Connecticut</p> <p>Market Cap \$9B</p> <p><b>Major Snuff Brand:</b> Copenhagen Skool</p> <ul style="list-style-type: none"> <li>• USSTC currently represents 57% of the total smokeless tobacco segment; but only an estimated 3% of all tobacco sales.</li> <li>• <b>USSTC is the only tobacco company that buys 100% American tobacco.</b></li> <li>• Signatory to the Smokeless Tobacco Master Settlement Agreement with the State of North Dakota? <b>YES.</b></li> </ul> <p>Sources: www.hooversonline.com and UST Annual Report</p>

# 6 Border Counties (Pembina, Walsh, Grand Forks, Traill, Cass, and Richland) North Dakota Sales Increases

Kerry  
Poulsen  
(USITPA)  
HB 1190



SOURCE: North Dakota - RAD 2005-2006