

2013 HOUSE FINANCE AND TAXATION

HB 1375

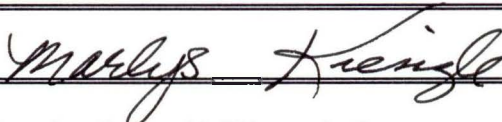
2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1375
January 29, 2013
Job # 17890

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill relating to tax stamping of cigarette packs; relating to tobacco products tax definitions.

Minutes:

Attached testimony #1, 2, 3, 4, 5, 6, 7

Chairman Belter: Opened hearing on HB 1375.

Vice Chairman Headland: Introduced bill.

Steve Grimaldi: Director of Corporate Security for Reynolds American Inc.: 12:00 See attached testimony #1.

Representative Zaiser: Are you aware that the use of tobacco has gone down in the Wisconsin where they have a substantially higher cigarette tax than their neighboring state Minnesota and surrounding states?

Steve Grimaldi: I'm not aware that of those particular facts in detail.

Representative Marie Strinden: Who physically puts the stickers on the cigarette boxes?

Steve Grimaldi: The distributors do that.

Representative Marie Strinden: \$1 million is a lot of money so why should North Dakota pay for it and not your company?

Steve Grimaldi: This illicit trafficking of cigarette packaging goes beyond just the financial component. It is that criminals go where the money is. Since North Dakota does not have tax stamp, there is the opportunity to make money. Criminals go where the money is. So this is a social issue and a financial issue.

Representative Froseth: We have five Native American reservations in North Dakota and they are not required to have Tax Stamps. How would stamping affect those in our state?

Steve Grimaldi: 16:51 They would be required to be stamped as well. He gave examples what other states are doing

Vice Chairman Headland: Yesterday I received an email from a local person who works for the campaign for tobacco free kids. Could you explain to the committee the difference between High Tech Tobacco Stamp and a regular stamp? Please explain if one is more effective than the other.

Steve Grimaldi: One is not more effective than the other. But the High encrypted Stamp is a very expensive tax stamp and would require new infrastructures to be set up for stamping.

Representative Hatlestad: You're painting a doom and gloom picture for the North Dakota industry. Can you show us any proof of any kind that this is happening?

Steve Grimaldi: In the testimony it does show that North Dakota has becoming an export state.

Representative Hatlestad: If we put a stamp on without a significant without a significant rise in price what changes?

Steve Grimaldi: It is not a silver bullet. It is part of a comprehensive look at the issue.

Representative Kelsh: Are you conducting similar efforts in the Carolinas as well?

Steve Grimaldi: Absolutely.

Representative Kelsh: What constitutes smuggling?

Steve Grimaldi: different states vary but it is not a single pack.

Representative Marie Strinden: I used to live in New York City and cigarettes cost like \$10 a pack. Is this a deterrent for smugglers?

Steve Grimaldi: It does to some extent. It can cause black market cigarettes.

Chairman Belter: Any further testimony to 1375? Any opposition to 1375?

John Job, Northern Division Manager for AMCON Distributing Company: See attached testimony #2, 3, 4.

Representative Froseth: In previous testimony it indicated cigarettes are leaving the state illegally in backpacks, car trunks and van loads. You indicate you track sales, have you any indication of any sales being large enough to qualify for a van load leaving our state?

John Job:31:10 I'm not an expert on trafficking but I have some common sense. In Fargo when travelling the malls you're going to see a lot of Minnesota license plates. I am sure that there are some cigarettes that are sold that go to Minnesota. I have no knowledge of

trafficking. We have our velocity increase in the state of North Dakota along with the population.

Representative Marie Strinden: You're obviously the entity of the trade that's on the ground. If we don't enact this bill do you work with the police with these issues? Do the police even care?

John Job: We would work with any law enforcement entity to resolve any issues.

Representative Marie Strinden: Do the police ever contact you to look into matters like this?

John Job: No we have not.

Vice Chairman Headland: You stated in your testimony that if this bill would become law that cigarettes without a stamp would become contraband. I am wondering if section, where it talks about only license distributor can received unstamped pack of cigarettes, doesn't that cover you.

John Job: It's unclear to me. When I read that unstamped cigarettes were contraband I was concerned. I would like this clarified.

Chairman Belter: Do you stamp for other states in North Dakota?

John Job: Yes we do. We stamp South Dakota, Montana, Minnesota, and Wisconsin.

Chairman Belter: You are receiving unstamped cigarettes now, is that correct?

John Job: That is correct.

Representative Trottier: Do you believe there is trafficking or illegal exporting going on in the State of North Dakota?

John Job: I'm not in law enforcement so I really couldn't say.

Chairman Belter: Any other testimony in opposition to 1375?

Kelly Kaiser: Owner of O.K. Distributing, from Williston: 39:00 See attached testimony 5.

Representative Marie Strinden: Do the police every contact you?

Kelly Kaiser: I've never been contacted and I've been doing this for 20 years.

Representative Marie Strinden: Do you think this is happening?

Kelly Kaiser: I know for a fact that the customers I sell to, that their sales have not dramatically increased. Example that van loads of cigarettes is not happening. The incline is definitely coming

Representative Drovdal: You mentioned out of state distributors would not have to stamp when going on to reservations because it's a sovereign nation but you would need to stamp if you went on the reservation.

Kelly Kaiser: I believe the way the way it's written we would have to stamp the cigarettes but it does not give any kind of exception for a sovereign nation.

Representative Owens: Do you only sell cigarettes in North Dakota?

Kelly Kaiser: I also sell into eastern Montana.

Representative Owens: You're already putting a stamp on cigarettes?

Kelly Kaiser: Yes I am.

Representative Owens: When you sell to the reservations, who do you sell to specifically?

Kelly Kaiser: I sell to stores, retailers.

Chairman Belter: Further testimony in opposition to 1375?

Brad Borcus: Supply Company in Minot: 93% of the company's sales are done in the state of North Dakota. The number one concern of this bill is that as legislators you have put through the effort of addressing what the people would like. One of the discussions here was on our reporting. We report all our sales back to the manufacturers every month to the actual skew to the customer. We, as a small distributor, are very concerned about the cost to go through the process of stamping. 1 1/2% increase for a pack will not cover our expenses because we do not have the volume. Not till we have any kind of data that is factual about criminal activity do I feel we should make these changes. I feel statements are made off of relativity. If the stamp had a unique number on the stamp it would have more meaning and would be more of logical solution.

Representative Marie Strinden: You talked about the USDA stamps and you can tell what distributor they came from. What is unique about these stamps so that we could tell where the cigarettes came from?

Brad Borcus: It depends if they individually number them and then we would buy a lot of these stamps which would have a number specifically.

Chairman Belter: Any further opposition to 1375?

Mike Rud, President for the North Dakota Retail Association: See attached testimony #6 and 7.

Chairman Belter: Further testimony in opposition to 1375? Is there any neutral testimony to 1375?

John Tax Department: Our concerns are as follows: We went to the reporting system when Pitney Bowes no longer made the stamp machines and asked if we could find another way to collect for cigarette taxes. One of the terms is does North Dakota have a smuggling problem. Based on common terminology we do not see we have a smuggling problem. Do we have diversion? Yes. That is the term that is used when you have a Minnesota resident come in to North Dakota buying groceries and buying cigarettes. All untaxed cigarettes in North Dakota are illegal. Stamping does not solve this problem. It doesn't stop you from smoking. At the time we had stamping, we had a stamp for cigarettes that went onto the reservation. Any enforcement to make sure any smuggling or buying cigarettes on the reservation takes a lot of boots on the ground. We have a big increase, but we have a large increase in population and should be expected.

Chairman Belter: Did you say your testimony was neutral?

John: Yes.

Doug Baar, Civil Litigation of the Attorney General: The Attorney General is neutral on this bill and takes no position. Our concern with this bill is the #20 section 1 states: rules within the exterior limits of this state North Dakota and includes all territory within these limits own by or seated to the United States of America. It means that in section 2 that every license distributor or retaliator and the taxing requirements would apply with in the boarders of North Dakota including Federal Military Bases and including sovereign tribal land. That raises legal issues and enforceability.

Chairman Belter: Any other neutral testimony to 1375?

Representative Hatlestad: You talked about working with the reservation in New York, and court case had allowed the taxing.

Steve Grimaldi: There is a second court of appeals ruling in the Federal Court Level, June of 2011 that the state of New York could enforce the collection of Non Native Americans.

Representative Marie Strinden: If we were to pass this bill would we see heightened smuggling on the reservations?

Grimaldi: There is a problem with that and is a heavy challenge.

Chairman Belter: Closed hearing for 1375.

2013 HOUSE STANDING COMMITTEE MINUTES

House Finance and Taxation Committee
Fort Totten Room, State Capitol

HB 1375
January 30, 2013
Job 18031

Conference Committee

Kristi Hetzler

Explanation or reason for introduction of bill/resolution:

A Bill relating to tax stamping of cigarette packs; relating to tobacco products tax definitions.

Minutes:

Chairman Belter: Opens HB 1375.

Rep Froseth: Motions Do Not Pass.

Rep Klein: Second.

(Unknown speaker): I would like to see this bill passed to the Senate, we are one of just a few states that don't follow this.

Rep Owens: Disagrees with the Do Not Pass.

Rep Klein: I don't understand giving money to tobacco companies to track where their products are being sold.

Rep Strinden: During the testimony I understood that if this does not go through, the problem would intensify, like on the reservations. I don't know that this would be getting rid of the problem.

Rep Hatlestad: They report all this information to the national groups, the former FBI agent could not give us any evidence that we have a problem.

Rep Owens: I agree.

(Unknown speaker): I don't think there is anything that precludes them from bypassing our distributors here in ND. If they want their cigarettes stamped they can go to a neighboring state that wants to do it.

Rep Hatlestad: There is no problem, for two years now we have dealt with this issue and even the representative from the tax department say there is no problem.

Rep Strinden: I want to repeat what the last distributor said, if you vote for this bill you are voting against ND small business. It would cost a lot of money. The tobacco company should have to pay for it, not the distributor.

Yes: 9

No: 4

Absent: 1

Carried by: Rep Klein.

FISCAL NOTE
Requested by Legislative Council
01/21/2013

Bill/Resolution No.: HB 1375

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$1,415,000			
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB 1375 requires the tax stamping of cigarettes sold and possessed in this state.

- 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.*

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.*

If enacted, HB 1375 is expected to result in increased expenditures for the Office of Tax Commissioner estimated to total between \$1.305 and \$1.409 million for the 2013-15 biennium. This estimate includes the cost of stamps, postage, programming and 2 FTE. This bill would result in an increase of the Office of Attorney General's workload due to the following: • The Licensing Section would see an increase in its workload of approximately 800 – 900 hours a biennium to review the renewal application for completeness and to verify that the applicant and its owners do not owe more than \$500 in delinquent cigarette taxes or was are a tobacco participating manufacturer. With the law change, applicants would answer specific questions and provide information for persons having more than 15% ownership in the company. Incomplete applications would need to be returned for correction/completeness. Currently the application is reviewed for signatures and any changes that were made on the 1/3 of a page renewal form. This operating cost is estimated to be \$12,750 from the general fund. • The Licensing system would need the following modifications: o Modify initial and renewal tobacco license application forms o Record additional information pertaining to license ownership o Retain License history information o Interaction with the Tax

Department, which is not currently occurring This cost is estimated at \$52,000 from the general fund. The bill could also impact office legal staff enforcement of NDCC Chapter 51-25, tobacco product manufacturer sales, dealing with non-participating tobacco manufacturers to the tobacco master settlement agreement. At this point it is unclear whether this will occur. Additionally, the Office of Attorney General may need to provide significant legal assistance as a result. The cost of such assistance is not known at this time.

- 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.*

The Office of Attorney General's budget should be increased by \$64,750 from the general fund for the Licensing system modifications and additional temporary licensing staff costs. The legal services cost associated with taxing tobacco products on reservation land and possible NDCC Chapter 51-25 enforcement is unknown at this time. The Office of Tax Commissioner's budget should be increased by \$1.350 million from the state general fund for the costs associated with implementing this bill.

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 01/28/2013

Date: 1-30-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. ~~300~~ 1375

House Finance and Taxation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Froseth Seconded By Rep. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley Belter		✓	Rep. Scot Kelsh		✓
Vice Chairman Craig Headland		✓	Rep. Steve Zaiser		✓
Rep. Matthew Klein	✓		Rep. Jessica Haak	✓	
Rep. David Drovdal	✓		Rep. Marie Strinden	✓	
Rep. Glen Froseth	✓				
Rep. Mark Owens		✓			
Rep. Patrick Hatlestad	✓				
Rep. Wayne Trottier	✓				
Rep. Jason Dockter	✓				
Rep. Jim Schmidt	✓				

Total (Yes) 9 No 4

Absent 1

Floor Assignment Rep. Klein

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

REPORT OF STANDING COMMITTEE

HB 1375: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1375 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HB 1375



House Finance and Tax Committee

North Dakota Legislative Assembly

Bismarck, ND

Tuesday, January 29, 2013

Hearing on House Bill No. 1375
A bill to require tax stamps on cigarettes

Prepared Testimony By:
Steve Grimaldi
Director of Corporate Security for Reynolds American Inc.

#1
P-2

Good morning Mr. Chairman and members of the House Finance and Tax Committee. My name is Steve Grimaldi, and I am Director of Corporate Security for Reynolds American Inc.

Reynolds American is the parent company of R.J. Reynolds Tobacco Co., the second-largest U.S. tobacco company; American Snuff Company, the second-largest manufacturer of smokeless tobacco products; Santa Fe Natural Tobacco Company, manufacturers of Natural American Spirit tobacco products; Nicovum AB, which markets innovative nicotine replacement therapy (NRT) products under the Zonnic brand name in Sweden and most recently RJRT Vapor Company.

I would like to thank you for the opportunity to testify here today on the issue of tax stamping for cigarettes. I would also like to commend this committee for taking the time to discuss this issue and its implications here in the state as well as across the country.

Let me start by telling you a little about my background. I retired from a 22-year career at the Federal Bureau of Investigation as a Supervisory Special Agent. During my FBI career, I conducted investigations into organized crime, counterterrorism, counterintelligence, white collar crime, drug trafficking organizations and violent crime.

My FBI experience also included supervising a Joint Terrorism Task Force (JTTF), a violent crime task force and a corporate fraud task force. While in the FBI, I served a one-year detail assignment at the Central Intelligence Agency's Crime and Narcotics Center as well as a one year assignment overseeing organized crime investigations at the FBI HQ level. While assigned to the FBI's New Orleans and New York City field offices, I specialized in organized crime and drug trafficking investigations.

Prior to my service in the FBI, I served in the U.S. Marine Corps, attaining the rank of Captain.

I am a member of the International Security Management Association (ISMA), the American Society for Industrial Security (ASIS), the FBI Agents Association (FBIAA), the Federal Law Enforcement Officers Association (FLEOA), the Society of Former Special Agents of the FBI and the Fraternal Order of Police.

3/10

Let me state that if you cannot tell by my background, crime prevention and security are issues that I take very seriously.

As you know, North Dakota is one of only three states without a tax stamp on packs of cigarettes. The other two states are North Carolina and South Carolina.

The lack of a tax stamp, combined with the relatively low-price on cigarettes when compared to bordering states makes North Dakota a target state for those individuals and organizations engaged in trafficking black market cigarettes.

For example, it is estimated that in fiscal year 2012, North Dakota sold 16.8 million more packs than would be expected given the state's population size and smoking rate. The majority of these cigarettes were likely smuggled out of the state by traffickers of black market cigarettes.

While tax stamps alone do not solve the problem of illicit trade, they provide a tool for law enforcement.

The disparity between cigarette tax rates in North Dakota and three of its four border states contributes to the price disparity and has grown significantly since 2005. And, let me be clear, raising the state's excise tax on cigarettes isn't the answer to solving illicit trade problems.

In North Dakota, the weighted-average pack price is \$4.50. Compare that to Minnesota's \$5.91, South Dakota's \$5.84 and Montana's \$6.18, and it is easy to see what makes North Dakota's unstamped product so attractive to cigarette smugglers.

These disparities also provide profit opportunities for criminals. For example, a van smuggling 50 cases of cigarettes (3,000 cartons) from Fargo, North Dakota to Moorhead, Minnesota would have gross profits in excess of \$30,000. The gross profits from a U-Haul on the same route can be 4-times that amount.

Let me give you some background on exactly what the North Dakota cigarette market looks like.

Tax-paid sales data suggest that few North Dakota cigarette packs went out of state prior to 2005. From fiscal year 1991 to fiscal year 2004, North Dakota tax-paid sales fell from about 54.1 million

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packs to 41.7 million packs. North Dakota tax-paid per capita sales in fiscal year 2004 were 65.7 packs, which was nearly equal to the national average of 65.1 packs, and well within the range of neighbors Minnesota (73 packs), Montana (62.4 packs) and South Dakota (69.3 packs).

The situation has changed dramatically, though, as the price of cigarettes has risen in neighboring states. North Dakota tax-paid sales are 22 percent higher now than they were in fiscal year 2004.

During this same time period, national cigarette sales fell by 25 percent. A major reason for this is that all neighboring states have had major cigarette tax hikes in the 2005 to 2007 time period. As a result, the tax-paid per capita sales in these states (on average about 42 packs), are now about 44 percent below tax-paid per capita sales in North Dakota (74.5 packs). These bordering states have lost, on average, about 26 percent of their tax-paid sales volume since fiscal year 2004 while North Dakota has increased its tax-paid sales by 22 percent.

North Dakota's surge in tax-paid sales strongly suggests that a large number of North Dakota cigarettes are being "exported" to high tax states. These cigarettes that are leaving the state illegally end up in the hands of criminals who often sell to minors out of backpacks and car trunks. These criminals use funds from sales to finance other illegal activities that pose a significant cost to society.

It is estimated that between 33 and 36 percent of North Dakota cigarette volume (nearly 17 million packs) are likely being exported to other states.

While all available data suggests that exports from North Dakota have been rising since fiscal year 2004, it also appears that there has been a recent surge in fiscal year 2012. From fiscal year 2011 to fiscal year 2012, North Dakota tax-paid sales have grown from 46.4 million packs to nearly 51 million packs – a spike of nearly 10 percent. That spike appears to be continuing, as data for the first five months of fiscal year 2013 seems is up by another 5 percent. It is important to note that this is occurring in the context of falling cigarette sales across the nation.

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Unlike the rise in sales from fiscal year 2004 to fiscal year 2008, there have been no tax rate increases among bordering states to contribute to the recent spike in tax-paid sales. Undoubtedly the oil boom in North Dakota is contributing to increased cigarette sales. However, a population increase requires increased demand for all goods. This leads to increased traffic delivering the goods and crossing the border from states all over the country. Trucks enter the state full of toilet paper and toothbrushes, but the potential to leave with a truck full of unstamped cigarettes at dramatically reduced prices is tempting to those inclined to break the law. It's very possible that unstamped North Dakota packs are now being sent much further than just Minnesota, Montana and South Dakota.

At \$7.13 per pack, Wisconsin's weighted-average pack price is significantly higher than both North Dakota's and those of its border neighbors. The profit potential of a vanload of cigarettes traveling from Fargo to LaCrosse, WI, could be as much as \$60,000. Chicago – a city plagued by cigarette smuggling due to some of the highest taxes in the nation (a combined state and city rate of \$5.66 per pack) offers even greater rewards for those willing to make longer hauls – more than \$150,000 per vanload.

While the price differentials provide the "motive" the lack of a stamp helps provide the "means," a blank canvas to which criminals can apply counterfeit stamps. Data from the Tobacco Task Force of New York City Sheriff's Office indicates that one of the largest types of contraband cigarettes seized were unstamped cigarettes. Clearly these unstamped cigarettes are prized. All three states without a stamp, North Dakota, South Carolina and North Carolina export cigarettes.

North Dakota currently has the lowest-price cigarettes among those states without tax stamps.

Now, some might ask what the downside is to being an exporter of unstamped cigarettes. Lately, many states are discovering the perils of being a large exporter of cigarettes. Profit margins of the size available in cigarette smuggling do not just attract one-off criminals, but organized crime. In turn, these organizations bring other criminal activities with them.

6/17/19

The Virginia State Crime Commission found that “as organized crime turns to Virginia for its supply of cigarettes there is an increase in attendant crimes: Identity theft/credit card fraud; money laundering; burglaries and robberies, of other criminals.” According to the Virginia State Crime Commission, traffickers have even set up fake retail operations to aid in their schemes. The phony retailer will purchase in bulk from a wholesaler and move them out of state to more profitable destinations. When an unwitting and otherwise law-abiding wholesaler or retailer makes a sale to one of these entities, the state is cheated out of the general sales tax.

Now, as I have mentioned, cigarette tax stamps are not a silver bullet that will automatically solve the issue of illicit cigarette trade, and neither is raising taxes

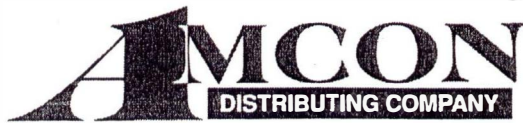
However, the application of tax stamps to cigarette packs intended for sale will help to ensure commercial and supply chain integrity – the collection of all applicable taxes, as well as enforcement efforts at the state and federal levels to reduce illicit trade.

Tax stamps enhance tracking and traceability throughout the supply chain. The importance of this issue is illustrated by the fact that the Bureau of Alcohol, Tobacco and Firearms (ATF) estimated in 2010 that approximately \$5 billion in annual tax revenue is lost to the black market.

In 2009, Congress passed the Family Smoking Prevention and Tobacco Control Act, which gave the Food and Drug Administration control of virtually every aspect of the tobacco industry. Tax stamping will benefit the state and distribution community in complying with the tracking, tracing and record keeping provisions of the Tobacco Control Act.

We strongly urge the committee to consider what is occurring with regard to cross border cigarette sales among states with differing tax rates, enforcement and the operational needs of the distribution community.

We commend the legislature for taking a proactive approach to this issue, especially now that federal regulation is being implemented. We are prepared to be of assistance in any way we can as you deal with this important issue.



January 29, 2013

Good Morning Mr. Chairman and members of the House Taxation committee

My name is John Job. I am the Northern Division Manager for AMCON Distributing Company.

I have compiled some additional information for your review during the consideration of stamping cigarettes for the state of North Dakota. The information will be presented as follows:

1. About AMCON.
 2. Neighboring state information.
 3. Equipment needed.
 4. Labor requirements.
 5. Security provided
 6. Wholesaler questions.
-
1. AMCON Distributing Company is a leading wholesale distributor of consumer products, including beverages, candy, tobacco, groceries, foodservice, frozen and chill foods, and health and beauty products with locations and customers in the Great Plains and Rocky Mountain regions of the United States. AMCON is a publicly traded company on AMEX with DIT as its symbol. AMCON Distributing Company's North Dakota distribution center is located at 3125 East Thayer Avenue, Bismarck, ND 58501. We own and occupy the north half of the block between 31st street and Eastdale Drive. AMCON employs between 60 & 65 people, depending on the time of the year. Our 2013 budgeted salary expense is more than \$ 2,225,000. Please visit amcon.com for additional information.
 - 2 South Dakota has minimum pricing. The minimum pricing formula is manufacturer list price less any purchase discounts plus the stamp value plus 5.5% mark-up. South Dakota Department of Revenue administers the minimum pricing within the state by posting this information publicly on their web site. Their tax stamps are ordered using a form that is sent in with a check. They have a stamp pre-purchase discount of \$ 0.10 cents per carton.

3125 East Thayer Avenue – Bismarck, ND 58501

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Montana has minimum pricing. The minimum pricing formula is manufacturer list price to the wholesaler plus 5.75% markup. Montana Department of Revenue administers the pricing within the state by posting this information publicly on their web site. Their tax stamps are pre-purchased by creating an order and paid for by ACH payment. The stamps are then shipped to our location. They have a pre-purchase discount of decreasing percentages depending on the wholesaler's volume. We use \$.07 cents per carton in determining the value of the discount in Montana.

Wisconsin has minimum pricing. The minimum pricing formula is manufacturer list price to the wholesaler plus 3% markup. The Wisconsin Department of revenue issues the stamps. Wisconsin has a pre-purchase of stamps discount of 18 cents per carton. In addition the wholesaler is charged the cost of printing for making the rolls of stamps.

Minnesota has minimum pricing. The minimum pricing formula is manufacturer list price to the wholesaler plus the stamp value plus \$ 0.75 per carton. The Minnesota Department of Commerce administers the pricing within the state by posting this information publicly on their web site. Their tax stamps are pre-purchased by creating an order and paid for by ACH payment. The stamps are then shipped to our location. Minnesota has no stamping purchase discount.

- 3 AMCON Distributing Company would need to purchase additional equipment in order to stamp North Dakota cigarettes. There is a misconception that since we have a stamping machine it would be easy for us to stamp another state. At the present time our stamping crew is working four 10 hour shifts per week stamping slightly less than 40% of our cigarette volume. Our North Dakota volume is slightly more than 60% of our total cigarette volume, by units, in the Bismarck Distribution Center. We will need to acquire an additional stamping machine in order to stamp another state. We would need to stamp with both machines in order to satisfy our customer commitments. The last price quote dated January 27, 2011 from United Silicone on Meyercord stamping and handling equipment. By analyzing the bid AMCON would have an additional minimum investment of \$145,000 to stamp North Dakota. We have purchased a Red Stamp brand of stamping equipment. This machine was a used reconditioned machine that we paid slightly more than \$80,000.00 when we purchased it along with the software upgrades.
- 4 In order to run the new equipment we would also need to hire and train two additional employees to stamp during the shifts. We would also need to invest some time of our maintenance people to install and service the equipment on a regular basis. We estimate approximately \$100,000 of

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additional annual salary and benefits to provide for the labor necessary to stamp North Dakota cigarettes.

- 5 AMCON has invested in a wide variety of security equipment in order to protect our inventory and property. We do keep our extra cigarette tax stamps locked up and very secure at all times. We do daily audits of cigarettes and stamps in order to make sure stamps and cigarettes are accounted for. Having one more state to audit will add to our daily audit. We would need to re-evaluate security if we would have to carry and stamp cigarettes for the State of North Dakota instead of collecting and paying the State excise tax monthly.
- 6 The primary concerns of the wholesaler are the cost of labor and equipment we would be required to provide in order to stamp cigarettes. Our other concerns will need to be addressed during the rules writing from the department that administers stamping. When will the state require payment of the stamps? Who will stand the loss of damaged stamps? What will the value of the stamps affixed to products returned to the manufacturer on outdated products be? Will customer credits for returned product be allowed at full value? Will tribal stamps be a requirement for all sales sold on tribal land within the states boundaries? Will there be any cigarette excise tax relief for bankrupt ND retailers?

In closing AMCON Distributing Company is committed to doing business in North Dakota. Collecting the cigarette excise tax for the state is one of those commitments. We will stamp North Dakota cigarettes, we just do not have a desire to commit to additional labor and equipment at our expense to complete this task. We feel a minimum price at the wholesale level similar to our surrounding states on cigarettes is necessary in order to continue our commitments to North Dakota. The minimum pricing should be administered by a state agency similar to our surround states. The formula should use manufacturer list price plus the stamp plus the markup to cover the wholesaler responsibility. In order to make sure all cigarettes are stamped and all excise taxes are collected a minimum amount on a highly regulated product should be a part of the stamping bill. I welcome this opportunity to address all of these concerns in a study to assist by providing information necessary for North Dakota.

Respectfully submitted,

John F. Job
Northern Division Manager



Cigarette Distribution Logistics

Purchasing – Our wholesale purchasing buyer orders direct from all of the manufacturers based on their minimum order requirements. Purchase orders arrive at our Bismarck Distribution Center Monday through Thursday of every week. All of the manufacturers require EFT payment of the purchase order in most cases on the day the PO ships from the manufacturer. Sometimes that is 4 days prior to arrival in AMCON's distribution center. The major key to a successful wholesale distributor is just in time deliveries of purchase orders in order to maximize inventory turns.

Security – AMCON Distributing Company verifies all cigarette inventories to our main frame perpetual inventory counts every day of the work week. We also have a wide variety of electronic security measures including cameras to make sure we have a zero shrink of inventory.

Order processing – AMCON's cigarette & tobacco order processors work each retail customer's order to completion. Each and every retail customer's order is checked for accuracy to insure that it is complete and matches the order pick ticket. In the case of states that require stamping the order then proceeds to our cigarette stamping machine to apply the tax stamp by the proper taxing jurisdiction. Tax stamping increases our labor and equipment costs on all states except for ND. If ND requires tax stamping we will need to raise the price of the product in order to recover our production costs.

Order Delivery – All cigarettes are counted at the time of delivery jointly with the customer to insure accuracy. Counts are signed off on the delivery manifest.

Excise Tax Collecting – The cigarettes excise tax for the various state taxing jurisdictions is added to the price of the product on all invoices to the retailers. AMCON collects cigarette excise tax payment from the retailer based on the retail customer's terms with AMCON.

Excise Tax Payments – In the cases of the states that require stamping AMCON will purchase the stamp rolls in advance from the various taxing jurisdictions. The stamps are on rolls of 30,000 stamps per roll. The states that require stamping that AMCON – Bismarck distributes are MN, MT, SD, & WI. The stamps are priced @ \$1.53 each up to \$2.52 depending on the state. Payment to the various state department of revenue is either by a check with order or EFT with order. The ND cigarette excise tax is paid by the 15th of the month following month end.

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Administration – Every wholesale distributor is required to provide a complete report to every state's department of revenue they distribute into. Reports are generated on our main frame computer system on demand by dates to facilitate with the individual reports. Some states require very detailed reports and some are primarily inventory sold. Detail reports are kept on our laser vault for the occasional Department of Revenue audits. Through our internal audits we are able to document every carton of cigarettes that passes through our facility with a 99.99% accuracy. Every week we also provide an electronic detail of every cigarette by stick by SKU number by retail customers to the STARS group. This documents all sales to match our manufacturer reporting requirements.

Types of Distributors – There are three types of wholesale cigarette distributors. There are wholesale distributors located in ND that only distribute within ND. There are out of the state of ND located wholesale distributors that distribute into ND. Finally there are wholesale distributors located in ND that distribute into multiple surrounding states in addition to ND. AMCON Distributing Company fits into the final category.

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Potential costs for AMCON – Bismarck to stamp ND cigarettes.

1. New Stamping Machine	\$95,000.00
2. Case packer for new machine	\$75,000.00
3. Case cutter for new machine	\$75,000.00
4. One additional employee including benefits	\$45,000.00 / year
5. Pre-pay stamps – interest only @ 4%	\$16,000.00 / month
6. Service contact on equipment	?
7. Re-tooling necessary to conveyors & DC	?

AMCON Bismarck was acquired in February of 1988.

AMCON owns (or leases to own) our fleet of trucks ranging in size from small delivery vans, straight trucks, & tractor trailers. The entire fleet is licensed through the ND DOT pro rate division. We calculate our fuel taxes through IFTA making sure all states get the correct share of fuel tax. This fleet of trucks is serviced by ND service providers. Our fiscal 2013 fleet operating costs are budgeted over \$875,000.00.

AMCON owns Bismarck building and property paying real estate taxes nearly \$25,000.00 per year.

AMCON employs 60 – 65 ND tax paying employees with our fiscal 2013 salary costs budgeted over \$2.5 million.



O.K. Distributing Co., Inc.

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Williston, ND 58802-1252
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Fax: 701-572-9631
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Monday, January 28, 2013

House Finance and Taxation Committee HB 1375

Mr. Chairman and members of the committee, my name is Kelly Kaiser I am from Williston and owner of O.K. Distributing. We are a cigarette wholesaler that services Northwest North Dakota for over 50 years. I employee 30 people in Williston and am the 3rd generation owner of this company.

I am not in favor of this bill. Because of the following:

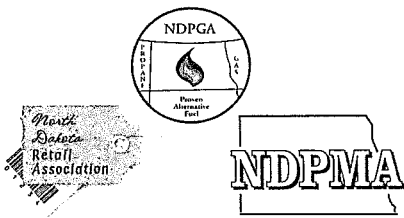
- Cost of the stamping equipment is over \$100,000 and that does not include the maintenance contract, installation or training. I would have to hire at least one additional employee to oversee and stamp the cigarettes at a minimum cost of \$30,000/year.
- The physical space required for the equipment and extra inventories would cause great difficulties because of size of our building.
- Any cartons damaged during the stamping process are not returnable and we would have to absorb the loss.
- How would sales to tribal accounts be handled? As I understand it, if North Dakota requires stamping and we sold cigarettes on the reservation they would have to have some type of stamp affixed. Out of state wholesalers could sell unstamped product into the reservations because of the ICC laws.

Stamping cigarettes will create more problems than it will solve. People have been able to counterfeit these stamps. The financial investment even a small wholesaler like me will have to make is staggering when comparing it to the return. There is little opportunity to pass on these costs in this industry. The large out of state wholesalers will be able to sell at a lower price just because they operate on larger economies of scale.

Today, with no stamping in North Dakota, businesses can be audited and verified with no more effort than a state that has stamping.

In closing, I believe that any problems we have with the distribution of cigarettes in North Dakota, that we collect the state excise tax, will not be fixed by putting a stamp on a pack of cigarettes.

Thank you very much for your time.



North Dakota Retail Association
ND Petroleum Marketers Association
North Dakota Propane Gas Association

LEGISLATIVE BULLETIN

Testimony- HB 1375
January 29, 2013- House Finance and Tax Committee

Chairman Belter and Members of the House Finance and Tax Committee:

NDPMA and its 400 members urge a **“DO NOT PASS”** vote on **HB 1375**. This piece of legislation has been before this committee many times. During the last interim it was studied and reviewed quite heavily.

In fact, **Minot Senator David Hogue** summed it up best when giving his interim taxation committee report by saying, **“the cigarette tax stamp is a solution in search of a problem.”**

In my conversations with the ND Tax Commission and Attorney General’s office, essentially the same answer was given: Show us there’s a problem and it will be addressed. Yet, no one can bring forth any such information that a problem exists.

NDPMA believes the biggest reason for needing a cigarette tax stamp has always been sales on Native American reservations. Tribal stores have a huge advantage in pricing because outside of the Standing Rock Reservation, which has the only tobacco compact signed with the State of North Dakota, these entities are not required to remit cigarette sales taxes to the State. Nowhere in HB 1375 is this issue addressed.

Again, NDPMA is urging a **“DO NOT PASS”** on **HB 1375**.

Thank you for your time and consideration.

Frank McKone Cigar Company
742 19th Street North
Fargo, ND 58102

January 29th, 2013

House Taxation Committee
HB 1375

Mr. Chairman and committee members; my name is Henry J Knoll and I am the President of Frank McKone Cigar company in Fargo, ND. We are a full line candy and tobacco distributor in Fargo ND. I distribute cigarettes in eastern North Dakota. I am also the Vice President of the Stop N Go Food stores based out of Fargo, ND. Between the two companies we employ approximately 360 employees.

On behalf of Frank McKone Cigar at the wholesale level and Stop N Go Food stores at the retail level, I strongly oppose House Bill No. 1375. Stamping would create a large financial hardship for Frank McKone Cigar Co. The stamping equipment alone would cost approximately \$120,000.00. We would also have to hire an additional person to run the machine at a minimum cost of possibly \$33,000.00 to \$36,000.00 annually.

The bill states a distributor may deduct and retain 1.5% of the tax due for reimbursement for stamping expenses. This equation will simply not work for Frank McKone Cigar Co.

Is there really a need to stamp cigarettes? If we have a problem in North Dakota with contraband cigarettes or taxes not being paid on cigarettes sold in North Dakota, I believe the Tax Department would have already addressed this issue.

Thank you for taking the time to listen to my testimony, and again, I strongly oppose HB 1375.

Henry J Knoll
President
Frank McKone Cigar Co.
701-235-4261