

MICROFILM DIVIDER

OMIB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2408

2001 SENATE FINANCE AND TAXATION

SB 2408

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2408

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 2/13/01

Tape Number	Side A	Side B	Meter #
2/14/01 - 1	x		0-31.7
	x		51-end
		x	0-14.6
Committee Clerk Signature <i>Synelle H. Craft</i>			

Minutes:

Senator Urlacher: Opened the hearing on SB 2408, relating to the tobacco products tax.

Senator Stenehjem: Prime sponsor of the bill, testified in support. The bill deals with the taxing on smokeless tobacco. There was considerable discussion on this issue last session and it was determined that maybe it wasn't the time to talk about it as it happened at the end of the session. There are plenty of people here to explain the technicalities and the effect.

Senator Steve Tomac: Co-sponsored the bill, testified in support. This bill is long overdue. It basically changes to form of taxation for chewing tobacco from gross receipts to weight. In effort to be fair to all the consumers and industry alike, I think the change is a fair approach.

Tom Kelsh: Local attorney representing most states who in turn represent United States Smokeless Tobacco Co., testified in support. Bill would put chewing tobacco, snuff, & pipe tobacco in its own category.

Robert Shephard: Attorney representing US Smokeless Tobacco Co., testified in support.

Provided written testimony and handout of slide show and went over it.

John Job: AmCon Distributing Co., testified in support. Written testimony attached.

Russ Hanson: ND Petroleum Marketers Assoc., testified in support.

Tom Kelsh: Goes through the bill & proposes an amendment.

Senator Christmann: Without this amendment, the only thing left would be the cigars at 28%?

And if we do this amendment, the pipe tobacco would also be at the 28% instead of the \$.40 per ounce?

Tom Kelsh: Right.

Senator Wardner: Do your clients sell pipe tobacco and cigars?

Russ Hanson: They do sell some, but the majority sell chewing tobacco and cigarettes.

Gary Anderson: State Tax Dept., testified neutrally. Explained the fiscal note-revenue impact would be the same.

Senator Urlacher: Wouldn't leveling the playing field generate additional revenue?

Gary Anderson: The price of the products will determine that the slight increases and decreases wash each other out.

Senator Stenehjem: I'm at a lost to see why there wouldn't be a positive fiscal impact.

Gary Anderson: Chewing tobacco is different. We can get you more numbers.

Senator Christmann: Is there a sales tax on top of this?

Gary Anderson: Yes, 5% on the selling price. The tax that applies to the wholesale price.

Senator Urlacher: Closed the hearing. Action delayed.

Discussion held 2/14/01. Meter number 51-end, Side A & 0-14.6, Side B.

John Quinlan: State Tax Dept., presented information on behalf of Gary Anderson of the department. Provides handout regarding the fiscal note and goes over it. Handout attached.

Senator Christmann: If we pass this bill, do you project that it will be revenue neutral with what we've had in the past?

John Quinlan: That's correct.

Senator Christmann: What would be your projected comparison of what will happen in the future if we pass this bill as opposed to if we don't pass it?

John Quinlan: If we don't pass, we show a increased revenue. These numbers are based on past increases.

Senator Christmann: We can't philosophically set a goal of making sure that the state is always going to get as much money from tobacco products as they have in the past and at the same time have a goal of cutting tobacco price.

Discussion of changing price on Pg. 4, Line 5. It was decided to leave it.

AMENDMENT ACTION:

Motion made by Senator Stenehjem, Seconded by Senator Wardner, to move the proposed amendments with changes on Pg. 4 Line 7, changing \$.15 to \$.16. Voice Vote was taken. All in favor, amendment adopted.

COMMITTEE ACTION: 2/14/01

Motion made by Senator Stenehjem for a DO PASS AS AMENDED, Seconded by Senator Nichols. Vote was 6 yeas, 0 nays, 0 absent and not voting. Bill carrier was Senator Stenehjem.

FISCAL NOTE
Requested by Legislative Council
02/16/2001

Bill/Resolution No.:

Amendment to: SB 2408

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$10,000			
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your 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.*

If enacted, SB 2408 First Engrossment is expected to increase State General Fund revenues by \$10,000 during the 01-03 biennium.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Tax Department
Phone Number:	328-3402	Date Prepared:	03/12/2001

FISCAL NOTE

Requested by Legislative Council
01/30/2001

Bill/Resolution No.: SB 2408

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2408 changes the taxation of tobacco products from 28% of wholesale price to a series of per ounce taxes, depending upon the type of product. For some types of product, this would be a tax increase, for others a tax decrease. Although we do not have complete detail on the amount of each type of product that is consumed in the state (current reporting forms do not require such detail) we believe the bill is overall close to revenue neutral for the 01-03 biennium. The current forecast for tobacco products is \$2.023 million for FY 02 and \$2.043 million for FY 03. This increase in forecasted revenue between the two years is primarily due to forecasted product price increases. Upon passage, SB 2408 would fix the tax on a per unit basis so future revenues would fluctuate based on consumption only.

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and*

appropriations.

Name:	Kathryn L. Stromeck	Agency:	Tax Department
Phone Number:	328-3402	Date Prepared:	02/12/2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2408

Page 1, line 15, after "cigars" insert ", pipe tobacco"

Page 1, line 18, after "cigars" insert ", pipe tobacco"

Page 1, line 21, after "cigars" insert ", pipe tobacco"

Page 1, line 22, after "cigars" insert ", pipe tobacco"

Page 2, line 5, after the underscored comma insert "and"

Page 2, line 6, remove ", and pipe tobacco"

Page 2, line 15, after "cigars" insert ", pipe tobacco"

Page 2, line 18, after "cigars" insert ", pipe tobacco"

Page 2, line 23, after "cigars" insert ", pipe tobacco"

Page 2, line 25, after "cigars" insert ", pipe tobacco"

Page 2, line 27, after "cigars" insert ", pipe tobacco"

Page 3, line 3, after "cigars" insert ", pipe tobacco"

Page 3, line 5, after the period insert "For sales of other tobacco products, the records must also include the net weight in ounces, as listed by the manufacturer."

Page 3, line 8, after "cigars" insert ", pipe tobacco"

Page 3, line 10, after the period insert "For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight in ounces, as listed by the manufacturer."

Page 3, line 23, after "~~products~~" insert "and pipe tobacco"

Page 3, line 27, after "~~products~~" insert "and pipe tobacco"

Page 3, line 28, after "~~products~~" insert "and pipe tobacco"

Page 4, line 1, after "~~products~~" insert "or pipe tobacco"

Page 4, line 7, replace "fifteen" with "sixteen"

Page 4, remove lines 9 and 10

Page 5, line 4, remove the overstrike over the second overstruck comma and insert immediately thereafter "pipe tobacco."

Page 5, line 7, remove the overstrike over the overstruck comma and insert immediately thereafter "and pipe tobacco"

Page 5, line 14, after "~~products~~" insert "or pipe tobacco"

Page 5, line 27, after "~~snuff~~" insert ", pipe tobacco."

Page 6, line 3, after "~~and~~" insert ", pipe tobacco."

Page 6, line 20, remove the overstrike over the second overstruck comma and insert immediately thereafter "pipe tobacco."

Page 6, line 22, remove the overstrike over the second overstruck comma and insert immediately thereafter "pipe tobacco."

Page 6, line 27, remove the overstrike over the second overstruck comma and insert immediately thereafter "pipe tobacco."

Page 6, line 30, remove the overstrike over the second overstruck comma and insert immediately thereafter "pipe tobacco."

Page 7, line 3, after the period insert "For sales of other tobacco products, the return must also include the net weight in ounces, as listed by the manufacturer."

Page 7, line 25, after "~~and~~" insert "pipe tobacco."

Renumber accordingly

Date: 2/14/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2408

enate Finance and Taxation Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number (Voice Vote)

Action Taken Move Proposed Amendments 3. Change Pg. 4 line 7 - 15th to 16th

Motion Made By Stenehjem Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman					
Senator Wardner-Vice Chairman					
Senator Christmann					
Senator Stenehjem					
Senator Kroeplin					
Senator Nichols					

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: 2/14/01
Roll Call Vote #: 8

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2408

enate Finance and Taxation Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Stenehjem Seconded By Nichols

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman	✓				
Senator Wardner-Vice Chairman	✓				
Senator Christmann	✓				
Senator Stenehjem	✓				
Senator Kroeplin	✓				
Senator Nichols	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Stenehjem

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

REPORT OF STANDING COMMITTEE

SB 2408: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2408 was placed on the Sixth order on the calendar.

Page 1, line 15, after "cigars" insert ", pipe tobacco"

Page 1, line 18, after "cigars" insert ", pipe tobacco"

Page 1, line 21, after "cigars" insert ", pipe tobacco"

Page 1, line 22, after "cigars" insert ", pipe tobacco"

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Renumber accordingly

2001 HOUSE FINANCE AND TAXATION

SB 2408

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2408

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date March 13, 2001

Tape Number	Side A	Side B	Meter #
1		X	740
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

REP. AL CARLSON, CHAIRMAN Opened the hearing and read the fiscal note.

SEN. BOB STENEHJEM, DIST. 30 Introduced the bill as the prime sponsor. This bill levels the playing field on the way we levy taxes on smokeless tobacco. Currently, we are levying the tax, based on the wholesale price of the smokeless tobacco. This bill will turn it into levying the tax on a per ounce basis.

SEN. STEVE TOMAC, DIST. 31 Testified in support as a co-sponsor of the bill. This bill is a bill which has been looked at several sessions ago. I believe it equalizes how we assess a tax on chewing tobacco. Currently, we do it on gross receipts, so you take a percentage of the gross receipts of the value of the product, and that is taxed. A higher premium product is taxed at a higher rate, than the other products. Just about every other commodity, or item, such as gasoline, you don't pay a higher tax on premium gasoline, then you do on the lower grade, based on a per gallon figure. All this bill does, is bring the tobacco/snuff products in to the same policy.

GARY ANDERSON, DIVISION OF SALES & SPECIAL TAXES, STATE TAX

DEPARTMENT, Explained the different sections of the bill.

REP. CARLSON Asked, how have we handled pipe tobacco in the past?

GARY ANDERSON It is possible there might be others who will speak to the rationale of that, under current law, pipe tobacco is taxed at the 28% as well as cigars. I believe the intent of this bill is only to move the application of tax on the weight, to the snuff and the chewing tobacco, it does not include products like pipe tobacco or cigars.

REP. CARLSON Was pipe tobacco formerly charged at an ounce basis?

GARY ANDERSON Pipe tobacco was applied on the gross receipts.

REP. LLOYD How do our changes fit in with neighboring states?

GARY ANDERSON At the present time, there are three states that currently apply tax on this basis, on weight, Arizona, Alabama and Connecticut. The other states, including our neighboring states, apply the percentage method, as we currently do. Minnesota is thirty five percent, I believe South Dakota is ten percent, and Montana I think twelve and a half percent.

REP. LLOYD Does that apply to the chewing tobacco, the way it fits in this bill?

GARY ANDERSON The same would apply to chewing tobacco and snuff.

REP. WINRICH As I understand it, what this does is one basis for taxation on tobacco products and another basis on smokeless tobacco, is that a fair characterization?

GARY ANDERSON It appears that is the way the bill has been written. It sets out a distinction.

REP. WINRICH How does the proposed sixty cents per ounce on snuff and sixteen cents per ounce on chewing tobacco, compare with the previous twenty eight percent on the wholesale price?

GARY ANDERSON The sixty cents can equate to approximately thirty percent versus the twenty eight percent that we apply on snuff.

REP. CARLSON The positive fiscal effect would be about ten thousand dollars?

GARY ANDERSON That is correct.

REP. KROEBER Would these two methods cause any great heart burn to retailers?

GARY ANDERSON With any change, there is some inconvenience created.

TOM KELSCH, ATTORNEY FOR MULTI-STATES ASSOCIATES REPRESENTING THE UNITED STATES TOBACCO COMPANIES. Testified in support of the bill. Related back to ten or twelve years ago, when tobacco products were the same amount, this did not have much impact. The prices have recently changed, they are almost double in price, this is some of the reason for the bill. He introduced Robert Shepard who is the consultant for the United States Tobacco Companies.

ROBERT SHEPARD, ATTORNEY FROM WHITE PLAINS, NEW YORK, Testified in support of the bill. See written testimony and handout relating to tobacco tax and other consumer products.

REP. CARLSON What would be the retail price for a brand you consider premium?

ROBERT SHEPARD Copenhagen, currently sells for about four dollars and twenty eight cents a can, versus price value, which sells for about two dollars and twenty seven cents a can. Those are average retail prices.

REP. CARLSON So if you equate the new tax system to these, they would go up a few cents?

ROBERT SHEPARD About thirty seven cents, plus a couple more pennies in sales tax.

REP. DROVDAL What is the difference between snuff and chewing tobacco?

ROBERT SHEPARD Snuff is a fine cut product that is designed to, what is referred to as "dipping". You take a pinch of it and put it in your mouth between your gum and your teeth. Chew is something that you actually bite off and chew it, it is more ragged, like putting a leaf in your mouth and chewing it.

KERRY PAULSON, SMOKELESS TOBACCO COMPANIES Testified in support of the bill. Submitted testimony from John Job, Div. Manager of AMCON Distributing Company, which is five companies in the smokeless category. Related to a couple issues regarding the packs. It relates to pack equity and fairness, and the distinction between excise tax versus the sales tax. We think the products are similar, if not identical, products and we think the taxes should be applied evenly, in terms of excise taxes. This is not to lower anyone's taxes but to bring them to an equitable level. This will simplify it from the smokeless end of it. He stated, you may or may not be aware, you talked about the settlement between the cigarette companies and the state, there is also a separate settlement that was reached between the state and the smokeless companies, but of the five companies, there has only been one company that signed that settlement, and that is ours. In addition to the hundred million dollars that we paid into a group called the American Legacy Foundation, which provides grant money to states like North Dakota and others, to run a fairly provocative anti-use tobacco consumption program. You may have seen some television advertising, that is what that money goes to. In addition to that, we have, through the consent decree with then, Attorney General Heitkamp and now with Attorney

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House Finance and Taxation Committee

Bill/Resolution Number SB 2408

Hearing Date March 13, 2001

General Wayne Stenchjem, have a whole compliance committee within our corporate structure which reports to the Attorney General. We have agreed to a number of marketing promotions. We have taken down all of our billboards, which have tobacco promotions.

REP. CARLSON Related to the pipe tobacco.

KERRY PAULSON Stated that was amended in the Senate. The original draft included pipe tobacco to make the shift. Primarily, through input from the wholesalers, they are determining that what is done when this bill is passed, you will essentially, have three sections. You have your cigarette tax, which will stay the same, you have a smoking section, cigars and pipe tobacco, which will stay where they are at, and now you have a smokeless tobacco section.

BOB FACKLER, SMOKELESS TOBACCO COUNCIL, Testified in opposition of the bill.

See written testimony. Also submitted a letter from the Mississippi Tax Commission, and a Letter from the Governor of Iowa.

REP. HERBEL I am not a chewer, so I don't understand that, why is there the huge discrepancy in price between the premium tobacco and the value brand, is it that much better or what?

BOB FACKLER I would just say, that people in all types of products, prefer to have price valued products, some prefer those, and some prefer a higher priced product. Premium tobacco products are the same way, some people prefer, they make higher priced products and some make the price value products, and folks prefer to buy them.

REP. HERBEL Is the quality different?

BOB FACKLER That would be hard for me to say, I do not make the products myself. I am not in the process of making the products, so I really could not speak to that, but I certainly will find that out for you. I will get that information to you later this afternoon.

REP. HERBEL How do you count the argument then, that this chart shows here, that different packages of cigarettes are charged the same value, or extremely higher priced, or if it is premium or value priced?

BOB FACKLER I haven't seen those charts. I couldn't address it right now.

REP. CARLSON Stated, I think his point is that they are taxed at the same level, no matter what.

BOB FACKLER Cigarettes are all sold twenty to a pack. With gasoline, it is sold by the gallon, with beer, it is sold by the six pack. If we were to take a look at this and say, well should a quart of wine be taxed the same as a quart of beer, I think you would disagree. With the tobacco products, with the smokeless tobacco products, there are many different weights, there is many different containers, many different packaging things. And so, it is a completely different type of situation.

REP. HERBEL There is a difference between beer and wine, when you are talking cigarettes versus cigarettes, or chewing tobacco versus chewing tobacco, I think you are talking products with just a little different quality.

BOB FACKLER As I said, with the cigarettes, you have a certain product. They are all cigarettes, they all weigh the same, they all look the same, they are all packaged the same. With smokeless tobacco products, you have _____, you have chew, you have twists, you have _____, you have all of these different products.

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House Finance and Taxation Committee

Bill/Resolution Number SB 2408

Hearing Date March 13, 2001

REP. CARLSON I would like to have you respond to the fact that there are only four or five different manufacturers, basically, of the product, and North Dakota has been a benefactor of the settlements that we received on the tobacco settlement, of which, part of it was the smokeless, one company, participated in smokeless, how do you defend the fact that when we are attempting to get our youth to not smoke and chew, that your companies have not participated in the program? How do you defend that, when you get back to the tax issue and say, we want it to be less, then on the other hand, we haven't participated in the system to push this issue.

BOB FACKLER I can't

REP. CARLSON I think that is a hard position to defend.

BOB FACKLER It is a position, perhaps, our attorneys could defend. I am here to discuss this bill.

REP. CARLSON And, you feel that it will be a loss of revenue, if we do it this way?

BOB FACKLER What will happen is, if the price of the tobacco products go up, and there is a twenty eight percent tax on those products, as those prices automatically increase, they will automatically bring in these revenues.

REP. LLOYD Referred to the bottom of the paragraph in the letter from the Governor of Iowa. "However, under the House File 2548, a distinction is made between moist and dry snuff so that the two products are taxed in a different manner." I guess I didn't realize that's how this would be in this bill.

BOB FACKLER In this particular bill, the difference is between chewing tobacco and snuff, so there is distinctions there between those two, but not between the dry and the moist.

REP. CARLSON Chewing tobacco would be considered dry?

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House Finance and Taxation Committee

Bill/Resolution Number SB 2408

Hearing Date March 13, 2001

BOB FACKLER Yes

REP. CARLSON I am not one of these who, historically, supports all of the bills that ban smoking everywhere, because I think that is an individual right, but if one can of this, is four dollars and eighty cents, and your can, is two dollars and fifty cents, there is a huge difference. and the price difference, I don't think does anything to stop, the cheaper it is, the more readily available it is, I should say, to more buyers. How do you respond to that?

BOB FACKLER I am not sure I understand the question.

REP. CARLSON In other words, the cheaper it gets, the more people or kids will be willing to try it, because it is not very expensive, even though it is illegal to buy it, they get their hands on it. The cheaper it is, it has been proven, that the cheaper it is, the more people will use it.

BOB FACKLER I am not sure if it has been proven to be the fact. I guess you would maybe take a look at cigarettes. There are cigarettes that are value priced as opposed to cigarettes that are premium priced. I don't think people make the distinction, because cigarettes are lower priced, that it is going to cause young people to start smoking.

REP. CARLSON That's an area we don't want to debate a long time, I was thinking it would have some effect on it. I can see your point.

With no further testimony, the hearing was closed.

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House Finance and Taxation Committee
Bill/Resolution Number SB 2408
Hearing Date March 13, 2001

COMMITTEE ACTION 3-14-01, TAPE #2, SIDE A, METER #4626

REP. CARLSON Reviewed the bill with committee members.

REP. WIKENHEISER Made a motion for a **DO PASS**.

REP. GROSZ Second the motion. **MOTION CARRIED**

13 YES 0 NO 2 ABSENT

REP. WIKENHEISER Was given the floor assignment.

Date: 3-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2408

House FINANCE & TAXATION Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Wikenheiser Seconded By Rep. Grosz

Representatives	Yes	No	Representatives	Yes	No
CARLSON, AL, CHAIRMAN	✓		NICHOLAS, EUGENE	✓	
DROVDAL, DAVID, V-CHAIR	✓		RENNER, DENNIS	✓	
BRANDENBURG, MICHAEL	✓		RENNERFELDT, EARL	✓	
CLARK, BYRON	✓		SCHMIDT, ARLO	✓	
GROSZ, MICHAEL	✓		WIKENHEISER, RAY	✓	
HERBEL, GIL	✓		WINRICH, LONNY	✓	
KELSH, SCOT	✓				
KROEBER, JOE	✓				
LLOYD, EDWARD	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep. Wikenheiser

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

REPORT OF STANDING COMMITTEE (410)
March 15, 2001 8:58 a.m.

Module No: HR-45-5662
Carrier: Wikenheiser
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2408, as engrossed: Finance and Taxation Committee (Rep. Carlson, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2408 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2408

Proposed Amendments to Senate Bill No. 2408

Page 3, line 5, after the period insert "For sales of other tobacco products, such records shall also include the net weight, in ounces, as listed by the manufacturer."

Page 3, line 10, after the period insert "For sales of other tobacco products, each licensed distributor shall also report to the tax commissioner the net weight, in ounces, as listed by the manufacturer."

Page 7, line 3, after the period insert "For sales of other tobacco products, such return shall also include the net weight, in ounces, as listed by the manufacturer."

Renumber accordingly

Proposed Amendments to Senate Bill No. 2408

Page 1, line 15, after "cigars," insert "pipe tobacco."

Page 1, line 18, after "cigars," insert "pipe tobacco."

Page 1, line 21, after "cigars," insert "pipe tobacco."

Page 1, line 22, after "cigars," insert "pipe tobacco."

Page 2, line 5, after "snuff" insert "and"

Page 2, line 6, remove "and pipe tobacco"

Page 2, line 15, after "cigars," insert "pipe tobacco."

Page 2, line 18, after "cigars," insert "pipe tobacco."

Page 2, line 23, after "cigars," insert "pipe tobacco."

Page 2, line 25, after "cigars," insert "pipe tobacco."

Page 2, line 27, after "cigars," insert "pipe tobacco."

Page 3, line 3, after "cigars," insert "pipe tobacco."

Page 3, line 8, after "cigars," insert "pipe tobacco."

Page 3, line 23, after "**Cigars,**" insert "and pipe tobacco"

Page 3, line 26, after "cigars," insert "and pipe tobacco."

Page 3, line 28, after "cigars," insert "and pipe tobacco."

Page 4, line 1, after "cigars," insert "or pipe tobacco."

Page 4, remove lines 9 and 10

Page 5, line 4, after "Cigars," insert "pipe tobacco,"

Page 5, line 6, after "cigars," insert "and pipe tobacco"

Page 5, line 14, after "cigars," insert "or pipe tobacco"

Page 5, line 27, after "cigars" insert ", pipe tobacco,"

Page 6, line 3, after "cigars," insert "pipe tobacco,"

Page 6, line 20, after "Cigars," insert "pipe tobacco,"

Page 6, line 22, after "cigars," insert "pipe tobacco"

Page 6, line 27, after "cigars," insert "pipe tobacco"

Page 6, line 30, after "cigars," insert "pipe tobacco"

Page 7, line 25, after "cigars," insert "pipe tobacco,"

Renumber accordingly

DRAFT

North Dakota Testimony – SB 2408
Weight Based Tax
Senate Finance Committee

Good morning Mr. Chairman and members of the Committee. I am here today in support of SB 2408, which would convert the Other Tobacco Products (OTP) tax on all smokeless tobacco products to a weight based formula from the current ad valorem method of taxation. In my testimony, I will explain how the current method of taxation is inequitable and unfair, how the contents of SB 2408 levels the playing field and how this bill will financially benefit the State of North Dakota.

Currently, the State of North Dakota's taxes OTP on an ad valorem basis. The tax is computed by taking 28% of the wholesale price of the tobacco product. This results in the higher priced premium brand being taxed at a greater amount than the lower priced price-value brand of tobacco even when they are the same product having equal amounts of tobacco. This is an unequal and unfair method of taxation on OTP. It is also inconsistent with the excise tax methodology used for nearly every other consumer product sold in North Dakota. All other consumer products are taxed on a per-unit basis. For example, a premium pack of cigarettes carries the same amount of tax as the cheaper price value pack of cigarettes. This is because the tax is figured on a per cigarette basis not per cost basis. A gallon of gasoline is taxed the same (per-gallon basis) no matter what the price. All six packs of beer and all bottles of wine are taxed on a per gallon basis no matter the brand or the price. As all of the aforementioned examples indicate, North Dakota's excise taxes are a tax on the product itself. Why then does North Dakota tax identical smokeless tobacco products differently? This history is unclear, but it is unfair and gives the appearance that the State is unintentionally giving preferential treatment to some brands over others.

DRAFT

In the last few years there has been significant growth in the price-value category of OTP. Rate-based taxation of OTP encourages the trend of consumers to substitute cheaper brands. It also encourages the promotion of cheaper brands in the marketplace. Increased sales of the price-value segment have fueled the growth of moist snuff category of OTP.

SB 2408 would create a level playing field for all smokeless tobacco brands and would keep North Dakota out of the business of giving preference to some brands over others. It does this by creating a tax methodology based on the weight of the tobacco product. As an example, under SB 2408 a can of smokeless tobacco would be taxed at a rate of 60-cents per-ounce. As a result, a premium can of moist snuff will carry the same excise tax as a price-value can, assuming an equal amount of tobacco in the cans. The passage and adoption of SB 2408 will make the OTP tax methodology consistent with the excise taxation of other products.

Switching to a weight based tax would also benefit North Dakota's OTP revenues. Under the ad valorem method of taxation, less tax revenue is generated by the sale of cheaper brands. Over time, the growth of price-value brands of smokeless tobacco results in downward pressure on tax revenues from OTP. For example, by not having a weight based method of taxation, the State of North Dakota lost over \$94,000 in potential tax revenue in 1997-1999 biennium and is projected to lose another \$136,000 in tax revenue for the 1999-2001 biennium.¹

SB 2408 would tax premium and price-value smokeless tobacco equally at a rate of 60-cents per ounce. As a result, OTP tax revenues to be gained by North Dakota could be as much as \$240,000 in the 2001-2003 biennium.²

¹ Data provided by MSA, Inc and assumes a weight based tax based on the wholesale price of a premium can of smokeless tobacco.

² Data provided by MSA, Inc. assumes a hypothetical 4% annual price increase

DRAFT

Switching to a weight based method is simply a technical correction required to make OTP excise tax methodology consistent with excise tax methodology on other consumer products sold in North Dakota.

The weight based tax proposed in this legislation also will protect the state of North Dakota's revenue stream from fluctuations in the marketplace such as a drastic reduction in price. On April 12, 1993, Philip Morris, in what has become known as "Marlboro Friday," reduced the price of Marlboro cigarettes by 20% in response to the growth of value-brand cigarettes. If such a price cut were to occur in the smokeless tobacco industry, under the current system of taxation OTP revenues would be negatively effected by a large amount, while under a weight based method of taxation total OTP state revenues would stay the same.

It should also be noted that the SB 2408 is not inconsistent with the position of public health advocates, who generally stand for increased prices of tobacco products. The current method of taxation may encourage the promotion of sales of cheaper brands because their tax expense will be less. The proposed legislation would make the tax on premium and price-value smokeless products equal and thus keep the state out of the business of encouraging the sales of cheaper tobacco products.

In closing, passage of SB 2408 would let North Dakota follow the OTP method taxation used by the Federal government and the states of Alabama, Arizona and Connecticut. This bill will not only bring fairness to the OTP category but also could be financially beneficial to the State of North Dakota. I urge the members of this committee to support this bill in its current form.

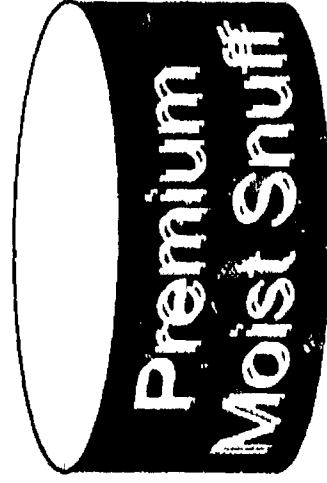
North Dakota

Other Tobacco Products

Proposal for:
Tobacco Tax Fairness
Weight Based Tax

DRAFT

Premium Brand



Value Brand



\$2.37 / can	Wholesale price	\$1.25 / can
28%	North Dakota Excise Tax	28%
<u>66¢ / can</u>	Tax Revenue per can	<u>35¢ / can</u>
<u>21¢ / can</u>	Sales Tax Collected*	<u>11¢ / can</u>

* 5% State Sales Tax applied at retail

-DRAFT-

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NEXT FIGURE

North Dakota Taxes on other Consumer Products

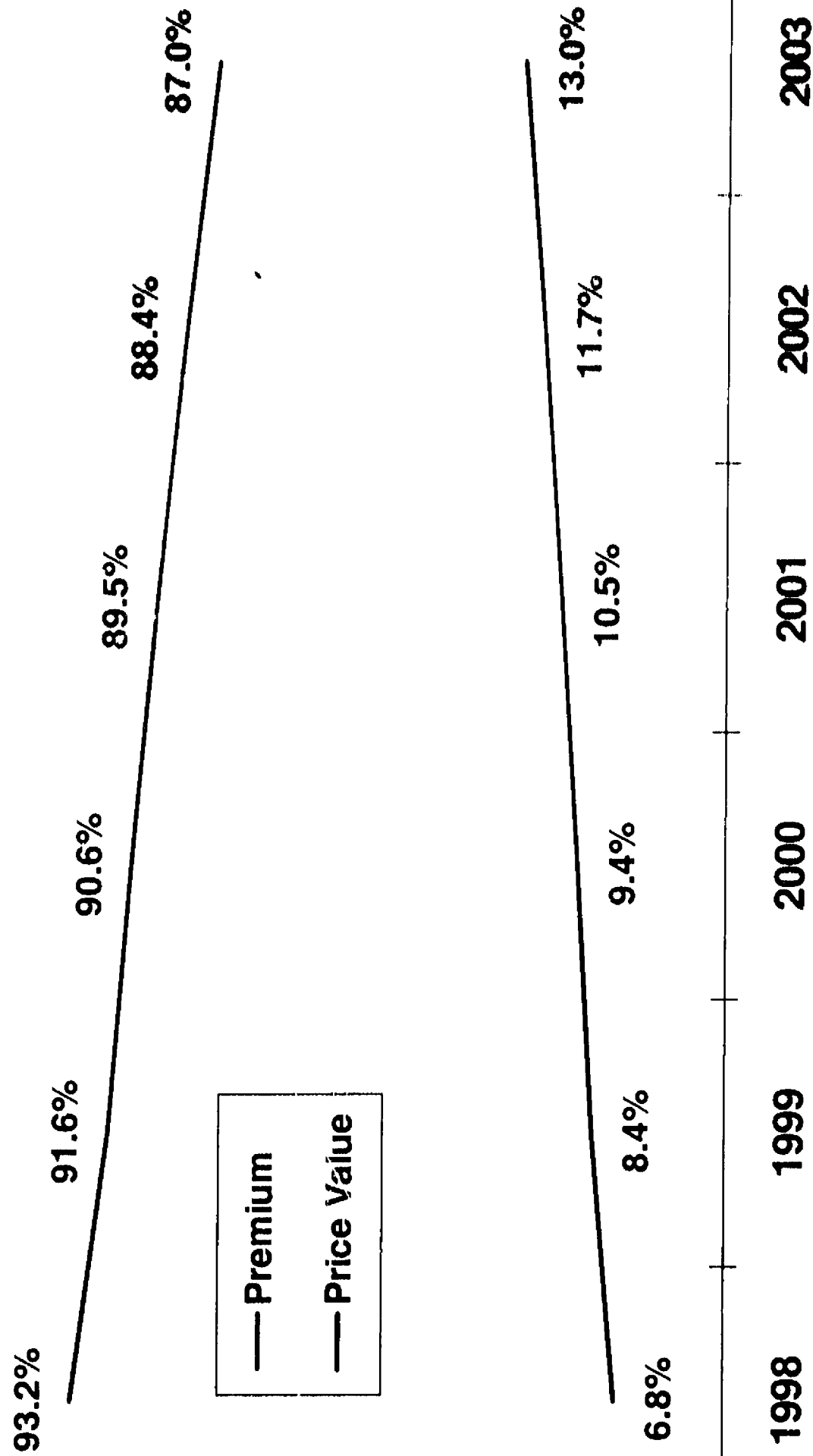
<u>Item</u>	<u>Premium</u>	<u>Price Value</u>
• Gasoline	21¢ / Gal	21c / Gal
• Beer	8¢ / 6-Pack	8c /6-Pack
• Cigarettes	44¢ / pack	44c/pack
• Wine	9¢ / bottle	9c/bottle

-DRAFT-

North Dakota Market Share Trends for Moist Snuff Tobacco

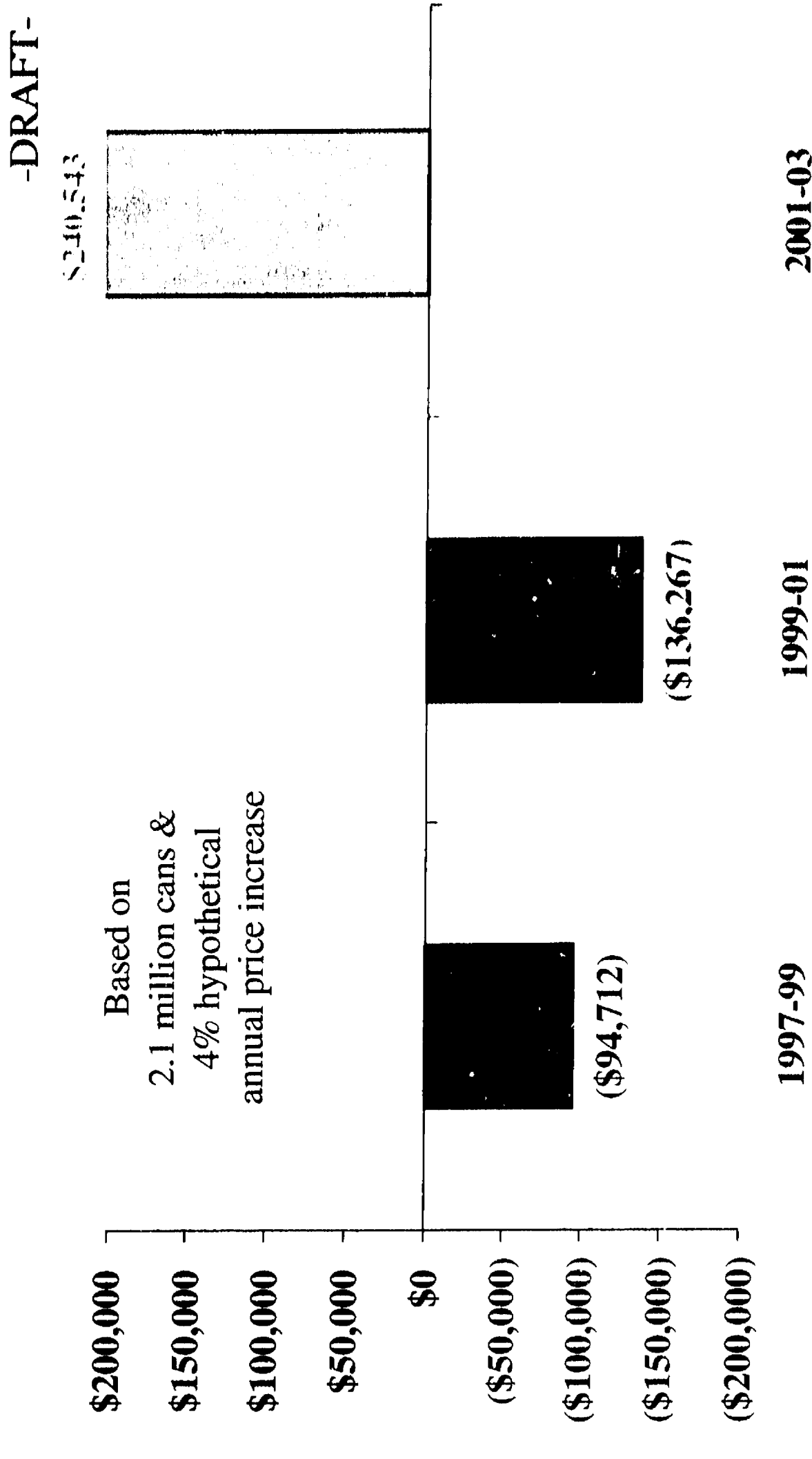
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PROJECTED



North Dakota Moist Snuff Tobacco Collections

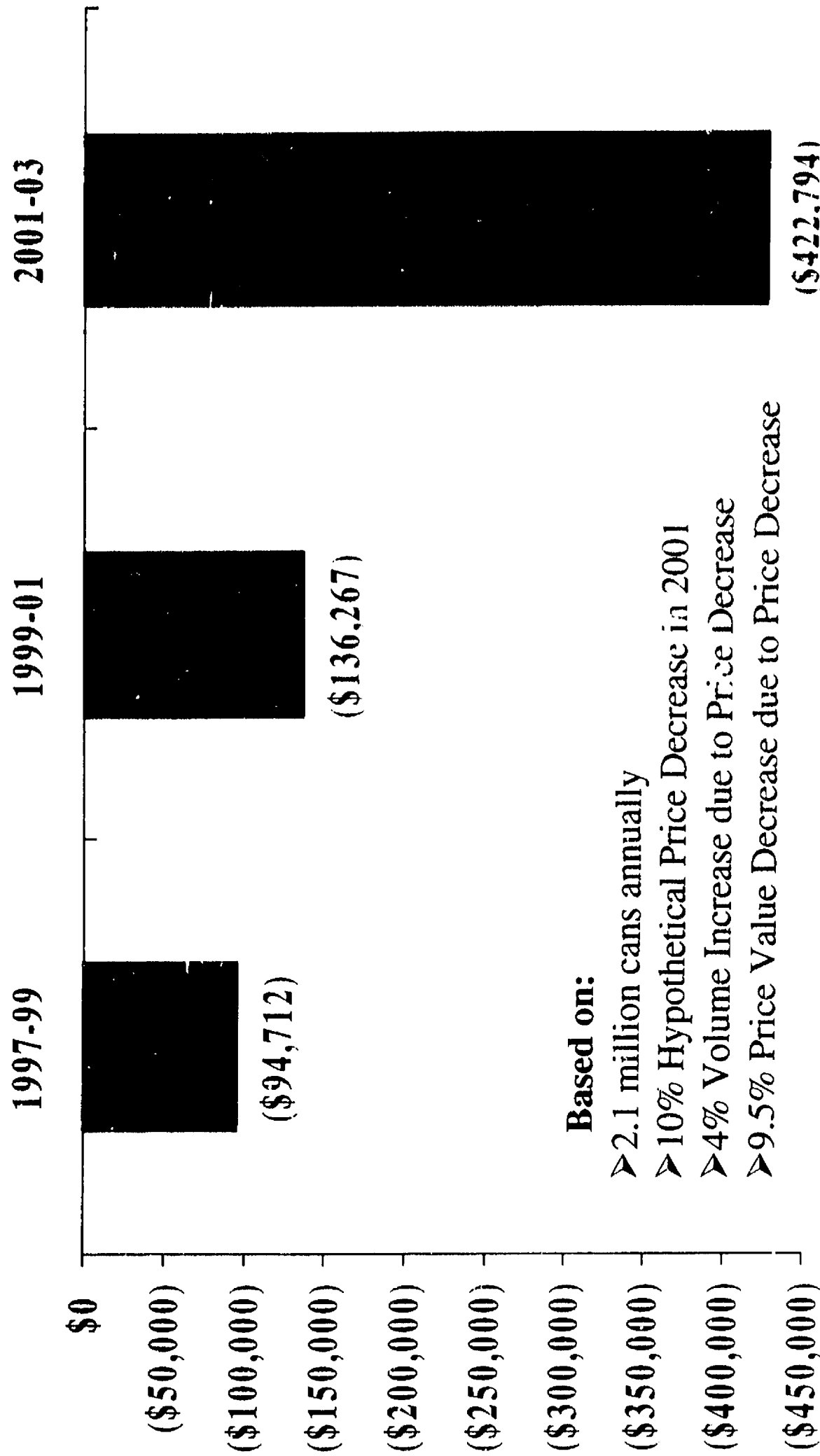
PROJECTED



■ Revenue Lost with Current Tax Inequity
▨ Revenue Gained with Weight Based Tax

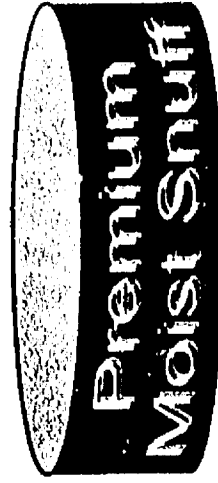
North Dakota Moist Snuff Tobacco Collections

PROJECTED



Proposed Moist Snuff Tobacco Tax Change

Premium Brand



\$2.37 / can Wholesale price \$1.25 / can

28% North Dakota Excise Tax 28%

66¢ / can Tax Revenue per can 35¢ / can

Value Brand



60¢ / oz.

Per Ounce Tax 60¢ / oz.

72¢ / can

Tax Revenue per can 72¢ / can

Eight Hundred Tax

-DRAFT-

Converting to a Weight Based

OTP Tobacco Tax

- ✓ Not inconsistent with North Dakota's stated purposes in enacting a tobacco excise tax.
- ✓ Protects State from adverse changes in the marketplace
- ✓ Streamline administration of the tax, including tax audits
- ✓ Bring fairness to the marketplace

DRAFT

Proposed Moist Snuff Tobacco Tax Change

Premium Brand



Value Brand



Weight Based Tax

60¢ / oz.	Per Ounce Excise Tax	60¢ / oz.
<u>72¢ / can</u>	Tax Revenue per can	<u>72¢ / can</u>
<u>22¢ / can</u>	Sales Tax Collected*	<u>13¢ / can</u>

* 5% State Sales Tax applied at retail

-DRAFT-



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.

Senate Bill No. 2408
Fiscal Analysis

Moist Tobacco (snuff) - estimated annual sales of moist tobacco

\$2,004,655 Tax Revenue / 28% = \$7,159,482 Gross Taxable Receipts

\$7,159,482 X 65% (project market share of snuff) = \$4,653,663

\$4,653,663 X 90% (Premium snuff product) = \$4,188,297

\$4,653,663 X 10% (Value priced product) = \$ 465,366

Cans of Snuff (Moist Tobacco):

\$4,188,297 / \$2.37 (price per can - 1.2 oz) = 1,767,214

\$ 465,355 / \$1.25 (price per can - 1.2 oz) = 372,293

Total cans **2,139,507**

(Industry reflects 2.1 millions cans)

Tax based on % of purchase price:			60 cents/oz.	Revenue Impact
\$2.37 =	\$1,254,204			
\$1.25 =	\$ 73,500	\$1,327,704	\$1,512,000	+\$184,296
\$2.61 =	\$1,312,151			
\$1.38 =	\$ 77,087	\$1,389,238	\$1,436,400	+\$ 47,162
\$2.85 =	\$1,361,168			
\$1.51 =	\$ 80,131	\$1,441,299	\$1,364,580	-\$ 76,719
\$3.00 =	\$1,361,168			
\$1.59 =	\$ 80,158	\$1,441,326	\$1,296,350	<u>-\$144,976</u>
	Average	\$1,399,892	\$1,402,333	+\$ 2,441

Based on a possible decrease in sales of tobacco products (specifically moist tobacco) and the anticipated price increases over time, the anticipated revenue effect is neutral using a \$.60 cents per oz. tax on moist tobacco.

Senate Bill No. 2408
Fiscal Analysis

Tax based on % of purchase price:			65 cents/oz.	Revenue Impact
\$2.37 ==	\$1,254,204			
\$1.25 ==	\$ 73,500	\$1,327,704	\$1,638,000	+\$310,296
\$2.61 ==	\$1,312,151			
\$1.38 ==	\$ 77,087	\$1,389,238	\$1,556,100	+\$166,862
\$2.85 ==	\$1,361,168			
\$1.51 ==	\$ 80,131	\$1,441,299	\$1,478,295	-\$ 36,996
\$3.00 ==	\$1,361,168			
\$1.59 ==	\$ 80,158	\$1,441,326	\$1,404,380	<u>-\$ 36,946</u>
	Average	\$1,399,892	\$1,519,194	+\$119,302

Robert S. S. S.

DRAFT

**North Dakota Testimony – SB 2408
Weight Based Tax
House Finance & Taxation Committee**

Good morning Mr. Chairman and members of the Committee. I am here today in support of SB 2408, which would convert the Other Tobacco Products (OTP) tax on all smokeless tobacco products to a weight based formula from the current ad valorem method of taxation. In my testimony, I will explain how the current method of taxation is inequitable and unfair, how the contents of SB 2408 levels the playing field and how this bill will financially benefit the State of North Dakota.

Currently, the State of North Dakota's taxes OTP on an ad valorem basis. The tax is computed by taking 28% of the wholesale price of the tobacco product. This results in the higher priced premium brand being taxed at a greater amount than the lower priced price-value brand of tobacco even when they are the same product having equal amounts of tobacco. This is an unequal and unfair method of taxation on OTP. It is also inconsistent with the excise tax methodology used for nearly every other consumer product sold in North Dakota. All other consumer products are taxed on a per-unit basis. For example, a premium pack of cigarettes carries the same amount of tax as the cheaper price value pack of cigarettes. This is because the tax is figured on a per cigarette basis not per cost basis. A gallon of gasoline is taxed the same (per-gallon basis) no matter what the price. All six packs of beer and all bottles of wine are taxed on a per gallon basis no matter the brand or the price. As all of the aforementioned examples indicate, North Dakota's excise taxes are a tax on the product itself. Why then does North Dakota tax identical smokeless tobacco products differently? This history is unclear, but it is unfair and gives the appearance that the State is unintentionally giving preferential treatment to some brands over others.

In the last few years there has been significant growth in the price-value category of OTP. Rate-based taxation of OTP encourages the trend of consumers to substitute cheaper brands. It also encourages the promotion of cheaper brands in the marketplace. Increased sales of the price-value segment have fueled the growth of moist snuff category of OTP.

SB 2408 would create a level playing field for all smokeless tobacco brands and would keep North Dakota out of the business of giving preference to some brands over others. It does this by creating a tax methodology based on the weight of the tobacco product. As an example, under SB 2408 a can of smokeless tobacco would be taxed at a rate of 60-cents per-ounce. As a result, a premium can of moist snuff will carry the same excise tax as a price-value can, assuming an equal amount of tobacco in the cans. The passage and adoption of SB 2408 will make the OTP tax methodology consistent with the excise taxation of other products.

Switching to a weight based tax would also benefit North Dakota's OTP revenues. Under the ad valorem method of taxation, less tax revenue is generated by the sale of cheaper brands. Over time, the growth of price-value brands of smokeless tobacco results in downward pressure on tax revenues from OTP. For example, by not having a weight based method of taxation, the State of North Dakota lost over \$94,000 in potential tax revenue in 1997-1999 biennium and is projected to lose another \$136,000 in tax revenue for the 1999-2001 biennium.¹

SB 2408 would tax premium and price-value smokeless tobacco equally at a rate of 60-cents per ounce. As a result, OTP tax revenues to be gained by North Dakota could be as much as \$240,000 in the 2001-2003 biennium.²

¹ Data provided by MSA, Inc and assumes a weight based tax based on the wholesale price of a premium can of smokeless tobacco.

² Data provided by MSA, Inc. assumes a hypothetical 4% annual price increase

DRAFT

Switching to a weight based method is simply a technical correction required to make OTP excise tax methodology consistent with excise tax methodology on other consumer products sold in North Dakota.

The weight based tax proposed in this legislation also will protect the state of North Dakota's revenue stream from fluctuations in the marketplace such as a drastic reduction in price. On April 12, 1993, Philip Morris, in what has become known as "Marlboro Friday," reduced the price of Marlboro cigarettes by 20% in response to the growth of value-brand cigarettes. If such a price cut were to occur in the smokeless tobacco industry, under the current system of taxation OTP revenues would be negatively effected by a large amount, while under a weight based method of taxation total OTP state revenues would stay the same.

It should also be noted that the SB 2408 is not inconsistent with the position of public health advocates, who generally stand for increased prices of tobacco products. The current method of taxation may encourage the promotion of sales of cheaper brands because their tax expense will be less. The proposed legislation would make the tax on premium and price-value smokeless products equal and thus keep the state out of the business of encouraging the sales of cheaper tobacco products.

In closing, passage of SB 2408 would let North Dakota follow the OTP method taxation used by the Federal government and the states of Alabama, Arizona and Connecticut. This bill will not only bring fairness to the OTP category but also could be financially beneficial to the State of North Dakota. I urge the members of this committee to support this bill in its current form.

Testimony of Bob Fackler on Senate Bill 2408

Good Morning Mr. Chairman and members of the Finance and Taxation Committee. My name is Bob Fackler, I represent the Smokeless Tobacco Council, and I am here to oppose the passage of SB 2408. This bill would convert the tax on all smokeless tobacco products to a weight based formula from the current ad valorem method of taxation. My clients were "late to the field" on this matter in the Senate, but I am here today to provide an opposing view on this tax change. First of all, I would like to say the current system of taxation is not broken, and does not need fixing. It is doing exactly what it was designed to do. Why then was this bill introduced to the legislature? It was not recommended by the North Dakota Tax Commissioner. The public did not raise the question, nor did the ND Tobacco wholesalers Association demand, or see the need for a change. Who is advocating this change? The United States Smokeless Tobacco Company.

The question of why they are introducing this legislation around the country has a simple answer. This legislation would freeze the tax on USST's premium priced products, and would dramatically increase the tax on their competitors value priced products. SB2408 would essentially equate all units of moist snuff and bring USST's competitors "up to" their current per unit tax basis. Their tax at wholesale stays the same, and their competitors pay more - as much as 90% more. It would be the same situation as two people buying a suit. Should the man buying the \$100 suit pay the same tax as the man buying the \$200 suit. Under SB 2408 that is what would happen to the tax on smokeless tobacco. SB2408 is nothing more than special interest legislation for USST. Additionally, SB2408 removes the "automatic adjuster" of an ad valorem tax. Under the current system, if there was a price increase or Federal Tax increase, the state would automatically get a 28% tax increase on that amount. For example, if the price of a tin of smokeless tobacco goes up \$1.00, the state would automatically get an additional 28 cents in tax. Under SB2408, the state would not get that additional tax revenue.

In the last five years USST has raised their prices by approximately 10% annually. At that rate, the state would stand to lose considerable tax revenue in the long term under the provisions of SB2408.

This proposed change will cause an administrative nightmare for wholesalers and the State Tax Department. Consider the fact that smokeless tobacco is sold in many different weights and packages. For example moist snuff is sold in 4 different weights. Loose leaf is sold in 11 different weights. Plugs and twists in 15 different weights and dry snuff in 17 different weights.

There is no possible way that the argument can be made that the provisions of SB 2408 will make the collections and administrations of these taxes simpler than the 28% currently charged on all smokeless tobacco products coming into the state.

Since my clients were not part of previous testimony in the Senate, Senators were unaware of these issues. I apologize to the Senate and to the members of this committee for being late entrants into this process, and we respectfully request a do not pass on SB2408.

Ed Buelow, Jr., Chairman
Mississippi Commissioner of Revenue

Lisa W. Davis, CPA
Associate Commissioner

Russell E. Hawkins, CPA
Associate Commissioner



MISSISSIPPI

STATE TAX COMMISSION

Executive Division
Post Office Box 22828
Jackson, Mississippi 39225
Phone: 601 923-7400
Fax: 601 923-7423

June 23, 2000

Honorable Beth Clay
Attorney at Law
P. O. Drawer 1532
Jackson, MS 39215-1532

Dear Beth:

You recently asked me our position concerning proposed changes to the method of taxation of certain smokeless tobacco products.

Presently we tax such products at 15% of their wholesale cost. This method was established many years ago in an effort to minimize the administrative cost to the State Tax Commission and wholesalers and retailers of smokeless tobacco located in the State of Mississippi without reducing the taxes on such products. This method has accomplished the intended purpose.

The proposed change to a tax based on weight of certain items included in the smokeless tobacco category would create additional administrative cost for the State Tax Commission and the Mississippi wholesalers of such products. For this reason we would oppose the proposed change.

Thank you for your interest in this area of taxation. If you have any questions on this matter, please call me at 601-923-7409.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lester C. Herrington".

Lester C. Herrington
Deputy Commissioner

LCH:rs

The Honorable Chester Culver
Secretary of State of
State Capitol
LOCAL

Dear Mr. Secretary:

I hereby transmit House File 2548, an act relating to the administration of the tax and related laws by the department of revenue and finance, including administration of state individual income, corporate income, sales and use, hotel and motel, real estate transfer, environmental protection charge on petroleum distillation, property, motor fuel, special fuel, cigarette and tobacco products, and inheritance taxes, treatment of motor fuel under the local option taxes, and authorizing tax agreements with Indian tribes, and including effective and retroactive applicability date provisions.

I am unable to approve House File 2548 and hereby transmit it to you in accordance with Article III, Section 16, of the Constitution of the State of Iowa.

House File 2548 includes many worthwhile provisions asked for by the Department of Revenue and Finance. I regret that one provision, not requested by the department but included in the bill, is a change in way moist snuff tobacco products are taxed. Under current law, moist snuff tobacco products are taxed at 22 percent of the wholesale price. House File 2548 changes the taxation to a \$.42 per ounce flat tax.

I cannot approve House File 2548 with this tobacco tax policy change included in the bill. Iowa has one of the highest moist snuff usage rates in the country, ranking ninth out of 38 states that monitor moist snuff usage by males over the age of 18 years. As tobacco prices increase in the future, a taxation rate based upon a percentage of the cost will continue to impose a tax that is proportionate with the cost of the product. However, taxation on a per ounce basis will remain the same, regardless of the cost of the product. This results in a potential loss of tax revenue to the state. It may eventually create an incentive for persons to purchase moist snuff products since they will be available at a lower overall cost than other snuff or other tobacco products. This is a policy direction I cannot approve.

Concerns have also been raised regarding the confusing definition of "moist snuff" in the bill. Current law does not define snuff, but House File 2548 defines moist snuff as "any finely cut, ground or powdered tobacco intended to be placed in the oral cavity, except dry snuff". The definition of moist snuff introduces the term "dry snuff" which is unused and undefined elsewhere in the Iowa Code, in federal law or in House File 2548 itself.

Finally, the method of taxation described in the bill creates differing treatment of products, with no apparent rational basis. Under current law in Iowa, cigarettes are taxed in the same manner, regardless of the type of cigarette. Similarly, under federal law smokeless tobacco products, including snuff, are taxed in the same manner in that a flat rate of tax is imposed on a per unit basis. Under current Iowa law, all snuff products are taxed on the same basis, a percentage of cost. However, under House File 2548, a distinction is made between moist and dry snuff so that the two products are taxed in a different manner, creating unnecessary work for both retailers and for the Department of Revenue and Finance in determining the appropriate amount of tax to be paid and collected.

For the above reasons, I hereby respectfully disapprove House File 2548.

Sincerely

Thomas J. Vilsack
Governor

TJV:jms

CC: Secretary of the Senate
Chief Clerk of the House

In conclusion, I would urge defeat of SB2408 for four reasons:

First: In the long term, it will cost the State of ND in lost tax revenues that they would not have lost under an ad valorem tax.

Second: In the short term, the tax department has indicated that SB 2408 will be revenue neutral, not bringing in additional tax dollars.

Third: It will cost the State tax department additional money to implement and administer such a cumbersome tax scheme as SB 2408.

Last: This legislation is nothing more than special interest legislation devised by a single company to further their own marketing goals.

The Real Story Behind SB 2408

◆ **SB 2408 Would Cost the State Money In Lost Tax Revenue**

Proponents claim that this new tax scheme is revenue neutral, it is not. Under this law the state will not have the opportunity to automatically benefit from a progressive tax, as it does with the current method of taxation. Under the current system if there is a price increase on smokeless tobacco products or the federal government increases taxes, the *advalorem* tax automatically brings in additional revenue (as the price goes up, the taxes automatically increase).

Under SB 2408, if product prices were to increase, the state would receive no additional tax revenues.

◆ **SB 2408 Benefits Only One Dominant Smokeless Tobacco Company, Reduces Competition, and Is Unfair to Consumers**

This legislation is specifically designed to benefit United States Tobacco Company (approximately 72% of the ND market) in the sales of its high-end premium priced moist snuff. This legislation will dramatically increase the tax burden on its competitors' price-value products, reduces competition, and is unfair to price conscious consumers. If this tax scheme were applied to other products, a person buying a \$100 suit would pay the same amount of tax as a person buying a \$300 suit, simply because they weighed the same. Most would agree this is not an equitable form of taxation.

◆ **SB 2408 Would Be Confusing and Cause Costly Changes to Computer Systems and Accounting Procedures Done By the Tobacco Wholesalers and the Tax Department**

Smokeless tobacco products are currently taxed on an *ad-valorem* (according to value) basis. Under the current system, taxes are calculated as a percentage of the manufacturer's price. To change the method within the whole system would be a terribly confusing and an unnecessary burden for those who collect and remit these taxes. The modification would require costly changes to the computer systems and accounting procedures done by small business wholesalers who collect and remit these taxes. The Tax Department presently taxes the different products within the smokeless tobacco category at the same rate. If this bill were to go into effect, the state would have to keep track of these different products separately. New forms and functions would add a layer of new work for the department, at a cost increase.

- ◆ **Under the current system the state's tax revenues automatically increase as prices increase. Under SB2408 this would not happen. Thus causing lost tax revenues to the state.**
- ◆ **Under SB 2408 higher value products will carry a proportionately lower tax burden while lower value products and the value conscious consumers will pay more.**
- ◆ **Under the current system taxes are spread equitably according to value.**
- ◆ **The taxes are currently easy to understand and administer. This bill would place unnecessary increased administration costs on tobacco wholesalers and the N.D. Tax Department.**

To our valued customers:

By now, many of you likely have been asked to lend support for a legislative initiative to convert the method by which excise taxes are calculated on your moist snuff and other OTP products from an ad valorem method (tax based upon the price manufacturers charge to the customer) to a weight based method. Proponents of this conversion have argued that you should support a weight based tax because: (a) it simplifies tax collection; (b) it improves record keeping requirements; (c) it eliminates confusion surrounding the application of tax among brands; and (d) allows for greater pricing flexibility and profitability.

We respectfully disagree with these proponents and, in deciding whether to support this conversion, we ask you to consider the following:

- (a) A weight based tax complicates, rather than simplifies tax collection -- under an ad valorem method, the selling price of the product is the basis upon which taxes are collected. Under a weight based tax, a distributor will be faced with multiple per unit tax rates owing to the fact that moist snuff and OTP products do not have a uniform weight per unit: for moist snuff, there are at least 4 different weights; for loose leaf chewing tobacco, there are at least 11 different weights; for plug and twist, there are 15 different weights; for dry snuff, 17 different weights; and for pipe tobacco and cigars, there are countless combinations of sizes and packaging.
- (b) A weight based tax makes record keeping very difficult -- in order to fulfill the record keeping requirements, one will have to keep track of countless different product weights (and in many cases, for products that do not even include the weight on the packaging (e.g., 1 cut for plug tobacco; 20 pouches for moist snuff pouch product like Skoal Bandits)).
- (c) A weight based tax creates confusion surrounding the application of tax rates to different brands, because within product categories, there are so many different weights among brands.
- (d) A weight based tax creates multiple and confusing price points within categories -- there will be as many as 6 different retail price points for moist snuff and 10 or more price points for loose leaf.
- (e) A weight based tax likely will stifle category growth and thus profitability as consumers forego retail store purchases in response to enormous price increases -- under various tax proposals, both value priced moist snuff (the growth segment of the moist snuff category) and loose leaf (the second largest segment of the smokeless category) will experience a substantial increase in price.

Thank you for the opportunity to express our views on this issue of major importance.