

**North Dakota Legislature  
House Finance and Taxation Committee Meeting  
Testimony of Monte Williams  
Regarding HB 1422**

February 9, 2021

Chairperson and Members of the Committee, thank you for the opportunity to speak today.

My name is Monte Williams, and I am offering testimony to the Committee today, on the behalf of Altria and its affiliates Philip Morris USA, John Middleton and U.S. Smokeless Tobacco Company regarding HB 1422 and the potential impact on North Dakota.

My comments and opinions are based on a 30-year career with the California State Board of Equalization. I have held the positions of Chief of Excise Taxes and Chief of Criminal Investigations during my tenure with the Board of Equalization. I have over 20 years of experience with tobacco tax administration and enforcement at the state level. I am a past chair of the Federation of Tax Administrators Tobacco Tax Section. Since leaving government 15 years ago, my practice has been almost exclusively dealing with tobacco issues.

In the interest of time I am going to limit my testimony to three areas:

- Revenue estimates on cigarette tax increases,
- Impact of this proposal on revenue and cross border issues
- Impact of this proposal on adult consumers

My comments will focus on the impact on cigarette excise tax increases. However, these comments also apply to Other Tobacco Products and Vapor Product tax increases.

Revenue Estimates

Revenue estimates on cigarette tax increases are difficult to make. The revenue is based on a declining market which will create funding shortfalls that will have to be paid for with other budget revenues or tax increases.

To illustrate how difficult it is to make cigarette revenue estimates, 85% of the last state revenue projections on cigarette tax increases missed their mark. Several states even collected lower revenues than before the increase. A material part of that shortage was due to cross border issues and consumer attitude.

Impact on Cross Border Issues

My second area of concern with this proposal is the issue of cross border trafficking of cigarettes. If this proposal is adopted, North Dakota's cigarette excise tax will be \$0.84 higher than Wyoming. This is a significant difference on a per-pack basis. However, when you look at a 10 pack carton or a 50 carton case, the money adds up quickly. In addition, this proposal raises the tax on MST from \$.60 per ounce to \$1.96 per ounce. That is a 227% increase.

Based on my experience as Chief of Criminal Investigations in California, this tax differential will cause adult smokers to seek out cheaper sources of cigarettes and change their attitude regarding paying taxes. This may begin with casual smuggling. That could be a neighbor going to Wyoming and offering to pick up some cigarettes for friends. However, there will be too much

money involved for it to stay casual for long. There could also be issues with any tribal sales as this tax differential will also be present on tribal lands.

For example, a 20' U-Haul type truck that goes to Wyoming and brings back a load of Wyoming tax paid cigarettes will have an excise tax advantage in North Dakota of nearly \$215,000. The trunk of a Ford Taurus can bring back cigarettes with an excise tax advantage of over \$4,000.<sup>1</sup>

In addition to this, the Mackinac Center for Public Policy completed a study on cigarette smuggling for each state. Using 2018 data North Dakota was rated at -20%. Meaning that approximately 20% of the consumption of cigarettes was going outside of North Dakota. South Dakota, with a tax rate of \$1.53 per pack, was rated at 13%. Meaning that approximately 13% of the consumption of cigarettes in South Dakota was from outside of the state.<sup>2</sup>

I saw no language in these bills to address this issue and I am fairly certain the Revenue Department is not currently equipped to handle this type of issue.

If this does occur, your revenue from this tax increase would be further impacted in a negative manner.

#### Impact on Adult Consumers and Retailers of Tobacco Products

These proposals to raise the excise tax on cigarettes to \$1.44 per pack is a 227% increase in the excise tax. Over the past 10 years, sales taxes on a pack of cigarettes has increased from \$0.21 to \$0.26. That is 23% increase.

This is significant and material increase for hard-working North Dakotans. The CDC estimates that 17% of North Dakota's population are smokers. Therefore, this entire tax increase will fall on this small percentage of the population. In addition, the majority of these smokers are in the lower income brackets. For example, 30.6% of smokers have incomes less than \$15,000 and only 14% of smokers in North Dakota earn more than \$50,000 per year.<sup>3</sup> Most of this increase will fall on those that can least afford it.

According to the National Association of Convenience Stores, tobacco is the top revenue generator, accounting for 38.8% of in-store sales nationwide.<sup>4</sup> Increasing the excise tax could hurt legitimate retailers when adult tobacco consumers shift purchases across state lines or to other outlets, such as the Internet. This would negatively affect North Dakota's more than 1,270 retailers.<sup>5</sup>

For the reasons I have outlined I believe that these proposed excise tax increases should not be adopted.

Thank you for your time and I will be happy to try to answer any questions.

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<sup>1</sup> Based on cargo sizes from <https://www.uhaul.com/Trucks> and <https://www.ford.com/cars/taurus/models/taurus-sho/> and the tax rates from Missouri Department of Revenue.

<sup>2</sup> Mackinac Center for Public Policy, Updated Research Quantifies Relationship Between Cigarette Taxes and Smuggling New York has highest smuggling rate; Michigan ranks 14<sup>th</sup> Monday, May 20, 2019

<sup>3</sup> Centers for Disease Control and Prevention, *Behavioral Risk Factor Surveillance System; Prevalence and Trends Data; Nationwide (States and DC) – 2019 Tobacco Use*, Centers for Disease Control and Prevention, at <https://www.cdc.gov/brfss/brfssprevalence/index.html>.

<sup>4</sup> NACS State of the Industry Report –2019, National Association of Convenience Stores, 33rd Edition, Table 9A.

<sup>5</sup> Retail locations based on internal PMUSA data and rounded to nearest 10.