

**MINUTES OF THE
SENATE COMMITTEE ON TAXATION**

**Seventy-fourth Session
April 3, 2007**

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 1:41 p.m. on Tuesday, April 3, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mike McGinness, Chair
Senator Randolph J. Townsend, Vice Chair
Senator Dean A. Rhoads
Senator Bob Coffin
Senator Michael A. Schneider
Senator Terry Care

COMMITTEE MEMBERS ABSENT:

Senator Mark E. Amodei (Excused)

GUEST LEGISLATORS PRESENT:

Senator Bob Beers, Clark County Senatorial District No. 6
Senator Maurice E. Washington, Washoe County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Tina Calilung, Deputy Fiscal Analyst
Russell J. Guindon, Senior Deputy Fiscal Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Jack Childress, Actuary, Division of Insurance, Department of Business and Industry
Tim Tetz, Executive Director, Office of Veterans' Services

Senate Committee on Taxation
April 3, 2007
Page 2

Martha Barnes, Administrator, Central Services and Records Division,
Department of Motor Vehicles
Dino DiCianno, Executive Director, Department of Taxation
Joseph Guild, III, United States Smokeless Tobacco Company
Monte Williams, United States Smokeless Tobacco Company
Barbara Smith Campbell, United States Smokeless Tobacco Company
Alfredo Alonso, Conwood
Stanley Arnold, Reynolds American Incorporated
Lawrence P. Matheis, Nevada State Medical Association
Jennifer Stoll-Hadayia, MPA, Public Health Program Manager, Washoe County
District Health Department

CHAIR MCGINNESS:

I will open the hearing on Senate Bill (S.B.) 528.

SENATE BILL 528: Provides for an incremental reduction in certain excise taxes payable by financial institutions and other employers that contribute to health savings accounts for their employees. (BDR 32-1179)

SENATOR MAURICE E. WASHINGTON (Washoe County Senatorial District No. 2):

This bill is a sequel to S.B. No. 240 of the 73rd Legislative Session dealing with health savings accounts (HSA). This bill provides for an incremental reduction in payroll taxes paid by employers who contribute to HSAs on behalf of their employees. It is another attempt to answer the ongoing issue of people who do not have insurance. Beginning in 2004, there were about 438,000 individuals who participated in HSAs, which is about 240,000 businesses based on the Internal Revenue Service data. Currently, there are 3.2 million participating in HSAs from November 2004 to December 2005. That is a 31-percent increase and a 33-percent increase for small businesses currently participating in these programs, which is about \$1 billion in investment in HSAs. This information was provided by the American health insurance providers. We are anticipating about 14 million businesses to be covered by HSAs in 2010, approximately 40 million to 45 million people.

This is a meritorious piece of legislation that will help to solve the problem of uninsured people by giving a tax break to employers who wish to offer HSAs to their employees.

Senate Committee on Taxation
April 3, 2007
Page 3

JACK CHILDRESS (Actuary, Division of Insurance, Department of Business and Industry):

We are neutral on this bill. I would like to point out that Assembly Bill (A.B.) 161 repeals *Nevada Revised Statute* (NRS) 689A.735 because medical savings accounts were changed to HSAs in the Deficit Reduction Act.

ASSEMBLY BILL 161: Revises various provisions governing insurance. (BDR 57-586)

SENATOR COFFIN:

Do we lose any premium tax with S.B. 528?

MR. CHILDRESS:

I have not seen the fiscal note.

SENATOR COFFIN:

Would we collect some premium tax on HSAs?

MR. CHILDRESS:

I believe we would, but I would have to double-check on that.

CHAIR MCGINNESS:

I will close the hearing on S.B. 528 and open the hearing on S.B. 372.

SENATE BILL 372: Provides for the exemption of fully disabled veterans from the payment of certain fees and taxes required for the registration of certain vehicles. (BDR 43-745)

SENATOR BOB BEERS (Clark County Senatorial District No. 6):

This legislation proposes to exempt fully-disabled veterans from car taxes imposed by the Department of Motor Vehicles. As you can see from the fiscal note, it is but a tiny fraction of the \$7 million we are planning to spend over the next biennium, and it is a most worthy cause. I ask that you earmark this bill when you put it back in your pile of proposed tax changes.

TIM TETZ (Executive Director, Office of Veterans' Services):

This bill modifies the taxation laws to exempt 100-percent service-connected disabled veterans from license plate and other automobile taxes. Currently, 8 percent of veterans registered with the United States Department of Veterans

Affairs (VA) are deemed to be 100-percent service-connected disabled, which is about 1,700 veterans. To qualify for this category, the veteran must have been injured in service to his or her country, and that injury must debilitate them either following their discharge or later in life to such a degree that they are deemed 100-percent disabled. To get this designation, the veteran must apply to the VA and go through a lengthy process to receive benefits.

This bill stands on its own merits. Anything we can do to help those most seriously disabled through service to their country is necessary. Considering that, the fiscal impact of this bill is minimal.

SENATOR COFFIN:

We have a definition for "totally disabled" in the workers' compensation statutes. Is this the first time we have created a definition for "fully disabled"?

MR. TETZ:

No. We have a definition of 100-percent service-connected disability in the disabled license plate and property tax statutes.

SENATOR COFFIN:

What is the difference between "totally disabled" and "fully disabled"? A person with a 100-percent disability can still be mobile.

MR. TETZ:

Yes. The term "100-percent disabled" does not necessarily mean the person is nonambulatory. In fact, some of the veterans who serve as my bodyguards to these hearings are 100-percent disabled. It basically means that it costs them a severe amount of pain to get through life and complete activities of daily living.

SENATOR COFFIN:

Is it correct to say that this designation is not easy to get?

MR. TETZ:

That is correct. Of the 20,000 veterans currently having some sort of service-connected disability, only 8 percent are considered 100-percent service-connected disabled.

CHAIR MCGINNESS:

Do you expect the number to increase with the increase in benefits?

MR. TETZ:

I do not think so. The numbers in the fiscal note are actually on the high side. This same 1,700 people are qualified to receive "Disabled Veteran" license plates, and there are only 1,200 plates out there. Even if we were able to increase the applications for benefits and get greater benefits, I would not expect it to go above 10 percent.

SENATOR CARE:

The bill seems to refer to fully-disabled veterans only. I do not see a reference to the disability being service connected, though this is clearly your intent.

MR. TETZ:

It is included in the definition of "fully disabled veteran" in section 1, subsection 2.

MARTHA BARNES (Administrator, Central Services and Records Division, Department of Motor Vehicles):

Following our contact with the VA Regional Office in Reno, we know there are approximately 1,500 to 2,000 veterans in Nevada who are 100-percent disabled. Utilizing this information, the Department of Motor Vehicles projects a loss of revenue from this bill. The fiscal note includes the cost to draft regulations, a onetime programming cost, and a total loss of revenue of \$471,738 in fiscal year (FY) 2007-2008 and \$445,365 in FY 2008-2009. This bill indicates an implementation date of July 1 for sections 1 through 6. We would ask the Committee to consider changing the effective date to January 2008 to give the Department time to complete programming changes.

SENATOR COFFIN:

I would not be surprised if the number doubles from the current action in Iraq because of the stress-related diseases that will occur in the future. We have a lot more wounded people now than we have ever had before. Can we segment this so it does not cost the schools money, while maintaining exemptions for certain parts of the tax? We have some essential services that are part of the tax.

CHAIR MCGINNESS:

We might be able to do it, but it would be a programming nightmare.

Senate Committee on Taxation
April 3, 2007
Page 6

DINO DICIANNO (Executive Director, Department of Taxation):
Are you referring to the sales tax or the government services fee?

SENATOR COFFIN:

We are in a year where we are having a hard time finding money and we want to help, but we have a tax that is not a simple tax. It is easy to say "abate the sales tax," but in fact, that tax goes in five different directions.

MR. DICIANNO:

It is my understanding that the bill would go to a vote of the people. The reason for that is this state has agreed to become part of the Streamlined Sales and Use Tax Agreement. This means we can no longer have split rates. If you are concerned about the Local School Support Tax portion of the sales tax, I do not know how you could get around that. If you are just talking about exempting the 2-percent portion, that would be just as problematic because of the streamlining bill.

CHAIR MCGINNESS:

I will close the hearing on S.B. 372 and open the hearing on S.B. 506.

SENATE BILL 506: Revises provisions governing taxation of moist snuff.
(BDR 32-256)

JOSEPH GUILD, III (United States Smokeless Tobacco Company):

Section 1 of the bill defines "moist snuff" to separate it from other tobacco products in NRS 370. This will ensure that the tax we are seeking to modify would apply only to moist snuff tobacco.

Section 2 changes the taxation method. It would create an excise tax in the amount of 75 cents an ounce for moist snuff only. Currently, this product, like all the other tobacco product (OTP) categories, is taxed at 30 percent of the wholesale price. With this bill, on a product that is 1.2 ounces, the tax would be 90 cents instead of 30 percent of the wholesale price of the product. One of our products sells now for \$5.68 with a wholesale price in the neighborhood of \$2.89, so the tax is now \$0.87. Another product by another manufacturer retails for 49 cents for the same size can, and the tax is currently about 6 cents a can. There are three reasons why this is a good idea. First, the current tax method creates an uneven playing field in the marketplace so the free market does not operate effectively. These products are also subject to the sales tax in

the county in which they are sold, which means there are two taxes on the product. Secondly, it is bad tax policy to put an ad valorem tax on this product. Currently, Nevada taxes alcohol, gasoline and cigarettes on a unit basis, and that is good excise tax policy. Taxing this product twice on an ad valorem basis is bad tax policy. It creates a volatile revenue picture with this kind of taxation. Finally, it removes the specter of some future tax litigation from Nevada.

MONTE WILLIAMS (United States Smokeless Tobacco Company):

I have an exhibit ([Exhibit C](#)) which consists of a slide show illustrating my testimony.

Excise taxes are historically consumption taxes. They are established for a specific purpose based on the social impact of the product. They are almost always applied on a unit basis. All other excise taxes in Nevada are applied on a unit basis, including alcohol, gasoline and cigarettes. Moist snuff is the only product in this group taxed at a percentage of the price rather than by unit. The reason for that is the category of OTP is made up of moist snuff, which accounts for a little over 60 percent of the revenue, along with cigars, pipe tobacco, roll-your-own, plug, chew and so on. With those other products, it is hard to define a specific unit. When the excise taxes were established in Nevada in 1984, there was only one type of moist snuff being sold at one price, and that was the premium product. If you applied the percentage to that, you basically got what an excise tax should be: a unit-based tax. It was the same amount per can.

Two weeks ago, Iowa became the tenth state in the country to move from an ad valorem system to a weight-based system of taxing these products. The governor of Pennsylvania, which does not have an OTP tax at this time, is proposing in his current budget to put a tax on OTPs, and he is proposing going to a weight-based system on moist snuff. Since 2001, seven states have changed or started taxing these products, and they have all gone to a weight-based system. There is a reason for this. Since 2001, the marketplace has changed significantly. Before 2001, there was really only one pricing point; now there are seven different pricing points, and the mainstream goes all the way from \$3.01 to \$0.81 wholesale.

Nevada is now receiving different amounts of tax on the different brands of snuff in the marketplace. This is an unintended loophole in the statute. It gives a subsidy to cheaper tobacco products. Tobacco products that have a lower

wholesale cost also pay significantly less excise tax. That excise tax alone could be a difference of up to 80 cents. This puts Nevada into the marketplace and pricing structure of these products, which is not a good excise tax policy.

It also allows the company to gain the system. For example, in 1993, Marlboro lowered the price of its product 20 percent to gain market share. That had no impact on excise taxes in Nevada because cigarettes pay a per-stick tax. In 2004, Timber Wolf Snuff and Chew lowered its wholesale price 30 percent, and Nevada received 30 percent less in taxes from this brand. That is not good excise tax policy, and it is not what Nevada intended when it implemented this tax.

I would like to talk about the "automatic escalator." Taxes that are tied to the price of a product have been held out for years to be the tax that keeps on giving. If prices go up, the taxes go up. As you can see on page 6 of [Exhibit C](#), this was pretty much the case for moist snuff until 2004. However, more and more consumers changed to the cheaper products. Beginning in 2005, Nevada is now receiving less per can for every can sold in Nevada. This will continue as long as this ad valorem system is in place and cheaper products are subsidized. The cheaper products have gone from 5-percent market share in Nevada in 2001 to 16-percent market share in 2006. From what we have seen in other states, more and more people buy the cheaper products and state revenues are impacted accordingly. In Nevada, there has been a 9-percent increase in the number of cans sold in 2004; but in that time, the average tax per can has gone down. This is now a down escalator. We believe this is costing Nevada approximately \$600,000 a year.

It will be argued that "the little guy" will not have cheap snuff available to him. If you pass this bill, there will still be a price difference at retail of over \$3 between these products. Cheaper products are not going away, but the state should not be dependent on revenue based on the price of the product and how the companies want to structure their prices. It is easy to anticipate how many cans will be sold, but it is not possible to anticipate how much they will sell for and what marketing strategies will be used.

You will hear that states taxing snuff on a weight basis have lost money. No weight-based state has ever lost money over what it got in an ad valorem system. You will also hear that it is a market-share issue with the United States Smokeless Tobacco Company (UST). The fact is, we want a level playing field

in Nevada. We will compete with anyone head-to-head based on the price and quality of our product, but we do not want the excise tax policy helping to determine what retail prices should be.

The bottom line is that Nevada's tax system is subsidizing these products and losing money at the same time. It is an unfair tax system that no longer adheres to the definition of a good excise tax: a consumption-based, unit-based tax. Let the marketplace determine the winners and losers.

BARBARA SMITH CAMPBELL (United States Smokeless Tobacco Company):

My purpose in coming forward today is to talk about the fiscal instability of the OTP tax. I am concerned that the structure of this tax is much more sensitive to downward trends than anyone is aware. From my experience with the Nevada Tax Commission, I would like to tell you why there is such volatility in OTP collection.

I have a handout titled "Nevada Share Trends" ([Exhibit D](#)) that illustrates some of the history. The OTP tax originated in Nevada in 1983, at which time there was only one smokeless tobacco product in the market. That is shown on these charts as first tier. Over the last eight to ten years, we have seen two new pricing tiers come into the market, and they are shown on these graphs as second- and third-tier pricing. With the first-tier pricing, Nevada gets 90 cents per can. In contrast, third-tier products generate between 24 cents and 36 cents per can. As second- and third-tier product sales have grown in volume, we will see tax collection per unit decline, as in New Mexico and Arkansas.

I have an abstract of an advisory opinion from the Department of Taxation that was written at the request of UST ([Exhibit E](#)), who had asked the Department to issue an opinion as to where the tax should occur. I also have a handout illustrating the revenue problem ([Exhibit F](#)). Currently, the tax is placed in the last link in the transactions between distributors, when the tax in our example would be 90 cents. In [Exhibit E](#), the Department opined that the correct imposition of the tax, under the circumstances described in the request for advisory, is in the first transaction, which would make the tax in our example 45 cents. If and when the distributors enter into negotiations with the Department to proceed with the new application of this tax, it is my strong opinion that the revenue collections from OTP taxes will decline by approximately 65 percent in the first year of the application. That is approximately \$3 million in the first year.

In addition, if the opinion letter moves forward, there is always the right to run the three-year statute of limitations for any claims on refunds. In the state of Washington, after ten years of litigation and in settlement of the case, Washington now places the tax in the first transaction in the string of transactions. Texas and Florida have followed suit. The governor in Washington is currently proposing legislation to change from the ad valorem tax to a weight-based excise tax to restrain any further declines in OTP collection.

The OTP tax is one of the most unstable and volatile taxes earmarked 100 percent for the General Fund. If the Committee does nothing to change the methodology, the state will butt up against the implementation of the advisory letter, and we will see a 65-percent decline in the first year's collection in OTP.

SENATOR CARE:

Who was the requestor for [Exhibit E](#)?

MS. SMITH CAMPBELL:

The advisory letter was requested by UST.

SENATOR CARE:

Are you waiving confidentiality on this opinion?

MS. SMITH CAMPBELL:

Yes.

SENATOR CARE:

How did you come up with 75 cents an ounce?

MR. WILLIAMS:

It is what we call a premium equivalent. That means it is the same per-ounce rate that the premium product pays. We are asking that everybody be brought up to this level. We are not asking for a tax reduction on any of our products.

SENATOR CARE:

Is the figure independent of what other jurisdictions do?

MR. WILLIAMS:

Yes.

SENATOR CARE:

If this bill became law today, how would this affect retail prices of these products?

MR. GUILD:

The price of our premium product would probably stay the same. I could not say what would happen to the price of the cheaper products. With a tax of 75 cents per ounce, you will not see a 1.2-ounce can being sold for 49 cents anymore, unless the company wants to sell it at a significant loss.

SENATOR CARE:

How many different competitors are there in this field compared to ten years ago, and what are their market shares in Nevada?

MR. GUILD:

I will get you more accurate figures, but I believe there are five manufacturers selling this product in Nevada today.

MR. WILLIAMS:

Our market share has gone down 5 percent or 6 percent from 2001 to today in Tier 1. I will get you the numbers for the other tiers, but there has not been a substantial decrease in our total market share.

SENATOR CARE:

You referred to litigation. Is there any current litigation on this?

MR. GUILD:

My reference was to the potential for distributors seeking refunds from the Department if the opinion letter were to be implemented. There is no litigation at the moment that I know of.

MS. SMITH CAMPBELL:

There is no litigation in Nevada at this time. There was litigation in the state of Washington for ten years.

SENATOR CARE:

The price difference between these products is still going to be substantial. Do you think that will change?

MR. WILLIAMS:

I do not know. There may be some minor market shifts. We do not believe it is good excise-tax policy to have your tax base be at the control of others. The Tier 3 products will continue to grow every year.

SENATOR CARE:

Have you done research to find out who your consumers are? I received a letter suggesting one of the main reasons for making the tax change in New Jersey was to discourage youths from buying snuff by making the cheap snuff a little more expensive. However, they discovered that most youths who use snuff buy the premium brands.

MR. WILLIAMS:

I am not an expert in this. The studies I have read show the price of the product dictates the consumption factor. Youth consumption of these products has decreased over the years. We make a concerted effort only to sell to adults and do not do any marketing strategies. We signed a Smokeless Tobacco Master Settlement Agreement (MSA), which limits what we can do to advertise. After we read about the New Jersey experience, we checked and found neither revenue nor the volume of cans sold went down. Regarding the issue of youth access, since the study was done in July 2006, it is not known whether it has had a significant impact on that area. However, price dictates consumption, according to the studies.

MR. GUILD:

The United States Smokeless Tobacco Company is the only manufacturer of moist smokeless tobacco that is a signatory to the MSA. I have been representing this company for 15 years, and it is a firm company policy to do everything we can to keep youths from having access to this product. In the studies Mr. Williams referred to, there is an exact correlation between price and youth access to the product.

SENATOR CARE:

Not all tobacco manufacturers signed the MSA, and we had a bill last session that nonetheless compels them to make deposits with Nevada. Does that apply to other smokeless manufacturers that are not signatories?

MR. GUILD:

Yes, but none of the other requirements of the MSA apply, such as restrictions on promotion and advertising.

ALFREDO ALONSO (Conwood):

I am here today representing Conwood, a subsidiary of Reynolds American Incorporated, to oppose this bill. I have a handout from the American Cancer Society and other organizations regarding weight-based taxation on smokeless tobacco ([Exhibit G](#)). The argument has been made that this bill would level an unfair playing field. It is not an unfair playing field; it is simply competition. People are allowed to price their products differently. This bill is not about Nevada. Similar legislation has been introduced in most of the states in the country. This is about market share only. You have heard that ad valorem tax is bad policy, but the real question is whether it is bad for the consumer or for UST. Ad valorem taxes are fair. When prices rise, so do taxes. A weight-based tax is a punitive tax that takes into account none of the market factors. Of course it is volatile, and we do not expect anything less. You heard there is currently no litigation pending, and this is because the only one the policy affects negatively is UST.

STANLEY ARNOLD (Reynolds American Incorporated):

For the record, there are four companies involved in the manufacture of moist snuff in the United States. I am involved in this matter mainly from a tax policy standpoint. I have 14 years' experience as a Commissioner of the Department of Revenue Administration, New Hampshire, and 30 years federal and state tax experience. Since I left state government, I have continued to work as a tax policy advisor, and I have worked with a number of states on tax issues.

This bill is a solution looking for a problem. We have been hearing about the 49-cent can. That 49 cents is a loss leader. The tax has to be paid on the manufacturer's wholesale price, which for that particular can is \$1.20, so the tax is \$0.36. I have a flyer regarding Skoal, a UST product ([Exhibit H](#)), that shows it being sold for 99 cents as a loss leader. The 49-cent can is a red herring.

Regarding [Exhibit E](#), as a tax commissioner, I received a lot of requests for advisory letters. The opinion depends on the facts given, and in this case, we do not know the facts that were given. Nothing in this bill addresses the

problem raised in the letter, if it is a problem. If you do decide you need to address it, there are ways to fix it without changing your tax system.

As Legislators, the two questions you ask yourselves are what problem are we trying to solve, and how does it help the citizens of Nevada. I would answer that there is no problem to be solved here. You have a good system that is operating. Currently, UST has 82 percent of the snuff market in Nevada and 94 percent of the premium. Nevada has one of the higher rates of premium usage I have seen; 85 percent of the market here is premium. It is clear that the ad valorem tax has not damaged your market or UST's market. This bill might raise revenue in the initial years, but it will not raise revenue in the later years. If you have two sources of increase in revenue, volume and price, and you eliminate price, which is the largest portion of the revenue, you will cap your revenue as a result of the change.

The U.S. Supreme Court has said, "True competition leads to better products and lower prices." Given that, why would Nevada want to artificially raise the price of products that have shown they can compete? If you took the tax away completely, you would leave the competitors in the same relative position they are now. But UST does not want the tax to go away; they want you to change it so it falls more heavily on its competitors. That only helps the shareholders of UST.

You have the power to tax us any way you wish, but you should do it for the right reason. This bill would impose an effective tax rate of 123 percent on the third-tier products on Nevada citizens of moderate needs. I do not think that is your intent. Mr. Williams indicated that when competition first started, there was no problem because the prices were the same; is he saying there is a problem now because there is competition? That does not sound like a problem under the American system to me. Also, they have been talking as if an excise tax is something special. An excise tax is a legacy tax, a nineteenth-century tax. The federal government used to raise 90 percent of its revenues with excise taxes, but they did away with them because they are bad policy and discourage competition. The Tax Foundation did a study a couple of years ago where they encouraged states to do away with all excise taxes because of their anticompetitive nature.

I have not seen the fiscal note to this bill, but I would check to make sure it is compared to what would happen if you change nothing. I would encourage you

to say no to this bill. If you have a revenue issue, you do not need to change your system to deal with it.

SENATOR CARE:

I have been given an article dated February 1, 2007, titled "Convenience Store Decisions," and it talks about the recent entry into the market of Philip Morris U.S.A. and R.J. Reynolds Tobacco Company. Is R.J. Reynolds the same as Reynolds American?

MR. ARNOLD:

Yes.

SENATOR CARE:

Does Reynolds American have a first-tier product?

MR. ARNOLD:

Yes. Their wholly-owned subsidiary, Conwood, competes in all three tiers.

SENATOR CARE:

Presumably, UST can do the same thing.

MR. ARNOLD:

Yes, they also have products in all three tiers.

SENATOR CARE:

Do you know if that is true of Philip Morris as well?

MR. ARNOLD:

Philip Morris has not officially entered into the moist snuff market. I believe they are test-marketing a product right now. The other two companies in the market at this point are Swedish Match and Swisher International, Incorporated, in addition to Conwood Sales Company, LLC, and UST.

SENATOR CARE:

In the 72nd Legislative Session, we looked at taxes on cigarettes, beer and wine. There was no suggestion that we should tax a certain percentage of the wholesale price; we just presumed that this was the way you do things, and we did not look at this. There was no suggestion that it was anticompetitive that one price of wine had a lower tax than another one based on whether it was a

high-end wine or a low-end wine. Tell me how in that context this is anticompetitive, while at the same time the existing tax system for the other products is not anticompetitive.

MR. ARNOLD:

The issue really is that excise taxes are the legacy. If you were to design that system today, you probably would not design them that way. At the same time, any time you make a tax change, you weigh what is the best from a theory standpoint with what is best from an administrative standpoint. The cost of trying to change a legacy system far outweighs any benefit you might have from a competitive standpoint. In addition, products like alcohol and tobacco continue to have an excise tax because of their nature, either to balance the health care costs in the case of tobacco or to control the product in the case of alcohol. But this does not mean they cannot be changed. In New Hampshire, they have state liquor stores that compete with Massachusetts liquor stores, and what profit they make goes to the state's general fund. Thus, we do not have an excise tax on liquor but control it by other means.

MR. ALONSO:

The issue in the 72nd Legislative Session was not what type of system would be used, it was how much the increase would be. You would not find anyone in the liquor industry who agrees with an excise tax. It is not about which tax is best. This is a legacy tax; it would probably cost much more to change at this point because of the system in place than it would to simply raise the tax. The main issue of this bill is not bringing in more revenue; it is about raising the tax for some parts of the industry and not others. This is no different than if you were talking about the auto industry. If someone suggested a Mercedes and a Ford should pay the same tax because they weigh the same, you would laugh.

CHAIR MCGINNESS:

Mr. DiCianno, can you shed some light on this?

MR. DICIANNO:

I think first of all I need to be very clear about this. The Department neither supports or opposes the bill. The bill is a policy question that this body must determine in and of itself. All I am is an administrator, and whatever this body decides and the Governor signs into law is what I do, pure and simple. Now there were some statements made earlier that I think need to be clarified. First of all,

it was presented to you—and I think you were provided with an abstract of an advisory opinion, and there was a statement made as to the date of that advisory opinion. That advisory opinion was requested of the Department on July 16, 2003. My predecessor signed that opinion on January 23, 2004. I can't answer for my predecessor, but what I can tell you is this—and as the gentleman from New Hampshire indicated earlier, I couldn't have said it any better. The Department receives hundreds of [requests for] advisory opinions on an annual basis. We research those advisory opinions as judiciously as we possibly can. We rely upon the facts that are stated within that request. We do a legal analysis, and we issue an opinion. And that opinion is specific; it is confidential to the requestor. What I was asked to do was to put together an abstract based upon the request from the original requestor of the advisory opinion. I did so. That advisory opinion only speaks to the analysis that was made at the time of the request, and the facts that were contained in that request. As such, we opined based upon the facts that were stated in that request and based upon the legal analysis that we knew at the time, that it was at the first point of sale, and we opined to that.

Now with respect to the Department taking specific actions associated with that opinion, in most cases when someone requests an advisory opinion, they are hypotheticals. As a hypothetical, we opined to that. The Department has not—and I'll be very clear here for the record—the Department is not in a position to take action with respect to the advisory opinion at this point in time.

SENATOR CARE:

Could you address the fiscal impact of this bill?

MR. DICIANNO:

If we make this change, you would see a General Fund gain of a little over \$400,000 in the first fiscal year, an additional \$460,000 during the second part of the fiscal year and then for the biennium, approximately \$900,000. Statements were made as to what would happen to the revenue stream in the future, but I do not know what will happen in the future.

SENATOR COFFIN:

Are you saying we will gain money if this bill passes?

MR. DiCIANNO:

Yes, given the language contained in the bill and the rate applied on a weight-based system.

SENATOR COFFIN:

What will this do to your budget if we make this change?

MR. DiCIANNO:

This is covered in the fiscal note ([Exhibit I](#)). There will be minimal notification costs. We are now in the process of finalizing through Phase 3, which will go live at the end of June, the excise taxes within our new computer system. If this body chooses to go to a weight-based system, we would have to change our system, and it would be a one-time cost of approximately \$55,000.

SENATOR COFFIN:

I wonder if this would be considered an increase in taxes. It sounds as if half the industry is against this bill, and the Governor has said if everyone in an industry wants to raise taxes, he will not sign it.

What if the tax was raised to \$1 per ounce? How much would we gain in revenue?

MR. DiCIANNO:

I do not have a calculator with me, and I would rather not guess.

LAWRENCE P. MATHEIS (Nevada State Medical Association):

I have a statement from Beverly Daly Dix, President, Nevada Tobacco Prevention Coalition ([Exhibit J](#)) in opposition to this bill. The Nevada State Medical Association, as a part of the Nevada Tobacco Prevention Coalition, opposes this bill because we do not want to see the continued growth of the moist snuff market, which is the only part of the tobacco industry on a significant rise right now. The public health community has finally had some successes in making more states smoke-free. We are beginning to turn the tide in terms of the public really understanding the personal and family health consequences of tobacco use. Into this has stepped the moist snuff market, and it is growing at significant rates, as you can see on page 2 of [Exhibit J](#).

Why do we care about this? Because we are opposed to anything that makes moist snuff more price-attractive, especially to young male athletes. It is more addictive than cigarettes because it has a much higher nicotine count per dose than cigarettes, comparing one cigarette to one pinch of snuff. The problem with any kind of adjustment in the tax that will allow for price decreases is that the tobacco industry has a history of spiking nicotine levels in cigarettes to ensure smokers will be more addicted. And as always with the tobacco industry, whatever their assurances, they have to addict younger people in order to maintain and increase their market share.

There is no safe tobacco. Moist snuff has all the cancer-causing properties of the other forms of tobacco; it causes increased risk of heart disease and stroke, and it causes 50 times greater chance of oral cancer. Now is not the time to be limiting tax liability for smokeless tobacco, which is the most profitable sector of the tobacco industry.

SENATOR CARE:

Would raising the cost of the cheaper brands of snuff not discourage some users, especially children?

MR. MATHEIS:

Not necessarily. Statistics show that 50 percent of the youths who use moist snuff buy the premium products, which are actually not that expensive at this point. But you might want to consider a taxing policy that would discourage the price-sensitive youth market; studies show that every 10-percent increase in the price of any tobacco product causes a 6-percent drop in adolescent use.

JENNIFER STOLL-HADAYIA, MPA (Public Health Program Manager, Washoe County District Health Department):

I have written testimony ([Exhibit K](#)), as well as statements on this issue from the Campaign for Tobacco-Free Kids ([Exhibit L](#)) and the American Lung Association ([Exhibit M](#)). In response to Senator Care's questions, a study was released in January 2007 by a retail consulting firm measuring purchases of smokeless tobacco. They concluded: "Moist smokeless tobacco volume is increasing faster in states employing a weight-based excise tax versus states that use an ad valorem tax." The weight-based tax structure is good for the smokeless tobacco business, but it is bad for public health. We oppose this bill because of its impact on public health.

Senate Committee on Taxation
April 3, 2007
Page 20

SENATOR COFFIN:

Has anyone tried basing the tax on level of nicotine? We tax liquor based on the alcohol content.

MR. MATHEIS:

No, though it has been looked at over the years. The problem is in testing the nicotine levels, since the tobacco industry has a history of manipulating nicotine levels.

CHAIR MCGINNESS:

I will close the hearing on S.B. 506. Is there any further business to come before the Committee today? Hearing none, I will adjourn the hearing at 3:28 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Mike McGinness, Chair

DATE: _____