

Senate Ways and Means Committee

Sonja Caldwell 271-2117

SB 207-FN-A, relative to the tax on chewing tobacco.

Hearing Date: February 15, 2017

Members of the Committee Present: Senators Sanborn, Giuda, Daniels, D'Allesandro and Feltes

Members of the Committee Absent : None

Bill Analysis: This bill changes the tax on chewing tobacco.

Sponsors:

Sen. Sanborn

Sen. Bradley

Sen. Gray

Sen. Reagan

Sen. Soucy

Sen. Ward

Rep. Pearl

Rep. Fromuth

Who supports the bill: Monte Williams (Altria), Rick Newman (McLane, Inc.), Curtis Barry (NH Retail Merchants Assoc.)

Who opposes the bill: Mike Rollo (American Cancer Society), Rob Johnson (Reynolds American), Mary Elizabeth Barwick (Reynolds American Co.)

Who is neutral on the bill: Carollynn Ward (DRA)

Summary of testimony presented in support:

Sen. Sanborn stated that he has an amendment that makes a technical correction to the bill as introduced based on definitions. The bill does not change availability or distribution; rather it is just looking to raise the question of how we tax certain tobacco products.

23 states tax moist snuff based on weight. The other states base it on a percentage of the wholesale price. This bill would simplify our tax code if it was implemented in NH. We currently have 117 individual SKU numbers. Our wholesalers perform all the calculations and send money back to the state, similarly to the meals and rooms tax. If we convert to a process based on the weight of the product, clearly it would be simpler.

We are doing this with many other products we tax today such as gasoline, which is taxed on a volume basis. This bill looks to provide that same level of consistency.

Two of NH's bordering states tax tobacco products based on weight. If the price of tobacco rises, NH could find itself in an uncompetitive situation. This will be simpler for the business community and the DRA.

There are criticisms of the bill and we should address them but he noted that companies can sell whatever they want.

There will be no change in revenue for NH and no cost to the state to make this conversion.

Monte Williams – Altria – supports the bill.

An excise tax is normally to deal with a perceived social impact or to serve as a deterrent effect and that's why it's done on a unit basis. Taxation is the same on inexpensive and expensive cigarettes. There is different taxation on OTP but the products shouldn't be taxed differently. When NH first put a tax on OTP the category was very diverse. Moist smokeless is the largest percentage of OTP at 70%. Beginning in 2001 market changed significantly with the introduction of discount products. In 2010, 36% of the market was discount product; now its 60%. The tax can amount to a 75 cent difference on the retail level, which makes discount product seem more desirable than premium product. He cited one price reduction by a company that cost NH \$600,000. His company sells premium and discount products. Companies that sell discount products will see the taxes on their products go up under this bill while the companies that sell the premium products will see taxes go down. Revenue will become more stable. Market volume is growing. It's the only segment of the tobacco market that is growing.

Rick Newman – McLane Incorporated.

Altria is a client of his but he's not speaking for them. McLane is a nationwide distributor of products sold in convenient stores, including tobacco. He submitted letters from various entities. From the perspective of distributors this bill would be very beneficial. McLane is based in Contoocook, NH and has 330 employees. They distribute to over 200 retailers in NH. They collected over \$1 million in tax on smokeless tobacco in NH. McLane handles over 100 different SKU's of smokeless tobacco. Obvious benefit to moving to weight based would be in the administration of collection of the tax. This would solve an accounting nightmare. When products go out of date or are damaged, they can apply to the state for a refund but they have to go back to the point of purchase to determine the price at that time. That process would be less consuming if we had a weight based tax. 8 or 9 years ago, wholesalers were compensated by the state for collection of the tax. That was taken away in the budget process. This legislation gives back a little to the company that lost revenue.

Sen. Giuda asked how often refunds happen.

Mr. Newman said it's regularly and he can get more information.

Summary of testimony presented in opposition:

Mike Rollo – American Cancer Society – opposed.

Mr. Rollo came forward to answer Sen. Giuda's earlier question. \$125,000 a year in state general funds goes toward the tobacco control program.

Rob Johnson- Reynolds American – opposed.

If a company gets a tax break over another company, someone has to pick up the slack and it will be either the state or the competitors of that company. That's what this bill will do. It is one company who is advocating this change, not only in NH but in other states. Oklahoma didn't do this because they didn't think it would benefit their state. If a company wants to be competitive in the market place, they choose what they sell premium products for. If they want to be closer to their competitors

they can lower their prices. They shouldn't come to the legislature for help in being more competitive. Under the current ad valorem tax system, you will receive more revenue based on trends year after year. If you switch to weight based taxation, you'll have to keep increasing the tax to generate more revenue. If NH had switched to weight based back in 2012, it would have received \$2.7 million less in revenue.

Sen. Giuda asked if he had any evidence from other states that have switched in regards to the impact on their revenue stream.

-He said he can provide that.

Neutral Information Presented:

Carolynn Ward and Devin Rodrique – DRA

No position from DRA on the bill.

Other tobacco products (OTP) are currently taxed at 65.03% of wholesale price. The bill would change the tax on chewing tobacco to \$1.55 per ounce.

OTP consists of non-premium cigars and a lot of other items such as loose tobacco, snuff, etc.

Currently, wholesalers report the wholesale price of all OTP sold in NH. Chewing tobacco is comingled in that data. Wholesalers do not report the weight of product sold in NH to DRA so they can't confirm or deny any suggested fiscal impact of the bill. It could be revenue neutral but they have no way of knowing. Revenue is sensitive to the price of the product itself and the choices consumers make in terms of expensive vs. inexpensive product. They have seen OTP prices increasing. They believe this change will benefit premium product. Under a weight based system, NH would not see increased revenue. DRA can administer the bill without any additional cost as it is simple to change forms. They are concerned about the effective date in the bill; it's too soon. They need until October 1st to change the forms and provide taxpayer education. Their other concern was the working definition of chewing tobacco.

Sen. Giuda asked if there are any anti-smoking programs funded by state revenues.

They didn't know the answer to that.

Sen. Giuda asked if the use of the products is continuing to increase.

Ms. Ward said the price has increased, not the use.

Sen. Daniels noted that the amendment Sen. Sanborn handed out has an effective date of January 1st.

Ms. Ward said that works for them.

Sen. D'Allesandro asked what has been happening to the tobacco tax and the movement from the sale of cigarettes to other OTP.

Ms. Ward said they have seen a gradual decline in the sale of cigarette stamps and a slight increase in sale of OTP and the revenue attributable to OTP.

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Date Hearing Report completed: February 17, 2017