SB 38

Department of Taxation

Position Summary

Senate Committee on Ways & Means/March 2, 2009

Bill Number	Bill Title "Relating to..."	Position	Comments	Revenue Impact	Methodology
SB 972 SD 1	TAX ADMINISTRATION	Strong concerns; prefer original version	*The Department strongly prefers the enforcement efforts set forth in the original measure because they are effective and comprehensive to target the Cash Economy. * Tax clearances as provided in this measure will be both time consuming and costly for the Department and taxpayers. The Department would need additional resources to accomplish this measure beyond what the original measure provided.	Potentially substantial, assuming sufficient resources.	Pending

SB 38	TAX ON TOBACCO PRODUCTS OTHER THAN CIGARETTES	No position	No technical comments.	An estimated $1.75 million per year could be collected for the Community Health Center Special Fund.	At the current tax rate of 40% on wholesale price of non-cigarette tobaccos, the tax collections for other tobacco products amounted to about $3.5 million in 2008. Assuming the same business activity, the new 60% tax on the wholesale price of non-cigarette tobaccos will increase this amount to $5.25 million per year. One third of this collection is about $1.75 million.
SB 194 SD 1	TAXATION	Support	No technical comments.	Potential revenue from assessment of the preparer penalties. Likely nominal.	None.

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TO: Chair Donna Mercado Kim and Members of the Committee on Ways and Means

FROM: LorrieAnn Santos

RE: **SB 38, S.D. 1** - Relating to Tax on Tobacco Products Other Than Cigarettes
Hearing Date: Monday, March 2,2009 at 9:30 a.m.

My name is LorrieAnn Santos. I am co-project director and program manager for `Imi Hale Native Hawaiian Cancer Network, a program of Papa Ola Lōkahi, a community-based, non-profit consortium of public institutions and private agencies committed to improving the health status of Native Hawaiians.

Please support SB 38, S.D. 1 relating to tax on tobacco products other than cigarettes, which is long over due.

SB 38, S.D. 1 should be passed for the reasons elucidated in the attached Fact Sheet from Campaign for Tobacco-Free Kids. It should be clearly noted that few states tax smokeless or other tobacco products on a per-weight basis because it is difficult to administer and worse for state revenues. A percentage-of-price tax, which is easier to administer, better for state revenues and shown to decrease youth use, should be applied in this situation.

It should also be noted that the current tax on smokeless and other tobacco products has not been adjusted since 1965; thereby necessitating the requested increase for a level playing field in addressing youth tobacco use and adult cessation.

Please consider adding a provision requiring that the proceeds to Hawai`i's Community Health Centers be specifically earmarked for tobacco prevention and cessation services and programs. So that these funds, unlike the Tobacco Master Settlement Agreement funds are appropriated for its intended purpose – to prevent the tobacco industry from marketing tobacco products to youth and to recover State resources spent addressing tobacco-related health problems and disabilities through the provision of tobacco cessation.

To quote Dr. Richard Carmona 17th Surgeon General of the U.S., "Our highest priority has to be keeping children from beginning to use tobacco products."

Thank you for allowing me to comment. Please support a tax increase on other tobacco products by passing SB 38, S.D. 1 out of Committee.

THE BEST WAY TO TAX SMOKELESS TOBACCO IS WITH A PERCENTAGE-OF-PRICE TAX
[Weight-Based Taxes Hurt State Revenues and Increase Youth Use]

The most common practice among the states is to tax smokeless tobacco, cigars, pipe tobacco, and the various other tobacco products besides cigarettes at a percentage of their wholesale price (sometimes referred to as the manufactures price). These state flat taxes on other tobacco products (OTPs) range as high as 90 percent of wholesale price (in Massachusetts), with 26 states having non-cigarette tobacco tax rates of 20 percent of wholesale price or more.

A few states tax smokeless or moist snuff tobacco products on a per-weight basis. This approach has been pushed aggressively by UST, the largest U.S. smokeless tobacco manufacture, primarily to reduce the effective tax rates on the higher-priced premium products it sells – while raising the effective tax rates on the lower-priced smokeless products primarily sold by UST's competitors.[1] But UST's best-selling premium products (Copenhagen, Skoal) are also smokeless tobacco products most popular with youth; so reducing their taxes and prices would directly increase youth smokeless tobacco initiation and use, dooming even more kids to a lifetime of tobacco addiction, related harms, and premature death.[2]

Beyond the fact that establishing a per-weight tax for smokeless tobacco would favor UST, harm its competitors, and increase youth use, taxing all OTPs or all smokeless at a percentage of price is not only easier to administer but also better for state revenues.

- A single percentage-of-price tax rate treats all OTPs the same. In sharp contrast, it is impossible to have a single weight-based tax rate that could equitably apply to all OTPs or even just to all smokeless tobacco or moist snuff because of all of the different types, sub-types, styles, and weights per dose of the products and brands in each category. Consequently, establishing a per-weight system just for smokeless tobacco or just for moist snuff smokeless still entails figuring out different tax rates by weight for each different sub-type or style – and such new rates would have to be established whenever another new type, sub-type or style of tobacco product entered the smokeless or moist snuff market.

- Failing to have different weight-based tax rates for each different type or style of product within the smokeless or moist snuff categories would end up grossly under taxing lighter-weight products. Most importantly, the newest trend in smokeless moist snuff products is toward spit-less pre-packed single-dose tablets or pouches, such as Ariva and Stonewall lozenges, RJR's Camel Snus, Philip Morris's Marlboro Snus and UST's Skoal Dry. This new generation of smokeless moist snuff tobacco products weigh as little as one-tenth per dose compared to the standard moist snuff that comes in a can. Any switch to a weight-based tax would allow these emerging products to pay to almost nothing as they gain increasingly larger shares of the smokeless moist snuff market, thereby sharply reducing state revenues.

- Weighing each product to apply a weight-based tax accurately and equitably would also entail significant new costs. Alternatively, relying on the stated weights provided by manufacturers would open the door to potential abuses – and require periodic checks to confirm the accuracy of the stated weights. In contrast, the prices used by a percentage-of-price tax are clear, publicly available, and easy to confirm quickly.

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[1] See American Lung Association, *Taxation of Smokeless Tobacco: Percentage of Price vs. Net Weight,* April 20, 2001, http://tobaccofreekids.org/research/factsheets/pdf/0175.pdf.

[2] Substance Abuse & Mental Health Services Admin., *Results from the 2005 National Survey on Drug use and Health,* Table 7.67B, http://oas.samhsa.gov/NSDUH/2k5nsduh/tabs/Sect7peTabs58to67.pdf.

- Unlike weight-based taxes, percentage-of-price tax rates automatically increase with inflation and other tobacco product price increases, thereby protecting the state's tax rate and revenues from being eroded over time. UST often packages its weight-based proposals so that they will purportedly bring in more revenues in the next couple of years. But the fixed monetary tax rate in a weight-based system will inevitably erode over time as inflation and product prices increase, producing substantially less state revenues than a parallel percentage-of-price tax. Accordingly, if a state wants more revenue from its smokeless or OTP taxes – over both the short and long term – it should simply raise its percentage-of-price rate or establish a reasonable minimum tax to reach those tobacco products with bargain-basement or predatory prices.

- Since most states tax non-cigarette tobacco products by percentage-of-price, having such a tax system for all OTPs allows a state to make quick and accurate comparisons against other states' OTP tax rates and related revenues. In addition, a single percentage-of-price tax for all OTPs establishes and maintains tax equity by ensuring that all OTPs pay the same flat tax rate. If smokeless moist snuff pays taxes by weight while other OTPs pay by price, tax inequities are certain to develop over time if not immediately.

- The percentage-of-price tax is a flat tax that applies the exact same percentage tax rate to each and every tobacco product and brand of tobacco product other than cigarettes. Just like with sales taxes, the actual tax amount paid on higher priced products will be larger than the amount for lower priced products. But the percentage tax rate on each product will stay exactly the same. In other words, those products priced to bring in the most revenues and profits will pay more per product that cheaper versions that bring in less revenue and profits. But each will pay the same flat percentage-of-price rate.

UST argues that a change to a weigh-based system is necessary to raise the effective tax rates on cut-rate smokeless tobacco products sold by their competitors. But predatory pricing and other below-market pricing practices could be addressed more effectively and appropriately through adding a minimum tax to a percentage-of-price tax and establishing smokeless tobacco product minimum price laws.[3]

UST's only legitimate claim about operating under a competitive disadvantage comes from UST currently being the only smokeless tobacco company that has signed onto the smokeless tobacco Master Settlement Agreement (STMSA). That competitive disadvantage could be eliminated, to the benefit of the states, by new state laws that penalize non-participating smokeless tobacco manufacturers that do not sign onto the STMSA, paralleling the state laws that do the same thing regarding nonparticipating manufacturers (NPMs) and the cigarette MSA. Such laws would level the playing field and either produce new payments to the states or get more smokeless manufacturers to sign onto the STMSA and comply with its various payment requirements and other requirements designed to reduce tobacco use by kids.[4]

Campaign for Tobacco-Free Kids, February 19, 2008 / Eric Lindblom

For more information, see the Campaign factsheets at http://tobaccofreekids.org/research/factsheets/pdf/0180.pdf and http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=18.

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[3] The Campaign for Tobacco-Free Kids has model legislative language, available upon request, to establish a minimum tax in existing state percentage-of-price tobacco tax systems – or to modify existing or proposed weight-based tax systems for smokeless or moist snuff so that (like a percentage-of-price system) they keep up with inflation and product price increases, do not fail to tax low-weight products adequately, and better protect the public health. To get any of this model legislative text, please email elindblom@tobaccofreekids.org.

[4] Model legislation to establish such a STMSA NPM fee is also available from the Campaign for Tobacco-Free Kids. To get a copy of this model legislative text, please email elindblom@tobaccofreekids.org.

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TO: Senate Committee on Ways and Means

FOR: Hearing Scheduled for 9:30 am
Monday March 2, 2009

RE: TESTIMONY IN SUPPORT SB 38, SD1 Relating to Tax on Tobacco Products Other Than Cigarettes

Chair Kim, Vice Chair Tsutsui and Committee Members:

The American Lung Association if Hawaii supports SB 38, SD1 which increases the tobacco tax on tobacco prohibits other than cigarettes. Our mission is to save lives by improving lung health and preventing lung disease through research, education and advocacy.

The tax has not been raised on non-cigarette products since 1965. With the taxes on cigarettes on the increase, these products are becoming an attractive alternative to both current cigarette smokers and those experimenting with tobacco products. It is well documented that all of these products pose significant health hazards.

The American Lung Association in Hawaii urges the Committee to consider raising the tax even higher than the proposed 60% of the wholesale price to 100% of the wholesale price. This would help to deter use of these dangerous products, especially for young people to whom they are being heavily marketed. In addition it will bring in needed revenue to the state.

On behalf of the 154,000 people who struggle to breathe I thank you your consideration on this important measure.

Respectively submitted,

Jean Evans, MPH
Executive Director
American Lung Association of Hawaii

COALITION FOR A TOBACCO-FREE HAWAI'I

To: Senator Donna Mercado Kim, Chair, Committee on Ways and Means
Senator Shan S. Tsutsui, Vice Chair, Committee on Ways and Means
Members, Senate Committee on Ways and Means
From: Trisha Y. Nakamura, Policy and Advocacy Director
Date: March 1, 2009
DM: Senate Committee on Ways and Means; March 2, 2009 at 9:30 a.m.
Re: **Strong Support to Increase the Tax on Other Tobacco Products, SB 38 SD 1**

Thank you for this opportunity to provide comments in support of an increase on the tax on tobacco products other than cigarettes. The Coalition for a Tobacco Free Hawaii (Coalition) is the only independent organization in Hawaii whose sole mission is to reduce tobacco use through education, policy and advocacy. The Coalition has long supported increasing taxes on tobacco products as a means to reduce youth consumption of tobacco. Thank you for considering this measure.

The Coalition supports raising the tax on other tobacco products as well as expanding the definition of "tobacco products" to explicitly include smokeless tobacco. The Coalition recommends that a portion of any new tobacco tax revenue fund tobacco prevention and cessation programs.

Raising the tax on tobacco products is a win-win for our State. A tax increase will not only bring revenue into our State but it will reduce youth tobacco use. SB 38 SD 1 also presents an opportunity for lawmakers to dedicate funds to tobacco prevention and control efforts.

Health is Promoted By Increasing the Tax on Tobacco Products Other Than Cigarettes
By increasing the percent of the wholesale price of each tobacco product sold, use of smokeless tobacco by adults and young people will decrease. This will result in a decline in the serious health conditions that arise from use of smokeless tobacco including cancer of the esophagus pharynx, larynx, stomach, and pancreas, gum disease, and the risk of cardiovascular disease. Adolescents and young adults are two to three times more sensitive to tobacco price changes than adults—less youth will begin to start using smokeless tobacco and more will reduce their consumption. Hawaii has seen an increase in youth use of smokeless tobacco despite our decreasing smoking rates. This is a concern because children and adolescents who use smokeless tobacco, especially if they are male, are at an increased risk to become cigarette smokers.

Rates of Smokeless Tobacco Use in 2003 and 2007

	2003	2007
High School students	2.8%	3.7%
Middle School students	1.7%	2.8%

(Hawaii State Department of Health, Data Highlights from the 2007 Hawaii Youth Tobacco Survey (YTS) and Comparisons with Prior Years. September 2008)

Significant Revenues Can Be Generated from an Increase in the Tax on Other Tobacco Products
The chart on the next page shows rough estimates of how much revenue our State may see if the tax on other tobacco products is increased. The figures are based on two averages: the five-year and the ten-year averages of taxes on other tobacco products as viewed at the Department of Taxation's website.

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Revenue Projections for Tax on Other Tobacco Products

Revenue Projections	Based on 5-Year Average	Based on 10-Year Average
60% of purchase price (20% increase fr current rate)	$3,826,354.45	$3,322,278.00
70% of purchase price (30% increase fr current rate)	$4,145,217.32	$3,599,134.50
80% of purchase price (40% increase fr current rate)	$4,464,080.19	$3,875,991.00
90% of purchase price (50% increase fr current rate)	$4,782,943.06	$4,152,847.50
100% of purchase price (60% increase fr current rate)	$5,101,805.93	$4,429,704.00

Other Tobacco Products Must Be Taxed at Rates Comparable to Cigarettes
The Coalition offers that an increase in the tax on tobacco products other than cigarettes will decrease the use of smokeless tobacco. We caution that the tax increase must be comparable to that of cigarettes. When the tax on cigarettes increased, an increase in the use of smokeless tobacco rose among our youth as noted above. Nationally, there is a growing trend in pipe-smoking among college youth. The president of the Cigar Association of America noted national sales in pipe tobacco climbed to 5.3 million pounds in 2008 (from 4.9 million in 2006).

The Tax Must be Based on Purchase Price; Weight-Based Taxes Reduce Revenue
The best way to tax smokeless tobacco is with a percentage-of-price tax. Emerging smokeless tobacco products like Camel Snus (mini pouches of tobacco) weigh as little as one-tenth per dose compared to the standard moist snuff that comes in a can. Percentage-of-price taxes treat all other tobacco products the same and automatically increase with inflation rates protecting the tax revenue from being eroded *over time*.

Altria, the parent company of United States Smokeless Tobacco Company and Philip Morris, advocates for weight-based taxes on other tobacco products—it reduces the tax rates on their higher-priced premium products that are often the most popular, including Copenhagen and Skoal. Altria's products become more affordable than its competitor's products that have lower purchase prices. The most popular brands remain the most popular; however, the State is collecting less revenue from them compared to a percentage-of-price tax. Often, the tobacco companies will argue that a weight-based proposal will bring in more revenue in the next few years; however, a fixed weight-based system will erode over time as inflation and product prices increase, providing less state revenue.

Revenues Should Be Directed to Fund Tobacco Prevention and Control
At a time when there are threats to fund tobacco prevention and control, the Coalition would like to see all, if not a portion of the revenues from the increase in the tax on other tobacco products dedicated to tobacco prevention and control. This will ensure that the comprehensive tobacco prevention and control work in Hawaii continues. Those who want help in quitting tobacco should have the services to help them. 88% of smokers want to quit someday; 61% have tried to quit in the past year. The revenues collected from tobacco should support services for them. We must fund tobacco prevention and control.

Thank you for the opportunity to provide comments in support of this measure. The Coalition strongly encourages you to pass this measure out of Committee.

LATE

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- A single percentage-of-price tax rate treats all OTPs the same. In sharp contrast, it is impossible to have a single weight-based tax rate that could equitably apply to all OTPs or even just to all smokeless tobacco or moist snuff because of all of the different types, sub-types, styles, and weights per dose of the products and brands in each category. Consequently, establishing a per-weight system just for smokeless tobacco or just for moist snuff smokeless still entails figuring out different tax rates by weight for each different sub-type or style – and such new rates would have to be established whenever another new type, sub-type or style of tobacco product entered the smokeless or moist snuff market.

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Campaign for Tobacco-Free Kids, February 19, 2008 / Eric Lindblom

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