



**LATE TESTIMONY**

March 18, 2011

Dear Hawaii Legislature,

This letter is in response to SB233, which would impose a flat rate tax of \$3.20 per large cigar beginning July 1, 2011. As Hawaii's only farmer of tobacco, (certified organic I should add) and cigar manufacturer I strongly oppose this tax increase, as it will result in a 100% tax increase for our Hawaii grown product, and result in a \$3.20 increase, per cigar, on the retail price! This price point will make it difficult to continue competing against imported cigars, and in the end, create less cigar tax revenue for the State of Hawaii.

Not only will this damage our family owned business, this will also increase the sales of out of state cigar purchases by Hawaii residents. It is important to note that the vast majority of these residents pay the state of Hawaii nothing in terms of usage on the current M19 return. I would encourage you to ask the Department of Revenue to provide the returns filed for tobacco usage on the M19 monthly returns. I don't think it is any mystery that the majority of residents who enjoy a premium hand made cigar purchase these cigars from wholesale mail order warehouses operating outside of Hawaii. Furthermore, the loss of sales by those licensed wholesalers, and dealers will result in less revenue paid to the State of Hawaii on the monthly M19 return. On this point, I'm sure I speak for every licensed, and legitimate wholesaler, or dealer of cigars in the state of Hawaii.

In addition to the negative impact that SB233 will have on our business, and your tax revenue, I would also like to point out another very important, and disturbing issue that faces both the State of Hawaii, as well as those of us who operate as licensed tobacco wholesalers, and dealers.

I am referring to the sale of cigars in Hawaii by unlicensed entities that do not file M19 returns, and the lack of tax enforcement. During the last several years I have been in communication with Edward Beal at the Audit Division of the Department of Revenue, and Alex Barrett of the Attorney General's Tobacco Enforcement Division. My complaints have focused on many businesses that do not comply with the current tobacco tax laws. Initially Edward Beal instructed us to send our complaints to Mr. Barrett at the A.G.'s office, and Mr. Barrett in return referred us back to Mr. Beal in Compliance, saying tax compliance was their responsibility. For no less than three years Mr. Beal heard our complaints, and he assured us that these complaints would be investigated. In early February of 2011 we again contacted Mr. Beal, and were outraged to hear his apology, and admittance that he in fact had never followed through with any investigations. He then went on to say that we should now direct our complaints to a newly formed Special Enforcement Tax Division. Before contacting this new division I again called Mr. Barrett at the A.G.'s office and were told by him, "while the stamp system on cigarettes has been able to eliminate nearly all of the contraband cigarettes being sold in Hawaii, unfortunately when it comes to tax on cigars, it is still the wild west." His response was unimaginable to me.

I then called the Special Enforcement Division, and spoke to an investigator named Thomas Torkiltson. Soon thereafter I turned over evidence of non compliance gathered by our employee, and that we deemed as, "a smoking gun." I was given assurances by Mr. Torkiltson, that his office was going to investigate the matter, and that this unit, was indeed, the one responsible for handling such complaints.

Upon learning about SB233 on March 9th, 2011, and the negative impact it would have on our business I decided to again contact Mr. Torkiltson to make sure that there was action on the enforcement end, especially if the legislature was going to seek a 100% tax increase on our cigars.

During this phone call on March 17, 2011, I was again shocked, and alarmed to find out that this Special Enforcement Division was not the one responsible for tobacco tax compliance, but that we should contact the Attorney General's Tobacco Enforcement Unit. Needless to say I was outraged to hear that, again, we were being referred back to the A.G.'s office.

At that point I demanded to speak to a supervisor. Mr. Torkiltson, reluctantly, transferred me to Ronald Randall who is the Division Administrator. Mr. Randall was profoundly sorry for what had happened and, regardless of who is truly responsible for enforcing the tobacco taxes in Hawaii, said that he would personally tend to my complaint, and take action. I must also inject that I do not envy his position, but I offered him support, as I know how difficult his job must be with such rampant tax evasion occurring in Hawaii. I have personally been witness to an unimaginable amount of deceit among both businesses and citizens who are responsible for paying their fair share of taxes in this State. It is a disgrace, that for years I have been represented by a Senator from Kauai, who failed to pay his own business taxes, and in the end was offered a compromise, and ultimately paid less than what he actually owed. What kind of example did this former Senator provide the people of Hawaii in regards to tax compliance?

The facts stated in this letter will hopefully encourage you, the Hawaii Legislature, to not only recognize the damage that your proposed SB233 tobacco tax will have on State revenue, but our local business, and those others who operate within the law, but that the ongoing non compliance, and lack of enforcement for the current tobacco tax law, also has a terrible, and devastating effect on those of us who are paying the 50% wholesale cigar tax, which in many people's mind is far too much already. I encourage you, again, to not only re-evaluate this proposed tax increase, but also address the issue of non-enforcement.

Please also consider converting the current 50% rate to a flat rate tax on cigars, based on the Alcohol Tobacco Trade Bureau's federal specifications. This would simplify everyone's accounting practices, and make auditing a much easier practice. Initiating a stamp program would also enable the Attorney General's office to better do their job in identifying contraband cigars being sold in Hawaii.

In closing, I know, and believe that my industry is a good one, and the dark shadows that cigarettes and other tobacco products cast, does not warrant a guilt by association in regards to cigars. As a husband, father of two young children, responsible business owner, active community member, and local farmer, I encourage you to re-evaluate your stance on the cigar tax increase.

Thank you for your time, and understanding, as this matter is of great importance to all of us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Les Drent', written in a cursive style.

Les Drent  
Owner/Kauai Cigar Company

PUBLIC TESTIMONY

*Dear Hawaii State Legislator:*

Please view the enclosed pages that will show you another way to collect tax revenues without causing businesses to fold up and leave the state.

- 42 states other than Hawaii have a low or have lowered taxes on products like cigars and still increase revenues.
- 8 states including the District of Columbia (D.C.) have capped taxes to increase revenues.
- The state of California lowered their tax by 20% to recapture revenues that had been pouring out of state. After a huge statewide debate in 1999, Proposition 10 fell flat on its face when consumers scrambled to out-of-state retailers for what they wanted.
- Don't play into the hands of out-of-state catalogue and on-line retailers.
- Prevent the rise of the underground economies that thrive on high taxation.
- You already know someone who buys product from these "carpetbaggers".
- Please don't encourage legislation that will force the consumer to play into the hands of the Black Market.
- Kokua your local merchant who already has a track record of being a good taxpaying member of the Hawaii economy.
- Support the tax cap on cigars sold locally. You may not be in a retail business, but you are ultimately a consumer of goods and services. Do your best to protect small business in our state.

*Sincerely,*

*Joe Hilton, President  
Cigar-Cigar Etc!*

*591-0808*

Today I appear before you as a citizen, parent, homeowner and business owner in this great state of Hawaii. I am appearing before you, so that you might see that by passing this bill in its present form the state of Hawaii will suffer even greater revenue consequences. This kind of taxation does little to raise revenue, it only serves to penalize the retailer and ultimately drives the consumer into the arms of the out-of-state merchant who takes monies out, and we also lose the General Excise Tax monies.

This bill has been proposed in many other states in this form. It is part of the model legislation by Tobacco Free Kids. Their aim is to tie cigar and cigarettes together at the tax waist and march it down the taxation aisle.

However, all this will do is drive the consumer, who is generally over 35, owns a home and has a full-time job, into one of many catalogue houses or online retailers. The state loses again because you cannot legislate peoples personal habits or lifestyles. Therefore you lose out on any kind of tax revenues because legislation such as S.B. 233 drives the consumer out-of-state to make his purchase. And please, do not be so naïve to think that any of our over burdened state agencies has the time or manpower to “chase” the consumer to “cough up” his share of taxes. This is not going to happen, especially in these tight economic times and many continuing days of furloughs by state employees.

You have to make up your mind. Are you trying to legislate human behavior by taxing the hell out of adult cigar consumption or do you want to raise revenues by promoting progressive taxation. I think that at this present economic junction you want to accomplish the best of both.

Please remember this simple matter of fact. Hawaii’s tobacco tax was untouched from 1965 until 2009 at 40% because when the tax level increases higher, the Black Market kicks in. This fact was revealed to me 10 years ago by Ray Kamikawa the former State Tax Director. We presently are at a 50% taxation rate and some say that S.B. 233 will raise it even further with a tax upon a tax.

When the 40% tax was calculated back in 1965 (46 years ago) catalogue shopping was in its infancy and Al Gore had not yet invented the internet. Today, gasoline is over \$4 per gallon and climbing. The public is thinking twice about getting into their car and driving 20-30 minutes just to buy Uncle Kimo a Happy Birthday box of his favorite stogies. They just going online, spend ten minutes and complete the transaction. Clean, clear and drop shipped to Uncle’s doorstep.

What many tax progressive states are now doing is keep the regular tax on cigarettes, but on large cigars they put a \$.50 cent cap per cigar sold and now many states are realizing increase revenues. Among them, Iowa, Oregon, Washington, Wisconsin, Rhode Island. Please recall that 42 states have lower tobacco tax rates that Hawaii.

## STATE EXCISE TAX RATES FOR NON-CIGARETTE TOBACCO PRODUCTS

Every state except for PA has at least some tax on non-cigarette tobacco products. FL does not tax cigars, but does tax all other tobacco products. The highest rates, as a percentage of wholesale/manufacture's price, are in WI (100%), WA (95%), VT (92%), MA (90%), RI (80%) ME (78%), and AK (75%). Of those states that tax moist snuff at a percentage of price, the average rate is roughly 35%, despite very low rates in SC (5%), TN (6.6%), and WV (7%). TN and WV also have two of the highest rates of smokeless use by high school males (21.3% and 24.2%). Nationwide, 15.0% of high school boys and 2.2% of girls use smokeless tobacco.<sup>1</sup> It is important to raise tax rates on all tobacco products to prevent switching to a lower-taxed and lower-priced tobacco product or initiation. See Campaign Factsheets, *Smokeless Tobacco and Kids*, and *Benefits from Increasing Smokeless Tobacco Taxes*,

State	Snuff Tax <sup>2</sup>	Chewing & Smoking Tobacco Tax	Cigar Tax	Date OTP tax last changed	Cigarette Tax (¢/pack)	Parallel Tax (% mfr. price)
Alabama	1.0-12.0¢/oz.	Chewing: 1.5¢/oz.; Smoking: 4-6¢/oz.	4.0-40.5¢/10 cigars	5/18/2004	42.5	15%
Alaska	75% wholesale price	75% wholesale price	75% wholesale price	10/1/1997	200	69%
Arizona	22.25¢/oz.	22.25¢/oz.	20.25-218¢/10 cigars	12/8/2006	200	69%
Arkansas	68% mfr. price	68% mfr. price	68% mfr. price	3/1/2009	115	40%
California <sup>3</sup>	33.02% wholesale price	33.02% wholesale price	33.02% wholesale price	7/1/2010	87	30%
Colorado	40% mfr. price	40% mfr. price	40% mfr. price	1/1/2005	84	29%
Connecticut	55¢/oz.	27.5% wholesale price	27.5% wholesale price	10/1/2009	300	104%
Delaware	54¢/oz.	15% wholesale price	15% wholesale price	6/30/2007	160	55%
DC	75¢/oz.	12% retail price, not pipe tobacco	12% retail price (not on \$2+ cigars)	1/1/2010	250	86%
Florida	85% wholesale price	85% wholesale price	None	7/1/2009	133.9	46%
Georgia	10% wholesale price	10% wholesale price	2.5¢/10 cigars; 23% wholesale price	7/1/2003	37	13%
Hawaii	70% wholesale price	70% wholesale price	50% wholesale price	9/30/2009	300	104%
Idaho	40% wholesale price	40% wholesale price	40% wholesale price	7/1/1994	57	20%
Illinois	18% wholesale price	18% wholesale price	18% wholesale price	7/16/1996	98	34%
Indiana	24% wholesale price	24% wholesale price	24% wholesale price	7/1/2007	99.5	34%
Iowa	119¢/oz.	50% wholesale price	50% wholesale price, 50¢ cap	3/15/2007	136	47%
Kansas	10% mfr. price	10% mfr. price	10% mfr. price	7/1/1972	79	27%
Kentucky	19¢/unit <sup>4</sup>	15% wholesale price	15% wholesale price	4/1/2009	60	21%
Louisiana	20% mfr. price	Chewing: 20% mfr. price; Smoking: 33%	8%-20% mfr. price	7/1/2000	36	12%
Maine	202¢/oz. (with min. tax)	Chewing: 202¢/oz.; Smoking: 20%	20% wholesale price	7/1/2009	200	69%
Maryland	15% wholesale price	15% wholesale price	15% wholesale price	7/1/2000	200	69%
Massachusetts	90% wholesale price	Chewing: 90% w/s price; Smoking: 30%	30% wholesale price	7/25/2002	251	87%
Michigan	32% wholesale price	32% wholesale price	32% wholesale price	7/1/2004	200	69%

<sup>1</sup> Youth Risk Behavior Surveillance (YRBS), 2009.

<sup>2</sup> Each state defines "snuff" differently, but it is usually defined as any powdered, finely cut, or ground tobacco that is not intended to be smoked.

<sup>3</sup> California's other tobacco product tax is based on the state's cigarette tax rate and changes every year.

<sup>4</sup> Dry snuff only. A unit is defined as a container less than 1.5oz. Moist snuff is taxed at the same rate as chewing tobacco.

State Excise Tax Rates for Non-Cigarette Tobacco Products / 2

State	Snuff Tax <sup>2</sup>	Chewing & Smoking Tobacco Tax	Cigar Tax	Date OTP tax last changed	Cigarette Tax (¢/pack)	Parallel Tax (% mfr. price)
Minnesota	70% wholesale price	70% wholesale price	70% wholesale price	8/1/2005	157.6	54%
Mississippi	15% mfr. price	15% mfr. price	15% mfr. price	6/1/2005	68	24%
Missouri	10% mfr. price	10% mfr. price	10% mfr. price	10/1/1993	17	6%
Montana	85¢/oz.	50% wholesale price	50% wholesale price	1/1/2005	170	59%
Nebraska	44¢/oz.	20% wholesale price	20% wholesale price	10/1/2009	64	22%
Nevada	30% wholesale price	30% wholesale price	30% wholesale price		80	28%
New Hampshire	65.03% wholesale price	65.03% wholesale price	65.03% wholesale price (not premium)	6/10/2010	178	62%
New Jersey	75¢/oz.	30% wholesale price	30% wholesale price	7/15/2006	270	93%
New Mexico	25% mfr. price	25% mfr. price	25% mfr. price		166	57%
New York	200¢/oz. (with min. tax)	75% wholesale price	75% wholesale price	8/1/2010	435	150%
North Carolina	12.8% wholesale price	12.8% wholesale price	12.8% wholesale price	9/1/2009	45	16%
North Dakota	60¢/oz.	Chewing: 16¢/oz.; Smoking: 28% w/s price	28% wholesale price	7/1/2001 <sup>†</sup>	44	15%
Ohio	17% wholesale price	17% wholesale price	17% wholesale price	2/1/1993	125	43%
Oklahoma	60% mfr. price	Chewing: 60% mfr. price; Smoking: 80%	3.6-120¢/10 cigars	1/1/2005	103	36%
Oregon	178¢/oz. (with min. tax)	65% wholesale price	65% wholesale price, 50¢ cap	1/1/2010	118	41%
Pennsylvania	None	None	Little cigars taxed as cigarettes	11/1/2009	160	55%
Rhode Island	100¢/oz.	80% wholesale price	80% wholesale price, 50¢ cap	4/10/2009	346	120%
South Carolina	5% mfr. price	5% mfr. price	5% mfr. price		57	20%
South Dakota	35% wholesale price	35% wholesale price	35% wholesale price	1/1/2007	153	53%
Tennessee	6.6% wholesale price	6.6% wholesale price	6.6% wholesale price	7/15/2002	62	21%
Texas	113¢/oz. (with min. tax)	113¢/oz. (with min. tax)	1-15¢/10 cigars	9/1/2010	141	49%
Utah	183¢/oz.	86% mfr. price	86% mfr. price	7/1/2010	170	59%
Vermont	187¢/oz. or 224¢/pack. if less than 1.2oz.	92% mfr. price	92% mfr. price for <\$1.08 price; \$2 per cigar for >\$1.08 to <\$10; \$4 per cigar for ≥ \$10	7/1/2010	224	77%
Virginia	10% mfr. price	10% mfr. price	10% mfr. price	3/1/2005	30	10%
Washington	252.6¢/oz. (on 10/1/10)	95% taxable sales price	95% taxable sales price, 75¢ cap	5/1/2010	302.5	105%
West Virginia	7% wholesale price	7% wholesale price	7% wholesale price	7/1/2003	55	19%
Wisconsin	100% mfr. price	71% mfr. price	71% mfr. price, 50¢ cap	9/1/2009	252	87%
Wyoming	60¢/oz.	20% wholesale price	20% wholesale price	7/1/2009	60	21%
US Government	9.4¢/oz.	Chewing: 3.1¢/oz.; Pipe: 17.7¢/oz.; RYO: \$1.55/oz.	Small cigars: \$1.01/20-pack Large cigars: 52.75% wholesale price, 40.26¢ cap	4/1/2009	100.66	35%

Campaign for Tobacco-Free Kids, January 26, 2011 / Ann Boonn

**Manufacturer's (Mfr.) Price** is the price charged to wholesalers/distributors by the tobacco company that makes the product. **Wholesale (w/s) Price** is either the price charged to retailers by the wholesalers/distributors or, in some states, equal to the Manufacturer's Price. **Parallel tax rate** is based on the cigarette tax and the taxable wholesale price of cigarettes versus other tobacco products.

**Sources:** Orzechowski & Walker, *The Tax Burden on Tobacco*, 2009; press reports; U.S. Alcohol and Tobacco Tax and Trade Bureau; USDA Economic Resource Service.

For more on other tobacco product taxes, see

, and

# LATE TESTIMONY

## Hawai'i Primary Care Association

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### House Committee on Finance

The Hon. Marcus R. Oshiro, Chair

The Hon. Marilyn B. Lee, Vice Chair

## Testimony in Support of Senate Bill 233 S.D. 2

### Relating to Tobacco Products

Submitted by Beth Giesting, Chief Executive Officer

March 23, 2011, 2:30 p.m., Room 308

The Hawai'i Primary Care Association strongly supports Senate Bill 233 SD2, which creates new taxes on tobacco products. Abusing tobacco contributes to some of the costliest health care issues including heart disease, obesity, lung disease, cancers and other chronic illnesses. These taxes will serve as both a deterrent to unhealthy behavior and generate revenues to pay for the costly burden on our health care system these behaviors produce.

Thank you for the opportunity to testify on this measure.