OHIO ASSOCIATION
OF CONVENIENCE STORES

An affiliate member of the Ohio Council of Retail Merchants

Testimony in Opposition to House Bill 64
House Finance Committee
March 26, 2015
Jeffrey Erb

Chairman Smith, Vice Chair Schuring, Ranking Member Driehaus and members of the House Finance Committee: Thank you for the opportunity to submit testimony in opposition to the tax policy changes proposed in House Bill 64.

My name is Jeff Erb. I have worked in the convenience store industry for over 30 years, working my way up from part-time clerk to my current position as General Manager of a small chain of stores. I am a member of the board of the Ohio Council of Retail Merchants and President of the Ohio Association of Convenience Stores, a trade association with over 100 members, representing thousands of convenience stores across Ohio, including independent family owned businesses, regional enterprises, and national chains.

I have been employed with Saneholtz-Mckarns Inc. for 28 years. Saneholtz-Mckarns Inc. is a small fuel distributer / C-Store operation that has been serving customers since the mid 1960's when Wilbur Saneholtz and Orrie Mckarns became partners. The business has grown from primarily serving farmers and rural customers to now serving over 20 communities. Saneholtz-Mckarns Inc. owns and operates 14 stores employing 170 workers, and supplies fuel to a number of small businesses, including "Mom & Pop" stores in Northwest Ohio. All of the locations we supply are very close to the Michigan and Indiana borders, so tax policy changes that affect our ability to compete with neighboring states are extremely important to us.

Our primary concern is regarding the proposed increase to the cigarette and other tobacco product taxes and the creation of the vapor tax, as the sales of these products are vital to the success of our business. For the average convenience store, cigarettes account for approximately 32 percent of sales and the categories of other tobacco products and electronic cigarettes account for approximately 6 percent. While the latter groups account for only a small percent of total sales, they are growing categories in the convenience store industry with new products flooding the market. Sales of e-cigs grew an astounding 129 percent in 2013.[1] To jeopardize more than one third of the revenue generated by an entire industry is a troubling policymaking decision.

Saneholtz-Mckarns, Inc. has historical experience to draw on relating to increased tobacco taxes, so my testimony today will provide an anecdotal account based on that knowledge. Over the past two decades, Ohio has enjoyed a considerable tax advantage over our neighbor to the North, Michigan. This has caused a steady stream of customers from Michigan to purchase their cigarettes in Ohio. The customer influx at Ohio border stores was so substantial in 2004-2005,

[1] National Association of Convenience Stores 2013 State of the Industry Annual Report

when Michigan adopted a $2 per pack increase, that businesses were expanded as well as new stores built. It was not just cigarettes, but large purchases of beer and pop because Michigan levies a can tax. Revenue increased so much that an acquaintance of mine who operated stores in the Toledo area actually parked semi-trailers behind his store to handle the extra volume of cigarettes primarily being sold to Michigan customers. The proposed tax increase of $1 on cigarettes and drastic equalization of OTP and vapor will certainly have the opposite effect on sales and revenue, not just for Ohio businesses, but also for the state.[2]

In July of 2005, Ohio cut our tax advantage over Michigan almost in half, by increasing the per-pack tax from $0.55 to $1.25. Business slowed as the incentive for Michiganders to purchase Ohio products was diminished. The acquaintance of mine referenced above was forced to sell his business as sales decelerated. Our own Lyons Main Stop, 3 miles from Michigan, went from selling an average of 700 cartons per week to a current average of 177 cartons per week, with no additional or new competition.

In an attempt to escape excessive taxes, customers look for alternatives or find out where the product they want to consume is the cheapest. If Michigan or Indiana offer the same product at a cheaper price, my Ohio customers will take their business to those states. This is not a theory. As a general manager of convenience stores, I am witness to this practice every day.

I recall a story that was published in response to the 2005 Ohio cigarette tax increase claiming that it was helping Ohioans stop smoking, citing the cigarette sales in the Toledo Ohio area as evidence. While we know that the percentage of smokers declines slightly each year, the truth was that the decrease in cigarette sales in the Toledo area was not due to people quitting smoking, it was Michigan people deciding to purchase their cigarettes from business outside of Ohio! The Columbus Dispatch recently published a study debunking this assertion, noting that in response to selective consumption taxes, people tend to shift their spending habits elsewhere to allow for the continued purchase of “sin products” like cigarettes.[3]

As past evidence shows, if you raise the tax on tobacco products even slightly, let alone to the extreme levels proposed in HB 64, convenience stores like mine will see a decrease in sales. When people stop coming into Ohio to purchase products, or worse yet, when our own citizens leave Ohio to purchase their tobacco products, we not only lose those tobacco sales, but we also lose the opportunity for additional sundry purchases that research shows consumers make.[4]

We must keep Ohio competitive and better yet, at an advantage against our neighbors, whenever possible. This protects tax revenue, enhances our ability to serve Ohioans, and creates a good business climate.

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[2] HB 64 proposes to increase the per pack cigarette tax from $1.25 to $2.25, increase the tax on OTP from 17 to 60 percent of wholesale price, and create a new weight/volume based tax on vapor products that is measured as the “cigarette equivalent”, stated as one tenth of one milliliter for vapor products sold in liquid form and one gram of vapor product sold in nonliquid form.

[3] *Regressive Effects: Causes and Consequences of Selective Consumption Taxation*, Adam Hoffer, Rejeana Gvillo, William F. Shughart II, and Michael D. Thomas. Mercatus Working Paper, March 2015.

[4] The state also misses out on lost revenue from the sales tax, commercial activity tax and petroleum activity tax on those sundry purchases.

We would also like to express opposition to the proposed revisions to the minimum price law.[5] HB 64 includes a new provision of law that will significantly impair retailers' current ability to provide promotions, advertisements and coupons by prohibiting cigarette sales at prices less than the state minimum. This is a drastic diversion from the way we have conducted business for as long as I have worked in the industry. To my knowledge, the law has never posed any problems that would cause an unprompted change such as this, so I would caution making such a radical adjustment.

It is also important to note that retailers take pride in enforcing the "We Card" program, and play an important role in keeping tobacco products out of the hands of minors. At Saneholtz-Mckarns, we designate a portion of our budget to ensuring our employees are complying with Ohio's age-of-purchase laws, including secret shopper visits and training courses. We pledge to continue our partnership with the state to guarantee adherence to this and other important initiatives to prevent underage sales.

In conclusion, what I have learned from my experience doing business on Ohio's north and northwest borders is that tax policy certainly impacts business. It can have a positive effect, like in the years prior to 2005, and to some degree, even currently. Alternatively, tax policy can deflate revenue, and threaten jobs and businesses if we cannot compete with our neighboring states. Just as people crossed borders into Ohio when incentivized by good tax policy, they will disappear and we will lose Ohioans taking their tax dollars to Michigan and Indiana.

Thank you for your consideration.

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[5] HB 64 proposes to move the minimum price law from Ohio's Uniform Commercial Code found in Ohio Revised Code Section 1333 to the Taxation Title found Ohio Revised Code Section 5743.