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Voter VOICE: Effective Grassroots Management

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LAW works hard to stop legislation that would adversely effect our industry and promote legislation that allows us to better serve our customers. LAW Members receive legislative alerts and updates regarding important legislation and you do a great job at communicating with legislators about issues. This year, the look and effectiveness of these notices is changing.

LAW has partnered with VoterVOICE to provide sophisticated web based software that will assist you in contacting your legislators and enable us to better manage your responses. Please take a few minutes to log onto the website at www.votervoice.net/groups/laaw or visit www.louisianawholesalers.org to go to the site.

The first time you visit this site you will be required to enter your name, email and home address. Please register both your home and business addresses so that the online system can automatically link you with the proper legislators for both addresses. You will then see a screen that allows you to choose which legislator you would like to send a message to. After that, you can compose the message and send it. At times, you will receive "Action Alerts" asking you to take a call to action. When you receive these alerts please visit the Webpage. Through the site you can view sample messages and bulleted information to send to your legislators, or you can send them your own personal message.

LAW's VoterVOICE website will be updated on a daily basis throughout the legislative sessions, and more frequently as necessary. Depend on VoterVOICE to keep you up-to-date and to get your message to your legislators - BEFORE THEY VOTE!

If you have any questions please contact the LAW office at 225-767-7640 or e-mail heather@tatmangroup.com.

2008 Legislative Session Underway

By: David Tatman

The 2008 Regular Session of the Louisiana Legislature is underway in Baton Rouge and there are a number of issues that impact our industry. The 2008 Regular Session began on March 31, 2008 and will end no later than June 23, 2008 at 6:00 p.m.

There are several bills that have been filed that deal with tobacco products. HB 240 by Rep. Walker Hines would raise the legal age to possess tobacco products from 18 to 21. This bill has been assigned to the House Criminal Justice Committee and will be debated in the coming weeks. HB 1021 by Rep. Walker Hines would prohibit cigarette smoking in an automobile when any occupant of that automobile is under the age of 18. That bill will be debated in the House Transportation Committee. Rep. Walker Hines is a new Representative from the New Orleans area. He is 24 years old. SB 185 by Sen. Marionneaux would prohibit smoking anywhere (bar or restaurant) where food is sold.

Please stay tuned to Alerts and Updates from the Louisiana Association of Wholesalers. We expect that more tobacco related bills will be filed. Each legislator can file up to 5 more bills until April 22 at 5:00 p.m. Be prepared to contact legislators on bills as they move through the process.

American Wholesale Marketers Association Files Comments Objecting to Proposed Rulemaking on Classification of Cigars and Cigarettes

(2006R-276P) Docket No. RIN 1513-AB34, 71 Federal Register 62506

Contact: Marcia D. Barker - marciab@awmanet.org, website: www.awmanet.org

March 27, 2008

FAIRFAX, VIRGINIA — The American Wholesale Marketers Association (AWMA), a national trade association representing wholesale distributors of consumer products to the convenience store industry, submitted comments on March 26, 2007 objecting to the Proposed Rulemaking on Classification of Cigars and Cigarettes offered by the Alcohol and Tobacco Tax and Trade Bureau (TTB) of the U.S. Department of the Treasury. Upon thorough review, AWMA determined that the proposal fails to take into account the requirements and costs to the wholesale distributors that will result from a change in the tax treatment of this major product category.

Nearly all of the cigarettes and other tobacco products sold in the convenience store segment are supplied by the wholesale distributor sector represented by AWMA. AWMA member companies in the tobacco distribution trade contract with state agencies to affix revenue stamps and collect taxes due. Any changes in the economics of tobacco distribution and sale have a substantial impact on the wholesale distribution industry, because the retail sales of cigarettes through convenience stores constituted over 63 percent of retail cigarette sales in 2005. The gross retail sales of cigarettes in the convenience sector came to over \$52 billion in 2005. Cigarettes constituted over 34 percent of total convenience store sales in 2005.

While the TTB concludes that "the proposed rulemaking will not have a significant economic impact on a substantial number of small entities," we disagree with this cursory dismissal of the unforeseen consequences of this proposed rule. Our members anticipate substantial increases in costs arising from the proposed change, yet the proposed regulations fail to address the potential economic effects on the distributors and retailers of tobacco products.

The Administrative Procedure Act, Sec. 603, requires that TTB conduct an initial regulatory flexibility act analysis to assess the impact on small businesses. There is no indication in the Federal Register notice for this proposed rule that a regulatory flexibility analysis was conducted. Instead, these statutory requirements have just been summarily dismissed as being irrelevant. Nothing could be farther from the truth. There is no mention of wholesale distributors or retailers,

nor any acknowledgement that these proposed changes in the regulations would have any effect on the companies in the distribution chain.

AWMA members represent nearly all of the tobacco wholesale distributors – approximately 350 such companies in the United States. Among these companies, the majority are small businesses, employing fewer than 50 people. Under the Small Business Administration's North American Industry Classification System, a "small entity" in the wholesale trade is one with fewer than 100 employees.

AWMA members will suffer substantial additional costs if these proposed changes are adopted. We anticipate that the proposed change in definitions would result in a number of tobacco products now labeled and sold as "cigars" will be classified as "cigarettes." This has the potential to be a very costly change for the distribution industry which is unique to tobacco products. The possible burden arises from the tax stamping process itself. The industry has developed highly specialized and highly efficient machines, each costing well over \$100,000, to uniformly affix revenue stamps to packages of cigarettes, with a very low rate of error. The process is largely automated, using specially designed machines to open ten-pack cartons of cigarettes, affix a stamp on every pack, and close the carton. The efficiency of the machines depends on the uniformity of the product and its packaging.

Unlike cigarettes, the products and packaging of small cigars are not uniform. If the packs of small cigars vary in any dimension, they cannot go through the stamping machines, or they can be handled only after time-consuming alterations and adjustments to the machines. Any stop in the production line is, of course, very expensive. Any recalibration, even if possible, will cost thousands of dollars to the industry, an event not considered when the subject regulations were proposed.

AWMA member companies have advised that, if the current TTB proposal is adopted, they anticipate the need to hire employees for additional shifts or to purchase additional stamping machines. These economic factors were not considered by the TTB when the proposal was issued.

Continued from page 2

The proposed changes in the definitions of cigarette and cigar will result in a number of products now classified as "cigars" to be treated as "cigarettes" for tax purposes. For instance, the proposed definition of "cigarette" includes any product containing burley tobacco filler. The Cigar Association of America estimates that over 20 percent of large cigars contain burley tobacco filler. These cigars are known as pipe-tobacco cigars. It is unlikely that stamping machines designed for cigarettes could even be reconfigured to stamp such products. The only other alternative would be manual stamping, a cost prohibitive process. The result would be to make a legal product inaccessible to the consuming product.

Sec. 553(c) of the Administrative Procedure Act requires that the final rule include a "concise general statement of [its] basis and purpose." Although this is not a requirement for the proposed rule, the TTB should be laying the foundation for the concise statement in the notice and comment period. AWMA fails to understand the basis for these proposed changes. What is the purpose or goal of these proposed changes, i.e., the benefit to be gained? While TTB suggests there is "confusion" about the definitions of cigarette and little cigars which may result in "possible revenue losses," no evidence is offered that there has been any revenue losses suffered by the Treasury Department or by any state

agency, and the possible magnitude of the losses is not touched upon. Without evidence of a real problem, of significant proportions, the disruptions and dislocations that this change would cause are not justified and should not be pursued.

The preamble to the proposed rule mentions three petitions received from the tobacco industry and state attorneys general. These petitions are related to either the Master Settlement Agreement (MSA) or public health concerns. As TTB correctly states, however, these matters are outside the scope of its authority (71 Fed. Reg. at 62516). Neither MSA fees nor public health responses can be a lawful basis for changing a federal excise tax law.

AWMA and its members believe it is improper for the Government to attempt to restrict if not outright ban a legal product through an unsubstantiated, "back door" regulatory event such as proposed here through an artificial and previously unimaginable regulatory process combining tobacco sugar content with state cigarette taxing authority. The Government has no legal basis to effect its anti-tobacco policies through the use of a tax which is happening in this instance. AWMA and its members are available for further discussions regarding this matter.

Calendar of Events

March 31, 2008 Regular Legislative Session begins

May 20, 2008 Legislative Reception
Hilton Capitol House, Baton Rouge, LA

Fall 2008 LAW 2008 Annual Convention
New Orleans, LA

Know Your Legislators!



**Representative
Michael Danahay**

Representative Michael Danahay serves District 33, which includes Beauregard and Calcasieu Parishes.

Rep. Danahay was elected in 2007 and he serves on the following Committees:

- *House and Governmental Affairs*
- *Municipal, Parochial and Cultural Affairs*
- *Ways and Means*
- *Joint Legislative Committee on Capital Outlay*

Rep. Danahay has a B.S. in Business Administration from McNeese State University and currently resides in Sulfur, LA.

To contact Rep. Danahay:
danahaym@legis.state.la.us

Louisiana Association of Wholesalers

2008 Legislative Reception

Tuesday, May 20, 2008

6:00 p.m. or upon adjournment

Hilton Capitol House

201 Lafayette St., Baton Rouge, LA

This is the perfect opportunity to discuss issues important to the wholesaler industry with Legislative Representatives.

Please RSVP to heather@tatmangroup.com

More information coming soon.