

FILED APR 1 1982

SENATE FILE 2299

BY COMMITTEE ON WAYS AND MEANS

(FORMERLY SSB 2238)  
*Approved 4/1 (p 994)*

Passed Senate, Date 4-15-82 (p. 1237) Passed House, Date \_\_\_\_\_

Vote: Ayes 37 Nays 22 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

*Motion to reconsider (p. 1237) proposed 4/20*  
*Failed to pass Senate*  
4-20-82 (p. 1215)  
25-24

# A BILL FOR

1 An Act relating to the state cigarette and little cigar tax  
2 by making permanent the tax rate of nine mills, the  
3 discount percent on the sale of tax stamps at two percent,  
4 providing for conditions upon which free samples may be  
5 distributed, providing for penalty and interest for unpaid  
6 or delinquent taxes, the time period in which a hearing  
7 must be held when a protest is filed, waiver of penalty  
8 and reduction or abatement of interest by the director,  
9 and repealing the Iowa unfair cigarette sales Act and  
10 the one-time inventory tax refund.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S. 2299

1 Section 1. Section 98.6, subsection 1, Code 1981, is  
2 amended by striking the subsection and inserting in lieu  
3 thereof the following:

4 1. There is imposed and shall be collected and paid to  
5 the department a tax on all cigarettes used or otherwise  
6 disposed of in this state for any purpose at the rate of nine  
7 mills on each cigarette.

8 Sec. 2. Section 98.8, subsection 1, Code 1981, as amended  
9 by Acts of the Sixty-ninth General Assembly, 1981 Session,  
10 chapter 43, section 2, is amended by striking the subsection  
11 and inserting in lieu thereof the following:

12 1. Stamps shall be sold by and purchased from the de-  
13 partment. The department shall sell stamps to the holder  
14 of a state distributor's permit which has not been revoked  
15 and to no other person. Stamps shall be sold to the permit  
16 holders at a discount of two percent of the face value.  
17 Stamps shall be sold in unbroken books of one thousand stamps,  
18 unbroken rolls of thirty thousand stamps, or unbroken lots  
19 of any other form authorized by the director.

20 Sec. 3. Section 98.28, Code 1981, is amended to read as  
21 follows:

22 98.28 ASSESSMENT OF TAX BY DEPARTMENT. If after any  
23 audit, examination of records, or other investigation the  
24 department finds that any person has sold cigarettes, without  
25 stamps affixed ~~thereto~~ as required by this division or that  
26 any person has failed to pay any tax imposed upon the person,  
27 the department shall fix and determine the amount of tax due,  
28 and shall assess the tax against the person, together with  
29 a penalty, ~~which is imposed, equal to the amount of the tax~~  
30 unless it is shown that the failure was due to reasonable  
31 cause, of five percent of the amount of the tax if the failure  
32 is for not more than one month, with an additional five percent  
33 for each additional month or fraction of a month during which  
34 the failure continues, not exceeding twenty-five percent in  
35 the aggregate. The person shall also pay interest on the

1 tax or additional tax at the rate in effect under Acts of  
2 the Sixty-ninth General Assembly, 1981 Session, chapter 131,  
3 section 1, counting each fraction of a month as an entire  
4 month, computed from the date the tax was required to be paid.  
5 In case of willful intent to evade tax, in lieu of the penalty  
6 otherwise provided in this section, fifty percent of the  
7 amount of the tax shall be added to the amount required to  
8 be paid. If any person fails to furnish evidence satisfactory  
9 to the director showing purchases of sufficient stamps to  
10 stamp unstamped cigarettes purchased by the person, the  
11 presumption shall be that the cigarettes were sold without  
12 the proper stamps affixed thereto. Within two years after  
13 the return is filed or within two years after the return  
14 became due, whichever is later, the department shall examine  
15 it and determine the correct amount of tax.

16 Sec. 4. Section 98.39, Code 1981, is amended by strik-  
17 ing the section and inserting in lieu thereof the following:

18 98.39 SAMPLE CIGARETTES AND LITTLE CIGARS. Notwithstand-  
19 ing the provisions of this division regarding licensing and  
20 the payment of tax, any person may distribute free sample  
21 cigarettes or little cigars in this state under the follow-  
22 ing conditions:

23 1. Sample packs containing twenty cigarettes or little  
24 cigars must be stamped with the tax stamp.

25 2. The tax on sample packs containing less than twenty  
26 cigarettes or little cigars shall be paid directly to the  
27 department of revenue no less than monthly by the person  
28 responsible for the distribution.

29 3. The payment of the tax shall be accompanied by a state-  
30 ment identifying the person responsible for the distribution  
31 of sample cigarettes or little cigars and the amount, manner,  
32 and location of the distribution.

33 4. Sample packs of cigarettes or little cigars which do  
34 not have stamps affixed shall be marked as directed by the  
35 department of revenue to indicate the tax has been paid.

1 Persons distributing packs of cigarettes in the state by  
2 placing the cigarettes in the United States mail at a point  
3 outside the state may pay the tax directly to the department  
4 regardless of the size of the pack, otherwise the tax shall  
5 be paid as provided in section 98.6.

6 Sec. 5. Section 98.46, subsections 3 and 5, Code 1981,  
7 are amended to read as follows:

8 3. If, within twenty days after mailing of notice of the  
9 proposed assessment, the taxpayer or ~~his~~ the taxpayer's legal  
10 representative ~~shall file~~ files a protest to ~~said~~ the proposed  
11 assessment and ~~request~~ requests a hearing ~~thereon~~, the director  
12 shall give notice to that taxpayer or legal representative  
13 of the time and place fixed for the hearing, shall hold a  
14 hearing on ~~such~~ the protest, and shall issue a final assessment  
15 to the taxpayer or legal representative for the amount found  
16 to be due as a result of the hearing. ~~This hearing shall~~  
17 ~~be held within forty-five days after filing of the protest.~~  
18 If a protest is not filed within the time herein prescribed,  
19 the director shall issue a final assessment to the taxpayer  
20 or legal representative, ~~as such~~. ~~Any such~~ An assessment  
21 made by the director ~~shall be~~ is prima-facie correct and  
22 valid, and the taxpayer ~~shall have~~ has the burden of  
23 establishing its incorrectness or invalidity in any action  
24 or proceedings ~~in respect thereto~~.

25 5. All taxes ~~shall be~~ are due and payable not later than  
26 the twentieth day of the month following the calendar month  
27 in which they were incurred, ~~and thereafter shall bear interest~~  
28 ~~at the rate of one percent per month~~.

29 If any person fails to file a required report on or before  
30 the due date, unless it is shown that the failure was due  
31 to reasonable cause there shall be added to the amount required  
32 to be shown as tax due on the return five percent of the  
33 amount of the tax if the failure is for not more than one  
34 month, with an additional five percent for each additional  
35 month or fraction of a month during which the failure

1 continues, not exceeding twenty-five percent in the aggregate.  
2 If a person fails to remit at least ninety percent of the  
3 tax due with the filing of the return on or before the due  
4 date or pays less than ninety percent of any tax required  
5 to be shown on the return, unless it is shown that the failure  
6 was due to reasonable cause, there shall be added to the tax  
7 a penalty of five percent of the amount of the tax due, if  
8 the failure is for not more than one month, with an additional  
9 five percent for each additional month or fraction of a month  
10 during which the failure continues, not exceeding twenty-five  
11 percent in the aggregate. The taxpayer shall also pay interest  
12 on the tax or additional tax at the rate in effect under Acts  
13 of the Sixty-ninth General Assembly, 1981 Session, chapter  
14 131, section 1, counting each fraction of a month as an entire  
15 month, computed from the date the return was required to be  
16 filed. The director shall not remit any part of a penalty  
17 for delinquent payment where the delinquency results from  
18 the fact that a check given in payment is not honored because  
19 of insufficient funds in the account upon which the check  
20 was drawn. In case of willful intent to evade tax, in lieu  
21 of the penalty provided in this section, there shall be added  
22 to the amount required to be paid fifty percent of the amount  
23 of tax. When penalties are applicable for failure to file  
24 a return and failure to pay the tax due or required on the  
25 return, the penalty provision for failure to file shall be  
26 in lieu of the penalty for failure to pay the tax due or  
27 required on the return, except in the case of a deliberate  
28 attempt on the part of the licensee or other person to evade  
29 payment of tobacco taxes.

30 Where, if under the provisions of subsections 2 and 3 of  
31 this section, the amount of tax due for a given period is  
32 assessed without allocating it to any particular month or  
33 months, the interest shall commence to run from the date of  
34 such the assessment.

35 The director shall have power to may reduce or abate

1 interest when in his the director's opinion the facts warrant  
2 such a reduction or abatement. ~~The exercise of this power~~  
3 ~~shall be subject to the approval of the attorney general.~~

4 Sec. 6. Section 98.46, subsection 6, Code 1981, is amended  
5 by striking the subsection.

6 Sec. 7. Chapter 551A, Code 1981, is repealed.

7 Sec. 8. Acts of the Sixty-ninth General Assembly, 1981  
8 Session, chapter 43, sections 1 and 4, are repealed.

9 Sec. 9. Sections 3, 5, and 6 of this Act take effect  
10 January 1 following enactment for returns due on or after  
11 that date.

12 EXPLANATION

13 The bill makes permanent the tax rate of nine mills on  
14 each cigarette and little cigar contained in the law enacted  
15 in the 1981 Session. Under that law the nine-mill rate would  
16 revert on July 1, 1983 to the rate of six and one-half or  
17 seven and one-half mills depending on the weight of the  
18 cigarette or little cigar. The bill provides the conditions  
19 upon which free samples may be distributed by any person.  
20 Under the 1981 law the discount from the value of the stamps  
21 sold by the department of revenue is two percent of the value,  
22 which rate reverts on July 1, 1983 to a rate not to exceed  
23 five percent of the value. This bill makes the two percent  
24 discount rate permanent. Because the nine-mill rate is made  
25 permanent in the bill there is no need for a cigarette tax  
26 refund when the rates revert to the lower rate which was  
27 provided in the 1981 law. This section 4 of the 1981 law  
28 is repealed.

29 The bill provides a penalty and interest for unpaid or  
30 delinquent taxes which are similar to the penalty and interest  
31 provisions for other types of taxes. The penalty and interest  
32 provisions may be waived or reduced by the director of revenue  
33 if failure to pay is due to reasonable cause.

34 The bill also repeals chapter 551A which is the state un-  
35 fair cigarette sales Act.

1 The penalty and interest provisions take effect January  
2 1 following enactment while the rest of the bill is effective  
3 July 1 following enactment.

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SENATE FILE 2299

S-5585

- 1 Amend amendment S-5517 to Senate File 2299, as
- 2 follows:
- 3 1. Page 1, line 4, by striking the words "word
- 4 "and"" and inserting in lieu thereof the words "words
- 5 "and repealing".

S-5585 FILED & ADOPTED  
APRIL 14, 1982 (p. 1178)

BY CLARENCE CARNEY

SENATE FILE 2299

S-5599

- 1 Amend Senate File 2299 as follows:
- 2 1. Page 5, by inserting after line 6 the
- 3 following:
- 4 "Sec. \_\_\_\_ Section 551A.3, subsection 1, Code 1981,
- 5 is amended to read as follows:
- 6 1. It shall be unlawful for any wholesaler or
- 7 retailer to offer to sell, or sell, at wholesale or
- 8 retail, cigarettes at less than cost to such wholesaler
- 9 or retailer, as the case may be, as defined in this
- 10 chapter. ~~Any wholesaler or retailer who violates~~
- 11 ~~the provisions of this section shall be guilty of~~
- 12 ~~a simple misdemeanor.~~
- 13 Sec. \_\_\_\_ Sections 551A.10 and 551A.11, Code 1981,
- 14 are repealed.

S-5599 FILED  
APRIL 14, 1982

BY DICK RAMSEY

*Lost 4/15 Cp. 12357*

SENATE FILE 2299

S-5601

- 1 Amend Senate Amendment S-5584 to Senate File 2299
- 2 as follows:
- 3 1. Page 1, by striking lines 2 through 10 and
- 4 inserting in lieu thereof the following:
- 5 "1. Page 2, by striking line 18 through page 3,
- 6 line 5 and inserting in lieu thereof the following:
- 7 "98.39 FREE CIGARETTES OR LITTLE CIGARS. A person
- 8 who is a manufacturer, distributor, wholesaler, or
- 9 retailer of cigarettes or little cigars shall not in
- 10 the course of that trade or business distribute free
- 11 cigarettes or little cigars in this state."
- 12 2. Title page, by striking line 4 and inserting
- 13 in lieu thereof the words "prohibiting certain free
- 14 cigarettes or little cigars from being".

S-5601 FILED & ADOPTED  
APRIL 14, 1982 (p. 1201)

BY ARTHUR A. SMALL

SENATE FILE 2299

S-5496

- 1 Amend Senate File 2299 as follows:
- 2 1. Page 2, by striking line 18 through page 3,
- 3 line 5 and inserting in lieu thereof the following:
- 4 "98.39 FREE CIGARETTES OR LITTLE CIGARS. A person
- 5 who is a manufacturer, distributor, wholesaler, or
- 6 retailer of cigarettes or little cigars shall not
- 7 in the course of that trade or business distribute
- 8 free cigarettes or little cigars in this state."
- 9 2. Title page, by striking line 4 and inserting
- 10 in lieu thereof the words "prohibiting certain free
- 11 cigarettes or little cigars from being".

S-5496 FILED  
APRIL 6, 1982  
*4/15 4/14 (p. 1197)*

BY JACK W. HESTER

SENATE FILE 2299

S-5517

- 1 Amend Senate File 2299 as follows:
- 2 1. Page 5, by striking line 6.
- 3 2. Title page, by striking line 9 and inserting
- 4 in lieu thereof the word "and".
- 5 3. By renumbering as necessary.

S-5517 FILED  
APRIL 7, 1982

*Adopted as amended by 5585  
4/14 (p. 1194)  
motion to reconsider lost 4/15*

BY CLARENCE CARNEY  
BOB CARR JOHN JENSEN  
RICHARD VANDE HOEF DALE TOEDEM  
C. W. BILL HUTCHINS DONALD V. DOYLE  
FORREST SCHWENGELS TOM SLATER  
NORMAN RODGERS

SENATE FILE 2299

S-5584

- 1 Amend Senate File 2299 as follows:
- 2 1. Page 2, by striking line 18 through Page 3,
- 3 line 5, and inserting in lieu thereof the following:
- 4 "98.39 FREE CIGARETTES OR LITTLE CIGARS. A person
- 5 who is a manufacturer, distributor, wholesaler or
- 6 retailer of cigarettes or little cigars shall not in
- 7 the course of that trade or business distribute free
- 8 cigarettes or little cigars in packs containing more
- 9 than four cigarettes or little cigars per pack in
- 10 this state."

S-5584 FILED & ADOPTED  
APRIL 14, 1982

*Adopted as amended by 5601  
4/14 (p. 1201)*

BY JACK W. HESTER

SENATE FILE 2299

S-5621

- 1 Amend Senate File 2299 as follows:
- 2 1. Page 1, line 7, by inserting after the word
- 3 "cigarette" the words "which shall not be considered
- 4 as part of the basic cost of cigarettes as defined
- 5 in section 551A.2".

S-5621 FILED & LOST  
APRIL 15, 1982 (p. 1234)

BY RICHARD F. DRAKE  
GEORGE R. KINLEY  
EDGAR H. HOLDEN

SENATE FILE 2299

S-5622

- 1 Amend Senate File 2299 as follows:
- 2 1. Page 5, by inserting after line 6 the following:
- 3 "Sec. \_\_\_\_ Chapter 551A, Code 1981, is amended
- 4 by adding the following new section:
- 5 NEW SECTION. CASH DISCOUNT. A wholesaler shall
- 6 provide a discount of two percent of
- 7 the price of the cigarettes sold to a retailer who
- 8 purchases the cigarettes for cash."
- 9 2. Title page, line 8, by inserting after the
- 10 word "director," the words "and requiring wholesalers
- 11 to grant a discount to retailers who purchase
- 12 cigarettes for cash,".
- 13 3. By numbering and renumbering as necessary.

S-5622 FILED  
APRIL 15, 1982  
LOST AS AMENDED (p. 1236)

BY RICHARD COMITO  
GARY L. BAUGHER  
JOHN W. JENSEN

SENATE FILE 2299

S-5625

- 1 Amend the Amendment S-5622 to Senate File 2299 as
- 2 follows:
- 3 1. Page 1, line 5, by striking the word "shall"
- 4 and inserting in lieu thereof the word "may".

S-5625 FILED & ADOPTED  
APRIL 15, 1982 (p. 1236)

BY JOHN W. JENSEN

SENATE FILE 2299

S-5706

- 1 Amend Senate File 2299 as follows:
- 2 1. Page 5, by inserting after line 5 the
- 3 following new section:
- 4 "Sec. \_\_\_\_ Chapter 551A, Code 1981, is repealed
- 5 effective January 1, 1983."

S-5706 FILED & LOST  
APRIL 20, 1982 (p. 1315)

BY EDGAR H. HOLDEN  
RICHARD COMITO  
DICK RAMSEY  
GARY L. BAUGHER  
RICHARD L. DRAKE  
GEORGE R. KINLEY  
MICK LURA  
WM. D. PALMER

S-5624

1 Amend Senate File 2299 as follows:

2 1. Page 1, line 15, by inserting after the word  
3 "shall" the word "not".

4 2. Page 1, line 16, by striking the words "of  
5 two percent of the face value".

6 3. Page 2, by inserting after line 15 the  
7 following:

8 "Sec. \_\_\_\_ . Section 98.35, Code 1981, is amended  
9 to read as follows:

10 98.35 TAX AND FEES PAID TO GENERAL FUND. The  
11 proceeds derived from the sale of stamps and the  
12 payment of taxes, fees and penalties provided for  
13 under this chapter, and the permit fees received from  
14 all permits issued by the department, shall be credited  
15 to the general fund of the state. However, beginning  
16 with the fiscal year beginning July 1, 1983, there  
17 is appropriated annually from the state general fund  
18 an amount equal to one percent of the face value of  
19 all tax stamps sold in the preceding fiscal year to  
20 the university of Iowa for the purpose of providing  
21 additional funds for research in the area of cancer,  
22 heart ailments, and other ailments or diseases  
23 associated with the smoking or use of cigarettes,  
24 cigars or other tobacco products. All permit fees  
25 provided for in this chapter and collected by cities  
26 in the issuance of permits granted by the cities shall  
27 be paid to the treasurer of the city wherein the  
28 permit is effective, or to another city officer as  
29 designated by the council, and credited to the general  
30 fund of said city. Permit fees so collected by  
31 counties shall be paid to the county treasurer and  
32 credited to the general fund of such county."

33 4. Title page, by striking lines 2 and 3 and  
34 inserting in lieu thereof the words "by making  
35 permanent the tax rate of nine mills, prohibiting  
36 the sale of tax stamps at a discount,".

37 5. Title page, line 8, by inserting after the  
38 word "director," the words "making an appropriation,".

39 6. By numbering and renumbering/as necessary.

S-5624 FILED  
APRIL 15, 1982  
RULED OUT OF ORDER (p. 1236)

BY SUE YENGER  
ARTHUR SMALL, JR.  
RICHARD COMITO  
GARY L. BAUGHER

SENATE FILE 2299  
FISCAL NOTE

REQUESTED BY SENATOR CRAFT

In compliance with a written request there is hereby submitted a Fiscal Note for Senate File 2299 pursuant to Joint Rule 16.

S.F. 2299 has the following provisions:

- Makes permanent the tax rate of nine mills on each cigarette and little cigar contained in the law enacted in the 1981 session. Under that law, the nine-mill rate would revert on July 1, 1983 to the rate of six and one-half mills depending on the weight of the cigarette or little cigar.

o fiscal effect: FY 1984 - \$17.0 million increase

- Under the 1981 law, the discount from the value of the stamps sold by the department of revenue is two percent of the value, which reverts on July 1, 1983 to a rate not to exceed five percent of the value. S.F. 2299 makes the two percent discount permanent.

o fiscal effect: FY 1984 - no change from previous two fiscal years

- Because the nine-mill rate is made permanent in S.F. 2299, there is no need for a cigarette tax refund when the rates revert to the lower rate which was provided for in the 1981 law. This section 4 of the 1981 law is repealed.

o fiscal effect: FY 1984 - a onetime windfall of \$500,000 results

- Provides a penalty and interest for unpaid or delinquent taxes which is uniform with the other taxes administered by the agency. The penalty and interest provisions may be waived or reduced by the director of revenue if failure to pay is due to reasonable cause.

o fiscal effect: None

- Provides the conditions upon which free samples may be distributed by any person.

o fiscal effect: Unknown, but expected to be minimal. Taxes are still paid on free samples.

- Repeals chapter 551A, which is the state unfair cigarette sales Act.

o fiscal effect: Unknown. The effects of allowing retailers to put their own prices on cigarettes possibly might stimulate competitive pricing, with lower prices increasing sales and thus cigarette tax receipts. No estimates are available as to how many retailers might change their cigarette pricing.

CONTINUED

SENATE 4  
APRIL 19, 1982

S.F. 2299, FISCAL NOTE - PAGE 2

The penalty and interest provisions take effect January 1 following enactment, while the rest of S.F. 2299 is effective July 1 following enactment.

- o Total fiscal effect  
for areas where an  
estimate is possible: FY 1984 - \$17.5 million increase

RECEIVED BY THE SECRETARY OF THE SENATE, APRIL 14, 1982

FILED:  
APRIL 16, 1982

BY GERRY RANKIN, FISCAL DIRECTOR