

Cigar Association of America

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Testimony on SSB 970

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Michigan is one of a very long list of states that are now collecting sales tax on transactions for online sales of cigars, pipe tobacco and vapor products and would like to collect excise tax on those same transactions. However, Michigan's treasury department does not have the clear-cut authority or the mechanisms (tools) to collect excise tax without statutory changes. SSB 970 seeks to extend the authority of Michigan's treasury department to force the payment of the tax. However, SSB 970 does not currently include the mechanisms or tools to solve the issues we will be discussing here today.

Ohio and Maryland are the two states that have directed their revenue agencies, through legislation, to collect Tobacco Taxes from online cigar sales yet neither has been able to effectively collect this tax.

The issues that have been identified are as follows;

- This is a tax levied at wholesale but, there is no visible wholesale transaction that can be verified. There is no three-tier distribution system.
- There is no requirement to collect and remit the excise tax that can be effectively applied to **all** online sellers.
- Online sellers, as of today, have not been able to successfully configure software to integrate the excise tax into the retail price for Michigan and the 52 plus other jurisdictions within a single shopping cart based on the ship-to destination and then calculate the sales tax.
- Neither Michigan's current nor proposed definition of "wholesale price" establishes a taxable value that can be verified by the states and the industry in these online retail transactions.
- If SSB 970 were to become law, Treasury would be charged with the never-ending task to chase down the online vendors both large and small only to end up in litigation because your statute of authority does not clearly provide a path to compliance for online sellers of any products subject to this tax.

We have been working with the chair and Treasury to find solutions to these issues and through this effort we have discovered a very real problem with Michigan's current law that makes the collection of this tax difficult when a Michigan brick and mortar retailer (tobacconist) is the retailer of premium cigars and other tobacco products. SSB 970 seeks to solve that problem by forcing these retail tobacconists to purchase premium cigars and other tobacco products from a Michigan licensee. Premium cigars are not carried by the big wholesale houses like cigarettes and smokeless tobacco are. Tobacconists across the country buy their premium cigars directly from the producers or importers.

To put it bluntly, there is only one Michigan licensee positioned to sell premium cigars and other tobacco products to Michigan retailers and that licensee is in direct competition with each and every one of those Michigan retailers.

We have committed to work with the chair, this committee and Treasury to find solutions that can be incorporated into SSB 970 to provide the tools Treasury needs to effectively collect this tax and provide a clear path to compliance for both online retailers and Michigan brick and mortar retailers by establishing in Michigan statute;

- The tools to validate the tax base or taxable value by both the states and the industry.
- Clear tax liability and point of taxation.
- A revised Michigan licensure structure to allow online sellers and Michigan brick and mortar retailers to become licensed as excise taxpayers by definition in Michigan as they have for sales tax.

We will continue to work with the chair and staff or anyone the chair wishes, on the issues that need to be resolved in Michigan's statute.

Thank You for hearing this bill today and thank you for accepting my testimony on this important issue.