[ms-0398.012.002.008]

COUNTY OF SAN DIEGO

INTER-DEPARTMENTAL CORRESPONDENCE

August 10, 1993

TO: Supervisor Leon L. Williams

FROM: John R. Sweeten, Director
Office of Intergovernmental Affairs

SUBJ: **TOBACCO TAX**

Attached are various materials intended to help you evaluate the cigarette tax proposal sponsored by Los Angeles County. That proposal would increase the tax on cigarettes by 15 cents per pack, and would provide for State preemption of local smoking ordinances. Local ordinances which are more restrictive than the State law, and which were enacted before April 1, 1993[1], would be "grandfathered."

- o Summary of tobacco tax issues.
- o County Counsel memorandum regarding the preemptive effect of the measure.
- o Copy of the report and recommendation approved by the Board August 3, 1993.
- o Copy of proposed amendment to the proposal which would carry out the Board's August 3 direction.
- o A table which displays the allocation of the tax revenue at the $330 million level[2] according the proposal, and an alternative allocation based on situs of the sale.

Respectfully,

JOHN R. SWEETEN

cc: David Janssen

lw081093.js

---

[1] The measure currently contains a "grandfather" date of August 1, 1993; but we understand that will be changed to April 1, 1993 -- presumably to "capture" the recently-enacted Los Angeles ordinance.

[2] The proposal would actually generate $300 million the first year, rather than $330 million.

TOBACCO TAX ISSUES

1. Preemption

The proposal would establish State preemption of local smoking ordinances. It would grandfather those local ordinances enacted not later than April 1993, so long as they are more restrictive than the State ordinance.

- All 18 cities in San Diego County have ordinances adopted prior to May 1993; I do not know if they are more or less restrictive than the proposal.

- Counsel opines that the proposed law is more restrictive than our ordinance in several respects, but that they are generally comparable.

2. Future Changes in State Law

The Legislature could, at a future date, revisit its smoking statute; the tobacco industry could be expected to follow this course of action. This could result in unwelcome changes in the law affecting smoking in local jurisdictions now governed by local ordinance.

3. Affect of New Tax on Voter Support for Proposition 172

Some believe that the Legislature, merely by imposing a tax before the November election, will reduce the chances of Proposition 172 passing -- i.e., such action would either reduce whatever sympathy voters presently feel for counties, or increase their anti-tax cynicism/paranoia.

4. Allocation Formula

As noted in the report that went to the Board, the Los Angeles proposal would allocate the bulk of the proceeds of the new cigarette tax to counties with relatively low sales tax generating capacity -- e.g., nearly 50% would go to Los Angeles. The proposal assumes that voters approve Proposition 172.

However, if voters to not approve Proposition 172, the proposal will work great inequities. This is because the allocation of the property tax shift was weighted to assign larger shifts to counties with large sales tax generating capacity -- e.g., San Diego and Orange Counties. If Proposition 172 fails, those counties will be left with disproportionately large property tax losses that will not be offset with the sales tax revenue on which their property tax loss was based. Such counties would be doubly harmed by a new tax proposal which penalizes them further for a non-existent "offsetting" sales tax.

- For example, San Diego County was allocated 6.2% of the entire property tax shift (even though its share of statewide property tax is much smaller than that). But its share of the new cigarette tax would only be 2.7%.

- Orange County was allocated 7.6% of the property tax shift. Its share of the new cigarette tax would only be 2.6%.

If the proposed new tax is to go forward (and there are reasons to caution against this), the formula should at the least be modified to provide a situs-based allocation in the event Proposition 172 on the November ballot fails.

5. Likelihood of Cigarette Tax Without Industry Amendments if Proposition 172 Fails

If Proposition 172 fails, counties will be devastated statewide. This fiscal problem will, in turn, cause serious problems for both cities and the State itself. As a result, the Legislature will be forced to consider alternative means of helping itself and counties limp through the fiscal year. High on that list of alternatives must be "sin taxes" -- taxes on alcohol and tobacco.

The difference between then and now may be that the tobacco industry would not be in as strong a lobbying position as it is now -- it is perceived that the industry is able to block the new tax without some concession in the form of a statewide smoking ordinance preemption. If Proposition 172 fails, the Legislature may be forced to consider a tax proposal without the need to "buy off" the tobacco industry.

6. Cities Will Oppose

Because (a) there is no money in the proposal for cities, and (b) the measure would preempt city smoking ordinances, cities may be expected to oppose the measure. This opposition will substantially impede the likelihood of success.

Before