

STATEMENT OF SENATOR ROBERT B. MORGAN  
BEFORE THE HOUSE SUBCOMMITTEE  
ON  
MISCELLANEOUS REVENUE MEASURES  
COMMITTEE ON WAYS AND MEANS  
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Mr. Chairman:

It is a pleasure to be able to address the House Subcommittee on Miscellaneous Revenue Measures concerning a subject with which I have had extensive dealings for some time now. Cigarette smuggling and state tax evasion have received increasing publicity in recent times but I have been aware and concerned about them since my term as a North Carolina State Senator in the 1950's and 1960's. I have been interested in the many proposals to combat the problem and I was prompted to appear today by the appealing idea of a uniform federal tax. The uniform tobacco tax approach is of interest to me not only in my capacity as a representative of the State of North Carolina and as a legislator concerned about the passage of effective and valuable laws but as well because of my long term interest since serving as Attorney General of my home state of North Carolina.

My position should be known to you at the outset. While I will not address in particular any one of the seven or eight proposals currently up for review, I will state two points which I feel should be taken into consideration by your subcommittee. I have reviewed the various proposals by Congressman Jones, Congressman Drinan and others and two points come to mind. First, the proposed uniform tobacco tax is a measure which may not be needed and may be in fact unjustified under the current situation. Second, the measure itself will be unwieldy, unworkable and may create a situation of confusion and ineffective law enforcement.

Mr. Chairman, let me speak first to the question of need. I believe that it is bad policy to create preemptive federal legislation for the benefit of a very few states. Now, we all know that we are talking about those fourteen states in the northeast who have the most disproportionate cigarette tax. Estimates are that in 1975, these states reportedly lost up to \$400 million in revenue, and it reported that as much as \$200 million of that went to organized crime. It is, of course, the decision of these states to create the taxes which they have and with those decisions, I cannot quarrel. Personally, I don't believe that 36 states should be confronted with major federal legislation which will severely restrict their taxing abilities simply on the needs of 14 states. Additionally, I believe there is an issue of much merit in the question of whether there is a need for regulating other commodities in a similar fashion. In other words will tobacco simply be the first step. I am sure that there is an arguable need to regulate alcoholic spirits and other commodities which are now the subject of disparate state taxation.

Fundamentally, I believe that the threshold question for this subcommittee to deal with is whether, before federal preemption or federal intervention should take place, the states have done all they can individually and collectively to address their common problem? Have they worked through all means at the regional or national level to deal with the problem? I'm pleased to note that the Governor of North Carolina, the

Honorable James B. Hunt, Jr., in a statement submitted for consideration of the Subcommittee on Crime of the House Judiciary Committee, stated that North Carolina is again renewing and expanding its efforts to work with law enforcement officers and revenue officials from other states that have been impacted by cigarette smuggling. North Carolina has been willing, all along, to assist other states in their anti-smuggling efforts. North Carolina has been sensitive as well to problems created by the fourth amendment concerning searches and seizures necessary to limit smuggling. The Governor's recent restatement of North Carolina's policy on smuggling and his commitment of greater resources of the State Bureau of Investigation, all speak to the concern and interest of the state of North Carolina. North Carolina's interest is shared by other states and this sincere concern and willingness to cooperate should not be lost in the rush to pass federal legislation.

I suggest to the Subcommittee that I am not merely attacking the legislation but would like to present an alternative. I do believe that it's possible to present to the northeastern states or to all the states, the uniform law approach. The idea of collective action or a regional tax or some form of reciprocal action to deal with the tax problem may be the best.

The second point I wish to make, Mr. Chairman, is that the nature of the proposals for a uniform tax with return

payments to the states, and I am speaking in large measure to H.R. 10066 and H.R. 10579, simply are going to be too simplistic a solution to a rather complex problem. Further, the proposals set forth in many of the bills before you now are going to create a most inequitable and unfortunate situation.

Let me just point to a few of the major problems with the uniform tax proposals. I believe there is an initial question of the cost of the various proposals here. I would hope the committee will look closely to the expense at the federal and state level brought about by the bills. The amount of paperwork involved and the increased law enforcement which will be required, not only to stop smuggling but as well to monitor sales and regulatory matters, should be taken into account. Will the expense be justified by either a significant decline in tax loss or an increase in tax revenue? I hope that the subcommittee will investigate this closely. It is purely speculative, but for my part I believe the expense may outweigh the gain and may be a greater cost than we are willing to bear in terms of law enforcement and the burden on the public. A second caution is the pure mechanics of these provisions with which I have some trouble. The 20,000 cigarette limit, which breaks down to some 100 cartons of cigarettes, in my view might limit major smuggling along the lines of truckload purchases of cigarettes from a wholesaler. It would not do anything to limit highjacking. It would do nothing to limit the type of smuggling which goes on primarily in the northeast, that is by consumers who will

cross the state line, for example, from Connecticut to New York or from New York to New Jersey where the tax differentials make the purchase of a hundred cartons or less worthwhile for an afternoon's drive. Let us not forget that much revenue is lost in these sales, as well, when we speak of a four hundred million dollar revenue loss. A 20 thousand cigarette limit also has an accounting problem. I am sure that 99 cartons purchased in a single transaction and then another 99 purchased in a subsequent transaction will never reach the record books under the provisions currently before the committee. And further, I have some concern as to whether they will be considered contraband under the definitions in the bills.

I believe one of the major problems with these proposals is that there is going to be a great discrimination in terms of the distribution of money received into the tax trust fund proposed in the bills currently before the subcommittee. In the distribution of money, there must be some method of preventing an inequitable return as Governor Shapp pointed out in his testimony before the Subcommittee on Crime of the Judiciary Committee in February of this year. The problem is not just preemption but the alteration of state tax systems by federal intervention and the imposition of higher taxes on the states. As Governor Shapp pointed out, 70% of the population would get a tax benefit from these uniform federal taxes. The average or below average tax state would be clearly disadvantaged by the preemptive federal action. I feel there is a certain degree of

inequity in this, a certain degree of unfairness. There is a clear infringement on state taxing and the very real fact that states will be forced to raise their taxes in order to qualify for tax returns. Mr. Chairman, the ability to regulate internal tax structures has been left to the states throughout history. These uniform taxes will create, by indirect means, a situation where the federal government would inevitably force states to adjust their taxes in order to benefit from the trust fund. This is a serious policy determination by the federal government and I hope that before this subcommittee recommends any bill they will grapple with this issue and confront it head-on. Let me add that most of these measures would appear to freeze the abilities of states to raise their revenues absent some federal permission. Again, we see that federal intervention has serious repercussions.

In short, Mr. Chairman, I believe that these are controversial bills before this subcommittee. They present major issues and while the constitutional questions are not clear, they represent a definite impact on federalism and on the relationship of the federal and state taxing structures. As I have stated, I am not sure there is a need for these proposals and second I believe there are some serious considerations to be taken up by this subcommittee as to the form and nature of the remedies set forth. I would urge the subcommittee to address these proposals with caution and with concern for the broader issue of federalism.

One thought that comes to mind whenever we talk about trust funds and giving federal aid to the states are the words of the writer Carl Workman who said that, "Federal aid is the system of making money taken from the people look like a gift when handed back." I hope that the subcommittee is not creating a system which does that and nothing more and which will really have little or no impact on cigarette smuggling.