



**House
Legislative
Analysis
Section**

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**TOBACCO TAXES; ADMINISTRATIVE
RULES**

**House Bill 4845 as introduced
First Analysis (5-23-95)**

**Sponsor: Rep. James Ryan
Committee: Tax Policy**

THE APPARENT PROBLEM:

As part of the new school finance plan approved by the voters in Proposal A in March, 1994, the tax on tobacco products was increased substantially. Public Act 265 of 1947, the cigarette tax act, was repealed and a new act, the Tobacco Products Tax Act, was enacted as part of the package of legislation creating the school finance proposal. Under both the old and new acts, the Department of Treasury was authorized to seize and confiscate contraband tobacco products, as well as vehicles, vending machines, and records used by those trafficking in illegal tobacco products.

On December 1, 1994, after a three-month investigation, the state police raided a Dearborn shop and seized about \$200,000 worth of tobacco products, plus \$180,000 cash, a car, and books, records, and a computer. The state alleged that the businesses involved, Global Imports, Inc. and several others, owed over \$240,000 in unpaid tobacco taxes. Global Imports brought an action in Wayne County Circuit court asking that the state be restrained from seizing and retaining the property. On March 2, 1995, a Wayne County Circuit Court judge ruled that Section 9 of the new act is unconstitutionally flawed and ordered the state to return property it had seized in the raid on Global Imports. The court of appeals has refused to stay the circuit court order.

In the ruling, the judge cited the act's provision that requires the revenue commissioner to promulgate rules to implement the act, and said that because rules had not been promulgated, the plaintiff had been denied due process. A second flaw, the judge said, was that the statute contains no timeline for the Department of Treasury to issue a decision after a hearing on the question of whether property was legally seized. Legislation has been proposed to remedy the flaws in the act.

THE CONTENT OF THE BILL:

The bill would amend the Tobacco Products Tax Act (MCL 205.433) to specify that promulgation of rules by the revenue commissioner to implement the act would be permissible, rather than required. (Note: A companion bill, Senate Bill 533 [which is now pending before the Senate], would amend the provisions in Section 9 of the act governing the procedures that must be followed when tobacco products and other property are seized to enforce the act, including specifying time frames for the Department of Treasury to hold a hearing, issue a decision, and the like.)

FISCAL IMPLICATIONS:

According to the Department of Treasury, without passage of the bill and Senate Bill 533, the department lacks the ability to seize property to enforce the collection of tobacco taxes. In the case cited, the state had to give back property it had seized worth about \$400,000; this money typically goes back into enforcement efforts. (5-19-95)

The House Fiscal Agency says the bill would have an indeterminate effect on revenues. (5-17-95)

ARGUMENTS:

For:

House Bill 4845 would make the promulgation of rules to implement the Tobacco Products Tax Act permissive, rather than mandatory. This would remedy one of the problems with the act that resulted in the Department of Treasury's enforcement efforts being thwarted. Besides, the particular due process provisions found lacking in the act, timelines for hearings and decisions, can easily be inserted into statute (as Senate Bill 533 would do), thus making rule promulgation

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unnecessary. This is in keeping with the administration's effort to cut down on the excessive number of administrative rules.

POSITIONS:

The Department of Treasury supports the bill. (5-19-95)