



Office of The Attorney General
State of Connecticut

**TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE FINANCE, REVENUE
AND BONDING COMMITTEE
MARCH 21, 2011**

Thank you for the opportunity to support, and urge prompt passage of, Senate Bill 1155, *An Act Concerning the Disclosure of Information in a Tobacco Arbitration Proceeding*. This bill provides for the disclosure of certain tobacco sales and related tax information in connection with a pending national arbitration proceeding. Connecticut has approximately \$117 million at stake in this proceeding, and enactment of this legislation is important to our ability to present our case in the strongest light. I understand that this bill also has the full support of the Department of Revenue Services.

This act will permit the Commissioner of the Department of Revenue Services (DRS) to disclose to the Attorney General "returns" and "return information" as defined in CGS § 12-15, obtained from cigarette and other tobacco product distributors, when that information is relevant to an arbitration or other dispute resolution proceeding brought under the tobacco Master Settlement Agreement (between the cigarette manufacturers and the states). It then permits the Attorney General to disclose this information in the arbitration proceeding. The disclosed information would include cigarette and tobacco products tax returns, reports of audits of distributors' records, and DRS internal or interagency communications regarding sales made by distributors and manufacturers. The proposed amendment will have no effect on the general privacy of individual taxpayer records, such as income tax returns.

Connecticut and 46 other states are parties to the tobacco Master Settlement Agreement of 1998 ("MSA") with major tobacco products manufacturers. Currently, the States and the tobacco products manufacturers who signed the MSA (Participating Manufacturers) are engaged in a court-ordered arbitration proceeding. The Participating Manufacturers are questioning whether -- in 2003 -- the states used "diligent efforts" to enforce certain statutory provisions requiring that annual escrow deposits be made by cigarette manufacturers that did not sign the MSA (Non-Participating Manufacturers). While I believe strongly that the Participating Manufacturers' challenge is without merit, and I will fight it vigorously, if the Participating Manufacturers prevail, Connecticut could potentially lose almost \$117 million.

On November 19, 2010, the Arbitration Panel issued a comprehensive Discovery and Scheduling Order which directs all the States, including Connecticut, to disclose detailed specific information regarding the reporting and tracking of cigarettes sold in Connecticut in 2002 and 2003 by manufacturers who did not sign the MSA. The order directs the States to begin disclosing relevant documents on December 31, 2010. A subsequent order directs the States to complete such document disclosure by July 7, 2011.

Many of the relevant documents and records the State of Connecticut has been ordered to produce by the Arbitration Panel are tax returns (or portions thereof) filed with the Department of Revenue Services by various cigarette distributors licensed by the Department of Revenue Services. These documents and records would generally constitute "returns" and "return information," as defined in Conn. Gen. Stat. § 12-15, and, under Conn. Gen. Stat. § 12-15, returns and return information may not be disclosed, except as specified by statute.

The Arbitration Panel has already ruled that each State must bear the burden of proving that it diligently enforced its escrow statutes during 2003. Consequently, if the State of Connecticut is legally unable to provide the relevant documents and records in the arbitration proceeding, the State will lack much of the evidence that demonstrates its enforcement activities, potentially jeopardizing its entire annual MSA payment of almost \$117 million for 2003. Without the ability to disclose this information, the State will be unable to make the strongest possible defense of its diligent enforcement efforts.

Accordingly, I urge you to enact this legislation as quickly as possible.