

CIGARETTE TAX: "Bravo's" are cigarettes made from a substitute for tobacco and are subject to the cigarette tax imposed by Chapter 149, RSMo.

OPINION NO. 431

September 15, 1966

Mrs. Frances Ferris  
Supervisor, Cigarette Tax Division  
Department of Revenue  
Jefferson Building  
Jefferson City, Missouri



Dear Mrs. Ferris:

This is in answer to your request for an opinion on the question of whether "Bravo's" are subject to the cigarette tax. We have examined a pack of "Bravo's" and find they are in appearance the same as cigarettes made from tobacco except that they are made of treated lettuce instead. They are also smoked the same as tobacco cigarettes. The following is printed on the back of the Bravo pack:

"Welcome to the pleasure of nicotine-free smoking"

"Medical authorities agree nicotine is the most harmful ingredient in tobacco. It causes significant increases in blood pressure, heart rate. It constricts the blood vessels.

"BRAVO IS GUARANTEED 100% NICOTINE-FREE.

"Instead of tobacco, Bravo contains wholesome leaf of Lactuca Sativa, a variety of lettuce, treated by a patented process to assure smoking pleasure and satisfaction.

"As you know, it takes a few packs to become accustomed to any new brand. When you discover the full pleasure of nicotine-free Bravo--and the lack of morning taste--you may ask, as others have... 'Who ever thought a no-nicotine smoke could taste so great?'"

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Subsection 1 of Section 149.020, RSMo Supp. 1965, reads as follows:

"A tax shall be paid on the sale of cigarettes made of tobacco, or any substitute for tobacco, of two mills per cigarette."

The legislature did not define the word "cigarette" but as said in State v. Goodrich, 133 Wis. 242, 113 N.W. 388, 389, "the Legislature used that word to describe some well known, recognized, and definite article."

In that case the court was considering a criminal statute outlawing cigarettes and quoted from Kappes v. City of Chicago, 119 Ill. App. 436, the following, 1.c. N.W. 390:

"\* \* \* We think the court may take judicial notice that cigarettes are generally made of tobacco rolled within small pieces of tissue paper."

The court then said, 1.c. N.W. 390:

"Further, all lexicographers agree that the paper wrapped rolls of tobacco are cigarettes, though they differ as to whether the word may also include similar rolls wrapped in tobacco."

\* \* \* \* \*

"As appears by uncontradicted evidence, what is generally termed a 'cigarette' in the tobacco trade has, as its special characteristics, the paper wrapper and the peculiar kind and quality of tobacco, which is distinguished by its light color and mildness. \* \* \*"

From the above it would appear that a cigarette is a roll of tobacco wrapped in thin paper to be smoked.

The legislative purpose in the cases from which these definitions have been taken was to outlaw cigarettes made from tobacco because of the apparently undesirable and harmful effects of nicotine found in tobacco.

The purpose of the legislature in enacting Chapter 149, RSMo, was not to outlaw cigarettes but to raise revenue by taxing a certain product. No legislative intent can be found in Chapter 149 that

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cigarettes are being taxed because tobacco is harmful. The legislature in fact defines the subject of the tax as a "cigarette made of tobacco, or any substitute for tobacco."

Webster's Third New International Dictionary defines cigarette as:

"\* \* \* 1 a: a tube of finely cut tobacco enclosed in paper, designed for smoking, and usu. narrower and shorter than a cigar b: a similar tube for smoking filled wholly or partly with some substance other than tobacco \* \* \*"

Webster's Third New International Dictionary also defines substitute as:

"\* \* \* 2: something that is put in place of something else or is available for use instead of something else \* \* \*"

It is our opinion that "Bravo's" are cigarettes which are the subject of taxation of Chapter 149, RSMo. The material used in "Bravo's" is a substitute for tobacco. "Bravo's" are designed to do the same thing as cigarettes made from tobacco but without the allegedly harmful substance nicotine. The message printed on the back of the Bravo pack best illustrates that "Bravo's" are cigarettes made from a substitute for tobacco when it says:

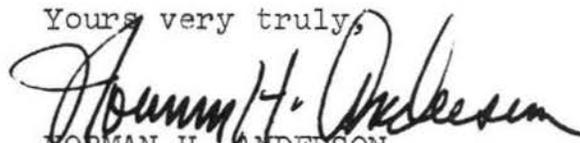
"Instead of tobacco, Bravo contains wholesome leaf of Lactuca Sativa, a variety of lettuce, treated by a patented process to assure smoking pleasure and satisfaction."

#### CONCLUSION

It is the opinion of this office that "Bravo's" are cigarettes made from a substitute for tobacco and are subject to the cigarette tax imposed by Chapter 149, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Yours very truly,



NORMAN H. ANDERSON  
Attorney General