

REPORT ON
TRADING STAMPS

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PREPARED BY
THE RESEARCH STAFF
OF THE
ARIZONA LEGISLATIVE COUNCIL

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This report is factual only and is not
a recommendation on the part of the
Council or any of its staff members.

TABLE OF CONTENTS

	<u>Page</u>
I INTRODUCTION -----	1
II SUMMARY -----	4
III PART I. LEGAL STATUS OF THE PROBLEM -----	8
a. District of Columbia v. Kraft -----	8
b. U. S. Supreme Court Opinions-----	10
c. Corpus Juris Secundum -----	10
d. Fair-Trade Laws -----	12
e. Pennsylvania Law Review -----	13
f. Wisconsin Informational Bulletin -----	15
g. Proposed Legislative Approach -----	17
h. Conclusion -----	18
IV PART II. THE POPULAR APPEAL AND EXTENT OF TRADING STAMPS ---	19
a. "Trading Stamps Become a Sticky National Question" ----	19
b. "Giveaway Craze Hits Retail Trade" -----	20
c. Redemption Estimates -----	20
V PART III. TAX STATUS OF TRADING STAMP COMPANIES IN ARIZONA--	21
a. Volume of Stamps Sold in Arizona -----	21
b. Taxes Paid by Trading Stamp Companies -----	21
VI PART IV. DATA FROM OTHER STATES -----	22
a. Chart Relating to Use and Tax Restrictions -----	22
VII PART V. PROPOSED LEGISLATION -----	28
a. Proposed Bills in 1955 -----	28
b. Proposed Bills in 1957 -----	29

INTRODUCTION

On March 10, 1957, the following proposal submitted by Honorable H. S. Corbett, Ray H. Thompson, and M. L. Simms, members of the State Senate, was received by the Legislative Council:

"A PROPOSAL requesting the Legislative Council to make a study and report on trading stamps."

The proposal or request for the study also contained the following explanation:

"Various trade magazines, among them the American Druggist for March 11, 1957, have carried items relating to proposed legislation in other states, having for its purpose the regulation or taxation of trading stamps. Some states have proposed legislation declaring issuance of these items an unfair trade practice and prohibit the issuance of trading stamps or other premiums by retailers as an incentive to the purchaser. During the last two or three legislative sessions this matter has been discussed, but no formal approach has been made. In order that the Legislature may have facts and figures upon which to base any legislation which might be contemplated, and in order that the pros and cons may be brought together for comparison, it is requested that the Council make a study and report of the matter for submission to the appropriate

committees at the next regular legislative session."

Proposal number 52 was presented to the Legislative Council at its regular meeting held April 16-17, 1957, and was referred to the Director for research. In adopting this proposal for research, the Council approved a motion which substantially stated that the report should consist of a compilation showing how the trading stamp problem is being met in the other states.

The material available for study in the trading stamp field is voluminous. Unfortunately, the great bulk of this information and data is more suited for a report on sociological and psychological attitudes than for a report on the legislative status of the various states in relation to trading stamps. However, we have endeavored to present the present status of trading stamp legislation in the various states. The following sources have assisted us in presenting the report:

Advertising Age

Analysis of State Laws Relating to Trading Stamps
Arkansas Legislative Council

Arizona State Tax Commission

Basic Information on Regulation of Trading Stamps
with Special Reference to Wisconsin

Corpus Juris Secundum

Court Decisions Relating to Trading Stamps

Legislative Councils of each State in the United
States

Life Magazine

Marketing Research Report No. 147; United States
Department of Agriculture

Report on the Use and Redemption of Merchandise
Stamps in Massachusetts

Retailers Manual

Temple Law Quarterly

The Council of State Governments

The Yale Law Journal

Trading Stamps by Harvey L. Vredenburg, Bureau of
Business Research, Indiana University School of
Business

University of Cincinnati Law Review

University of Pennsylvania Law Review

SUMMARY

The proposal as first presented to the Legislative Council was for the purpose of directing the Council staff to conduct general research in the problem of trading stamp companies. When the Council accepted the proposal for study a motion was made to accept it for study on the basis of ascertaining what other states were doing in this field.

The field of trading stamps has a legislative and judicial history covering more than half a century; however, tremendous growth in the trading stamp business has occurred within the past decade.

As a result of this activity and interest in the subject of trading stamps, the Council staff has prepared this report with material which is more than just a compilation. We trust that this factual report will be of assistance to the members of the Legislature should the trading stamp problem become an issue in the State of Arizona.

This report in substance sets forth the following:

1. The United States Supreme Court in a 1916 decision determined that the trading stamp question was a problem within the police power of each state and therefore the United States Supreme Court declined to assume jurisdiction in this field.

2. The states have assumed jurisdiction but the state courts have consistently invalidated legislation which was prohibitory or punitive. Taxation of trading stamp companies

and regulation thereof has been approved when such measures applied to a general class of business which included trading stamp companies. Whenever legislation was directed at trading stamp companies alone, the courts have held such restrictions to be unreasonable, discriminatory and not within the police power of the state.

3. It has been determined as a general rule that the distribution of trading stamps is not a violation of the fair-trade laws. In a few states, courts have ruled that the distribution of trading stamps is a reduction in the price of the fair-traded product and therefore such sales are in violation of the fair-trade laws. This is a minority viewpoint. Many states consider the distribution of trading stamps as a discount for cash and therefore it has no relation to the sales price.

4. A multitude of bills relating to trading stamps have been introduced into the state Legislatures. The most popular bill introduced has been the measure relating to escheat to the states of the value of unredeemed stamps. None of these measures have been enacted into law.

5. The popular appeal and extent of the trading stamp business is widespread. It is estimated that over fifty per cent of American families save trading stamps. In some large communities four out of five families save trading stamps and in some instances the percentage is close to 100%.

6. There are approximately eleven trading stamp companies in the State of Arizona. These companies are subjected to the same taxes as other businesses within the state. Trading stamp companies pay sales tax of one per cent on the sale of the stamps to merchants; two per cent on the merchandise used as premiums, and of course, such companies file their returns with the income tax division of the State Tax Commission.

7. While there are over 300 trading stamp companies in the United States, there are only eleven trading stamp companies in the State of Arizona. Consequently, in thinking of these companies as a new source of revenue, it must be remembered that such additional revenue will be derived from approximately eleven companies unless it is intended to tax the merchant who distributes the stamp to the consumer.

8. Only the District of Columbia and the State of Kansas prohibit the distribution of trading stamps within their jurisdictions. A court decision in 1910 prohibited trading stamp companies from operating within the District of Columbia. The State of Kansas enacted a measure in 1957 which provides for the prohibition of trading stamps in the state, effective April 16, 1958. Undoubtedly there will be a court test of this legislation to determine its constitutionality.

We trust that we have presented a clear and dispassionate picture of a fairly involved and emotional problem. The future of trading stamp legislation rests with the Legislature and,

we might add, the problem rests not only with the members of the Legislature, but with the many thousands of women within this state who are avidly saving trading stamps and who can and undoubtedly will become very articulate should trading stamps become a legislative issue.

PART I

LEGAL STATUS OF THE PROBLEM

In the District of Columbia v. Kraft, the opinion of the court was written by Mr. Chief Justice Shepard and he wrote in part:

"The trading stamp concerns are not engaged in the advertising business, or as agents for advertisers. * * * * * are not merchants engaged in business, as that term is commonly understood. They are not dealers in ordinary merchandise, engaged in a legitimate attempt to obtain purchasers for their goods by offering fair and lawful inducements to trade. Their business is the exploitation of nothing more or less than a cunning device. With no stock in trade, but that device and the necessary books and stamps and so-called premiums with which to operate it successfully, they have intervened in the legitimate business carried on in the District of Columbia, between seller and buyer, not for the advantage of either, but to prey upon both. They sell nothing to the person to whom they furnish the premiums. They pretend simply to act for his benefit and advantage by forcing their stamps upon a perhaps unwilling merchant. * * * * * The whole country is now agitated by the increased cost of living that has grown to alarming proportions, and legislative bodies are inquiring into its causes with a view, if

possible, of providing remedies for the mischief. While there is difference of opinion as regards the chief source, all concur in the opinion that every introduction of superfluous middlemen, and consequent unnecessary charges between producer and consumer, undoubtedly contribute to swell the stream to overflowing. * * * * * Now, what are the conditions presented by the facts in this case? An entirely unnecessary middleman, for his own profit solely, has injected himself between the regular merchant on the one hand, and his customers on the other."

The strong and even harsh language relating to trading stamps, written by Chief Justice Shepard, was in an opinion dated May 10, 1910, approximately forty-seven years ago. As can be readily observed, the problem of trading stamps even a half century ago was just as violent and turbulent as it is today. The opponents of trading stamps could use this same language which was written in 1910 without any changes and for their purposes it would be applicable to the current controversy.

The decision rendered in the case of District of Columbia v. Kraft in essence outlawed the use of trading stamps in Washington, D. C., and, to the best of our knowledge, trading stamps have been outlawed in the District of Columbia to this day. However, this court decision is one of the few, possibly the only decision, which has taken a position declaring the use of trading stamps unlawful.

In a series of three opinions, the Supreme Court of the United States* held that the states may regulate the use of, and impose license taxes on the privilege of using profit-sharing coupons and trading stamps. Moreover, the court declared that the trading stamp license statute of the State of Washington is not unconstitutional under the commerce clause of, or the due process or equal protection provision of, the Fourteenth Amendment to the Federal Constitution.

The Supreme Court of the United States has in effect abandoned the field of any regulation or prohibition of trading stamps and has left jurisdiction solely within the province of the states. The Supreme Court, furthermore, while abandoning jurisdiction insofar as the Federal government was concerned, did directly confer upon the states the power to legislate and regulate this type of business.

Even though the Supreme Court of the United States has conferred upon each of the states power to regulate the trading stamp business, state courts have repeatedly held that prohibitions and punitive regulations are unreasonable and therefore unconstitutional. Corpus Juris Secundum** contains an excellent analysis of this problem and pertinent excerpts are quoted

* Rast, Tax Collector for Duval County, Florida v. Van Deman & Lewis Co. 240 V.S. 342.
Tanner, Attorney General of the State of Washington v. Little 240 V.S. 369.
Pitney v. State of Washington 240 V.S. 387.

**87 Corpus Juris Secundum, 878-882.

below:

"A 'trading stamp' has been defined as being a stamp given to a purchaser of goods or property entitling the purchaser to receive other goods or property from a person other than the seller; a stamp issued to a purchaser by a seller who agrees to redeem the same in merchandise or money; a stamp which entitles a buyer of goods to obtain from some person other than the seller some article of merchandise in addition to that sold."

Regarding the regulation and prohibition of trading stamps, Corpus Juris Secundum has this to say:

"Although there is authority to the contrary,* statutes and ordinances designed to prohibit the giving away of trading stamps or profit-sharing coupons by a merchant with the purchase of goods, as part of the sale transaction, have been repeatedly held to be unconstitutional. As affecting the validity of the regulations it has been held immaterial whether the stamps are redeemable by the merchant or by a third person. Consequently, a statute forbidding the issuance of trading stamps redeemable by anyone other than the seller has been held to be unconstitutional. Without express authority municipal corporations cannot prohibit merchants and dealers in merchandise from offering gifts to induce trade; and such authority itself cannot

* The only authority to the contrary cited by C.J.S. is the District of Columbia v. Gregory which is based on District of Columbia v. Kraft, explained in this report.

be derived from the general welfare clause."

With reference to police power, we quote Corpus Juris Secundum as follows:

"Although, the courts of a few jurisdictions have held that laws regulatory of trading stamp and other premium schemes are within the police power, statutes and ordinances of this kind in most jurisdictions have been declared to be invalid as not being a proper exercise of the police power. Such legislation it has been held does not look to, or in any manner concern, the public health; nor does it look to, or tend to promote, the public safety; nor does it in any manner relate to, or tend to promote, public morals; nor can such legislation, it seems, be upheld as a valid exercise of the legislative power to enact what shall amount to a crime."

The use of trading stamps has caused the eruption of still another complex legal problem which in some instances has been resolved by using accounting principles. The question raised is whether the use of trading stamps results in a reduction in the price of merchandise, thereby, in certain instances, violating the fair-trade practices act. Fair-trade laws are part of the statutes of almost every state in the United States. Opponents of the trading stamp system maintain that issuance of trading stamps by a merchant selling a fair-traded item is a violation of the law and the merchant, in effect, is giving an illegal price reduction to the purchaser.

Proponents of the trading stamp system insist that trading stamps are no more than a discount for cash and as such has no relation to the price of the merchandise which is purchased.

Several law review articles* have been published relating to this subject. The following is a quote from an article in the University of Pennsylvania Law Review:

"The second and more difficult problem is whether dispensing trading stamps to purchasers of fair-traded articles who have paid minimum prices results in a sale 'at less than the price stipulated.' * * * * *

The predominant view is that issuance of trading stamps with purchases of fair-traded articles at minimum prices is not a violation of the fair-trade laws. Courts so holding have concluded that the stamps represent a discount for the payment of cash and that such a discount is not a reduction in price; or that they are merely a trade promotional device similar to advertising or the extension of credit and that the act is not intended to ban such devices; or that the stamps, even if a violation, come within the maxim de minimis non curat lex. However, some cases reach the opposite result on the ground that, because the stamps may be redeemed for merchandise, they have value in themselves and, accordingly, constitute a reduction to that

* University of Pa. Law Review, December 1956.
Temple Law Quarterly, Winter, 1957.
The Yale Law Journal, January, 1957.
University of Cincinnati Law Review, 1956.

extent in the price of the article purchased. * * * * *

How the seller reflects a cash discount on his books is of no consequence to buyer; from buyer's viewpoint, when he receives two cents worth of trading stamps with the purchase of an item fair-traded at one dollar, his net purchase price may justifiably be considered ninety-eight cents. Thus, labeling the stamps a 'cash discount' settles nothing, for even if sellers will normally treat the stamps as a selling cost such treatment represents no more than seller's bookkeeping procedure."

Corpus Juris Secundum, in Volume 87, page 719, cites a California case and states: "The issuance of trading stamps in connection with sales is not a gift by the seller, but a cash discount."

In presenting the legal ramifications of the trading stamp problem, we would like to show the possible relationship to our own state. In Arizona, we have no prohibitory or restrictive legislation, nor do we have any court decisions bearing on the problem. However, there is pending in our courts a suit which will eventually answer the question as to whether trading stamps are a cash discount or an advertising expense. This decision should in no way affect the mobility and use of trading stamps within the state.

There is no doubt that if prohibitory legislation or if a licensing tax were imposed on trading stamp companies, such a statute might be contested in our courts. Based on previous

judicial opinions, it appears that a prohibitory statute may be invalidated; moreover, a license tax, if punitive in nature, would also be declared invalid. This is only an assumption based on all the information we have been able to accumulate. In support of this calculated assumption we find considerable documentary evidence.

The Wisconsin Legislative Reference Library issued Informational Bulletin No. 158, entitled "Basic Information on Regulation of Trading Stamps With Special Reference to Wisconsin." The author of this bulletin points out that with few exceptions court decisions have invalidated any laws which were enacted for the purpose of prohibiting or restricting trading stamp activities. For example:

In 1915 the Kentucky Supreme Court held that trading stamps were "merely one way of discounting bills in consideration for immediate payment in cash, which is a common practice among merchants, and is doubtless a popular method, and advantageous to all concerned and it is not obnoxious to public policy."

In 1917 the Utah Legislature imposed a tax of fifty cents per 1,000 on trading stamps. The Utah Supreme Court determined the statute invalid since the tax, in its opinion, constituted undue discrimination. The court said it was "legislation designed to drive out of business a successful competitor."

The Oregon Legislature enacted a measure imposing a five per cent excise tax on the gross receipts of trading stamp companies. The Oregon state courts held this statute unconstitutional.

The California Legislature imposed a quarterly license tax of \$200 on merchants using stamps. California courts held this law unconstitutional and in the opinion pointed out that this tax was eight times larger than any tax on a business within the state not using trading stamps.

In 1930 the New Hampshire Legislature imposed several restrictions on the use of trading stamps. For example, New Hampshire required a bond or deposit of \$10,000, plus fees ranging from \$250 to \$1,000, from trading stamp companies; also an excise tax of ten per cent of the amount of sales of stamps and an additional tax of three per cent of the gross receipts of the trading stamp company. The New Hampshire courts invalidated this statute and determined that the act amounted to an unconstitutional interference with the right to acquire and possess property.

Pennsylvania courts, in 1939, determined that trading stamps did not violate the fair-trade act, while the Wisconsin Supreme Court prohibited the issuance of stamps on fair-traded items.

The Wisconsin Informational Bulletin No. 158 also points out that Wisconsin is one of the few states where

stamp plans are legally limited. As will be pointed out in a subsequent portion of this report, the State of Wisconsin permits trading stamp companies to operate but trading stamps must be redeemed in cash.

Another favorite legislative approach to the problem of restricting trading stamp companies is to introduce bills which provide for escheat to the state of the value of all unredeemed stamps after a specified period. The State of New Jersey has begun an escheat suit against Sperry & Hutchinson Company (S & H Green Stamps) for the value of unredeemed stamps between the years 1896 and 1950. This case is being carefully observed by the principals in the trading stamp controversy in the other states. Meanwhile, many state legislatures have seen the introduction of escheat bills, but none of them have been enacted into law. In 1955 the following states considered escheat legislation: Arkansas, California, Colorado, Idaho, Maryland, Montana, Nebraska and Nevada, while in 1957 such legislation was considered by California (this bill provided that funds from stamp operations in excess of expenses and redemptions revert to state treasury), Idaho, Maryland, Nevada and New Mexico.

None of the escheat bills have been enacted into law and the court cases are as yet undetermined. It is apparent, therefore, that from a legislative viewpoint this approach has not been successful.

We have endeavored to set forth the legal status of the trading stamp problem. In essence, we come forward with the

following conclusions:

1. The United States Supreme Court has determined that it will not assume jurisdiction of the trading stamp question and that such jurisdiction is rightfully imposed upon each of the states with the right to regulate under its police power.

2. Few states have prohibited the use of trading stamps, but many have regulated their use and many statutes have been determined invalid by state courts because the regulation or restriction is unreasonable and not in accord or on a par with regulations or restrictions imposed on similar businesses.

3. Generally, the use of trading stamps is not in violation of fair-trade laws. However, in a few states it has been determined that distribution of trading stamps is a reduction in the price of the fair-traded product and therefore such sale is in violation of the fair-trade laws. Some states consider the distribution of trading stamps as a discount for cash and therefore it has no relation to the sales price.

4. Many states have introduced in their legislatures bills which would provide for escheat to the state the value of all unredeemed stamps after expiration of a specified period. No legislation of this type has been enacted into law in any state. Presently, there is a court case pending in the State of New Jersey where the state has brought suit against Sperry & Hutchinson (S & H Green Stamps) asking that the value of unredeemed stamps escheat to the state.

PART II

THE POPULAR APPEAL AND EXTENT OF TRADING STAMPS

Life Magazine, in an article entitled "Trading Stamps Become A Sticky National Question", states that one out of every two American families save trading stamps. The article reveals that while the Tennessee Legislature was considering restrictive legislation against trading stamp companies the legislators received more than 40,000 pieces of correspondence, at the rate of 2,500 each day.

Harvey L. Vredenburg in his report on trading stamps discloses that a survey in 1954 showed that 52.5% of families surveyed were saving trading stamps. It is apparent that the national average is well over 50%. The report also indicates that a survey was taken in a city of approximately 200,000 where stamps had been used extensively for many years and the results revealed that 96% of the housewives in that city were saving trading stamps.

During the past two years there has been a tremendous growth in the use of trading stamps. Therefore, present usage of trading stamps would undoubtedly reflect a sharp increase when compared to the 1954 survey.

We have no results of polls or surveys which have been taken in the State of Arizona. However, a glance at the newspapers and a check of the other advertising media discloses that the saving of trading stamps by Arizona housewives and other purchasers is widespread.

Premium Practice, April 1953, reports that the highest redemption rates usually occur in the Southwest.

United States News & World Reports, in an article entitled "Giveaway Craze Hits Retail Trade", states that forty million American homes save stamps and that in Detroit, Michigan, four out of five families save trading stamps. According to this article, California is saturated with over 50 trading stamp companies.

It is estimated that there are over 300 trading stamp companies in the United States, while the State of Arizona has approximately eleven stamp companies.

The problem relating to the percentage of redemption is not only shrouded in secrecy but is a well-guarded business secret. Sperry & Hutchinson (S & H Green Stamps) maintains that its redemption percentage is 97%. It has also been estimated that of the larger stamp companies there is about a 75% redemption factor.

PART III

TAX STATUS OF TRADING STAMP COMPANIES IN ARIZONA

There are approximately eleven trading stamp companies in the State of Arizona. These trading stamp companies are permitted to operate just as any other business doing business within the state. They are obligated to pay the transaction privilege tax, use tax, income tax, and any other tax to which the ordinary business is subjected.

When a trading stamp company sells stamps to any merchant, the stamp company pays the one per cent transaction privilege tax imposed by section 42-1310, subsection (h), Arizona Revised Statutes. It is estimated that in 1955 trading stamp companies sold trading stamps valued at \$1,650,000 to merchants. This amounted to a tax of \$16,500. The year 1956 found a sudden upward swing in the sale of trading stamps. During 1956 it is believed that trading stamp companies sold approximately \$2,700,000 worth of trading stamps to merchants. The tax in 1956 amounted to approximately \$27,000.

All merchandise which the consumer receives as premiums is also subject to the transaction privilege tax at the rate of two per cent. If the merchandise is purchased out of the state, the merchandise is subject to the two per cent use tax.

The State of Arizona does not impose any special taxes or license fees on trading stamp companies or the merchants who distribute trading stamps.

Merchants who award premiums on the basis of cash register tape receipts save the one per cent tax since the purchase of stamps is eliminated thereby.

PART IV

DATA FROM OTHER STATES

On May 3, 1957, we directed a questionnaire to each of the states and the District of Columbia, relating to the operation of trading stamps within their jurisdiction. The chart shown below sets forth the states which permit trading stamp companies to operate and the restrictions, if any.

<u>State</u>	<u>Are trading stamp companies permitted to operate?</u>	<u>Unusual tax restrictions, if any.</u>	<u>Other restrictions.</u>
Alabama	Yes	<u>a/</u>	----
Arizona	Yes	None	----
Arkansas	Yes	None	----
California	Yes	None	----
Colorado	Yes	None	----
Connecticut	Yes	None	----
Delaware	Yes	None	----
Dist. of Col.	No	None	----
Florida	Yes	None	----
Georgia	Yes	None	----
Idaho	Yes	None	----
Illinois	Yes	None	----
Indiana	Yes	None	<u>b/</u>
Iowa	Yes	None	<u>c/</u>
Kansas	No(Effective 4/16/58)	None	----
Kentucky	Yes	None	----
Louisiana	Yes	None	<u>d/</u>
Maine	Yes	None	----

<u>State</u>	<u>Are trading stamp companies permitted to operate?</u>	<u>Unusual tax restrictions, if any.</u>	<u>Other restrictions.</u>
Maryland	Yes	<u>e/</u>	----
Massachusetts	Yes	None	----
Michigan	Yes	None	----
Minnesota	Yes	None	----
Mississippi	Yes	<u>f/</u>	----
Missouri	Yes	None	----
Montana	Yes	<u>g/</u>	----
Nebraska	Yes	None	----
Nevada	Yes	None	----
New Hampshire	Yes	None	----
New Mexico	Yes	<u>h/</u>	----
New York	Yes	None	----
North Carolina	Yes	<u>i/</u>	----
North Dakota	Yes	None	<u>j/</u>
Ohio	Yes	None	----
Oklahoma	Yes	None	----
Oregon	Yes	None	----
Pennsylvania	Yes	<u>k/</u>	----
Rhode Island	Yes	None	----
South Carolina	Yes	None	<u>l/</u>
South Dakota	Yes	None	----
Tennessee	Yes	<u>m/</u>	----
Texas	Yes	None	----
Utah	Yes	None	<u>n/</u>
Vermont	Yes	None	----

<u>State</u>	<u>Are trading stamp companies permitted to operate?</u>	<u>Unusual tax restrictions, if any.</u>	<u>Other restrictions.</u>
Virginia	Yes	<u>o/</u>	----
Washington	Yes	<u>p/</u>	<u>q/</u>
West Virginia	Yes	<u>r/</u>	----
Wisconsin	Yes	None	<u>s/</u>
Wyoming	Yes	None	----

a/ Alabama: Trading stamp licenses; 3% of gross receipts but not less than \$1,000 annually. Return must list name of each merchant who has purchased trading stamps. Additional license tax at 50% of state rate levied for county.

b/ Indiana: Unlawful to issue trading stamps without consent of one liable to redeem.

c/ Iowa: Issuance of trading stamps with fair-trade merchandise is an evasion of the fair-trade price act.

d/ Louisiana: Trading stamps shall be redeemable in cash on the day following the date of issue at the option of the bearer of the stamps.

e/ Maryland: Annual license fee \$500 for issuers of trading stamps and \$25,000 bond for distributors to merchants.

f/ Mississippi: License tax for distributors of trading stamps set at \$250 and may be levied by cities and towns. Some have adopted levy.

- g/ Montana: Tax of 3% on use of trade stimulators based on value of returns, plus \$5.00 fee.
- h/ New Mexico: License tax on distributors of trading stamps \$1,000 per county. This tax applicable to other corporations of a similar nature.
- i/ North Carolina: Trading stamp license tax \$300 on one engaged in issuing, selling or delivering trading stamps.
- j/ North Dakota: Effective July 1, 1957, trading stamp companies must print the cash value upon each stamp and the stamps shall, at the option of the holder, be redeemable in cash by the company or any retail business issuing such stamps. Furthermore, any trading stamp company desiring to discontinue business must notify the Secretary of State and a bond shall be furnished to the Secretary of State providing for the redemption of outstanding trading stamps.
- k/ Pennsylvania: The third class city code authorizes councils of third class cities to impose a license tax of not more than \$100 annually on certain types of business, including "trading stamps or premium companies or dealers."
- l/ South Carolina: This state prohibits the distribution of trading stamps to purchasers of food. This statute has been held unconstitutional by a state circuit judge and his decision has never been appealed to the Supreme Court of the state.

- m/ Tennessee: Act will be effective August 1, 1957. Privilege tax upon trading stamp companies increased from \$300 to \$600. Act also imposes a privilege tax of 2% of the gross receipts derived from the sale of all goods with which trading stamps are given upon persons, firms, or corporations using the same.
- n/ Utah: A trading stamp company, to operate in Utah, must have an established office with all books and accounts relating to the sale, issue, transfer, or delivery of stamps; the company must have a designated attorney filed with the Secretary of State to handle any civil actions or processes; the company must furnish a bond to the state in the sum of \$20,000, and provision is made in the law that either a trading stamp company must redeem stamps for cash or merchandise or that a merchant must redeem stamps for cash or merchandise if he issues such stamps. A violation of the law is a misdemeanor. The law also provides that trading stamps are in effect sales discounts.
- o/ Virginia: License tax based on the value of the premium stamps sold. If value does not exceed \$10,000, the tax is \$50.00; when the value exceeds \$10,000, the tax is \$50.00 on the first \$10,000 and twenty-five cents per hundred dollars upon all in excess of \$10,000. "Value" means the average value if sold at retail of the goods, merchandise, or other commodities for which the premium stamps may be redeemed.

p/ Washington: Each trading stamp company shall obtain a license from the auditor of the county for each place of business within a county. The license fee for each place of business is \$6,000 for one year. Enforcement is on a local level and it is possible this statute is not being enforced.

q/ Washington: Trading stamps shall be redeemed either for merchandise or for cash when presented by the bearer in any quantity. The premium stamp must show on its face the cash value of the stamp.

r/ West Virginia: License fee of \$75.00 on distributors of trading stamps to merchants in each county in which they operate.

s/ Wisconsin: The trading stamp law generally forbids the issuance of trading stamps redeemable in merchandise. The stamps must be redeemed in cash.

PART V

PROPOSED LEGISLATION

During the past few years state legislatures have been carefully scrutinizing the trading stamp business for its possibilities as a source of revenue. Few states have enacted restrictive tax legislation and in some instances when so done, the courts have invalidated such measures as discriminatory. In some instances we have been informed that even though licensing statutes have been enacted the law is not enforced.

A multitude of bills on many subjects relating to trading stamp companies have been introduced in the legislatures. One of the most popular measures has been the escheat bill. In fact, during the legislative year 1955, fifteen escheat bills were introduced in fourteen states. Prohibitive license tax bills were introduced in eleven states; in seven states bills were introduced for the sole purpose of prohibiting trading stamp companies from operating within the state, and in four states measures were introduced for the purpose of levying a gross receipts tax. Of the 50 bills introduced during the 1955 legislative year, 48 were killed.

Advertising Age, in its publication dated March 25, 1957, presented a summary of the status of legislation and litigation affecting trading stamps. The summary is as of March 12, 1957, and any changes are reflected in the chart shown in Part IV of this report. The following chart is of considerable interest since it shows the level of activity in this field:

CURRENT STATUS OF LEGISLATION

LITIGATION AFFECTING TRADING STAMPS

(As of March 12, 1957)

<u>State</u>	<u>Bill or Suit</u>	<u>Status</u>
Alabama-----	Suit challenging Birmingham's license on trading stamps. State's tax law on trading stamps.	Hearings concluded and court's decision pending. Suit pending.
Arkansas-----	Bill to make trading stamps redeemable in cash as well as merchandise.	Defeated in house.
California-----	Bill to have funds from stamp operations in excess of expenses and redemptions revert to state treasury.	Tabled in assembly.
Georgia-----	Bill to outlaw trading stamps.	Shelved for this year.
Idaho-----	Bill to tax stamps 2%, to be paid by stamp companies. Bill to escheat stamp values to the state a year after issue if not redeemed by holder.	Passed by house. Pending in senate. Pending in senate.
Indiana-----	Bill to make stamps redeemable in cash as well as merchandise.	Passed by senate. Pending in house.
Iowa-----	Bill to levy 10% tax on gross receipts of trading stamp companies.	Killed in senate.
Kansas-----	Bill to outlaw stamps.	In committee.
Maine-----	Bill to charge \$500 license fee to stamp companies for each county they operate in.	Pending in house.
Maryland-----	Bill to increase tax from \$500 to \$2,500 a year on stamp companies. Escheat bill.	In senate finance and house committee.
Minnesota-----	Three bills: (1) would ban use of trading stamps; (2) would make stamps redeemable in cash as well as merchandise; (3) would provide that stamps be exchanged for merchandise at stores that issue them.	All three bills are in house committee.
Missouri-----	Bill to make stamps redeemable in either cash or merchandise.	Awaiting action.

<u>State</u>	<u>Bill or Suit</u>	<u>Status</u>
New Jersey-----	Escheat suit brought by State vs. Sperry & Hutchinson Co. for value of unredeemed stamps between years 1896 and 1950 (AA, Dec.10, '56).	No trial date set.
Nevada-----	Bill to make stamps redeemable in cash as well as merchandise and also to escheat stamp values to the state if not redeemed one year after issue. Bill to assess merchants who give stamps \$1,000 to \$5,000 a year.	Pending in house. Pending in senate.
New Mexico-----	Bill provides that cash value and date of issue be printed on face of stamps, and that unredeemed stamps become state property three years after date of issue.	Killed in house.
New York-----	Bill to make stamp issuance subject to State Banking Department.	Pending in house.
North Dakota---	Bill provides trading stamps be redeemed in cash or merchandise. Referendum last year authorized legislation.	Passed both houses and sent to governor. He is expected to sign it.
Ohio-----	Bill to prohibit discrimination between businesses by operators of trading stamp plans on basis of stamp quantities purchased.	Awaiting action.
Oregon-----	Bill making it mandatory for stores issuing stamps to redeem them either in cash or merchandise.	In senate committee.
South Carolina-	Two bills: (1) would outlaw use of stamps and premiums except for manufacturers who include them with products; (2) would require stamp companies to sell stamps to all merchants at same price regardless of quantity purchased.	(1) Killed in senate. (2) Passed by house, pending in senate.
South Dakota---	Bill requiring stamp companies to report on number and value of stamps redeemed annually.	Passed by house. In senate committee.
Tennessee-----	Bill levying 2% gross receipts tax on all transactions where trading stamps are issued, plus \$600 annual privilege tax.	Passed by both houses and signed by governor. Law becomes effective Aug. 1, 1957.
Wyoming-----	Bill to prohibit exclusive contracts between merchants and stamp companies.	Defeated in house.