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FISCAL IMPACT REPORT

SPONSOR: Garcia DATE TYPED: 3/20/03 HB _____

SHORT TITLE: Tobacco Escrow Fund Act SB 801/a SJC

ANALYST: Smith

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
		See Narrative	Recurring	New Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

Responses Received From

TRD

SUMMARY

The Senate Judiciary Committee amendments to Senate bill 801 make a number of technical changes to the bill.

- Certifications and payments are converted from quarterly to annual payments.
- “Distributor” does not include retailers who buy cigarettes pre-stamped.
- A new section is added that clarifies the steps the Attorney General needs to take to remove noncompliant manufacturers from the directory.

- The amendments clarify that roll your own manufacturers must also comply with the act.

Synopsis of Original Bill

Senate Bill 801 creates a “Tobacco Escrow Fund Act” (TEFA) to improve compliance with the master settlement agreement between the states and the tobacco companies. TEFA requires that tobacco product manufacturers whose cigarettes are sold in NM provide to the attorney general various information about their businesses and brands on an annual basis. Non-participating manufacturers (defined in Section II(jj)) must verify that they are maintaining an escrow account in compliance with Section 6-4-13 NMSA 1978.

The attorney general shall publish on its web site a directory listing of all tobacco product manufacturers that have provided current, accurate and complete certifications. The attorney general shall keep this list current and inform a manufacturer if they are in jeopardy of being removed from the list.

Section 8 of the Act requires distributors to submit, on a monthly basis, to the Taxation and Revenue Department a list of brand families and the total number of cigarettes for which the distributor affixed stamps or otherwise paid tax due. A distributor shall also provide documentation of sales of all non-participating manufacturer cigarettes. Further, the attorney general may require information from a financial institution about the status and balance of an escrow account established by a non-participating manufacturer on behalf of the state.

Section 9 makes it illegal to sell, offer or possess for sale cigarettes of a tobacco product manufacturer that is not included in the attorney general’s directory.

ADMINISTRATIVE IMPLICATIONS

TRD notes that the department’s cigarette tax unit is responsible for compiling information from the cigarette distributors/wholesalers per the tobacco settlement agreement on behalf of the attorney general. There will be a moderate impact for the special tax unit. The bill will require modifications to the current reporting form and instructions since additional information will need to be collected.

Initially, additional resources (2 FTE) will be needed to change the forms, instructions, and to assist with the education of and compliance from cigarette wholesalers/distributors. Prior changes to the reporting requirements resulted in compliance issues with the wholesalers and distributors. Longer-term, one additional FTE will be required to manage the additional data entry requirements.

Additionally, a tracking system would need to be created and maintained for the existing clients within the cigarette tax system. A report would have to be developed and maintained so as to link information from the cigarette client to the attorney general via a web interface. A small database would also have to be devised to handle the reports and penalties for non-compliance. The estimated cost for this would be \$16,800.

TECHNICAL ISSUES

Sections 8(f), 9(f) and 10(B) of this bill provides the state shall be entitled to costs, expenses and attorneys fees if the state files suit under those sections to enforce the Act. This should probably state that the State can recover costs, expenses and attorneys fees if it brings suit *and substantially prevails*.

SS/njw:yr