

promulgate such regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Synopsis of HTRC Substitute

The House Taxation and Revenue Committee substitute for House Bill 452 amends the cigarette tax act.

It provides for tax-exempt stamps; all cigarettes sold in New Mexico would be required to have either a tax stamp or a tax exempt stamp, depending on whether they are subject to the cigarette tax or not. Distributors must be affix stamps within 10 days of receipt of cigarettes. Stamps would carry serial numbers.

The bill also changes the price for tax stamps by reducing discounts. The discount for the first \$30 thousand of stamps purchased in one month is reduced from 4 percent to one percent. The discount for the next \$30 thousand of stamps is reduced from three percent to eight tenths of one percent. The discount for amounts greater than \$60 thousand is reduced from two percent to one-half percent.

The bill adds new licensing provisions and requires registration for the distribution or manufacture of all cigarettes in New Mexico. These provisions include a \$100 license fee, which the Taxation and Revenue Department may charge for each manufacturer or distributor license.

The bill allows for intergovernmental agreements with Indian tribes to: enforce, administer and implement the provisions of the act; increase the ability of the department to account for packages of cigarettes imported into, sold or transferred within or exported from the state; provide for cooperative tax collection and administration. It adds that nothing in the act can be construed to waive or restrict the sovereign immunity of either the Indian tribe or the state.

The bill provides enforcement mechanisms including increased penalties for violations of the act and new reporting requirements.

No effective date is specified. The bill would presumably take effect 90 days after approval by the Governor.

FISCAL IMPLICATIONS

The bill includes a \$500 thousand general fund appropriation in FY06 to implement the provisions of the act.

TRD has not issued an FIR for the HTRC committee substitute. However, it seems unlikely that the provisions of the bill would significantly alter the fiscal impacts estimated for the original bill. These were reported as follows: TRD estimates that the bill's provisions reducing the discounts would increase total revenue by \$1.2 million in FY06. Approximately \$860 thousand of this would accrue to the general fund. The estimate assumes that the average discount would decrease from 2.2 percent to 0.55 percent. Additional revenues also are expected from the license fees. Increased revenue distributions can be seen in the revenue table 11 at the top of the FIR.

ADMINISTRATIVE IMPLICATIONS

TRD reported the following issues, most of which were administrative:

Cigarette Tax Unit issues

- Changes needed for forms and instructions within the cigarette tax program.
- System changes will be needed to reflect new discounts, addition of the exempt tax stamp, new forms, and changes to record the license, and provisions for recording, collecting and tracking penalties imposed.
- Design new applications for licensing and procedures for approving and issuing licenses.
- Design and purchase new nontaxable stamps, hand-apply stamps, and stamps for packs containing 25 cigarettes.
- Redesign the tracking system for the issuance of stamps.
- Revise the contract with the stamp supplier.
- Develop procedures for implementing new penalties.
- Taxpayer and department employee education.
- Audit and compliance duties and procedures to be developed.
- Four new FTEs will be required in the Revenue Processing Division to administer and process cigarette stamp orders and applications for licensing, and to work closely with the fraud and audit units on compliance efforts.
- Addition Audit Division and Fraud Unit FTEs will be required.

Information systems issues

- A new system or an expansion of the existing system will be necessary to accommodate the increased licensing and reporting requirements of this bill.
- New tax-exempt stamps, stamping of free samples and railway sales, as well as the requirement of serial numbers on stamps will again require system development.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 56 duplicates the original HB 452. These bills were introduced for the Tobacco Settlement Oversight Committee.

OTHER SUBSTANTIVE ISSUES

TRD's analysis notes that all tax exempt cigarette sales, including those by tribal facilities, would be required to have stamps. They also report that it is not clear that they would be able to enforce the penalty provisions against Indian tribes arising out of purely reservation-based activities.

The following issues were raised by the Department of Health

Cigarette smoking is the leading cause of premature death in New Mexico. Each year, over 2,100 New Mexicans die from smoking-related illnesses (Centers for Disease Control, Tobacco Control State Highlights, 2002). In any given year more individuals die from tobacco-related illnesses than from AIDS, alcohol, all illegal drugs, car crashes, fires, suicides and homicides,

combined.

In 1998, an estimated \$360 million was spent in New Mexico on smoking-attributable direct medical expenditures. Of that \$360 million, \$144 million was spent on Medicaid services, representing about 15% of all Medicaid expenditures. Furthermore, an additional \$397 million in smoking-attributable productivity costs was estimated in the State. Any decrease in the use of cigarettes among New Mexicans will help to relieve both the economic and health-related burden on the state of New Mexico (Centers for Disease Control, Tobacco Control State Highlights, 2002).

One of the major goals of a comprehensive tobacco control program is to prevent youth from using tobacco. Preventing youth access to tobacco is one of the major components of an effective youth tobacco prevention initiative. The US Public Health Service developed a model Sale of Tobacco Products to Minors Act intended to reduce the sale of tobacco to minors. Provisions included in the act are: instituting 19 years of age as the minimum age for legal tobacco sales, creating a licensure system (retail licensure), establishing a graduated schedule of penalties for illegal sales, establish an enforcement agency, use civil penalties and local courts to assess fines, and banning cigarette vending machines.

The Centers for Disease Control and Prevention (CDC) recommends that each state develop a tobacco licensure system as part of a comprehensive approach to reduce youth tobacco use and illegal sales of tobacco to minors. CDC emphasizes that retail licensure is one of the most effective ways to reduce illegal sale of tobacco to minors (CDC, Best Practices for Comprehensive Tobacco Control, 1999). A licensing system has three major benefits: (1) it provides for license suspension or revocation and fines as a penalty, which provides additional motivation for manufacturers, distributors, and retailers, to comply with the law; (2) it helps to identify vendors that sell tobacco, thus facilitating compliance checks; and (3) "licensing fees (when applicable) can generate a source of funds to pay for enforcement..." (CDC, Preventing Tobacco Use Among Youth, 1994). CDC also recommends that retailers be licensed to sell tobacco products because it provides incentives for retailers to prevent the illegal sale of tobacco products to minors.

HB 452 would provide for new licensure requirements and penalties, ensuring that manufacturers and distributors are adhering to the provisions of the Cigarette Tax Act by instituting fines and license revocation for non-compliance.

A large body of economic research, numerous expert panels, experience in other states, and even the tobacco industry have decisively concluded that price increases are effective in reducing smoking, especially among youth. In 2000, the U.S. Surgeon General concluded that raising the price of cigarettes is widely regarded as one of the most effective tobacco prevention strategies and that these increases would lead to "substantial long-run improvements in health." HB 452 would lower the volume discount on cigarette tax stamps, in essence causing a price increase. It is estimated that for every 1% increase in the price of cigarettes, youth consumption decreases by 0.65% (Guide to Community Preventative Services, 2001).

HB 452 would increase penalties; establish reporting procedures; specify procedures for affixing cigarette stamps and for sales; require each cigarette pack to have a serial number, and improve documentation and inspection of retailer, distributor, and manufacturer records.

Multiple strategies implemented congruently are needed to continue decreasing youth tobacco use. In addition to requiring licensure for tobacco manufacturers and distributors, retail licensure, continued school, community, media, and cessation activities are needed. Any cigarette price increase resulting from HB 452 could contribute to and enhance the comprehensiveness of the statewide tobacco control program; therefore, helping to reach the goal of decreasing youth initiation and ultimately decreasing tobacco-related death and disease in New Mexico.

BT/lg