

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/31/06
 SPONSOR Chasey LAST UPDATED 2/12/06 HB 617
 SHORT TITLE CIGARETTE TAX STAMP PROCEDURES SB _____
 ANALYST Francis

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	668.0	661.0	Recurring	General Fund
	191.0	189.0	Recurring	New Mexico Finance Author- ity/CEA
	16.0	16.0	Recurring	UNM Cancer Center
	24.0	24.0	Recurring	NM Finance Authority
	173.0	172.0	Recurring	NMFA/UNM Health Sciences
	73.0	72.0	Recurring	NMFA/Departm ent of Health
	16.0	16.0	Recurring	County and Municipal Rec- reation Fund
	32.0	32.0	Recurring	County and Municipal Ciga- rette Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

Additional 4 FTE for TRD	FY06	FY07	FY08	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		240.0	240.0	480.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Taxation and Revenue Department (TRD)

Responses Received From

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 617 amends the Cigarette Tax Act in the following ways:

1. numerous definition changes including defining a “distributor;”
2. changing the cigarette inventory tax to levy the tax on tax-exempt stamps or tax stamps whether affixed to a pack or not and to levy the tax in the month of an excise increase;
3. assigns serial numbers to tax stamps;
4. lowers the vendor discount rates

HB 617 adds a section to the Cigarette Tax Act to require a license to manufacture or distribute cigarettes. The license is good for one year and costs \$100.00 and they are required to be a participating manufacturer in the Master Settlement Agreement (MSA), which is the tobacco settlement with the states.

There is also a section that allows the Taxation and Revenue Department (TRD) to enter into intergovernmental agreements with tribes concerning enforcement of the Cigarette Tax Act. The last section enacts new civil and criminal penalties for violation of the Cigarette Tax Act.

In lieu of effective date reported, the effective date is 90 days after the end of the 2006 session.

FISCAL IMPLICATIONS

TRD:

Fiscal impacts are due to the proposed reduction of the cigarette stamp discount rate. The current weighted discount rate is approximately 2.2%. This is the case because nearly 90% of stamp sales occur at the 2% discount rate. This proposal would cause the average discount rate to decrease to 0.55% and generate over \$1 million in additional cigarette tax revenue. There are also some additional revenues from licensing fees of \$3,400/year. This revenue would be distributed to each of the cigarette tax beneficiaries. In the event that the revenues distributed to the Credit Enhancement Account (CEA) at NMFA are not needed to meet current debt obligations, this revenue will be deposited in the General Fund. The Consensus Group General Fund revenue forecast assumes that the General Fund will receive the CEA distribution for the next few years.

	FY 2007	FY 2008
Discount Change	\$1,191	\$1,179
License Fee	\$3.40	\$3.40
Total Increase in Rev	\$1,194	\$1,182

ADMINISTRATIVE IMPLICATIONS

TRD reports that the Cigarette Tax Unit would have significant administrative impacts due to the changes in the forms, contracts and procedures required. TRD estimates that 4 new FTEs would be required to meet the demands. There would also be significant information systems changes required.

TRD also notes the effective date of 90 days after the session leaves the department little time to prepare for the new law.

TECHNICAL ISSUES

TRD notes the following technical issues:

- Page 7 lines 4-6- Practice is for distributors to buy more than 10 day supply of cigarettes and hold together in unstamped inventory until order is received by instate, out of state, Indian buyer. This will be difficult to enforce.
- Page 7 line 23. Refers to “subject to the cigarette tax” 7-12-3 refers to “selling, giving, consuming cigarettes there is levied and excise tax. This conflicts with new language on line
- Page 14 line 21 suggest inserting “taxed” in B- A retailer of cigarettes shall only obtain taxed stamped cigarettes
- Page 15 line 9-10 A retailer need not retain copies of invoices of sales. All a retailer will have to do is not keep purchase invoices and not report sales to sell internet Indian cigarettes without fear of discovery.
- Page 16- lines 19 to page 17 line 5. Distributors typically do not know where cigarettes are going before orders are received and commingle all unstamped until determination made to which state sales is made. Cigarettes are not stamped until they are ready to be shipped.
- Page 22 line 19 through page 23 line 4 seems to apply to retailers, while B is confusing as to who should have paid the tax and owes the penalty.
- **Internet Sales:** The bill does not specifically address internet sales. Addition of specific references to internet sales would give the department more legal power to pursue internet sellers.
 - Page 3 definitions- next to Master settlement, Jenkins Act definition which requires all internet sellers to give the state copies of invoices of cigarettes sold in NM.
 - Page 10 new material licensing 7-12-9.1 A adding “including through the internet” after cigarettes
 - Page 14 7-12-9.4 A – new material - seems to imply retail cannot buy from internet who is not a distributor “including non licensed internets”
 - 7-12-12 A, Include reference to internet shipper of unstamped cigarettes.
 - Page 18 New material reports A “include internet sellers in report requirement” this would supplement federal Jenkins Act requirements.
- “Possession” with regard to the inventory tax is not clear in the bill.

OTHER SUBSTANTIVE ISSUES

TRD notes that they have a significant quantity of seized cigarettes that they would like the authority to destroy. The portion of HB617 dealing with the inventory tax does not give them that authority if they are not bought back.

NF/mt:nt