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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/16/11  
**LAST UPDATED** 03/09/11    **HB** \_\_\_\_\_

**SPONSOR**    Lovejoy

**SHORT TITLE**    Cigarette Stamp to Determine Escrow Payments    **SB** 397

**ANALYST** Burrows

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$0.0- \$7,500.0	\$0.0- \$7,500.0	Recurring	Tobacco Settlement Permanent Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to SB81, SB264, HB250, HB79

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)  
 Attorney General's Office (AGO)  
 Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 397 proposes to amend the definition of "units sold" for the purpose of determining escrow payments of cigarette manufacturers who are not participating in the Master Settlement Agreement (MSA) to include both "tax-exempt" and "tax-credit" stamps. Under current law, tax-exempt stamps are issued on sales on tribal land to tribal members and on sales to the U.S. and New Mexico governments or any political subdivision of New Mexico. Tax-credit stamps are issued on sales on tribal land to non-tribal members, for which the tribe or Indian nation is required to charge a minimum tax of \$0.75 per retail unit, but may retain the tax for tribal use.

MSA participating manufacturers make payment under the provisions of the MSA on all sales in New Mexico, regardless of the type of stamp issued. This proposal is intended to equalize treatment of MSA participating and non-participating manufacturers.

Because this bill includes emergency language, the provisions will be effective at the time of signing.

## **FISCAL IMPLICATIONS**

According to the Attorney General's Office (AGO), escrow payments under current law are approximately \$100 thousand to \$400 thousand per year. The AGO estimates an additional \$7.5 million annually would be available under Senate Bill 379. Moreover, this proposal could minimize the potential for MSA participating members to prevail in claims against the state for failure to diligently enforce its escrow statutes. As well, this bill will provide statutory support for the state to bring claim against non-participating members who fail to pay escrow.

TRD is not aware of any direct revenue impact from the change to the definition of "units sold" under the cigarette Master Settlement Agreement. The definition change to "units sold" is considered by TRD to be a technical clean-up that should contribute to a more clear and precise interpretation, which could thereby forestall legal challenges by tobacco manufacturers to the administration of the MSA agreement.

According to TRD, the new "tax-credit" stamp associated with certain cigarettes subject to a qualifying tribal-imposed tax began on July 1, 2010. From July 2010 through December 2010, the department issued 14.6 million "tax-credit" stamps to cigarette distributors. The expected volume for FY10 is expected to be about 30 million "tax-credit" stamps. This volume represents all state tax-exempt cigarettes sold by tribal entities, and includes all cigarette brands and manufacturers of cigarettes sold by tribal-approved retailers.

The December 2010 consensus revenue forecast assumes the state will receive the full payment for escrow on both "tax-credit" and "tax-exempt" stamps.

## **SIGNIFICANT ISSUES**

The AGO reports that Senate Bill 397 will remove ambiguity under current law as to which sales are subject to escrow payment. Currently, New Mexico has two tobacco manufacturers: one that is party to the MSA and one that is not. Senate Bill 397 will level the playing field between these manufacturers.

According to the AGO, during 2009 and 2010, when statute included language similar to that in this proposal, New Mexico was able to collect escrow on 100 percent of cigarette sales. But since 2010, when the language was inadvertently amended, only 8 percent of MSA non-participant sales have resulted in escrow payments.

The Department of Health (DOH) reports that funds received through the MSA are used to prevent and treat chronic disease.

## **ADMINISTRATIVE IMPLICATIONS**

According to the AGO, Senate Bill 397 could simplify auditing procedures, and strengthen the state's position against claims of lax enforcement of escrow payment. As such, the bill would simplify enforcement litigation, which could minimize costs in terms of staffing and litigation procedures.

TRD reports it will need to adopt rules to determine the amount of excise tax paid on cigarettes and on ounces of "roll-your own" tobacco, and the number of cigarettes sold bearing tax-exempt

and tax-credit stamps. TRD does not anticipate any additional operating costs as a result of this bill.

## RELATIONSHIP

Senate Bill 81 and House Bill 250 would raise the tax on tobacco products from 25 percent to 57 percent per retail unit, and impose a minimum excise tax on small quantities.

House Bill 79 provides for an additional distribution from the Tobacco Settlement Permanent Fund to the Tobacco Settlement Program Fund through FY13.

Senate Bill 264 would extend the excise tax to all sales on tribal land to non-tribal members. This would remove the “tax-credit” status on these sales, thereby making the sales subject to escrow payment.

## OTHER SUBSTANTIVE ISSUES

TRD contends the “tax-credit” stamp is another form of a tax-exempt stamp because no state excise tax is collected on cigarettes with either stamp. As a stamp on cigarettes sold in the state and exempted from state excise tax, tax-credit stamped cigarettes should be included for purposes of the MSA “units sold.”

TRD further states the definition of “units sold” plays a key role in the MSA escrow requirements for non-participating manufacturers, and also is important in determining changes to the market share for participating manufacturers, and evaluating the effective administration of the MSA by the state.

The Department of Health (DOH) states that Senate Bill 397 can assist DOH’s strategic plan to improve community health, and prevent and control chronic diseases.

## WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The definition of “units sold” for the purpose of determining escrow payments will continue to exclude “tax-credit” stamps.

LKB/mew:svb

***The Legislative Finance Committee has adopted the following principles to guide responsible and effective tax policy decisions:***

- 1. Adequacy:*** revenue should be adequate to fund government services.
- 2. Efficiency:*** tax base should be as broad as possible to minimize rates and the structure should minimize economic distortion and avoid excessive reliance on any single tax.
- 3. Equity:*** taxes should be fairly applied across similarly situated taxpayers and across taxpayers with different income levels.
- 4. Simplicity:*** taxes should be as simple as possible to encourage compliance and minimize administrative and audit costs.
- 5. Accountability/Transparency:*** Deductions, credits and exemptions should be easy to monitor and evaluate and be subject to periodic review.

***More information about the LFC tax policy principles will soon be available on the LFC website at [www.nmlegis.gov/lcs/lfc](http://www.nmlegis.gov/lcs/lfc)***