

ISSUES FOR HEARING

Tobacco Settlement Revenue Update

Presented to Tobacco Settlement Revenue Oversight Committee

By Elisa Walker-Moran, Chief Economist, NM Legislative Finance Committee

Overview

- Master Settlement Agreement (MSA) revenue dropped in FY11 to \$38.6 from \$40.9 in FY10
- The drop is due to loss of participating manufacturers (PM's) market share
- MSA revenue of \$38.6 million is projected for FY12 and FY13
- Forecast is subject to significant uncertainty

million

Background

- Signed in 1998, settlement of lawsuits over smoking-related deaths
- 46 states
- Payments made in perpetuity by participating manufacturers (PM's)
- Restrictions on advertising, marketing and promotion
- The goal is to reduce smoking – especially among the youth

Key Statutory Provisions

- All manufacturers selling cigarettes in NM must either:
 - make MSA payments (PM's) or
 - pay equivalent amounts into escrow for settlement of future claims (Non-participating manufacturer or NPM)
- MSA payments are deposited in Tobacco Settlement Permanent Fund (TSPF)
- Since 2003, MSA revenue has been distributed to the Tobacco Settlement Program Fund
- Program Fund may fund health care, research and tobacco use cessation
- Beginning in FY2014 50 percent of the tobacco settlement fund will no longer be distributed to the Program Fund.
- According the most recent Consensus Revenue Estimates there will be \$245 million in “new money” in FY13. Given uncertainty about the litigation and tobacco settlement, it may be desirable to return to a 50 percent distribution to the program fund and leave the remaining 50 percent in the TSPF.

MSA Payment Determination

- Base payment increased annually for **inflation factor** – greater of CPI or 3%
- Payments are reduced if participating manufacturers lose market share: **volume adjustment** has averaged -3% in recent years but has been increasing
- Some PM’s began withholding payments in 2006, arguing the states are not enforcing the MSA: **NPM withholding** has ranged from \$3 million to over \$4 million per year *last year 4 million*
- Settlement/litigation risks: settlement of prior withholding is a positive risk, but ongoing litigation is a negative risk to annual payments

MSA Revenue Forecast Assumptions

- Inflation factor = 3% (IHS/Global Insight forecast of inflation is below 3%)
- Volume adjustment -4%
- NPM withholding: \$4.3 million per year in FY12 and after

MSA Revenue Forecast Summary

	FY10	FY11	FY12	FY13
	Actual	Actual	Forecast	Forecast
Base Payments with Adjustments	\$45.2	\$44.3	\$44.3	\$44.3
NPM Withholding	(\$4.3)	(\$5.7)	(\$5.7)	(\$5.7)
Net Revenue	\$40.9	\$38.6	\$38.6	\$38.6

MSA Revenue Budget Challenge

- MSA revenue is highly unpredictable
- Actual revenue is not known until April and not distributed until the end of the fiscal year
- Appropriations must be determined prior to actual amounts being available
- Annual report providing details of MSA revenue components is not currently available