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FISCAL IMPACT REPORT

ORIGINAL DATE 2-4-2006

SPONSOR Arnold-Jones LAST UPDATED 2/13/06 HB 850/aHTRC

SHORT TITLE Seizure of Unstamped Cigarettes SB _____

ANALYST Dearing

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Non-Rec | Fund Affected |
|-------------------|-----------------------|------|-------------------------|------------------|
| FY06 | FY07 | FY08 | | |
| | NFI* | | | |
| | *Please See Narrative | | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of TRC Amendments

House Taxation and Revenue Committee amends House Bill 850 such that;

1. On page 1, line 11, after the semicolon insert "REQUIRING SELLERS OF CIGARETTES TO FILE INFORMATION RETURNS WITH THE TAXATION AND REVENUE DEPARTMENT; CHANGING PENALTY PROVISIONS FOR FAILURE TO RETAIN INVOICES FOR SALE OF CIGARETTES;".

2. On page 1, between lines 16 and 17, insert the following new section:

"Section 1. A new section of the Cigarette Tax Act is enacted to read:

"[NEW MATERIAL] INFORMATION RETURN--PENALTY.--

A. A person who sells cigarettes in New Mexico shall file an information return with the department by the twenty-fifth day of each month in a form prescribed by the department. The information return shall include the name and address of each person to whom the seller sells cigarettes for resale and information with respect to the seller's:

(1) imports of cigarettes into the state;

- (2) exports of cigarettes from the state;
- (3) sales of cigarettes to tribes; and
- (4) sales of cigarettes to retailers.

B. A taxpayer who fails to timely file an information return in accordance with this section shall pay a penalty not to exceed two hundred fifty dollars (\$250). This penalty shall be in addition to other applicable penalties."".

3. Renumber the succeeding sections accordingly.,

Accordingly, the House Taxation and Revenue Committee’s amended version of this legislative enactment has the effect of minimally increasing revenue due to increased additional penalties from failing to file information returns, which previously were not required.

Synopsis of Bill

House Bill 850 would amend the Section 7-12-13 NMSA 1978, Cigarette Tax Act, by allowing the Taxation and Revenue Department to destroy seized cigarettes that are not stamped. HB850 would change the language in Section 7-12-13 c.) NMSA 1978, such that the Department is now provided with *the option* to seize and sell, *or, if chosen, to destroy the unstamped cigarettes*; where the existing law specifies that the Department *must* seize and sell unstamped cigarettes, yet provides no language to allow their destruction. Lastly, the Department is empowered to collect the tax due on unstamped inventories of cigarettes, and has the option to impose an additional penalty, not to exceed 100% of tax due *and* \$500.

The effective date of the provisions of this act is July 1, 2006.

FISCAL IMPLICATIONS

Enactment of this legislation should not incur significant fiscal changes. Auctions currently held for the sale of confiscated cigarettes, due to storage and administrative costs, are stated to provide minimal revenues to the State. Subsequently, an increase in fine revenue due to the doubling of penalties would compensate for some of this loss on revenues (*again, stated as currently minimal*) derived via auction.

SIGNIFICANT ISSUES

Changes proposed by HB 850 would allow for more interpretation in cigarette tax stamp procedures and may consequently decrease the collection of cigarette excise tax. HB 850 makes the seizure of unstamped cigarettes optional (changing the Department ‘shall’ to the Department ‘may’) and allows flexibility in the penalty (changing it from exactly 50% to up to 100% of the cigarette tax plus \$500).

It is possible that there would be no (zero) penalty due to the addition of language ‘may impose an additional penalty.’

However, HB 850 would also provide the Department with the option of destroying seized cigarettes that are unstamped, which could decrease the number of cigarettes in circulation for public consumption.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Applicable Sections of the New Mexico Statutes Annotated code would remain intact, as currently written.

PD/mt