

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 01/25/10

SPONSOR Egolf LAST UPDATED _____ HB 35

SHORT TITLE Cigarette Tax Increase and Distribution SB _____

ANALYST Gutierrez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY10	FY11	FY12		
	\$53,461.0	\$53,644.0	Recurring	Public School Fund
	(\$18,666.0)	(\$18,666.0)	Recurring	General Fund
	\$67.5.0	\$67.5	Recurring	County & Muni Recreation Fund
	\$131.8.0	\$131.8	Recurring	County & Muni Cigarette Fund
	\$67.5	\$67.5	Recurring	UNM Cancer Center
	\$99.6	\$99.6	Recurring	NMFA
	\$692.4	\$692.4	Recurring	NMFA for UNM Health
	\$295.6	\$295.6	Recurring	NMFA for DOH
	\$51.0	\$51.0	Recurring	Rural County Cancer Treatment

(Parenthesis () Indicate Revenue Decreases)

Relates to SB30, SB121, and HB34

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

New Mexico Finance Authority (NMFA)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 35 increases the excise tax rates on cigarettes and other tobacco products and adjusts the distributions to the beneficiaries so that the revenue from the increase goes to the public school fund and decreases the revenue to the general fund.

New Distributions under HB35

	Current Law	HB35
County/Municipal Recreational Fund	1.35%	0.93%
County/Municipal Cigarette Tax Fund	2.69%	1.85%
UNM HSC	1.35%	0.93%
NMFA	2.02%	1.39%
NMFA/HSC	14.37%	9.87%
NMFA/DOH	6.05%	4.16%
NMFA/CEA (general fund)	15.79%	10.85%
NMFA/rural county cancer treatment	1.00%	0.69%
General Fund	55.38%	16.97%
Public School Fund	0.00%	52.36%

Changes to Excise Taxes and Vendor Discounts

<i>Changes tax rate on cigarettes</i>	Current Law	HB35
Cigarette	\$ 0.0455	\$ 0.0955
Pack of 20	\$ 0.9100	\$ 1.9100
Cigarette in packs of five	\$ 0.1820	\$ 0.3820
Pack of 5	\$ 0.9100	\$ 1.9100
 <i>Changes tax rate on other tobacco products</i>	 Current Law	 HB35
Tobacco products tax	25%	40%
 <i>Changes the discounts for stamps</i>	 Current Law	 HB35
Less than \$30,000 of stamps	1.00%	0.48%
\$30,000 to 60,000	0.80%	0.38%
\$60,000 or more	0.50%	0.24%

The bill decreases the discount granted to distributors who affix tax stamps on cigarette packages by 52% to offset the approximate doubling of the tax, leaving the value of the discount to cigarette distributors approximately unchanged.

The effective date of this bill's provisions is July 1, 2010.

FISCAL IMPLICATIONS

TRD assumed that revenue generated from an increased tax rate would be partially offset by a decline in demand for cigarettes in general and *taxable* cigarettes in particular. The percentage distributions are adjusted so that the current beneficiaries, other than the general fund, are not impacted by the increase.

The public school fund distribution includes \$47,354 thousand from cigarette tax and \$6,107 thousand from Tobacco Products Tax in FY2011. Subsequent years are similar, with some growth expected in Tobacco Products Tax revenue and no growth in Cigarette Tax revenue.

TRD:

The “Cigarette Inventory Tax” (Section 7-12-3.1 NMSA 1978) is distinctly separate from the “Cigarette Tax” and is distributed entirely to the State General Fund. The estimate has assumed that less than one-half of the first month of additional revenue may be collected as inventory tax, and that retailer purchases in the first month will be weaker than normal after stocking to capacity in June to beat the tax increase. Thus, some strength in FY2010 June revenue may be expected, but that impact has not been included in the estimated revenue.

Cigarette Tax revenue to the NMFA Credit Enhancement Account is ultimately forwarded to the State General Fund. The total General Fund impact with inclusion of the NMFA Credit Enhancement Account is shown as “General Fund”. The direct impact on the NMFA Credit Enhancement Account is +765 thousand (positive) per year.

SIGNIFICANT ISSUES

The increase in the state tax would move New Mexico from 31st highest excise tax to 16th. Colorado has an 84 cent tax, Arizona taxes at \$2.00, Utah taxes at \$0.695, and Texas taxes \$1.41 per pack (see Attachment 1).

TRD:

The Public School Fund (Section 22-8-14 NMSA 1978) is distributed to school districts and state-chartered schools through three distribution programs: 1) the state equalization guarantee distribution; 2) the transportation distribution; and, 3) supplemental distributions (including out-of-state tuition to school districts, emergency distributions, and program enrichment distributions). The balance remaining in the Public School Fund at the end of each fiscal year reverts to the General Fund.

An increase in the state Cigarette Tax rate would probably result in the shifting of a significant volume of additional cigarette sales to tax-exempt Tribal retail sellers. Currently, state taxable cigarette volume is 67% of total consumption and tax-exempt Tribal cigarette volume is 33% of total consumption. It is estimated that with the tax increase, tax-exempt Tribal cigarette volume would be almost 50% of total consumption.

The Cigarette Tax rate was last increased in 2003 when the rate was increased from \$0.21 per pack to \$0.91 per pack. Prior to that, the tax rate was increased from \$0.15 per pack to \$0.21 per pack in 1993. The \$0.15 per pack tax had been in effect from 1986 through 1993.

The Tobacco Products Tax was first implemented in 1986 at the current tax rate of 25% of wholesale value.

On March 31, 2009 the federal cigarette tax rate increased from 39 cents per pack to \$1.01 per pack, which was expected to decrease cigarette consumption by about 8%. The federal tax increase was expected to affect the volume of both state taxable cigarettes and tax-exempt Tribal sales.

ADMINISTRATIVE IMPLICATIONS

This bill will have a moderate impact on TRD.

RELATIONSHIP

House Bill 35 relates to:

- SB30 which also increases the cigarette and tobacco taxes and distributes the additional revenue to the county-supported Medicaid fund
- SB121 which also increases the cigarette and tobacco taxes, adjusts the cigarette stamp discounts and adjusts the cigarette tax distribution
- HB34 which also makes a revenue distribution to the public school fund but this bill increases the liquor excise tax

OTHER SUBSTANTIVE ISSUES

DOH:

Raising cigarette taxes is widely regarded as one of the most effective tobacco prevention strategies. The U.S. Surgeon General has concluded that such tax increases will lead to “substantial long-run improvements in health” (Reducing Tobacco Use, Surgeon General, 2000).

NMFA:

Section 6-21-6.10E of the NM Finance Authority Act states:

“Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax shall not be amended, repealed or otherwise directly or indirectly modified so as to impair or reduce debt service coverage for any outstanding revenue bonds that may be secured by a pledge of those cigarette tax revenues, unless the revenue bonds have been discharged in full or provisions have been made for a full discharge.”

The NMFA currently has several series of outstanding revenue bonds which are dependent on the tobacco excise tax to pay the annual debt service and to maintain adequate coverage ratios. The NMFA anticipates issuing additional revenue bonds in the future for the health care facilities identified above.

The total debt service paid by the NMFA in FY09 from tobacco excise tax revenue distributions was \$8,852,732 and the total projected revenue requirement for maintaining adequate coverage ratios and anticipated projects was \$13,426,208.

BLG/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

State Cigarette Tax Rates (as of July 1, 2009)

State	Cigarette Tax (Per Pack)	State Ranking (Highest = 1)	State	Cigarette Tax (Per Pack)	State Ranking (Highest = 1)
Alabama	\$0.425	45	Rhode Island	\$3.460	1
Alaska	\$2.000	9	New York	\$2.750	2
Arizona	\$2.000	10	New Jersey	\$2.700	3
Arkansas	\$1.150	26	Hawaii	\$2.600	4
California	\$0.870	32	Wisconsin	\$2.520	5
Colorado	\$0.840	33	Massachusetts	\$2.510	6
Connecticut	\$2.000	11	Vermont	\$2.240	7
D.C.	\$2.000	12	Washington	\$2.025	8
Delaware	\$1.150	27	Alaska	\$2.000	9
Florida	\$1.339	23	Arizona	\$2.000	10
Georgia	\$0.370	46	Connecticut	\$2.000	11
Hawaii	\$2.600	4	D.C.	\$2.000	12
Idaho	\$0.570	42	Maine	\$2.000	13
Illinois	\$0.980	30	Maryland	\$2.000	14
Indiana	\$0.995	29	Michigan	\$2.000	15
Iowa	\$1.360	21	New Hampshire	\$1.780	16
Kansas	\$0.790	35	Montana	\$1.700	17
Kentucky	\$0.600	40	S. Dakota	\$1.530	18
Louisiana	\$0.360	47	Minnesota	\$1.504	19
Maine	\$2.000	13	Texas	\$1.410	20
Maryland	\$2.000	14	Iowa	\$1.360	21
Massachusetts	\$2.510	6	Pennsylvania	\$1.350	22
Michigan	\$2.000	15	Florida	\$1.339	23
Minnesota	\$1.504	19	Ohio	\$1.250	24
Mississippi	\$0.680	37	Oregon	\$1.180	25
Missouri	\$0.170	50	Arkansas	\$1.150	26
Montana	\$1.700	17	Delaware	\$1.150	27
N. Carolina	\$0.350	48	Oklahoma	\$1.030	28
N. Dakota	\$0.440	44	Indiana	\$0.995	29
Nebraska	\$0.640	38	Illinois	\$0.980	30
Nevada	\$0.800	34	New Mexico	\$0.910	31
New Hampshire	\$1.780	16	California	\$0.870	32
New Jersey	\$2.700	3	Colorado	\$0.840	33
New Mexico	\$0.910	31	Nevada	\$0.800	34
New York	\$2.750	2	Kansas	\$0.790	35
Ohio	\$1.250	24	Utah	\$0.695	36
Oklahoma	\$1.030	28	Mississippi	\$0.680	37
Oregon	\$1.180	25	Nebraska	\$0.640	38
Pennsylvania	\$1.350	22	Tennessee	\$0.620	39
Rhode Island	\$3.460	1	Kentucky	\$0.600	40
S. Carolina	\$0.070	51	Wyoming	\$0.600	41
S. Dakota	\$1.530	18	Idaho	\$0.570	42
Tennessee	\$0.620	39	West Virginia	\$0.550	43
Texas	\$1.410	20	N. Dakota	\$0.440	44
Utah	\$0.695	36	Alabama	\$0.425	45
Vermont	\$2.240	7	Georgia	\$0.370	46
Virginia	\$0.300	49	Louisiana	\$0.360	47
Washington	\$2.025	8	N. Carolina	\$0.350	48
West Virginia	\$0.550	43	Virginia	\$0.300	49
Wisconsin	\$2.520	5	Missouri	\$0.170	50
Wyoming	\$0.600	41	S. Carolina	\$0.070	51

State Tax Rates on Other Tobacco Products

As of January 1, 2008

<u>State</u>	<u>Tax Base</u>	<u>Tax Rate (1)</u>
Alabama	Cigars (2)	4.0¢-40.5¢/ 10 cigars
	Tobacco/Snuff	0.6¢-5.25¢/ ounce
Alaska		75% Wholesale Price
Arizona	Cigars (2)	44.1¢-\$2.60/ 20 cigars
	Tobacco/Snuff	23.8¢/ounce
Arkansas		32% Manufactures Price
California (3)		45.13% Wholesale Price
Colorado		40% Manufactures Price
Connecticut (5)		20% Wholesale Price
Delaware		15% Wholesale Price
Florida		25% Wholesale Price
Georgia	Little Cigars	2.5¢/10 cigars
	Other Cigars	23% Wholesale Price
	Tobacco	10% Wholesale Price
Hawaii		40% Wholesale Price
Idaho		40% Wholesale Price
Illinois		18% Wholesale Price
Indiana		24% Wholesale Price
Iowa		50% Wholesale Price
Kansas		10% Wholesale Price
Kentucky		7.5% Wholesale Price
Louisiana	Cigars	8%-20% Manufacture Price
	Tobacco/Snuff	33% Manufactures Price
Maine	Chewing Tobacco./Snuff	78% Wholesale Price
	Smoking Tobacco/Cigars	20% Wholesale Price
Maryland		15% Wholesale Price
Massachusetts	Smokeless Tobacco	90% Wholesale Price
	Smoking Tobacco/Cigars	30% Wholesale Price
Michigan		32% Wholesale Price
Minnesota		70% Wholesale Price
Mississippi		15% Manufactures Price
Missouri		10% Manufactures Price
Montana		50% Wholesale Price
Nebraska		20% Wholesale Price
Nevada		30% Wholesale Price
New Hampshire		19% Wholesale Price

State Tax Rates on Other Tobacco Products

As of January 1, 2008

<u>State</u>	<u>Tax Base</u>	<u>Tax Rate (1)</u>
New Jersey		30% Wholesale Price
New Mexico		25% Product value
New York		37% Wholesale Price
North Carolina		3% Wholesale Price
North Dakota	Cigars & Tobacco	28% Wholesale Price
	Chew Tobacco/Snuff	16¢-60¢/ounce
Ohio		17% Wholesale Price
Oklahoma	Cigars (2)	36¢-120¢/ 10 cigars
	Tobacco/Snuff	60%-80% factory list price
Oregon		65% Wholesale Price
Rhode Island		40% Wholesale Price
South Carolina		5% Manufactures Price
South Dakota		35% Wholesale Price
Tennessee		6.6% Wholesale Price
Texas	Cigars (2)	1.0¢-15.0¢/10 cigars
	Tobacco/Snuff	40% Manufactures Price
Utah		35% Manufactures Price
Vermont (6)		41% Manufactures Price
Virginia		10% Wholesale Price
Washington		75% Wholesale Price
West Virginia		7% Wholesale Price
Wisconsin		50% Manufactures Price
Wyoming (4)		20% Wholesale Price

Source: Compiled by the Federation of Tax Administrators from various sources.

(1) The volume based tax rates were converted to cents per 10 cigars or per ounce for consistency.

(2) Tax rate on cigars varies based on the selling price.

(3) Tax rate is adjusted annually by the state, effective July 1st of each year.

(4) or 10% of the retail price.

(5) Snuff tobacco taxed at 40 cents per ounce.

(6) Little cigars are taxed as cigarettes.