

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 LAST 02/08/11
UPDATED _____

SPONSOR Stewart HB 250

SHORT TITLE Tobacco Products Tax & Definitions SB _____

ANALYST Burrows

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$6,720.0	\$6,970.0	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

Duplicate to SB81

Relates to SB264

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)

Department of Taxation and Revenue (TRD)

Responses Not Received From

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of Bill

House Bill 250 proposes to raise the excise tax rate on tobacco products from 25 percent of product value to 57 percent of product value. The bill will also set a minimum tax rate of \$1.66 per unit on tobacco products sold in retail units of 1.2 ounces or less. The bill provides definition of "retail unit" as a single lot of a tobacco product that can be sold, and clarifies the definition of "tobacco product" to include cigars and any product smokeless tobacco product, but exclude products used in smoking cessation.

The effective date of the provisions of this bill is July 1, 2011.

FISCAL IMPLICATIONS

Tobacco demand is responsive to price changes and it is important to recognize that when prices go up demand will do down, thereby affecting the fiscal impact.

Impacts were calculated based on the effect of the tax increase on price and the correlated decrease in demand for tobacco products. Demand elasticity, the ratio of the change in purchases to the change in price, was assumed to be -0.40. This estimate is consistent with those reported in economic studies of tobacco use.

No impacts are estimated from the new minimum tax on smokeless products in small quantities due to lack of information on current consumption of these products.

SIGNIFICANT ISSUES

House Bill 250 would create tax equity between cigarettes and other tobacco products, and subsequently lower the attractiveness of tobacco products among price-sensitive consumers, such as youth. Moreover, the minimum tax rate on small quantities could prevent brands sold at low predatory or anti-competitive prices from evading reasonable taxation.

ADMINISTRATIVE IMPLICATIONS

According to TRD, the provision on page 3, lines 21-23, which creates a new rate of tax for certain products, will be difficult for TRD to administer and may cause compliance issues. TRD reports that the tax is imposed on the “first purchaser” who may be a wholesaler; the retailer may later divide the wholesale unit into smaller quantities for resale. In such case, the ultimate retail form of the tobacco unit may be unknown at the point of taxation, and it will be unclear which tax rate should apply. Moreover, audits will be more time consuming.

RELATIONSHIP

Senate Bill 264 proposes to impose excise taxes on cigarette vendors selling cigarettes to non-tribal members on tribal land, and proposes to remove the requirement that tribes impose an excise tax.

TECHNICAL ISSUES

TRD reports on page 2, line 24 through page 3, line 3, the definition of “retail unit” may lack clarity and/or be unnecessary. The meaning of the term “retail unit” on page 3, line 21 appears to be clear even without the definition. However, in some cases it may be impossible for a distributor or wholesaler to know what the ultimate “retail unit” might be in the case of loose tobacco, and possible other tobacco products as well. Thus, it may be difficult to assure accurate administration of the minimum rate of \$1.66 for retail units of less than 1.2 ounces with a tax that is imposed at the wholesale level as defined on page 3, lines 21-23.

OTHER SUBSTANTIVE ISSUES

According to the Department of Health (DOH), raising tobacco taxes is widely regarded as one

of the most effective tobacco prevention strategies, but it is important to place comparable taxes on cigarettes, as well as other tobacco products, to prevent users from substituting one form of tobacco for another.

According to DOH, chew tobacco use by New Mexico high school youth increased by 34 percent between 2003 and 2009, ranking New Mexico with the 11th highest rate in the country. In addition, New Mexico is ranked the highest in the country among cigar use by high school youth at 18.1 percent.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The tobacco product excise tax will remain at 25 percent of product value.

LKB/bym