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FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/12

SPONSOR Stewart LAST UPDATED _____ HB 133

SHORT TITLE Increase Tobacco Products Tax SB _____

ANALYST Walker-Moran

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|-----------|-----------|---------------------------------|------------------|
| FY12 | FY13 | FY14 | | |
| | \$7,200.0 | \$7,300.0 | Recurring | General Fund |

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

State Investment Council (SIC)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 133 amends §7-12A-2 NMSA 1978, the Tobacco Products Tax Act definition of “tobacco product” to include cigars or any product containing tobacco that is intended or expected to be consumed without being combusted, unless it has been approved as a tobacco use cessation product. It also increases the tobacco products tax from 25 percent to 57 percent.

The effective date of this bill is July 1, 2012.

FISCAL IMPLICATIONS

Tobacco demand is responsive to price changes. When prices go up demand will go down, thereby affecting the fiscal impact. Baseline tobacco products tax base from the December 2011 Consensus Revenue Estimate was adjusted to reflect reduced demand in response to the proposed tax increase using an assumed demand elasticity of -0.4. The impacts are estimated from the new minimum tax on smokeless products due to lack of information on baseline consumption.

Based on data from DOH it appears that other tobacco products use is increasing, especially among the youth. This is expected to have an increase on the GF but the impact cannot be determined.

The provisions may help the TRD in its compliance efforts. Following a sharp increase in the cigarette tax over the last several years, the tobacco products tax is now significantly lower than the cigarette tax as a percent of value. This bill would create tax equity between cigarettes and other tobacco products.

Per the SIC, the Tobacco Settlement Permanent Fund (TSPF), which is managed by the SIC, would not be directly affected. Indirect impact could be an issue however, as tobacco tax rates would presumably affect annual tobacco usage, which in turn can relate to how much some tobacco companies are required to pay New Mexico under stipulations in the Master Settlement Agreement. A lowering of these payments could potentially alter annual in-flows to the TSPF.

SIGNIFICANT ISSUES

According to the DOH, raising tobacco taxes is widely regarded as one of the most effective tobacco prevention strategies, with such increases leading to “substantial long-run improvements in health”.¹ New Mexico raised cigarette taxes in 2003 and in 2010, but there has been no comparable increase of the tax on “other tobacco products” (OTPs). Increasing cigarette taxes without increasing taxes on other tobacco products prompts youth to start using OTP’s.²

HB133 also expands the definition of “tobacco product” to include the broad spectrum of smokeless tobacco products currently being market-tested by the tobacco industry, such as orbs, strips, sticks and other dissolvable tobacco products with candy-like appearance, which are of particular appeal to youth who wish to conceal their tobacco use in school and from parents. The most recent data on youth tobacco use shows a dramatic increase in smokeless tobacco use among high school students. Spit/chew tobacco use by NM high school youth increased by one-third between 2003 (8.8%) and 2009 (11.8%), ranking NM with the eleventh highest spit use rate in the country.³ In addition, 18.1% of NM high school youth currently smoke cigars, ranking NM as the highest cigar use state for youth.⁴

Smokeless tobacco use causes nicotine addiction, oral cancer, gum disease, tooth decay, and may increase risk factors for cardiovascular disease. It has also been linked to cancers of the esophagus, pharynx, larynx, stomach, and pancreas.⁵ Long-term health consequences of the new innovative tobacco products remain unknown.

PERFORMANCE IMPLICATIONS

Per DOH, HB133 relates to FY13 Strategic Plan Objective: Reduce the abuse of alcohol, drugs and tobacco.

¹ Reducing Tobacco Use, Surgeon General, 2000

² www.tobaccofreekids.org/research/factsheets/pdf/0180.pdf

³ 2003 NM Youth Risk and Resiliency Survey and <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>

⁴ <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>

⁵ www.tobaccofreekids.org/research/factsheets/pdf/0319.pdf

ADMINISTRATIVE IMPLICATIONS

The TRD reports a minimal impact. Revising forms and instructions for the tobacco products tax would cost \$2,000. There would be low staffing resources of information systems team impact (60 hours). Programming changes and testing would need to be completed by June 30, 2012.

OTHER SUBSTANTIVE ISSUES

Every state except for Pennsylvania has at least some tax on non-cigarette tobacco products. The highest rates, as a percentage of wholesale/manufacturer's price, are in WI (100%), WA (95%), VT (92%), MA (90%), RI (80%), ME (78%), and AK (75%). Of those states that tax moist snuff at a percentage of price, the average rate is roughly 39%, despite very low rates in SC (5%), TN (6.6%), and WV (7%).

The TSPF receives New Mexico's pro rata share of the Master Settlement Agreement, reached in 2000 when dozens of states sued big tobacco companies. The Fund was established at \$49M, and subsequent distribution amounts were determined on an annual basis, flowing into the TSPF unless otherwise diverted through legislative mandate. Such diversions have been put in place by the legislature since 2008, the last year the TSPF received any new funds from the Master Settlement. This practice was extended through FY 2013 last year with HB 79. The TSPF now has a balance of \$141M as of 12/31/11.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

EWM/svb