F I S C A L   I M P A C T   R E P O R T

SPONSOR Lopez **ORIGINAL DATE** 02/21/13 **LAST UPDATED** **HB**

SHORT TITLE Cigarette Tax Stamps & Penalties **SB** 516

ANALYST Walker-Moran

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY13	**FY14**	**FY15**	**FY16**	**FY17**		
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(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB 428, HB 75

SOURCES OF INFORMATION
LFC Files

Responses Received From
Attorney General's Office (AGO)
Taxation and Revenue Department (TRD)
Public Regulation Commission (PRC)
Indian Affairs Department (IAD)

SUMMARY

Synopsis of Bill

Senate Bill 516 has two principal purposes. First, it amends the Cigarette Tax Act by deleting Section 7-12-5(G). That provision indicates that cigarette sales bearing a tax-credit stamp are not "units sold" for the purposes of the Tobacco Escrow Act. Along with that deletion, the bill amends Section 6-4-12(J) to include tax-credit sales in the definition of "units sold" in the Tobacco Escrow Act. The bill also amends the definition of "units sold" in Section 6-4-12 to encompass all sales on which excise tax is owed rather than all sales on which excise tax is collected.

Second, the bill increases the civil and criminal penalties for violations of the Tobacco Escrow Act. The civil penalties are paid by non-participating manufacturers who fail to pay the escrow they are legally required to pay. The criminal penalties are applied to persons selling contraband cigarettes (those cigarettes that do not appear on the Attorney General's tobacco directory). In addition to increasing those penalties, the bill amends Section 7-12-13.1 to create strict liability for the failure to pay required escrow.

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends (June 14, 2013).

FISCAL IMPLICATIONS

***Escrow collected per the changes in this bill will increase payments into the tobacco escrow account. The impact could potentially be several million dollars but cannot be determined exactly until escrow payments are collected from non-participating manufacturers (NPMs).

As reported by Attorney General's Office (AGO):

This bill is designed to immunize New Mexico's Tobacco Escrow Act from challenge by the participating manufacturers, or PMs (those tobacco manufacturers who signed the Master Settlement Agreement, or MSA, in settlement of the claims brought by the states against them). Under the MSA, New Mexico is required to collect escrow on tobacco sales made by those manufacturers who did not sign the MSA – the non-participating manufacturers or NPMs. The collection of that escrow is designed to subject both the PMs and NPMs to similar cost structures so that the PMs, who make annual payments to the State pursuant to the MSA, would not be operating at a competitive disadvantage in the State by virtue of their settlement. Part of New Mexico's obligation is to pass a "qualifying statute" that requires NPMs to make these escrow payments. If New Mexico's Tobacco Escrow Act is determined not to be a qualifying statute, the State will lose all of the PM payments it received during the years in which it did not have a qualifying statute.

Though we are prepared to defend the adequacy of the Tobacco Escrow Act as currently written, there is a real risk that it could be found inadequate and that the State would be forced to repay (in the form of a credit against future MSA payments) the money the PMs have paid to New Mexico since possibly 2006 and certainly since 2010. Those payments average between $35 and $40 million each year. The passage of this bill would absolutely ensure that New Mexico would have a qualifying statute for the first calendar year in which the bill is effective.

As reported by the Indian Affairs Department (IAD):

Escrow is not assessed against retailers, distributors or purchasers. It is assessed against tobacco cigarette manufacturers and only those who do not participate in the Master Settlement Agreement. However, the cost to the manufacturer might be or could be ultimately passed down to the consumer. Being that this bill addresses escrow for sales on tribal property, the bill could have some effect on businesses and consumers on tribal lands.

SIGNIFICANT ISSUES

As reported by the Taxation and Revenue Department (TRD):

The 2009 amendment to the MSA (Section 6-4-12, Subsection J) added the provision that tax-exempt stamps are to be included in the measurement of "units sold" for purposes of determining escrow payment obligations of non-participating manufacturers. In the 2010 Special Session, a cigarette tax increase (HB-3 or Laws 2010 2nd S.S., Chapter 5) created a new “tax-credit” stamp which applies to tribal cigarettes that are subject to a qualifying tribal-imposed tax. The department contends that the “tax-credit” stamp is another form of a tax-exempt stamp because no state excise tax is collected on cigarettes with either stamp. As a stamp on cigarettes sold in the state and exempted from state excise tax, volumes of tax-credit stamped cigarettes should be included as volumes intended to be included for purposes of the MSA “units sold”.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the AGO, the failure to pass this bill imperils future MSA payments to the State of New Mexico of between $35 and $40 million each year.

SS/svb