

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 and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 2/8/16
SPONSOR Johnson **LAST UPDATED** _____ **HB** 300

SHORT TITLE Increase Cigarette Tax Rates **SB** _____

ANALYST Malone

REVENUE (dollars in thousands)

Estimated Revenue Impact					R or NR	Fund Affected
FY2016	FY2017	FY2018	FY2019	FY2020		
\$0.0	\$26,600.0	\$26,200.0	\$25,700.0	\$25,300.0	R	General Fund (Cigarette)
\$0.0	\$17,000.0	\$17,200.0	\$17,400.0	\$17,500.0	R	General Fund (TPT)
\$0.0	\$300.0	\$300.0	\$300.0	\$200.0	R	UNM Cancer Center
\$0.0	\$400.0	\$400.0	\$400.0	\$400.0	R	NM Finance Authority
\$0.0	\$2,800.0	\$2,700.0	\$2,700.0	\$2,700.0	R	NM Finance Auth./UNM Health Sciences
\$0.0	\$1,200.0	\$1,200.0	\$1,100.0	\$1,100.0	R	NM Finance Auth./DOH
\$0.0	\$200.0	\$200.0	\$200.0	\$200.0	R	Rural County Cancer Treatment Fund
\$0.0	\$48,500.0	\$48,200.0	\$47,800.0	\$47,400.0	R	Total

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$21.0	\$0.0	\$0.0	\$21.0	Nonrecurring	TRD Operating

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

House Bill 300 amends the Cigarette Tax Act to increase the excise tax on cigarettes, amends the Tobacco Products Act to include all products, other than cigarettes, that contain or are derived

from tobacco or nicotine in the definition of tobacco product, and taxes tobacco products at an increased rate. Specifically, the bill:

- Increases the excise tax on packs of 25 cigarettes by \$1.25 and on packs of 20, 10, and 5 cigarettes by \$1.
- Increases the tobacco products tax from 25 percent to 66 percent of the product value of the tobacco products.
- Expands the definition of “tobacco product” significantly, to include:
 - A product that is made of, contains, or is derived from tobacco or nicotine and that is intended for human consumption through means that include smoking, heating, chewing, absorption, dissolution, inhalation, snorting, and sniffing;
 - An electronic device that delivers nicotine or other substances to the person inhaling from the device;
 - A component, part, or accessory of a tobacco product; and,
 - A cigar, chewing tobacco, pipe tobacco, snuff, an electronic cigarette, and electronic cigar, an electronic pipe, and an electronic hookah.

FISCAL IMPLICATIONS

TRD and LFC estimated additional revenues using the January 2016 consensus forecasted revenue of cigarette taxes in FY16 of \$82.4 million as a starting point. Based on historical consumer demand of cigarette and tobacco products after a tax rate increase, TRD assumes the bill would initially decrease consumption of cigarettes by 15 percent. Even with the decrease in consumption, the revenues from the tax increase on cigarettes will increase by 60 percent.

Historically, there has not been such a decline in Tobacco Products Tax (TPT) consumption and revenues will increase about 42 percent from the tax rate increase. The consensus forecasted declines were used for FY2018 – FY2020 based upon the continued trend in the decline of cigarette consumption seen since FY07 while TPT consumption is estimated to grow. The TPT growth revenue estimate considers the participation of e-cigarettes in the marketplace and acknowledges a high degree of difficulty when estimating the consumption of these products in lieu of the impending decision by the Federal Drug Administration that could eliminate the majority of e-cigarette products currently sold in the state.

SIGNIFICANT ISSUES

Currently, New Mexico imposes an excise tax for each cigarette sold, given or consumed at the rates below, through section 7-12-3 NMSA 1978 of the Cigarette Tax Act:

- \$.083 if the cigarettes are packaged in lots of twenty or twenty-five (\$1.66 and \$2.08, respectively);
- \$.166 if the cigarettes are packaged in lots of ten (\$1.66 per pack); or
- \$.332 if the cigarettes are packaged in lots of five (\$1.66 per pack).

In its analysis of the bill, DOH notes that in New Mexico, cigarette use among high school youth declined to 14.4 percent in 2013. Although cigarette smoking has declined, the use of other products has remained steady (spit/chew tobacco) or increased dramatically (hookah and e-cigarettes) in recent years. A national study showed an eight-fold increase (1.5 percent to 13.4 percent) in e-cigarette use and a more than doubling of hookah use (4.1 percent to 9.4 percent)

use among high school youth between 2011 and 2014, even surpassing use of traditional cigarettes (9.2 percent) in 2014. The result is that the rate of use of any tobacco product by NM high school youth has increased to 28.4 percent (2013 NM Youth Risk and Resiliency Survey).

DOH observes that HB 300 aligns with the research and recommendations of the Tobacco Control Legal Consortium (Consortium) regarding the regulation of e-cigarettes and similar devices. However, the Tobacco Control Legal Consortium recommends that when analyzing a state's tobacco tax laws for possible reform, it is essential to examine the state's entire regulatory scheme affecting cigarettes and non-cigarette tobacco products, including not only tobacco tax laws but also tobacco retailer licensing, retail sales, youth access, and other tobacco control measures.

TRD notes that increasing these taxes historically has promoted internet sales and the use of counterfeit stamps and the sale of cigarettes without stamps affecting audit and compliance.

ADMINISTRATIVE IMPLICATIONS

TRD anticipates that the bill would have a low IT/GenTax impact (200 hours) and requires tax rate configuration changes for cigarette and tobacco products tax programs. The bill has a moderate impact on financial distribution bureau (FDB) business processes. FDB staff will need to verify GenTax system changes by performing selected tests of data, functionality and reporting, prior to authorizing GenTax to move the proposed changes into production. FDB testing should be completed no later than June 11, because the effective date is July 1, 2016.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 300 relates to SB 04 and SB 77 which both amend and enact new sections of the Tobacco Products Tax Act and/or the Cigarette Tax Act.

OTHER SUBSTANTIVE ISSUES

According to the U.S. Food and Drug Administration (FDA), e-cigarettes have not been fully studied, so consumers currently do not know the potential risks when used as intended, how much nicotine or other potential harmful chemicals are being inhaled during use, and whether there are any benefits associated with using these products. The FDA adds it is unknown whether e-cigarettes may lead young people to try other tobacco products, including conventional cigarettes, which are known to cause disease and lead to premature death.

Only e-cigarettes that are marketed for therapeutic purposes are currently regulated by the FDA Center for Drug Evaluation and Research. Currently, the FDA Center for Tobacco Products (CTP) regulates cigarettes, cigarette tobacco, and smokeless tobacco. FDA has issued a proposed rule that would extend the agency's tobacco authority to cover additional products that meet the legal definition of a tobacco product, such as e-cigarettes. The proposed rule would empower FDA to issue restrictions to individuals under the age of 18 and require the display of health warnings on tobacco product packages and advertisements. It would also allow the agency to evaluate claims of new tobacco products to reduce tobacco-related disease and death through rigorous scientific review and to prohibit the sale of e-cigarettes through vending machines, except in a facility that never admits youth.

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

Attachment 1: E-Cigarette Taxation in Other States

CEM/jle/al

E-Cigarette Taxation in Other States.

New Jersey Legislators announced they want to place a 75 percent wholesale tax on e-cigarettes and related accessories in parity with taxes on traditional cigarettes, currently \$2.70 for a pack of 20. No special tax is currently imposed on e-cigarettes. According to the Wall Street Journal, Governor Christie says the tax on e-cigarettes could bring in \$35 million a year. New Jersey has banned people from smoking them indoors in public places and requires buyers to be at least 19 years old.

Minnesota E-cigarettes and liquid capsules are considered tobacco products and are subject to the tobacco tax, which is currently 95 percent of the wholesale cost of any product containing or derived from tobacco. Distributors who do not pay tobacco tax on these products are subject to penalties, interest, license revocation, and possible criminal charges. Retailers are required to purchase the tax paid product. If they do not comply, they are subject to penalties, interest, license revocation, and possible criminal charges. Consumers who purchase from someone who has not paid the tobacco tax must pay a tobacco consumer use tax. The state requires childresistant packaging for liquid nicotine containers.

The tobacco tax on an e-cigarette starter kit is calculated on the total cost unless the nicotine cartridges are sold separately and then the tax would only be on the nicotine cartridge value. Similarly, a disposable e-cigarette may have the tax calculated on its nicotine cartridge value if the cartridge is replaceable.

North Carolina The top tobacco-producing state passed a measure this spring in which a tobacco product is defined as a cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use, including a vapor product. The excise tax of \$0.45 levied on every pack of traditional cigarettes did not change with the measure. The measure stipulates an excise tax is levied on tobacco products other than cigarettes and vapor products at the rate of 12.8 percent of the cost price of the products. This tax does not apply to the following:

- A tobacco product sold outside the State;
- A tobacco product sold to the federal government; or
- A sample tobacco product distributed without charge.

Further, the measure imposes an excise tax on vapor products at the rate of five cents (5¢) per fluid milliliter of consumable product. All invoices for vapor products issued by manufacturers must state the amount of consumable product in milliliters. Taxes imposed under this section do not apply to:

- A tobacco product sold outside the State;
- A tobacco product sold to the federal government; or
- A sample tobacco product distributed without charge.

Missouri The general assembly voted on September 10 to override the executive's veto of SB 841, a bill banning sales of e-cigarettes and similar "vaping" products to minors. The bill also carries a provision that bans the state from regulating e-cigarettes like tobacco is regulated. Even as cigarette tax revenue falls, the new law means the booming e-cigarette market won't bolster the state's income. Missouri's tobacco tax revenues have fallen every year since 2006 and were

\$99.5 million in FY14, according to the Missouri Department of Revenue. An FDA decision could call Missouri's deregulation into question. At 17 cents a pack, Missouri's cigarette tax is the lowest in the nation. Voters have defeated cigarette tax increase referendums three times since 2002.