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

ORIGINAL DATE 02/17/16
SPONSOR Pirtle **LAST UPDATED** **HB**

SHORT TITLE Fine Cigar Tax Rate **SB** 178

ANALYST Alejandro

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY16	**FY17**	**FY18**	**FY19**	**FY20**		
$0	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

Parenthesis ( ) indicate revenue decreases

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

FY16	FY17	FY18	3-Year Total	Recurring or Nonrecurring	Fund Affected
$43.0	$0	$0	$43.0	Nonrecurring	TRD Budget

Parenthesis ( ) indicate expenditure decreases

SOURCES OF INFORMATION
LFC Files

Responses Received From
Department of Health (DOH)
Taxation and Revenue Department (TRD)

SUMMARY

Senate Bill 178 defines “fine cigars” and reduces the tax rate for such products from 25 percent to $0.05 per cigar if sold individually, and $0.03 per cigar if sold in a package containing more than one.

The effective date of this bill is July 1, 2016.

FISCAL IMPLICATIONS

The Taxation and Revenue Department (TRD) was not able to produce a reliable estimate of the bill’s fiscal impact because the necessary data is not available. There are currently no cigar manufacturers operating in the state. Based on results from phone interviews conducted by TRD staff with a handful of specialty shops around the Albuquerque-metro area, the agency believes about 80 percent of all cigar sales made through specialty shops in the area could pertain to high-quality cigars produced predominantly in Florida, South Carolina, and New Jersey. TRD assumes the reduction in revenue collections from the tobacco products excise tax (TPT) from an ad valorem vehicle to a fixed dollar amount would be partially offset by an increase in the demand of high-quality cigars in the short-term.

A "fine" cigar at a price of $10 at the current TPT rate of 25 percent incurs a tax of $2.50. This bill reduces this tax to $0.05 (or $0.3 if sold in a multi-pack), representing a 98 percent reduction.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity. Due to the increasing cost of tax expenditures revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

POLICY IMPLICATIONS

According to the New Mexico Department of Health (DOH), the health detriments of cigar use are well known. The Centers for Disease Control and Prevention contends that cigars contain the same toxic and carcinogenic compounds found in cigarettes and are not a safe alternative to cigarettes (*CDC Fact Sheet – Cigars,* *www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/cigars/index.htm*). Regular cigar smoking is associated with an increased risk for cancers of the lung, esophagus, larynx (voice box), and oral cavity (lip, tongue, mouth, and throat). Heavy cigar smokers and those who inhale deeply may be at increased risk for developing coronary heart disease. Because of their size, cigars can produce even more secondhand smoke than cigarettes and can contain higher levels of some toxins than cigarettes. A person smoking a regular cigar creates much more air pollution than a cigarette smoker. But even in equal amounts, cigar smoke contains substantially higher levels of carbon monoxide and other toxins than cigarette smoke. (*The Rise of Cigars and Cigar-Smoking Harms,* *http://www.tobaccofreekids.org/research/factsheets/pdf/0333.pdf*)

Historically, cigar smoking in the United States has been a behavior of older men, but the industry's accelerated marketing of these products to targeted groups in the 1990s increased the prevalence of use among adolescents. Of note, cigars are marketed in a range of flavors that are attractive to kids, such as candy, fruit, and chocolate. In 2013, 12.3 percent of New Mexico high school youth, including almost 1 in 4 twelfth-grade boys, reported having used cigars, cigarillos or little cigars in the previous 30 days (2013 Youth Risk and Resiliency Survey). In 2014, 6 percent of New Mexico adults smoked cigars, but use was significantly higher among young adults (18-29 yrs) at 12 percent, compared to adults age 30 and older (4.1 percent) (*2014 New Mexico Tobacco Evaluation Survey*). Many laws and restrictions pertaining to cigarettes – such as federal laws banning flavored cigarettes, blocking illegal internet sales and restricting cigarette marketing – do not apply to cigars. In April 2014, the FDA issued a proposed rule to regulate tobacco products it does not currently regulate, including cigars, but that rule has yet to be finalized.

PERFORMANCE IMPLICATIONS

This bill relates to the FY17-FY19 Department of Health Strategic Plan:

- Result 1: Improved health status for New Mexicans;
- Indicators: Percent of adults who smoke; Percent of adolescents who smoke.
- Substance misuse, including tobacco use, has recently been identified as one of four super priorities for the Department of Health.

This bill also relates to the Department of Health, Public Health Division Performance Indicator:

- Percent of QUIT NOW enrollees who successfully quit using tobacco at 7-month follow-up.

TECHNICAL ISSUES

None identified.

ADMINISTRATIVE ISSUES

The bill would cause a moderate impact on TRD's ITD/GenTax (400 hours) and a minimal impact on its Revenue Processing Division (RPD). RPD costs may be absorbed with existing resources. An additional 1/8 of an FTE is required on an ongoing basis.

The Audit and Compliance Division (ACD) reports the tobacco products tax form and instructions will need to be modified. There is also additional cost to develop and send a notice of the rate change to taxpayers.

This bill has a moderate impact on the Financial Distributions Bureau (FDB) (40 hours). Programming changes will be required to the GenTax system to account for the special tax collected and related distribution. FDB staff will need to verify GenTax system changes by performing selected tests of data, functionality and reporting, prior to authorizing GenTax to move changes into production. Programming and testing would need to be completed by FDB no later than June 11, 2016.

DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

SB 178 conflicts with SB 4 which would amend and enact new sections of the Tobacco Products Tax Act to: 1) change the title of the act to the "Tobacco and Nicotine Products Tax Act"; 2) define and impose a tax on nicotine products; 3) require nicotine content labeling on all nicotine products; and 4) permit the Taxation and Revenue Department to conduct periodic compliance checks to ensure accurate nicotine content labeling on nicotine products. Compliance checking of nicotine content of nicotine products would be conducted by the Department of Health Scientific Laboratory Division. SB4 would also create definitions for "electronic delivery device" and amend the definition for "tobacco product."

SB 178 also conflicts with SB 77 which would increase tax rates for cigarettes and tobacco products, expand the types of products subject to the tobacco products tax. SB 77 also proposes to create a new 23 percent and 41 percent distribution of net receipts from the cigarette and tobacco products tax respectively to the Children, Youth and Families Department (CYFD) for early childhood education.

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