BILL ANALYSIS AND FISCAL IMPACT REPORT
Taxation and Revenue Department

January 30, 2025

Bill: SB-20 **Sponsor:** Senator Martin Hickey

Short Title: Increase Cigarette & Tobacco Products Taxes

Description: This bill increases the cigarette tax from 10 cents to 15 cents per cigarette. It creates the Nicotine Use Prevention and Control Fund and adjusts the distributions of the cigarette tax to distribute 28.5% of net receipts attributable to the cigarette tax to that new fund and adjusts distribution percentages for current distributions of the cigarette tax. The new distribution rates reduce the distribution rate to the General Fund from 79.81% to 66.34% . The bill also amends 7-12-7 NMSA 1978 to reduce the discounts given for bulk cigarette stamp purchases.

The overall tobacco products tax rate is increased from 25% of the product value to 67.5% of the wholesale price, and Sections 7-12A-4 and 7-12A-5 NMSA 1978 are amended to refer to the wholesale price instead of product value. Section 7-12A-2 NMSA 1978 is amended to change several definitions, including the definition of an “e-cigarette”, and add a definition for “wholesale price.” Section 7-12A-3 NMSA 1978 is amended to remove the exceptions for certain products and add specific tax rates for cigars and little cigars. The bill redirects 65% of the net receipts of the tobacco products tax from the General Fund to the new Nicotine Use and Prevention Control Fund.

The bill makes a $500 thousand General Fund appropriation to the Regulation and Licensing Department.

Effective Date: July 1, 2025

Taxation and Revenue Department Analyst: Pedro Clavijo

Appropriation*		R or NR**	Fund(s) Affected
FY2025	FY2026		
--	500	NR	Section 10: Regulation and Licensing Department

* In thousands of dollars. Parentheses ( ) indicate a revenue loss. ** Recurring (R) or Non-Recurring (NR).

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
--	(8,300)	(7,800)	(7,600)	(7,400)	R	Sections 2, 4: General Fund – cigarette tax
--	100	100	100	100	R	Sections 2, 4: UNM Cancer Center – cigarette tax
--	(600)	(600)	(500)	(500)	R	Sections 2, 4: UNM Health Science Center – cigarette tax
--	40	50	50	50	R	Sections 2, 4: New Mexico Finance Authority – Department of Health – cigarette tax

--	(500)	(400)	(400)	(400)	R	Sections 2, 4: New Mexico Finance Authority – Credit Enhancement Account – cigarette tax
--	100	100	100	100	R	Sections 2, 4: Rural County Cancer Treatment Fund – cigarette tax
--	21,400	21,000	20,400	19,900	R	Sections 2, 4: Nicotine Use Prevention and Control Fund – cigarette tax
--	800	1,800	3,200	5,200	R	Sections 3, 7: General Fund – tobacco products tax
--	23,000	26,300	30,900	37,000	R	Sections 3, 7: Nicotine Use Prevention and Control Fund – tobacco products tax
--	(7,500)	(6,000)	(4,400)	(2,200)	R	Total General Fund
--	45,400	47,700	51,900	57,400	R	Total Nicotine Use Prevention and Control Fund

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Methodology for Estimated Revenue Impact:

Sections 2, 4: The Taxation and Revenue Department (Tax & Rev) used the Cigarette Tax forecast from the Consensus Revenue Estimating Group (CREG) in December 2024 to estimate the revenue impact of the proposed tax increases under 7-12-3 NMSA 1978. Based on a Tax & Rev estimation of the tax elasticity of cigarettes in New Mexico, a tax elasticity of -0.40 was applied. Given that the bill also increases tobacco products taxes, the fiscal impact does not consider any substitution impacts on the consumption of tobacco products, possibly impacting revenue from the Cigarette Tax (see Policy Issues below). The drop-in consumption could be higher than what is modeled because age groups respond differently to tax/price increases due to variations between income elasticities. After modeling the fiscal impact of the tax increase, Tax & Rev simulated the distribution changes of cigarette collections using the proposed distribution rates.

Sections 3, 7: Tax & Rev estimated tax collections under different tobacco products and used an average tax elasticity of demand for tobacco products of -0.05[1] to calculate the revenue impact of the proposed tax increases under 7-12A-3 NMSA 1978. No cross-tax elasticities were used. Deviations from the impact estimated here will be mainly driven by the response to tax increases by the different population groups, with teenagers showing a higher elasticity of demand than adults. Also, if consumption moves to the black market (see Policy Issues below), the assumed drop in consumption could be higher. After modeling the fiscal impact of the tax increase, Tax & Rev simulated the distribution changes of tobacco products collections using the proposed distribution rates.

A factor that may increase or reduce the fiscal impact is the pass-through of taxes to retail prices, which may vary considerably across products depending on the profit maximization strategy of tobacco and

[1] https://tobaccocontrol.bmj.com/content/34/1/34

cigarette companies, primarily driven by market concentration and tax structure. Studies[2] show that when the industry overpasses a given tax increase to price, (i.e., increases the price more than would be indicated by the increase in tax), tobacco consumption decreases by a larger amount than it would under a 1:1 pass-through scenario. In contrast, when the industry absorbs part of a given tax increase, tobacco consumption decreases by a smaller amount compared to the case of a 1:1 scenario. Thus, the extent of the pass-through may impact tax collections.

Tax & Rev assumes there is no unexpended balance in the Nicotine Use Prevention and Control Fund at the end of the fiscal year to revert to the General Fund.

Policy Issues: The bill would increase the tax rate on cigarettes by 50% and tobacco products tax by 140% on average, presumably to discourage consumption, which can lead to adverse health outcomes. But by increasing the tax rate of tobacco products more disproportionally compared to cigarettes, the bill could shift consumption from tobacco products to cigarettes. From a health policy standpoint, this is especially important for younger users who have a larger market share of e-cigarettes, which fall under the tobacco products tax, and are more sensitive to price increases. On the other hand, there are arguments that – though addictive - vaping products may be less harmful than cigarettes.[3] Depending on the goal of raising taxes to either raise revenue or curb consumption due to health outcomes, looking at the overall interaction of all taxes on vaping products, cigarettes, and other tobacco products would be necessary.

New Mexico's current cigarette tax of $2 per pack is slightly above the national average of $1.9. The proposal to increase the tax to $3 per pack would place the State close to the 80th percentile amongst the States, but still far from New York's $5.35 per pack.[4] Regarding tobacco products, New Mexico's position depends mainly on the type of product. For example, New Mexico taxes little cigars more heavily than Utah but less than Arizona. However, the overall proposed tax rate increases would place the State above its neighbors.[5]

Significant increases in taxes may encourage consumers to buy products on the black market. The increased demand by consumers would presumably be met by an increased supply of cigarette and tobacco products within the black market. This raises safety concerns for consumers with a question of the quality of products being supplied and what may be contained, for example, within e-liquids with no oversight. In New Mexico, the smuggling rate is 41.2% and the foregone revenue from smuggling is estimated at $56.1 million.[6]

The distribution of revenue to a targeted nicotine prevention fund and subsequent appropriations from the fund may directly support state and community programs to prevent nicotine addiction. This would establish a consistent future fund balance for budgeting appropriations from these funds but would permanently divert gross receipts revenue from the General Fund and add complexity to Tax & Rev's distributions.

Technical Issues: [Section 6]: On pages 7 and 8, Tax & Rev suggests removing the definition of "closed system cartridge". Because a "closed system cartridge "is included in the "e-cigarette" definition and the tax is based on wholesale value, the definition of "closed system cartridge" is no longer necessary.

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[2] IARC. Effectiveness of tax and price policies for tobacco control. IARC Handbook of Cancer Prevention, Tobacco Control, Volume 14. Lyon, France: International Agency for Research on Cancer; 2011.

[3] Public Health England, " E-cigarettes around 95% less harmful than tobacco estimates landmark review," Aug. 19, 2015, https://www.gov.uk/government/news/e-cigarettes-around-95-less-harmful-than-tobacco-estimates-landmark-review.

[4] https://www.lung.org/policy-advocacy/tobacco/slati/current-state-taxes

[5] https://tobtax.avior.tax/doc/tob/tobacco-tax-rates

[6] https://taxfoundation.org/data/all/state/tobacco-tax-data-tool/

On page 7, lines 17-25 and page 8, lines 1-6, the definition of “e-cigarette” does not include a “battery or battery charger” as detailed on page 8, lines 5-6. Many e-cigarettes (vape pens) are purchased as a “set” in which the box will include the cartridge, the battery contained within the vape pen, a mouthpiece, and the battery charger (these boxes may also include a storage case). The bill does not include any methodology for computing the value of the battery or battery charger to deduct from the product's wholesale price. Furthermore, there are lower and high-end vape pens, and with no methodology to deduct the battery accessories taxpayers may apply different deduction amounts. Tax & Rev recommends removing the following language on page 8, lines 5 and 6, “but does not include a battery or battery charger.”

On page 8, lines 7-9, the definition of “e-liquid” has been amended to remove “not including any substance containing cannabis or oil derived from cannabis.” It is unclear what the bill intended when removing this language. Tax & Rev suggests the following definition: “e-liquid means liquid or other substance containing nicotine intended for use in an e-cigarette.”

Other Issues: None.

Administrative & Compliance Impact: Tax and Rev will update forms, instructions and publications and make information system changes.

Tax & Rev’s Administrative Services Division (ASD) will define and test requirements for a new distribution to the new fund. These new distributions will also require changes to revenue reports and audit financial statements. It is anticipated this work will take approximately 100 hours split between 2 FTE of a pay band 70 and a pay band 80 at a cost of approximately $6,600.

Tax & Rev’s Information Technology Division (ITD) will implement the changes in GenTax, the tax system of record, taking approximately 700 hours or about 4.5 months at a cost of $161,000 in staff workload.

Estimated Additional Operating Budget Impact*				**R or NR****	**Fund(s) or Agency Affected**
FY2025	**FY2026**	**FY2027**	**3 Year Total Cost**		
--	$6.6	--	$6.6	NR	Tax & Rev – ASD Staff workload
$161	--	--	$161	NR	Tax & Rev – ITD Staff workload

* In thousands of dollars. Parentheses ( ) indicate a cost saving. ** Recurring (R) or Non-Recurring (NR).