

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 21, 2011

TO: Honorable Harvey Hilderbran, Chair, House Committee on Ways & Means

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2085 by Shelton (Relating to the imposition of a fee on the sale of cigarettes and cigarette tobacco products manufactured by certain companies; providing penalties.), **As Introduced**

There could be an indeterminate revenue gain to the state, however, there is a concern that the nonsettling manufacturer fee could be interpreted by a court to be a tax that, under the bill's provisions, is a levy not uniformly applied to all taxpayers in the same class of taxpayer as required by Article 8, Section 1, Texas Constitution.

The bill would amend Chapter 161 of the Health and Safety Code to add new Subchapter V to impose a fee on the sale, use, consumption or distribution of cigarettes and cigarette tobacco products manufactured by companies that were not part of the Comprehensive Settlement Agreement and Release between Texas and certain tobacco companies filed in 1998, and are generally known as "non-settling manufacturers" or NSMs.

The bill would set the fee at 2.15 cents per cigarette or per nine-hundredths (0.09) of an ounce of cigarette tobacco product. Revenue collected from the fee would be deposited to General Revenue Fund 0001. The bill would direct the Comptroller's Office, on January 1 of each year, to increase the fee rate by the greater of 3 percent or the annual percent increase in the most recent Consumer Price Index as published by the U.S. Department of Labor. The Comptroller's Office would develop, maintain and present on its website a listing of all NSMs that have complied with this subchapter.

Distributors of NSM tobacco products would be required to include detailed information on the sales of these products in their monthly reports to the Comptroller's Office. The NSM product sales shown in the report would include sales that are not subject to the state's excise taxes on cigarettes, cigars, or other tobacco products. Based on the monthly reports, the Comptroller, for each NSM, would compute the fee amounts due and send the NSM a notice of the fee amount they owe. The bill would require NSMs whose products are not available for sale in Texas to make prepayments of this fee before those products can be legally sold in Texas.

The penalty provisions in Chapters 154 (cigarettes) and 155 (cigars and tobacco products) of the Tax Code would apply to violations of this subchapter. An NSM not appearing on the Comptroller's list of NSMs could not pay the taxes in those chapters of the Tax Code.

The quantity of cigarettes and cigarette tobacco products (i.e. roll-your-own tobacco) from NSMs sold in Texas was estimated, and possible fiscal implications were determined under the assumption that the proposed fee would reduce consumption of the affected tobacco products. This analysis resulted in a potential revenue gain of approximately \$25 million per year, which would be deposited to General Revenue Fund 0001. Information on the collection of such a fee in Minnesota and Mississippi suggests a decline in revenue in years following enactment.

There is a concern that the nonsettling manufacturer fee could be interpreted by a court to be a tax that, under the bill's provisions, is a levy not uniformly applied to all taxpayers in the same class of taxpayer as required by Article 8, Section 1, Texas Constitution. Therefore, the revenue implications of this bill cannot be determined.

The bill would take effect September 1, 2011.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

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