LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 12, 2013

TO: Honorable Tommy Williams, Chair, Senate Committee on Finance

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB3536** by Otto (Relating to imposing a fee on the sale of cigarettes and cigarette tobacco products manufactured by certain companies; providing penalties; changing the rate of the tax on chewing tobacco.), **As Engrossed**

Given the uncertainty over units to be subject to the fee under a dual-rate structure and unclear or declining revenue in other states who have imposed a fee on non-settling manufacturers, there could be an indeterminate revenue gain to the State.

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 2.75 cents per cigarette, or per nine-hundredths (0.09) of an ounce of cigarette tobacco product, for products of NSMs who are not Subsequent Participating Manufacturers (SPMs) of the 46-state Master Settlement Agreement (MSA) of which Texas was not a part. The fee for products of NSMs who are SPMs would be 0.75 cents per cigarette or per nine-hundredths (0.09) of an ounce of cigarette tobacco product. If there were an amendment to the MSA allowing the SPMs to receive a credit from the 46 states for the payment of this fee on their products sold in Texas by distributors, the rate of the fee for SPMs would rise to the 2.75 cent rate to which the products of other NSMs are subject. Revenue collected from the fee would be deposited to General Revenue Fund 0001. The bill would direct the Comptroller, on January 1 of each year, to increase the fee rate by the greater of 3 percent or the annual percent change in the most recent Consumer Price Index as published by the U.S. Department of Labor.

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. 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, except for those sold into another state for resale to consumers outside of Texas if those sales are reported to that state under Title 15, Section 376 of the United States Code. The distributor would be required to calculate and remit the NSM fee due to the Comptroller with the report. Distributors who remit the NSM fee would receive a 3 percent stamping allowance discount on all of their cigarette stamp purchases for the service of affixing tax stamps to cigarette packs; distributors who do not remit the fee would continue to receive a 2.5 percent discount, as provided under current law. Any fees remitted by an NSM under this bill would be applied on a dollar for dollar basis to reduce any judgment or settlement on a claim against the NSM for costs related to the use or exposure of their tobacco products to the public.

The Comptroller would be required, upon request, to report annually to the independent auditor of the MSA the volume of cigarettes on which the NSM fee was paid, itemized by manufacturer and brand family. The penalty provisions in Chapters 154 (cigarettes) and 155 (cigars and tobacco products) of the Tax Code would apply to violations of this subchapter. The bill also would amend Section 155.0211 of the Tax Code, to reduce the tax rate on chewing and smoking tobacco from $1.22 per ounce to $0.80 per ounce.

The quantities of cigarette and cigarette tobacco products (i.e. roll-your-own tobacco) subject to the 2.75 cent rate and those subject to the 0.75 cent rate are unknown as is the likelihood and timing of a credit amendment to the MSA that would increase the fee assessed on some products (in bill section 1, amending 161.604(c)).

Of the initial four settling states, Minnesota and Mississippi have imposed fees on NSMs. Information on the collection of such a fee in Mississippi is unclear as to fiscal outcome. Information for the fee in Minnesota indicates a decline in revenue, from initial collections in 2004 of $5.6 million to $2.8 million in 2012.

The NSM fee provisions could have a positive fiscal impact. Given, however, the uncertainty over units to be subject to the fee under a dual-rate structure and unclear or declining revenue in Mississippi and Minnesota, the revenue implications of the NSM fee in Texas cannot be determined.

Regarding the change in the stamping allowance, the increase to 3 percent would affect only distributors who sell NSM cigarettes and remit the fee. Distributors who do not sell NSM cigarettes or do not remit the NSM fee required in this bill would continue to receive the 2.5 percent stamping allowance under Section 154.052 of the Tax Code. Although the increased stamping allowance would decrease cigarette tax collections, the number of distributors to be affected by the new fee and reporting requirements, and the fiscal implications, are unknown.

With respect to the change in the tax rate on chewing and smoking tobacco, the change in the taxation of tobacco products other than cigarettes and cigars in HB 2154, 81st Legislature, Regular Session (2009) led to a significantly reduced level of consumption of chewing and smoking tobacco. For example, a typical package of chewing tobacco weighs approximately three times that of a can of snuff, but has historically been priced similarly. The switch to a weight-based tax had a disproportionate effect on the prices of these products. It appears as though the reduction in tax rate proposed in this bill would correspond in increased unit sales of chewing and smoking tobacco such that no significant change in revenue would be expected.

The bill would take effect September 1, 2013.

Local Government Impact

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

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD, AG