

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 24, 2013

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

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1136 by Hinojosa (Relating to imposing a fee on the sale of cigarettes and cigarette tobacco products manufactured by certain companies; providing penalties.), **As Introduced**

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, except for those sold into another state for resale to consumers outside of Texas, would include sales that are not subject to the state's excise taxes on cigarettes, cigars, or other tobacco products. The Comptroller would be required, not later than the 20th day after receiving the distributor reports, to calculate the amount each NSM owes based on those distributor reports and mail the NSMs a notification of the amount owed. NSMs would be required to remit payment by the 15th day of the month following the month the comptroller sent notice. NSMs that did not have products available for sale in Texas on September 1, 2012 would be required to make a prepayment of at least \$50,000 before offering those products for sale 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. Products of noncompliant NSMs would not be allowed to be stamped and sold.

The Comptroller would be required to develop, maintain, and publish on the Comptroller's website listing a directory of the NSMs complying with this chapter and their brands. 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 Attorney General's Office and the Comptroller are authorized to conduct reasonable periodic audits or inspections of the financial records of non-settling manufacturers and their distributors for compliance with this subchapter. The two agencies may issue rules necessary to implement this subchapter. It is assumed that any costs associated with implementing the provisions of the bill could be accomplished utilizing existing resources.

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 (bill section 1, 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 such a fee in Minnesota indicates a decline in revenue, following initial collections in 2004, from \$5.6 million to \$2.8 million in 2012.

The bill would take effect September 1, 2013.

Local Government Impact

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

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD, AG