

SENATE AMENDMENTS

2nd Printing

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H.B. No. 3536

A BILL TO BE ENTITLED

1 AN ACT
2 relating to imposing a fee on the sale of cigarettes and cigarette
3 tobacco products manufactured by certain companies; providing
4 penalties; changing the rate of the tax on chewing tobacco.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 161, Health and Safety Code, is amended
7 by adding Subchapter V to read as follows:

8 SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS

9 MANUFACTURED BY CERTAIN COMPANIES

10 Sec. 161.601. PURPOSE. The purpose of this subchapter is
11 to:

12 (1) recover health care costs to the state imposed by
13 non-settling manufacturers;

14 (2) prevent non-settling manufacturers from
15 undermining this state's policy of reducing underage smoking by
16 offering cigarettes and cigarette tobacco products at prices that
17 are substantially below the prices of cigarettes and cigarette
18 tobacco products of other manufacturers;

19 (3) protect the tobacco settlement agreement and
20 funding, which has been reduced because of the growth of sales of
21 non-settling manufacturer cigarettes and cigarette tobacco
22 products, for programs that are funded wholly or partly by payments
23 to this state under the tobacco settlement agreement and recoup for
24 this state settlement payment revenue lost because of sales of

1 non-settling manufacturer cigarettes and cigarette tobacco
2 products;

3 (4) ensure evenhanded treatment of manufacturers and
4 further protect the tobacco settlement agreement and funding by
5 imposing a partial payment obligation on non-settling
6 manufacturers that already make payments on Texas sales under the
7 master settlement agreement until a credit amendment to that
8 agreement that will provide those manufacturers with a credit for
9 payments to Texas is effective; and

10 (5) provide funding for any purpose the legislature
11 determines.

12 Sec. 161.602. DEFINITIONS. In this subchapter:

13 (1) "Brand family" means each style of cigarettes or
14 cigarette tobacco products sold under the same trademark. The term
15 includes any style of cigarettes or cigarette tobacco products that
16 have a brand name, trademark, logo, symbol, motto, selling message,
17 recognizable pattern of colors, or other indication of product
18 identification that is identical to, similar to, or identifiable
19 with a previously known brand of cigarettes or cigarette tobacco
20 products.

21 (2) "Cigarette" means a roll for smoking that is:

22 (A) made of tobacco or tobacco mixed with another
23 ingredient and wrapped or covered with a material other than
24 tobacco; and

25 (B) not a cigar.

26 (3) "Cigarette tobacco product" means roll-your-own
27 tobacco or tobacco that, because of the tobacco's appearance, type,

1 packaging, or labeling, is suitable for use in making cigarettes
2 and is likely to be offered to or purchased by a consumer for that
3 purpose.

4 (4) "Credit amendment" means an amendment to the
5 master settlement agreement that offers a credit to subsequent
6 participating manufacturers for fees paid under this subchapter
7 with respect to their products in a form agreed on by settling
8 states, as defined in the master settlement agreement, with
9 aggregate allocable shares, as defined in the master settlement
10 agreement, equal to at least 99.937049 percent; by the original
11 participating manufacturers, as defined in the master settlement
12 agreement; and by subsequent participating manufacturers whose
13 aggregate market share, expressed as a percentage of the total
14 number of individual cigarettes sold in the United States, the
15 District of Columbia, and Puerto Rico during the calendar year at
16 issue, as measured by excise taxes collected by the federal
17 government, and in the case of cigarettes sold in Puerto Rico, by
18 arbitrios de cigarillos collected by the Puerto Rico taxing
19 authority, is greater than 2.5 percent. For purposes of the
20 calculation of subsequent participating manufacturer market share
21 under this subchapter, 0.09 ounces of roll-your-own tobacco
22 constitutes one cigarette.

23 (5) "Distributor" has the meaning assigned by Section
24 154.001 or 155.001, Tax Code, as appropriate.

25 (6) "Fee" or "monthly fee" means the fee imposed under
26 Section 161.603.

27 (7) "Manufacturer" means a person that manufactures,

1 fabricates, or assembles cigarettes or cigarette tobacco products,
2 or causes or arranges for the manufacture, fabrication, or assembly
3 of cigarettes or cigarette tobacco products for sale or
4 distribution. For purposes of this subchapter, the term includes a
5 person that is the first importer into the United States of
6 cigarettes or cigarette tobacco products manufactured, fabricated,
7 or assembled outside the United States.

8 (8) "Master settlement agreement" means the
9 settlement agreement entered into on November 23, 1998, by 46
10 states and leading United States tobacco manufacturers, as amended
11 as of September 1, 2013.

12 (9) "Non-settling manufacturer" means a manufacturer
13 of cigarettes or cigarette tobacco products that did not sign a
14 tobacco settlement agreement described by Subdivision (15).

15 (10) "Non-settling manufacturer cigarettes" means
16 cigarettes of a non-settling manufacturer.

17 (11) "Non-settling manufacturer cigarette tobacco
18 products" means cigarette tobacco products of a non-settling
19 manufacturer.

20 (12) "Released claim" means:

21 (A) "released claims" as that term is defined in
22 the agreement described by Subdivision (15)(A); and

23 (B) all claims encompassed in Paragraph 7 of the
24 agreement described by Subdivision (15)(B).

25 (13) "Settling manufacturer" means a manufacturer of
26 cigarettes or cigarette tobacco products that signed a tobacco
27 settlement agreement described by Subdivision (15).

1 (14) "Subsequent participating manufacturer" has the
2 same meaning provided for that term in the master settlement
3 agreement, except that the term excludes any settling manufacturer
4 under the tobacco settlement agreement described by Subdivision
5 (15)(B). A manufacturer may not be treated as a subsequent
6 participating manufacturer for purposes of Section 161.604(c)
7 unless it has provided to the comptroller notice and proof, in the
8 form and manner the comptroller may prescribe, that it is a
9 subsequent participating manufacturer.

10 (15) "Tobacco settlement agreement" means either:

11 (A) the Comprehensive Settlement Agreement and
12 Release filed on January 16, 1998, in the United States District
13 Court, Eastern District of Texas, in the case styled The State of
14 Texas v. The American Tobacco Co., et al., No. 5-96CV-91, and all
15 subsequent amendments; or

16 (B) the settlement agreement entered into on
17 March 20, 1997, regarding the matter described in Paragraph (A),
18 but only as to companies that signed that agreement on that date.

19 Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the
20 sale, use, consumption, or distribution in this state of:

21 (1) non-settling manufacturer cigarettes if a stamp is
22 required to be affixed to a package of those cigarettes under
23 Section 154.041, Tax Code;

24 (2) non-settling manufacturer cigarettes that are
25 sold, purchased, or distributed in this state but that are not
26 required to have a stamp affixed to a package of those cigarettes
27 under Chapter 154, Tax Code;

1 (3) non-settling manufacturer cigarette tobacco
2 products that are subject to the tax imposed by Section 155.0211,
3 Tax Code; and

4 (4) non-settling manufacturer cigarette tobacco
5 products that are sold, purchased, or distributed in this state but
6 that are not subject to the tax imposed by Section 155.0211, Tax
7 Code.

8 (b) The fee imposed by this section does not apply to
9 cigarettes or cigarette tobacco products that a settling
10 manufacturer claims as its own, and that are included in computing
11 payments to be made by that settling manufacturer, under the
12 tobacco settlement agreement described by Section 161.602(15)(A).

13 (c) The fee imposed by this section does not apply to
14 cigarettes or cigarette tobacco products that are sold into another
15 state for resale to consumers outside of this state, provided that
16 the sale is reported to the state into which the cigarettes are sold
17 under 15 U.S.C. Section 376.

18 (d) The fee imposed by this section is in addition to any
19 other privilege, license, fee, or tax required or imposed by state
20 law.

21 (e) Except as otherwise provided by this subchapter, the fee
22 imposed by this section is imposed, collected, paid, administered,
23 and enforced in the same manner as the taxes imposed by Chapter 154
24 or 155, Tax Code, as appropriate.

25 (f) The fee imposed by this section shall be collected only
26 once on each cigarette or cigarette tobacco product on which it is
27 due.

1 Sec. 161.604. RATE OF FEE. (a) For cigarettes or cigarette
2 tobacco products sold, used, consumed, or distributed in this
3 state, as provided by Section 161.603, during the 2013 calendar
4 year, the fee is imposed at the rate of 2.75 cents for:

5 (1) each non-settling manufacturer cigarette; and

6 (2) each 0.09 ounces of non-settling manufacturer
7 cigarette tobacco product described by Section 161.602(3).

8 (b) Beginning in January 2014, and in January of each
9 subsequent year, the comptroller shall compute the rate of the fee
10 applicable during that calendar year by increasing the rate for the
11 preceding calendar year by the greater of:

12 (1) three percent; or

13 (2) the actual total percentage change in the Consumer
14 Price Index for All Urban Consumers (CPI-U), as published by the
15 Bureau of Labor Statistics of the United States Department of
16 Labor, during the preceding calendar year, calculated by comparing
17 the CPI-U for December of the preceding calendar year with the CPI-U
18 for December a year earlier.

19 (c) Notwithstanding Subsection (a), the rate of the fee on
20 the cigarettes and cigarette tobacco products of a subsequent
21 participating manufacturer shall, for calendar months beginning
22 before the effective date of a credit amendment, be calculated by
23 substituting 0.75 cents for 2.75 cents in Subsection (a). For
24 calendar months beginning on or after the effective date of a credit
25 amendment, the rate of the fee on the cigarettes and cigarette
26 tobacco products of subsequent participating manufacturers shall
27 be the same as the rate that applies for those months to the

1 cigarettes of non-settling manufacturers who are not subsequent
2 participating manufacturers.

3 Sec. 161.605. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY
4 FEE. (a) A distributor required to file a report under Section
5 154.210 or 155.111, Tax Code, shall, in addition to the information
6 required by those sections, include in that required report, as
7 appropriate:

8 (1) the number and denominations of stamps affixed to
9 individual packages of non-settling manufacturer cigarettes during
10 the preceding month;

11 (2) the amount of non-settling manufacturer cigarette
12 tobacco products subject to the tax imposed by Section 155.0211,
13 Tax Code, during the preceding month;

14 (3) the number of individual packages of non-settling
15 manufacturer cigarettes and the amount of non-settling
16 manufacturer cigarette tobacco products not subject to the tax
17 imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code,
18 sold or purchased in this state or otherwise distributed in this
19 state for sale in the United States;

20 (4) a calculation of the monthly fee required to be
21 paid by the distributor; and

22 (5) any other information the comptroller considers
23 necessary or appropriate to determine the amount of the fee imposed
24 by this subchapter or to enforce this subchapter.

25 (b) A distributor shall include with the report required
26 under this section the fee imposed under Section 161.603 based on
27 the non-settling manufacturer cigarettes and cigarette tobacco

1 products required to be included in the distributor's report under
2 this section and calculated using the rate under Section 161.604.

3 (c) The information required by Subsections (a)(1), (2),
4 and (3) must be itemized for each place of business and by
5 manufacturer and brand family.

6 (d) The requirement to report information under this
7 section shall be enforced in the same manner as the requirement to
8 deliver to or file with the comptroller a report required under
9 Section 154.210 or 155.111, Tax Code, as appropriate.

10 (e) Notwithstanding any other law, a distributor that
11 remits a monthly fee under this section is, subject to Section
12 154.051, Tax Code, entitled to a stamping allowance of three
13 percent of the face value of all stamps purchased under Section
14 154.041, Tax Code, for providing the service of affixing stamps to
15 cigarette packages.

16 (f) Information obtained from a report provided under
17 Subsection (a) regarding cigarettes or cigarette tobacco products
18 sold, purchased, or otherwise distributed by a non-settling
19 manufacturer may be disclosed by the comptroller to the
20 manufacturer or to the authorized representative of the
21 manufacturer.

22 (g) The comptroller shall, for the purpose of assisting
23 distributors in calculating the monthly fee, publish and maintain
24 on the comptroller's Internet website:

25 (1) a list of the names and brand families of settling
26 manufacturers;

27 (2) a list of each non-settling manufacturer showing

1 whether that manufacturer:

2 (A) is a subsequent participating manufacturer;

3 or

4 (B) is not a subsequent participating
5 manufacturer; and

6 (3) the effective date of any credit amendment.

7 Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING
8 NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS
9 FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or
10 cigarette tobacco products of a non-settling manufacturer were not
11 offered for sale or distribution in this state on September 1, 2013,
12 the non-settling manufacturer shall, before the date the cigarettes
13 or cigarette tobacco products are offered for sale or distribution
14 in this state, provide to the attorney general on a form prescribed
15 by the attorney general:

16 (1) the non-settling manufacturer's complete name,
17 address, and telephone number;

18 (2) the date that the non-settling manufacturer will
19 begin offering cigarettes or cigarette tobacco products for sale or
20 distribution in this state;

21 (3) the names of the brand families of the cigarettes
22 or cigarette tobacco products that the non-settling manufacturer
23 will offer for sale or distribution in this state;

24 (4) a statement that the non-settling manufacturer
25 intends to comply with this subchapter; and

26 (5) the name, address, telephone number, and signature
27 of an officer of the non-settling manufacturer attesting to all of

1 the included information.

2 (b) The attorney general shall make the information
3 provided under this section available to the comptroller.

4 Sec. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and
5 cigarette tobacco products of a non-settling manufacturer that are
6 sold, used, consumed, or distributed in this state in violation of
7 this subchapter, including cigarettes and cigarette tobacco
8 products for which full payment of the fee imposed under Section
9 161.603 is not made, shall be treated as cigarettes or cigarette
10 tobacco products for which the tax assessed by Chapter 154 or 155,
11 Tax Code, as appropriate, has not been paid, and the distributor or
12 non-settling manufacturer is subject to all penalties imposed by
13 those chapters for violations of those chapters.

14 Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.
15 A non-settling manufacturer shall appoint and engage a resident
16 agent for service of process.

17 Sec. 161.609. AUDIT OR INSPECTION. The comptroller or
18 attorney general is entitled to conduct reasonable periodic audits
19 or inspections of the financial records of a non-settling
20 manufacturer and its distributors to ensure compliance with this
21 subchapter.

22 Sec. 161.610. COMPTROLLER INFORMATION SHARING. On request,
23 the comptroller shall report annually to the independent auditor or
24 other entities responsible for making calculations or other
25 determinations under a tobacco settlement agreement or the master
26 settlement agreement, as the master settlement agreement may be
27 amended or supplemented by some or all of the parties thereto, the

1 volume of cigarettes on which the fee required under Section
2 161.603 is paid, itemized by cigarette manufacturer and brand
3 family.

4 Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND.
5 The revenue from the fees imposed by this subchapter shall be
6 deposited in the state treasury to the credit of the general revenue
7 fund.

8 Sec. 161.612. RELEASED CLAIMS. All fees paid by a
9 manufacturer under this subchapter shall apply on a dollar for
10 dollar basis to reduce any judgment or settlement on a released
11 claim brought against the manufacturer that made the payment.

12 Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This
13 subchapter applies without regard to Section 154.022, Tax Code, or
14 any other law that might be read to create an exemption for
15 interstate sales.

16 (b) This subchapter does not apply to a tobacco product
17 described by Section 155.001(15)(C), Tax Code.

18 Sec. 161.614. RULES. The comptroller and attorney general
19 may issue rules and regulations as necessary to carry out or enforce
20 this subchapter.

21 SECTION 2. Section 155.0211(b), Tax Code, is amended to
22 read as follows:

23 (b) Except as provided by Subsection (c), the tax rate for:

24 (1) each can or package of a tobacco product other than
25 cigars, chewing tobacco, or smoking tobacco is \$1.22 per ounce and a
26 proportionate rate on all fractional parts of an ounce; and

27 (2) chewing tobacco or smoking tobacco is 80 cents per

1 ounce and a proportionate rate on all fractional parts of an ounce.

2 SECTION 3. (a) Not later than September 30, 2013, a
3 non-settling manufacturer, as that term is defined by Section
4 161.602, Health and Safety Code, as added by this Act, that is
5 offering cigarettes or cigarette tobacco products for sale or
6 distribution in this state on September 1, 2013, shall provide to
7 the attorney general on a form prescribed by the attorney general:

8 (1) the non-settling manufacturer's complete name,
9 address, and telephone number;

10 (2) the date that the non-settling manufacturer began
11 offering cigarettes or cigarette tobacco products for sale or
12 distribution in this state;

13 (3) the names of the brand families of the cigarettes
14 or cigarette tobacco products that the non-settling manufacturer
15 offers for sale or distribution in this state;

16 (4) a statement that the non-settling manufacturer
17 intends to comply with Subchapter V, Chapter 161, Health and Safety
18 Code, as added by this Act; and

19 (5) the name, address, telephone number, and signature
20 of an officer of the non-settling manufacturer attesting to all of
21 the included information.

22 (b) The attorney general shall make the information
23 provided under Subsection (a) of this section available to the
24 comptroller.

25 SECTION 4. The change in law made by this Act to Section
26 155.0211, Tax Code, does not affect tax liability accruing before
27 the effective date of this Act. That liability continues in effect

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1 as if this Act had not been enacted, and the former law is continued
2 in effect for the collection of taxes due and for civil and criminal
3 enforcement of the liability for those taxes.

4 SECTION 5. This Act takes effect September 1, 2013.

ADOPTED

MAY 21 2013

Leta Spaw
Secretary of the Senate

By: _____

____.B. No. _____

Substitute the following for ____B. No. _____:

By: *[Signature]* _____

C.S.H.B. No. 3536

A BILL TO BE ENTITLED

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AN ACT

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relating to imposing a fee on the sale of cigarettes and cigarette tobacco products manufactured by certain companies; providing penalties.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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SECTION 1. Chapter 161, Health and Safety Code, is amended by adding Subchapter V to read as follows:

7

8

SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS

9

MANUFACTURED BY CERTAIN COMPANIES

10

Sec. 161.601. PURPOSE. The purpose of this subchapter is

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to:

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(1) recover health care costs to the state imposed by

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non-settling manufacturers;

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(2) prevent non-settling manufacturers from

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(3) protect the tobacco settlement agreement and

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funding, which has been reduced because of the growth of sales of

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to this state under the tobacco settlement agreement and recoup for

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this state settlement payment revenue lost because of sales of

1 non-settling manufacturer cigarettes and cigarette tobacco
2 products;

3 (4) ensure evenhanded treatment of manufacturers and
4 further protect the tobacco settlement agreement and funding by
5 imposing a partial payment obligation on non-settling
6 manufacturers that already make payments on Texas sales under the
7 master settlement agreement until a credit amendment to that
8 agreement that will provide those manufacturers with a credit for
9 payments to Texas is effective; and

10 (5) provide funding for any purpose the legislature
11 determines.

12 Sec. 161.602. DEFINITIONS. In this subchapter:

13 (1) "Brand family" means each style of cigarettes or
14 cigarette tobacco products sold under the same trademark. The term
15 includes any style of cigarettes or cigarette tobacco products that
16 have a brand name, trademark, logo, symbol, motto, selling message,
17 recognizable pattern of colors, or other indication of product
18 identification that is identical to, similar to, or identifiable
19 with a previously known brand of cigarettes or cigarette tobacco
20 products.

21 (2) "Cigarette" means a roll for smoking that is:

22 (A) made of tobacco or tobacco mixed with another
23 ingredient and wrapped or covered with a material other than
24 tobacco; and

25 (B) not a cigar.

26 (3) "Cigarette tobacco product" means roll-your-own
27 tobacco or tobacco that, because of the tobacco's appearance, type,

1 packaging, or labeling, is suitable for use in making cigarettes
2 and is likely to be offered to or purchased by a consumer for that
3 purpose.

4 (4) "Credit amendment" means an amendment to the
5 master settlement agreement that offers a credit to subsequent
6 participating manufacturers for fees paid under this subchapter
7 with respect to their products in a form agreed on by settling
8 states, as defined in the master settlement agreement, with
9 aggregate allocable shares, as defined in the master settlement
10 agreement, equal to at least 99.937049 percent; by the original
11 participating manufacturers, as defined in the master settlement
12 agreement; and by subsequent participating manufacturers whose
13 aggregate market share, expressed as a percentage of the total
14 number of individual cigarettes sold in the United States, the
15 District of Columbia, and Puerto Rico during the calendar year at
16 issue, as measured by excise taxes collected by the federal
17 government, and in the case of cigarettes sold in Puerto Rico, by
18 arbitrios de cigarillos collected by the Puerto Rico taxing
19 authority, is greater than 2.5 percent. For purposes of the
20 calculation of subsequent participating manufacturer market share
21 under this subchapter, 0.09 ounces of roll-your-own tobacco
22 constitutes one cigarette.

23 (5) "Distributor" has the meaning assigned by Section
24 154.001 or 155.001, Tax Code, as appropriate.

25 (6) "Fee" or "monthly fee" means the fee imposed under
26 Section 161.603.

27 (7) "Manufacturer" means a person that manufactures,

1 fabricates, or assembles cigarettes or cigarette tobacco products,
2 or causes or arranges for the manufacture, fabrication, or assembly
3 of cigarettes or cigarette tobacco products for sale or
4 distribution. For purposes of this subchapter, the term includes a
5 person that is the first importer into the United States of
6 cigarettes or cigarette tobacco products manufactured, fabricated,
7 or assembled outside the United States.

8 (8) "Master settlement agreement" means the
9 settlement agreement entered into on November 23, 1998, by 46
10 states and leading United States tobacco manufacturers, as amended
11 as of September 1, 2013.

12 (9) "Non-settling manufacturer" means a manufacturer
13 of cigarettes or cigarette tobacco products that did not sign a
14 tobacco settlement agreement described by Subdivision (15).

15 (10) "Non-settling manufacturer cigarettes" means
16 cigarettes of a non-settling manufacturer.

17 (11) "Non-settling manufacturer cigarette tobacco
18 products" means cigarette tobacco products of a non-settling
19 manufacturer.

20 (12) "Released claim" means:

21 (A) "released claims" as that term is defined in
22 the agreement described by Subdivision (15)(A); and

23 (B) all claims encompassed in Paragraph 7 of the
24 agreement described by Subdivision (15)(B).

25 (13) "Settling manufacturer" means a manufacturer of
26 cigarettes or cigarette tobacco products that signed a tobacco
27 settlement agreement described by Subdivision (15).

1 (14) "Subsequent participating manufacturer" has the
2 same meaning provided for that term in the master settlement
3 agreement, except that the term excludes any settling manufacturer
4 under the tobacco settlement agreement described by Subdivision
5 (15)(B). A manufacturer may not be treated as a subsequent
6 participating manufacturer for purposes of Section 161.604(c)
7 unless it has provided to the comptroller notice and proof, in the
8 form and manner the comptroller may prescribe, that it is a
9 subsequent participating manufacturer.

10 (15) "Tobacco settlement agreement" means either:

11 (A) the Comprehensive Settlement Agreement and
12 Release filed on January 16, 1998, in the United States District
13 Court, Eastern District of Texas, in the case styled The State of
14 Texas v. The American Tobacco Co., et al., No. 5-96CV-91, and all
15 subsequent amendments; or

16 (B) the settlement agreement entered into on
17 March 20, 1997, regarding the matter described in Paragraph (A),
18 but only as to companies that signed that agreement on that date.

19 Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the
20 sale, use, consumption, or distribution in this state of:

21 (1) non-settling manufacturer cigarettes if a stamp is
22 required to be affixed to a package of those cigarettes under
23 Section 154.041, Tax Code;

24 (2) non-settling manufacturer cigarettes that are
25 sold, purchased, or distributed in this state but that are not
26 required to have a stamp affixed to a package of those cigarettes
27 under Chapter 154, Tax Code;

1 (3) non-settling manufacturer cigarette tobacco
2 products that are subject to the tax imposed by Section 155.0211,
3 Tax Code; and

4 (4) non-settling manufacturer cigarette tobacco
5 products that are sold, purchased, or distributed in this state but
6 that are not subject to the tax imposed by Section 155.0211, Tax
7 Code.

8 (b) The fee imposed by this section does not apply to
9 cigarettes or cigarette tobacco products that a settling
10 manufacturer claims as its own, and that are included in computing
11 payments to be made by that settling manufacturer, under the
12 tobacco settlement agreement described by Section 161.602(15)(A).

13 (c) The fee imposed by this section does not apply to
14 cigarettes or cigarette tobacco products that are sold into another
15 state for resale to consumers outside of this state, provided that
16 the sale is reported to the state into which the cigarettes are sold
17 under 15 U.S.C. Section 376.

18 (d) The fee imposed by this section is in addition to any
19 other privilege, license, fee, or tax required or imposed by state
20 law.

21 (e) Except as otherwise provided by this subchapter, the fee
22 imposed by this section is imposed, collected, paid, administered,
23 and enforced in the same manner as the taxes imposed by Chapter 154
24 or 155, Tax Code, as appropriate.

25 (f) The fee imposed by this section shall be collected only
26 once on each cigarette or cigarette tobacco product on which it is
27 due.

1 Sec. 161.604. RATE OF FEE. (a) For cigarettes or cigarette
2 tobacco products sold, used, consumed, or distributed in this
3 state, as provided by Section 161.603, during the 2013 calendar
4 year, the fee is imposed at the rate of 2.75 cents for:

5 (1) each non-settling manufacturer cigarette; and

6 (2) each 0.09 ounces of non-settling manufacturer
7 cigarette tobacco product described by Section 161.602(3).

8 (b) Beginning in January 2014, and in January of each
9 subsequent year, the comptroller shall compute the rate of the fee
10 applicable during that calendar year by increasing the rate for the
11 preceding calendar year by the greater of:

12 (1) three percent; or

13 (2) the actual total percentage change in the Consumer
14 Price Index for All Urban Consumers (CPI-U), as published by the
15 Bureau of Labor Statistics of the United States Department of
16 Labor, during the preceding calendar year, calculated by comparing
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19 (c) Notwithstanding Subsection (a), the rate of the fee on
20 the cigarettes and cigarette tobacco products of a subsequent
21 participating manufacturer shall, for calendar months beginning
22 before the effective date of a credit amendment, be calculated by
23 substituting 0.75 cents for 2.75 cents in Subsection (a). For
24 calendar months beginning on or after the effective date of a credit
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27 be the same as the rate that applies for those months to the

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2 participating manufacturers.

3 Sec. 161.605. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY
4 FEE. (a) A distributor required to file a report under Section
5 154.210 or 155.111, Tax Code, shall, in addition to the information
6 required by those sections, include in that required report, as
7 appropriate:

8 (1) the number and denominations of stamps affixed to
9 individual packages of non-settling manufacturer cigarettes during
10 the preceding month;

11 (2) the amount of non-settling manufacturer cigarette
12 tobacco products subject to the tax imposed by Section 155.0211,
13 Tax Code, during the preceding month;

14 (3) the number of individual packages of non-settling
15 manufacturer cigarettes and the amount of non-settling
16 manufacturer cigarette tobacco products not subject to the tax
17 imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code,
18 sold or purchased in this state or otherwise distributed in this
19 state for sale in the United States;

20 (4) a calculation of the monthly fee required to be
21 paid by the distributor; and

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23 necessary or appropriate to determine the amount of the fee imposed
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26 under this section the fee imposed under Section 161.603 based on
27 the non-settling manufacturer cigarettes and cigarette tobacco

1 products required to be included in the distributor's report under
2 this section and calculated using the rate under Section 161.604.

3 (c) The information required by Subsections (a)(1), (2),
4 and (3) must be itemized for each place of business and by
5 manufacturer and brand family.

6 (d) The requirement to report information under this
7 section shall be enforced in the same manner as the requirement to
8 deliver to or file with the comptroller a report required under
9 Section 154.210 or 155.111, Tax Code, as appropriate.

10 (e) Notwithstanding any other law, a distributor that
11 remits a monthly fee under this section is, subject to Section
12 154.051, Tax Code, entitled to a stamping allowance of three
13 percent of the face value of all stamps purchased under Section
14 154.041, Tax Code, for providing the service of affixing stamps to
15 cigarette packages.

16 (f) Information obtained from a report provided under
17 Subsection (a) regarding cigarettes or cigarette tobacco products
18 sold, purchased, or otherwise distributed by a non-settling
19 manufacturer may be disclosed by the comptroller to the
20 manufacturer or to the authorized representative of the
21 manufacturer.

22 (g) The comptroller shall, for the purpose of assisting
23 distributors in calculating the monthly fee, publish and maintain
24 on the comptroller's Internet website:

25 (1) a list of the names and brand families of settling
26 manufacturers;

27 (2) a list of each non-settling manufacturer showing

1 whether that manufacturer:

2 (A) is a subsequent participating manufacturer;

3 or

4 (B) is not a subsequent participating
5 manufacturer; and

6 (3) the effective date of any credit amendment.

7 Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING

8 NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS

9 FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or

10 cigarette tobacco products of a non-settling manufacturer were not

11 offered for sale or distribution in this state on September 1, 2013,

12 the non-settling manufacturer shall, before the date the cigarettes

13 or cigarette tobacco products are offered for sale or distribution

14 in this state, provide to the attorney general on a form prescribed

15 by the attorney general:

16 (1) the non-settling manufacturer's complete name,
17 address, and telephone number;

18 (2) the date that the non-settling manufacturer will
19 begin offering cigarettes or cigarette tobacco products for sale or
20 distribution in this state;

21 (3) the names of the brand families of the cigarettes
22 or cigarette tobacco products that the non-settling manufacturer
23 will offer for sale or distribution in this state;

24 (4) a statement that the non-settling manufacturer
25 intends to comply with this subchapter; and

26 (5) the name, address, telephone number, and signature
27 of an officer of the non-settling manufacturer attesting to all of

1 the included information.

2 (b) The attorney general shall make the information
3 provided under this section available to the comptroller.

4 Sec. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and
5 cigarette tobacco products of a non-settling manufacturer that are
6 sold, used, consumed, or distributed in this state in violation of
7 this subchapter, including cigarettes and cigarette tobacco
8 products for which full payment of the fee imposed under Section
9 161.603 is not made, shall be treated as cigarettes or cigarette
10 tobacco products for which the tax assessed by Chapter 154 or 155,
11 Tax Code, as appropriate, has not been paid, and the distributor or
12 non-settling manufacturer is subject to all penalties imposed by
13 those chapters for violations of those chapters.

14 Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS.
15 A non-settling manufacturer shall appoint and engage a resident
16 agent for service of process.

17 Sec. 161.609. AUDIT OR INSPECTION. The comptroller or
18 attorney general is entitled to conduct reasonable periodic audits
19 or inspections of the financial records of a non-settling
20 manufacturer and its distributors to ensure compliance with this
21 subchapter.

22 Sec. 161.610. COMPTROLLER INFORMATION SHARING. On request,
23 the comptroller shall report annually to the independent auditor or
24 other entities responsible for making calculations or other
25 determinations under a tobacco settlement agreement or the master
26 settlement agreement, as the master settlement agreement may be
27 amended or supplemented by some or all of the parties thereto, the

1 volume of cigarettes on which the fee required under Section
2 161.603 is paid, itemized by cigarette manufacturer and brand
3 family.

4 Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND.
5 The revenue from the fees imposed by this subchapter shall be
6 deposited in the state treasury to the credit of the general revenue
7 fund.

8 Sec. 161.612. RELEASED CLAIMS. All fees paid by a
9 manufacturer under this subchapter shall apply on a dollar for
10 dollar basis to reduce any judgment or settlement on a released
11 claim brought against the manufacturer that made the payment.

12 Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This
13 subchapter applies without regard to Section 154.022, Tax Code, or
14 any other law that might be read to create an exemption for
15 interstate sales.

16 (b) This subchapter does not apply to a tobacco product
17 described by Section 155.001(15)(C), Tax Code.

18 Sec. 161.614. RULES. The comptroller and attorney general
19 may issue rules and regulations as necessary to carry out or enforce
20 this subchapter.

21 SECTION 2. (a) Not later than September 30, 2013, a
22 non-settling manufacturer, as that term is defined by Section
23 161.602, Health and Safety Code, as added by this Act, that is
24 offering cigarettes or cigarette tobacco products for sale or
25 distribution in this state on September 1, 2013, shall provide to
26 the attorney general on a form prescribed by the attorney general:

27 (1) the non-settling manufacturer's complete name,

1 address, and telephone number;

2 (2) the date that the non-settling manufacturer began
3 offering cigarettes or cigarette tobacco products for sale or
4 distribution in this state;

5 (3) the names of the brand families of the cigarettes
6 or cigarette tobacco products that the non-settling manufacturer
7 offers for sale or distribution in this state;

8 (4) a statement that the non-settling manufacturer
9 intends to comply with Subchapter V, Chapter 161, Health and Safety
10 Code, as added by this Act; and

11 (5) the name, address, telephone number, and signature
12 of an officer of the non-settling manufacturer attesting to all of
13 the included information.

14 (b) The attorney general shall make the information
15 provided under Subsection (a) of this section available to the
16 comptroller.

17 SECTION 3. This Act takes effect September 1, 2013.

FLOOR AMENDMENT NO. 1

J. J. Aung
BY: _____

1 Amend C.S.H.B. No. 3536 (senate committee report) in
2 SECTION 1 of the bill, in added Section 161.614, Health and
3 Safety Code (page 6, line 1), by striking "and attorney
4 general".

ADOPTED

MAY 21 2013

Arlene Spaw
Secretary of the Senate

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 22, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

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.), **As Passed 2nd House**

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 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.

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 20, 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.), **Committee Report 2nd House, Substituted**

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 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.

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

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**

<p>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.</p>

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 29, 2013

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

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.), **Committee Report 1st House, Substituted**

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 to an Indian tribe for resale to members of the tribe on tribal land or 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 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 a 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 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 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 tobacco. 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 price of this product. It appears as though the reduction in tax rate proposed in this bill would correspond in increased unit sales of chewing 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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 8, 2013

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

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3536 by Otto (Relating to the imposition of 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 distributor would be required to calculate and remit the fee due to the Comptroller with the report.

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 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 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: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD, AG

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

TAX/FEE EQUITY NOTE

83RD LEGISLATIVE REGULAR SESSION

April 29, 2013

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

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.), **Committee Report 1st House, Substituted**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: UP, KK

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY NOTE

83RD LEGISLATIVE REGULAR SESSION

April 8, 2013

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

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3536 by Otto (Relating to the imposition of a fee on the sale of cigarettes and cigarette tobacco products manufactured by certain companies; providing penalties.), **As Introduced**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: UP, KK