

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



**CORRECTED
FISCAL NOTE**

SB 3133 - HB 3656

March 26, 2010

SUMMARY OF BILL: Defines non-participating manufacturer, as it applies to the Tobacco Tax Law, to mean a manufacturer of cigarettes that is not a participating manufacturer as defined in the Tobacco Master Settlement Agreement. Levies an equity assessment equal to 45 cents per pack on cigarettes sold by non-participating manufacturers in Tennessee. Establishes certain rules, requirements, and procedures for the Department of Revenue and non-participating manufacturers. Authorizes the Commissioner of Revenue to impose civil fines for violations of this act.

ESTIMATED FISCAL IMPACT:

On February 24, 2010, we issued a fiscal note for this bill indicating a *recurring increase to state revenue of \$3,603,400 per year, a one-time increase to state expenditures of \$29,700, a recurring increase to state expenditures of \$51,400 per year, and a recurring increase to local government revenue of \$84,200 per year.* Based on additional information received, the fiscal impact for this bill has been corrected to the following estimated fiscal impact:

(CORRECTED)

Increase State Revenue - \$3,603,400/Recurring

Increase State Expenditures - \$29,700/One-Time

\$51,400/Recurring

Increase Local Revenue - \$84,200/Recurring

Other Fiscal Impact – A potential loss of Master Settlement Agreement payments to the state from participating tobacco manufacturers up to an estimated \$147,200,000 per year.

Assumptions:

- According to the Department of Revenue (DOR), approximately \$290,000,000 of tobacco tax revenue was collected from the sale of cigarettes during FY08-09.

- The amount of tobacco tax revenue collected from cigarettes remains constant under current law.
- The current excise tax on cigarettes is \$0.62 per pack.
- The total number of packs taxed during FY08-09 is estimated to be 467,741,935 ($\$290,000,000 / \$0.62 = 467,741,935$ packs).
- Based on information provided by DOR, five percent of cigarette sales (23,387,097 packs) are estimated to be from non-participating manufacturers.
- The unadjusted increase to state revenue derived from the levy of equity assessments is estimated to be \$10,524,200 per year ($23,387,097 \times \$0.45 = \$10,524,194$).
- DOR indicates that non-participating manufacturers currently have a considerable price advantage over participating manufacturers of approximately \$0.36 per pack. The Department indicates a high probability that the state will only realize a portion of the unadjusted revenue estimate (\$10,524,200). This is because as non-participating manufacturers lose the competitive advantage they have over participating manufacturers (as the result of the \$0.45 per pack equity assessment), a good majority of non-participating manufacturer sales will shift to participating manufacturer sales. The Department estimates approximately 68 percent of non-participating manufacturer cigarette sales will shift to participating manufacturer sales.
- The adjusted increase to state revenue derived from the levy of equity assessments is estimated to be \$3,367,700 per year ($\$10,524,200 \times 32.0\% = \$3,367,744$).
- There will be an increase to state and local sales tax collections because sales tax is computed on the after-tax price of cigarettes.
- The current state sales tax rate is seven percent.
- The average local option sales tax rate is estimated to be 2.5 percent.
- The total increase to state revenue is estimated to be \$3,603,400 per year ($\$3,367,700 \times 107.0\% = \$3,603,439$).
- The increase to local government revenue is estimated to be \$84,200 per year ($\$3,367,700 \times 2.5\% = \$84,193$).
- DOR indicates the need for one additional Taxpayer Representative 2 position. The increase to recurring state expenditures is estimated to be \$51,400 per year (\$26,400 salary; \$17,700 benefits, \$7,300 other). An additional one-time state expenditure of \$4,700 for computer and software.
- DOR indicates additional one-time state expenditures for computer and software modifications. Such expenditures are estimated to be \$25,000.
- Based on information from the Attorney General relative to similar proposed legislation from the 2005 legislation session, and from new information provided by DOR for this bill, the state could jeopardize Master Settlement Agreement (MSA) payments in the future. This potential impact is based on the withholding of MSA payments from participating tobacco manufacturers (PTMs) that interpret this proposed legislation as an amendment to the Tobacco Master Settlement Agreement. If such PTMs bring litigation against the state as a result, and are convincing in their case, tobacco manufacturers could withhold MSA payments for a lengthy an unknown period of time.

- According to DOR, MSA payments have averaged approximately \$147,200,000 per year over the last four years.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "James W. White". The signature is written in a cursive style with a large initial "J" and "W".

James W. White, Executive Director

/rnc