mwd

PREPARED BY: Doug Gibbs
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PHONE: 402-471-0051

LB 590

Revision: 01

FISCAL NOTE

LEGISLATIVE FISCAL ANALYST ESTIMATE

Revised due to adoption of amendments on General File.

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES *

	FY 2011-12		FY 2012-13	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	$201,556		$208,487	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	$201,556		$208,487	

*Does not include any impact on political subdivisions. See narrative for political subdivision estimates.

LB 590, as amended by AM1072, adopts nine new sections of statute and amends twenty-eight sections dealing with the sales, licensing, and taxation of cigarettes; Master Settlement Agreement (MSA) escrow deposits; and adds a number of new reporting requirements and restrictions to the sale of cigarettes. These changes are to enforce the MSA escrow requirements for nonparticipating manufacturers and cigarette tax collection. The bill imposes new licensing requirements and penalties for noncompliance, and imposes requirements on persons who are not licensed, including Indians and Indian tribes. LB 590, as amended, permits the state and tribes to negotiate a compact and share both cigarette taxes and escrow payments.

The bill, as amended by AM1072, does the following:

- Updates the incorporation of federal statutes to January 1, 2011 instead of May 1, 2001.
- Requires quarterly instead of monthly escrow payments by nonparticipating manufacturers.
- Defines and regulates importers of cigarettes upon which non-federal or state tax has been paid. Importers would also be required to deposit into escrow. Manufacturers and importers would be required to report all sales into the state within 15 days. The Tax Commissioner may request that manufacturers and importers also provide copies of similar reports filed in other states. Each manufacturer and importer is required to supply the state with all federal reports filed.
- Defines "units sold" for reporting purposes to mean packs of cigarettes required to bear a stamp, or roll-you-own tobacco.
- Defines "Indian tribe" as any tribe, band, nation, or organized group eligible for special services under U.S. law.
- Defines "Indian country" as land within reservations, dependent Indian communities, and Indian allotments.
- Allows an Indian tribe to receive a refund of escrow deposits that relate to cigarettes sold on an Indian tribe's Indian country to a member of that tribe.
- Requires a bond from nonparticipating manufacturers that are not selling cigarettes in the state or have been struck from any directory in any state. The Attorney General would be responsible for collecting and enforcing against the bond.
- Allows manufacturers or importers to be licensed as stamping agents by the Tax Commissioner.
- Imposes additional reporting requirements for all stamping agents regarding numbers sold and stamped and where cigarettes come from or went to. Any shortfall found by comparing escrow deposits to the sales reported by the stamping agent from a nonparticipating manufacturer is to be made up by the stamping agent. The stamping agent may require prepaid escrow from suppliers. Stamping agents may be terminated for failure to report or pay shortfall escrow, resulting in penalties and striking brand families from the directory maintained by the Department of Revenue.
- Requires reports to be filed in a manner directed by the Tax Commissioner, allowing mandatory electronic filing.
- Authorizes and adds references to tribal stamps as an alternative to Nebraska cigarette stamps.
- Allows the license of a stamping agent to be terminated for failing to file any of these reports, selling or possessing unstamped cigarettes, stamping cigarettes not on the directory, or holding on to these cigarettes for more than ten days. Terminated licenses may be reinstated after a certain period of time under certain conditions.
- Subjects manufacturers to penalties for failure to report under this act or the PACT Act, including striking brand families from the directory. Any difference between sales reported for federal excise tax purposes and the PACT Act reports that exceed five percent could also result in striking the appropriate brand families from the directory.
- Imposes requirements on persons acquiring, importing, selling, transporting, etc. non-directory cigarettes in Nebraska and adopts penalties for failure to do so.
- Adopts detailed procedures governing refunds of cigarette taxes for cigarettes sold on a federal installation or to an Indian in Indian country. This provision limits the refund to buyers who are members of the selling tribe.
- Allows the Governor to negotiate a cigarette tax agreement with any federally-recognized Indian tribe within the state. The tribes must collect escrow, waive sovereign immunity, and tax at a rate identical to the state rate. The tribes may issue their own stamps, and may agree to a percentage split of both the tax and escrow. The tribe may sell non-directory cigarettes, but must deposit escrow equal to the amount required of nonparticipating manufacturers.

- Allows manufacturers, importers, wholesalers, and sales affiliates to become licensed as a stamping agent if they promise to comply with all requirements, consent to the jurisdiction to allow the state to control the operation, and name an agent in the state for service of process. Licensed manufacturers, importers, wholesalers, or retailers may also obtain a directory license, which authorizes the holder to possess non-directory cigarettes for purposes of exporting them to other states. Persons holding directory licenses are to be listed on the Department of Revenue's website.
- Imposes a new reporting requirement on persons that sell cigarettes from this state into another state. The number sold, the number stamped, and for which state, and the brand families of any sold unstamped to a person not authorized to stamp cigarettes is required in the report.
- Increases penalties for stamping cigarettes that are not on the directory and provide that any contraband cigarettes and cigarette inputs must be destroyed and cannot be stamped or resold.

The bill, as amended by AM1072, provides that the sections authorizing the compact be operative three months after the end of the legislative session and all other provisions of the bill become operative January 1, 2013.

The Department of Revenue estimates the cost to implement LB 590 as amended to be $201,556 for FY2011-12, $208,487 for FY2012-13, and $249,917 for FY2012-14 respectively. Costs include a one-time cost of $74,052 to implement the web application for processing electronic data files, $5,315 for mainframe programming costs, and the remainder for personnel costs.

There is no basis to disagree with the Department of Revenue's estimate of fiscal impact.