



**Colorado
Legislative
Council
Staff**

SB17-273

**FINAL
FISCAL NOTE**

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0905
Prime Sponsor(s): Sen. Hill; Williams A.

Date: May 16, 2017
Bill Status: Deemed Lost
Fiscal Analyst: Greg Sobetski (303-866-4105)

BILL TOPIC: MANUFACTURER'S LIST PRICE FOR TOBACCO PRODUCTS TAX

Fiscal Impact Summary*	FY 2017-2018	FY 2018-2019
State Revenue	<u>(\$3.9 million)</u>	<u>(\$4.4 million)</u>
General Fund	(1.9 million)	(2.2 million)
Cash Funds	(1.9 million)	(2.2 million)
State Expenditures	<u>(\$1.0 million)</u>	<u>(\$1.2 million)</u>
General Fund	0.9 million	1.0 million
Cash Funds	(1.9 million)	(2.2 million)
TABOR Impact	<u>(\$1.9 million)</u>	<u>(\$2.2 million)</u>
Appropriation Required: See State Appropriations section.		
Future Year Impacts: Ongoing state revenue and expenditure decrease.		

**Totals may not sum due to rounding.*

NOTE: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

The state's tobacco excise tax is assessed on the manufacturer's list price of the taxable product. Under current law, the manufacturer's list price is the invoice price for which a manufacturer or supplier sells a tobacco product to a distributor. This bill allows a distributor to use the price for which the product is sold to the first importer or first manufacturer of record as the manufacturer's list price instead, provided that the distributor can provide evidence of this price to the Department of Revenue.

Background

The state collects an excise tax from distributors of non-cigarette tobacco products. Examples of non-cigarette tobacco products include cigars, chewing tobacco, and loose tobacco used for roll-your-own cigarettes. The tax is assessed at a rate of 40 percent of the manufacturer's list price, the price for which the distributor purchased the product from a manufacturer or supplier. Tobacco distributors in Colorado sometimes purchase products from intermediary suppliers rather

than directly from the manufacturer. In these cases, the tax is assessed on the intermediary supplier's price, which may include a markup above the price for which the supplier purchased the product from the manufacturer.

Half of the tobacco excise tax is deposited in the General Fund and available for annual appropriation at the discretion of the General Assembly. Pursuant to Amendment 35, the other half of tobacco excise tax revenue is deposited in the Tobacco Tax Cash Fund and expended as follows:

- 46 percent to the Department of Health Care Policy and Financing (HCPF) for the Children's Basic Health Plan and Medicaid;
- 19 percent to HCPF for comprehensive primary care;
- 16 percent to the Department of Public Health and Environment (CDPHE) for tobacco education programs;
- 16 percent to CDPHE for cancer, cardiovascular, and pulmonary programs; and
- 3 percent to state and local governments.

Only the General Fund share of the tobacco excise tax is subject to TABOR.

State Revenue

The bill is expected to reduce state revenue by **\$3.9 million in FY 2017-18, \$4.4 million in FY 2018-19**, and similar amounts in subsequent fiscal years. The revenue reduction will impact the General Fund and the Tobacco Tax Cash Fund in equal shares. The estimate for FY 2017-18 represents an impact for eleven months based on the bill's August 2017 effective date.

Assumptions. The bill is assumed to primarily impact the tax base for cigars. Distributors generally purchase other products subject to the tobacco products tax, such as chewing tobacco, dip, snuff, and loose tobacco, directly from manufacturers. Based on Colorado industry statistics for 2014, premium and popular large cigars are assumed to account for 15.9 percent of taxable tobacco product sales.

The New York State Department of Taxation and Finance is required to calculate a cigar industry standard adjustment ratio representing the average share of a cigar supplier's price that comprises the price for which the cigars were purchased from a manufacturer or importer. For 2017, this ratio is 38 percent. Based on the New York industry standard adjustment ratio, it is assumed that the bill allows premium and popular large cigar distributors to provide evidence reducing their excise tax obligation by 62 percent on average. To the extent that markups differ between the two states, the reduction in taxes may be larger or smaller than estimated.

Distribution. The bill reduces revenue to each of the General Fund and the Tobacco Tax Cash Fund by \$1.9 million and \$2.2 million in FY 2017-18 and FY 2018-19, respectively. Distributions from the Tobacco Tax Cash Fund to HCPF and CDPHE for health-related programs will be reduced in both years in accordance with their percentage allocations in Amendment 35 as shown in Table 1.

Table 1. Change to Amendment 35 Distributions under SB17-273*		
	FY 2017-18	FY 2018-19
Children's Basic Health Plan/Medicaid (HCPF)	(\$0.9 million)	(\$1.0 million)
Comprehensive Primary Care (HCPF)	(0.4 million)	(0.4 million)
Tobacco Education Programs (CDPHE)	(0.3 million)	(0.4 million)
Cancer, Cardiovascular, and Pulmonary Programs (CDPHE)	(0.3 million)	(0.4 million)
State and Local Governments	(0.1 million)	(0.1 million)
TOTAL	(\$1.9 million)	(\$2.2 million)

*Totals may not sum due to rounding.

TABOR Impact

This bill reduces state revenue from the tobacco excise tax, the General Fund portion of which will reduce the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

Since the bill reduces both TABOR revenue to the General Fund and the refund obligation by equal amounts, there is no net impact from TABOR on the amount of money available in the General Fund for the budget. However, the bill will reduce money available for the General Fund budget in the future during years when the state does not collect money above the TABOR limit.

The cash fund portion of the excise tax levied pursuant to Amendment 35 is exempt from TABOR as a voter-approved revenue change.

State Expenditures

The bill is expected to decrease state expenditures by a net of **\$1.0 million in FY 2017-18** and **\$1.2 million in FY 2018-19**, and similar amounts in subsequent years. Expenditures from the Tobacco Tax Cash Fund will decrease by \$1.9 million and \$2.2 million in the two years, respectively. General Fund expenditures will increase to offset the lost share of Tobacco Tax Cash Fund revenue expended for health care expansion programs in HCPF. The amount required from the General Fund is estimated at \$0.9 million in FY 2017-18 and \$1.0 million in FY 2018-19. In addition, the bill increases workload for the Division of Taxation in the Department of Revenue beginning in FY 2017-18.

Department of Health Care Policy and Financing. The bill reduces appropriations from the Tobacco Cash Tax Fund to the following funds in the Department of Health Care Policy and Financing:

- **Health Care Expansion Fund** — (\$0.9 million) in FY 2017-18 and (\$1.0 million) in FY 2018-19. These amounts are assumed to be offset by corresponding increases in General Fund appropriations. Moneys in the Health Care Expansion Fund are appropriated to the Medicaid and Children's Basic Health Plan programs.
- **Primary Care Fund** — (\$0.4 million) in each of FY 2017-18 and FY 2018-19. Moneys in the Primary Care Fund are allocated to federally qualified health centers, school based health centers, certified rural health clinics, and other qualified health providers for uncompensated care to indigent and uninsured clients.

- **Old Age Pension Fund** — (\$29,100) in FY 2017-18 and (\$33,300) in FY 2018-19. Moneys in the Old Age Pension Fund pay for the constitutional old age pension program.

Department of Public Health and Environment. The bill reduces appropriations from the Tobacco Tax Cash fund to the following funds in the Department of Public Health and Environment:

- **Tobacco Education Program Fund** — (\$0.3 million) in FY 2017-18 and (\$0.4 million) in FY 2018-19. Moneys in the fund are used to provide funding for community-based and statewide tobacco education and cessation programs.
- **Prevention Detection Treatment Fund** — (\$0.3 million) in FY 2017-18 and (\$0.4 million) in FY 2018-19. Moneys in the fund are appropriated to the Prevention Services Division for the Cancer, Cardiovascular Disease and Chronic Pulmonary Disease prevention, Early Detection, and Treatment Program.

Department of Revenue. The bill increases workload for the Division of Taxation beginning in FY 2017-18. The division will be responsible for reviewing evidence submitted pursuant to the requirements in the bill. Because the bill affects a small population of taxpayers, the workload increase can be accomplished within existing departmental appropriations.

Local Government Impact

The bill reduces tobacco tax distributions to counties and municipalities by about \$17,500 in FY 2017-18 and about \$20,000 in FY 2018-19. Counties and municipalities receive 30 percent of 3 percent, or less than 1 percent, of Amendment 35 tobacco tax revenue.

Effective Date

The bill is deemed lost since the Senate laid the bill over until May 11, 2017, during second reading on April 24, 2017.

State Appropriations

For FY 2017-18, the bill requires the following appropriations from the Tobacco Tax Cash Fund be reduced as follows:

- \$891,955 to the Health Care Expansion Fund in the Department of Health Care Policy and Financing;
- \$368,416 to the Primary Care Fund in the Department of Health Care Policy and Financing;
- \$29,085 to the Old Age Pension Fund in the Department of Health Care Policy and Financing;
- \$310,245 to the Tobacco Education Programs Fund in the Department of Public Health and Environment;
- \$310,245 to the Prevention Detection Treatment Fund in the Department of Public Health and Environment;
- \$17,451 to the Department of Revenue for distributions to local governments; and
- \$11,634 to the General Fund.

For FY 2017-18, the bill requires the following appropriations from the General Fund Exempt Account be reduced as follows:

- \$5,817 to the Department of Public Health and Environment for immunizations; and
- \$5,817 to the Department of Health Care Policy and Financing for the Children's Basic Health Plan.

For FY 2017-18, the bill requires the following appropriation from the General Fund increase as follows:

- \$891,995 to the Health Care Expansion Fund in the Department of Health Care Policy and Financing.

State and Local Government Contacts

Counties
Information Technology
Public Health and Environment

Health Care Policy and Financing
Municipalities
Revenue