



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #386

Cigarette and Tobacco Product Tax Refunds -- Current-Law Reestimate (General Fund Taxes -- Excise Taxes and Regulation of Tobacco)

[LFB 2009-11 Budget Summary: Page 285, #2]

CURRENT LAW

Federal law prohibits states from imposing a cigarette tax on sales of cigarettes by Native Americans to Native Americans on reservations. Under current law, the Department of Revenue (DOR) may enter into agreements with Indian tribes to provide for the refunding of cigarette and tobacco product taxes imposed on such sales sold on reservations. For sales of cigarettes that occur on reservations or trust lands, the tribes receive a refund of 100% of the excise tax on cigarettes sold to tribal members and 70% of the tax on sales to non-tribal members. For tobacco products (excluding cigarettes) sold on reservation or trust lands, the tribes receive a refund of 100% of the tax on products sold to tribal members and 50% of the tax on products sold to non-tribal members.

Cigarette and tobacco product tax refunds to Native American tribes are paid through a sum sufficient GPR appropriation. Base funding for the appropriation is \$20,900,000. Expenditures in 2008-09 are estimated at \$30,700,000.

GOVERNOR

Increase funding for cigarette and tobacco product tax refunds by \$11,500,000 in 2009-10 and \$12,200,000 in 2010-11 to reflect higher estimates of the sum sufficient appropriation amounts required to reimburse Native American tribes under present law. These figures do not include the impact of the proposed tax increases recommended by the Governor on cigarette and tobacco products.

DISCUSSION POINTS

1. 2007 Act 20 enacted higher tax rates for cigarettes (\$1.77 per pack from \$0.77 per pack) and tobacco products (50% of manufacturer's price and \$1.31 per ounce of moist snuff from 25% of manufacturer's price). The higher taxes took effect on January 1, 2008. In order to account for the impact of the tax increases, funding for tribal refunds was increased from the 2006-07 base level of \$12,200,000 to \$17,800,000 in 2007-08 and \$20,900,000 in 2008-09. However, actual expenditures totaled \$20,300,000 in 2007-08 and are estimated at \$30,700,000 in 2008-09.

2. The Governor's funding amounts for the 2009-11 biennium reflect the higher-than-anticipated expenditures that have occurred since the tax increases took effect. Prior to the increases imposed by Act 20, tribal refunds generally represented 3.9% of estimated state tax revenues from cigarettes and tobacco products in each year. Estimated tribal refunds in 2008-09 represent 5.1% of estimated cigarette and tobacco products revenue, due to an increase in the proportion of cigarette packs sold by the tribes compared to the total number of cigarette packs sold in this state following the increased tax rates on January 1, 2008. DOR assumes the relationship of refunds as a percent of cigarette tax revenue will increase slightly over the 2009-11 biennium. Current data collections support the administration's estimated share of packs purchased on tribal lands.

3. With the increases recommended by the Governor, total funding for the refunds under current law would be \$32,400,000 in 2009-10 and \$33,100,000 in 2010-11. However, these estimates were calculated before enactment of the recent legislation that increased the federal cigarette and tobacco products taxes on April 1, 2009. It is anticipated that tobacco consumption will decline by approximately 4.4% as a result of this federal legislation. Funding for the tribal refunds should be reduced by \$1,400,000 in each year to account for the expected lower level of tobacco consumption.

MODIFICATION

Reestimate funding for cigarette and tobacco product tax refunds under current law at \$31,000,000 in 2009-10 and at \$31,700,000 in 2010-11. The reestimate reflects lower consumption expectations of cigarette and tobacco products in response to increased federal excise tax rates. Compared to the bill, the revised estimates decrease funding for the refunds by \$1,400,000 in 2009-10 and 2010-11.

Change to Bill Funding	
GPR	- \$2,800,000

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