

SESSION OF 2017

SUPPLEMENTAL NOTE ON SENATE BILL NO. 96

As Amended by House Committee on Taxation

Brief*

SB 96, as amended, would make a number of amendments to the Cigarette and Tobacco Products Act relating to definitions, licenses and permits, bonds, suspension or revocation of licenses, tax stamps, redemption of stamps, records required of dealers, penalties, license fees, and administrative fines designed to keep Kansas in compliance with the Master Settlement Agreement (MSA). Additional provisions of the bill would decelerate the effective date and reduce the rate of the tax on electronic cigarettes.

MSA Provisions

One of the bill's provisions would make individuals who purchase, possess, use, or consume more than 400 cigarettes liable for the tax imposed if the cigarettes do not have the required tax stamp.

The bill would clarify what would be considered a first, second, third, or subsequent conviction for the purposes of sentencing. The fine for a first conviction of trafficking in counterfeit or illegal cigarette and tobacco products would be at least \$1,000, but no more than \$2,500. Subsequent convictions could result in fines of up to \$100,000 and possible jail time after the third conviction.

The bill would define when certain cigarettes and tobacco products would be considered contraband.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Counterfeit or illegal cigarettes and tobacco and property used in the trafficking would be subject to seizure and sale. The bill would outline the procedure and process the Kansas Department of Revenue (KDOR) would be required to follow to effectuate the sale and disbursement of any funds.

Any packages of cigarettes bearing indicia of tax payment pursuant to compacts signed between the Governor and the Prairie Band Potawatomi Nation and the Iowa Tribe of Kansas and Nebraska and approved by the Legislature would not be deemed as contraband.

The bill would make it unlawful to possess, transport, import, distribute, wholesale, or manufacture more than 1,000 cigarettes, cigarettes without Kansas stamps being affixed, or cigarettes or tobacco products otherwise in violation of the MSA. Transportation of cigarettes not bearing tax stamps to a retailer would also be made unlawful.

The bill would require tobacco distributors to file their reports electronically on forms and in a manner prescribed by KDOR.

The bill would require all moneys received from license fees, fines, and forfeiture proceedings be used exclusively for assisting in funding diligent enforcement as required by the MSA.

An additional provision would require wholesale dealers to be in good standing with the Director of Taxation (KDOR) in order to receive a discount on stamps purchased. KDOR would be authorized to suspend, deny, or non-renew license applications under certain circumstances.

The bill would clarify its provisions would apply to the sale of tobacco products over the Internet and telephone and through mail order transactions. The bill would revise outdated language related to vending machines and allow

KDOR to divulge information related to vending machines to contracting entities.

The bill would require any retailer selling cigarettes to Kansas consumers without a tax stamp to file an annual statement for each consumer to KDOR that includes the name and address of the consumer, the date of the purchase, and the total number of packs of cigarettes purchased by the consumer.

Electronic Cigarette Provisions

The bill would decelerate the effective date and reduce the rate of the tax on electronic cigarettes. Under current law, a tax at the rate of \$0.20 per milliliter of consumable material in electronic cigarettes was imposed as of January 1, 2017. The bill would delay the effective date of the tax to July 1, 2017, and would reduce the rate to \$0.05 per milliliter.

Additional language in the bill specifically would define “consumable material” to mean any liquid solution or other material that is depleted as an electronic cigarette is used.

Background

SB 130—MSA Provisions

The original bill, which dealt with the MSA provisions, was requested for introduction and supported at the Senate Committee on Assessment and Taxation hearing by KDOR, whose representative said the bill’s provisions were necessary to ensure Kansas could demonstrate “diligent enforcement” and continue receiving money from the MSA. A representative of the Office of the Attorney General also appeared as a proponent. The Petroleum Marketers and Convenience Store Association of Kansas provided testimony in opposition to the bill.

The Senate Assessment and Taxation Committee subsequently adopted a package of amendments provided by KDOR to address several concerns raised by the opponents.

A fiscal note prepared by the Division of the Budget on the bill, as introduced, notes that approximately \$50 million in annual MSA payments to Kansas could be imperiled if the bill is not enacted.

The House Taxation Committee amended the bill to incorporate the provisions of SB 130, as amended by the Senate Assessment and Taxation Committee, relating to electronic cigarettes; and to clarify certain MSA language at the suggestion of the revisor.

SB 130—Electronic Cigarettes

The bill was introduced at the request of KDOR, whose representative stated during the public hearing that a definition of consumable material was necessary to provide clarity for that agency and the industry.

On March 6, the Senate Committee on Assessment and Taxation amended the proposed definition of “consumable material” based on agreement with KDOR and the industry, and included the additional aforementioned provisions delaying the effective date of the tax and reducing the tax rate.

In response to a question in the Senate Committee hearing on March 6, a KDOR spokesperson stated if SB 130 were to pass, any receipts since January 1 would either be refunded or be made available as a credit against future liability. Later that afternoon, KDOR reported \$29,000 in electronic cigarette tax receipts had been submitted since January 1.

At the time of the November Consensus Revenue Estimating meeting, KDOR reiterated its expectation that the

electronic cigarette tax would produce an estimated \$1.0 million in receipts in FY 2017, and \$2.0 million in receipts in FY 2018 and subsequent fiscal years. Given these assumptions are implicit in the current estimates, the bill would be expected to reduce receipts by \$1.0 million in FY 2017, \$1.5 million in FY 2018, and \$1.5 million in FY 2019.