

TOBACCO PRODUCTS

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Senate Bills 472 and 476 as passed by the Senate
Sponsor: Sen. Wayne Schmidt

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 473 as passed by the Senate
Sponsor: Sen. Peter MacGregor

House Committee: Appropriations
Senate Committee: Commerce
Complete to 2-1-16

SUMMARY:

Each of these bills addresses the regulation and/or taxation of the sale of tobacco products.

Senate Bill 472

Under the Tobacco Product Manufacturers' Escrow Accounts Act (Public Act 244 of 1999) a tobacco product manufacturer selling cigarettes to consumers within the state (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) must do one of the following: (1) become a participating manufacturer and generally perform its financial obligations under the Tobacco Master Settlement Agreement; or (2) place certain specified amounts into a qualified escrow fund.

Senate Bill 472 would amend the act regarding escrow accounts to:

- Require deposits to be made quarterly, rather than annually, according to a schedule specified in the bill.
- Require quarterly deposits to be based upon "units sold" in that quarter, plus an inflation adjustment, and require an annual reconciliation deposit to be made.
- Modify the definition of "units sold." Currently that term refers to the number of individual cigarettes sold in the state by the tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the state on packs (or "roll your-own" tobacco containers) bearing the excise tax stamp of the state. The bill also makes the term apply to cigarettes for which the state had the power to impose or collect an excise tax under federal law but did not.
- Require the manufacturers to certify their compliance quarterly, as well as annually.
- Allow a manufacturer to irrevocably assign to the state the manufacturer's interest in the escrow funds, and provide that the assignment would apply to all funds in the account and those subsequently deposited. The assignment would have to be in writing.

- Allow assigned escrow funds to be withdrawn by the state and deposited into the General Fund as a credit against a judgment or settlement on a released claim brought against the manufacturer by the state or a releasing party.
- Allow, rather than require, the Department of Treasury to promulgate such rules as are necessary to ascertain the number of units sold by the manufacturer each year.

Senate Bill 473

The bill would amend the Tobacco Products Tax Act to require the Department of Treasury to disclose to the attorney general or a designee, upon request, information obtained by the department relevant to the enforcement of Public Act 244 of 1999, "notwithstanding any law to the contrary." (PA 244 is referred to as the Tobacco Product Manufacturers' Escrow Accounts Act.)

However, information received under any tax agreement between the State of Michigan and any Indian tribe that includes limits on disclosure of information in addition to, or instead of, statutory limitations, would have to be consolidated to include all information received under such agreements so a person could not ascertain any one tribe's information.

The Treasury Department and attorney general could disclose information otherwise confidential information under any of the following circumstances:

- To enforce or defend the Tobacco Products Tax Act or the Tobacco Product Manufacturers' Escrow Accounts Act (Public Act 244).
- In the course of any litigation, arbitration, or proceeding related to Public Act 244, the Tobacco Master Settlement Agreement (MSA), or the NPM (nonparticipating manufacturer) Adjustment Settlement Agreement.
- In compliance with provisions in the NPM Adjustment Settlement Agreement related to a data clearinghouse.

Tobacco product sales data provided by another state, a manufacturer, or another person or entity to a data clearinghouse under the NPM Adjustment Settlement Agreement and provided to the Treasury under that agreement would have to be treated as confidential tax information subject to nondisclosure requirements of the Revenue Act. This provision would apply only to information the department received solely as a result of the NPM Adjustment Settlement Agreement.

Senate Bill 476

The bill would amend the Tobacco Products Tax Act (TPTA) to eliminate an October 1, 2016, sunset date on a provision that limits the maximum tax on a cigar to 50 cents per cigar.

The act levies a 32% tax on the wholesale price of cigars, non-cigarette smoking tobacco, and smokeless tobacco, but limits the per-cigar tax to 50 cents until October 1, 2016. Because of the existing 50-cent cap, the amount of tax imposed on any cigar with a wholesale price of \$1.5625 or more is the same, which means that the tax rate declines as

the wholesale price of a cigar increases. Eliminating the sunset date would permit the cap to remain in statute indefinitely.

The TPTA also requires a retailer licensed as an unclassified acquirer, retail importer of tobacco products other than cigarettes, to post a sign informing purchasers of cigars through catalog or internet sales of their responsibility to pay all unpaid state taxes on those cigars. Under the bill, this provision would apply, instead, to retailers not licensed in this manner.

FISCAL IMPACT:

As written, neither Senate Bill 472 nor Senate Bill 473 would have a state or local revenue impact, although changing from annual to quarterly deposits as specified in SB 472 may result in slightly increased administrative costs to the Department of Treasury.

By eliminating the existing sunset on the maximum tax imposed on premium cigars, SB 476 would prevent a projected revenue increase of less than \$5 million per year, although an exact amount cannot be determined because it depends on the actual wholesale prices of the cigars eligible for the preferential tax treatment.

The Medicaid Benefits Trust Fund receives 75% of the revenue collected from tax imposed on non-cigarette tobacco products while the remaining 25% accrues to the General Fund.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.