

February 10, 2017

The Honorable Caryn Tyson, Chairperson
Senate Committee on Assessment and Taxation
Statehouse, Room 123-E
Topeka, Kansas 66612

Dear Senator Tyson:

SUBJECT: Fiscal Note for SB 96 by Senate Committee on Assessment and Taxation

In accordance with KSA 75-3715a, the following fiscal note concerning SB 96 is respectfully submitted to your committee.

SB 96 would amend the Kansas Cigarette and Tobacco Products Act by implementing enforcement provisions related to the Tobacco Master Settlement Agreement. The bill would make individuals who purchase, possess, use, or consume more than 400 cigarettes liable for the tax imposed by this Act if the cigarettes do not have the required tax stamp. The bill clarifies what would be considered a first, second, third or subsequent conviction for the purposes of sentencing under the Act. 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. The bill would subject counterfeit or illegal cigarettes and tobacco, and property used in the trafficking, to seizure and sale. The bill would provide the procedure and process the Department of Revenue 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 considered 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 Master Settlement Act. It would also be unlawful to transport cigarettes to a retailer or at retail that do not bear Kansas tax stamps. The bill would require tobacco distributors to file their reports electronically on forms and in a manner prescribed by the Department. It would provide that all monies received from license fees, fines, and forfeiture proceedings must be used exclusively for assisting in funding diligent enforcement as required by the Master Settlement Agreement and the 2012 Settlement.

The bill would strike outdated language regarding vending machines and would allow the Department to divulge vending machine information to contracting entities. The bill would create an exception for the retention of invoices requirement for an outlet, fuel outlet or fuel center owned by the same entity. The bill would provide that wholesale dealers must be in good standing with the Director of Taxation in order to receive a discount on stamps purchased. The Department would be authorized to suspend, deny or not renew license applications based on a list of relevant factors.

The bill would include the sale of tobacco products from the internet, telephone, and mail order transactions. The bill would require penalties, fines, and taxes to be collected in a manner similar to sales taxes. The bill would require that any retailer that sells cigarettes to Kansas consumers without a tax stamp file an annual statement for each consumer to the Department of Revenue 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. The bill would allow the Director of Taxation to require a retail dealer that sells more than \$100,000 of cigarettes a calendar year to Kansas consumers without a tax stamp to file the annual statement electronically. The retailer would be required to pay a \$10 penalty for each consumer that should have been included in the annual statement. The Director of Taxation has the power to request reports, investigate, and examine records to determine the completeness of tax returns or reports.

The bill would amend definitions for cigarette, dealer, dealer establishment, package, retail dealer, stamps, and tobacco specialty store, and would strike the definition of meter imprints and any other language regarding meter imprints or water applied. The bill would add a definition for conspicuous location or place. Finally, the bill includes several amendments that are technical in nature, or are necessary for clarification or compatibility.

The Department of Revenue indicates that SB 96 would require \$7,200 from the State General Fund in FY 2018 to update forms and notify taxpayers that are authorized to sell cigarette and tobacco products. The Department indicates that the bill would allow the state to continue to be eligible for payments under the Master Settlement Agreement (MSA) from the 1998 tobacco settlement. Under the MSA, most tobacco companies have agreed to make annual cash payments to the State of Kansas. At the same time, Kansas agreed to diligently enforce its obligations under the MSA. If the bill is not approved, approximately \$50.0 million in annual tobacco payments to Kansas could be at risk.

The Office of Judicial Administration indicates that the bill could increase the number of cases filed in district courts beginning in FY 2018, which could increase the workload of the courts and the amount of revenues collected from docket fees. However, an accurate estimate of the fiscal effect cannot be made.

The Office of the Attorney General indicates that bill would create new enforcement duties, but would require the Department of Revenue to assign one of its attorneys to the enforcement effort; therefore, it does not anticipate a need for additional staff at this time. It also anticipates additional revenues collected from fines, but is unable to provide an estimate.

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The Kansas Association of Counties indicates that the bill has the potential to increase enforcement, prosecution, and incarceration expenses for county government. The bill also has the potential to decrease certain costs incurred by county governments because it would allow them to request the Department of Revenue appoint special prosecutors to prosecute violations of the Kansas Cigarette and Tobacco Products Act. However, an accurate estimate of the fiscal effect on additional expenditures or savings of county governments cannot be estimated.

The Kansas Sentencing Commission indicates SB 96 would increase its journal entry workload and could also increase prison admissions and beds, but an accurate estimate of the fiscal effect cannot be determined at this time. Any fiscal effect associated with SB 96 is not reflected in *The FY 2018 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,
Director of the Budget

cc: Jack Smith, Department of Revenue
Ashley Michaelis, Judiciary
Scott Schultz, Sentencing Commission
Willie Prescott, Office of the Attorney General
Melissa Wangemann, Association of Counties