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REVISED FISCAL NOTE

(replaces fiscal note dated February 26, 2018)

Drafting Number: LLS 18-0894 Date: March 9, 2018
Prime Sponsors: Sen. Hill; Williams A. Bill Status: House Finance
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Bill Topic: EXTEND CREDIT FOR OUT-OF-STATE TOBACCO SALES

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill permanently extends the excise tax credit for sales of non-cigarette tobacco products to out-of-state consumers, which reduces state and local government revenue on an ongoing basis.

Appropriation Summary: No appropriation is required.

Fiscal Note Status: This fiscal note reflects the reengrossed bill.

Table 1
State Fiscal Impacts Under SB 18-179

Table with 4 columns: Revenue/Expenditures/Transfers, General Fund, Cash Funds, Total, FY 2018-19, FY 2019-20. Values include (at least \$6,250), (at least \$7,500), (at least \$12,500), (at least \$15,000).

Summary of Legislation

This bill permanently extends the excise tax credit for sales of non-cigarette tobacco products to out-of-state consumers. Under current law, the credit is set to repeal effective September 1, 2018.

The bill also amends record keeping requirements for tobacco distributors. Under current law, distributors are not required to keep records of sales to any end consumer. The bill requires distributors to keep records of sales to out-of-state end consumers only.

Background

Non-cigarette tobacco products are subject to an excise tax equal to 40 percent of the manufacturer's list price. Examples of non-cigarette tobacco products include cigars, chewing tobacco, and loose tobacco used for roll-your-own cigarettes. The tax is assessed at the time when tobacco products are brought into the state and is remitted by distributors to the Department of Revenue. Since September 1, 2015, distributors have been able to claim a credit against the tobacco excise tax equal to excise taxes paid on products sold to out-of-state consumers.

Half of the tobacco excise tax is deposited in the General Fund and is 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 disbursed 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

This bill is estimated to reduce state revenue by at least \$12,500 in FY 2018-19 and at least \$15,000 in FY 2019-20 and subsequent years. The bill is expected to reduce General Fund and Tobacco Tax Cash Fund revenue in equal amounts, reducing Tobacco Tax Cash Fund disbursements as shown in Table 2. The estimates for FY 2018-19 represent a ten-month impact beginning September 1, 2018.

Assumptions. Data on actual tax credits claimed for 2016 and 2017 cannot be disclosed because a majority of the credit amount is claimed by fewer than five taxpayers. The estimates in this fiscal note reflect credit information provided for earlier tax years, grown by the December 2017 forecast for tobacco tax revenue. This amount is assumed to reflect credits claimed by small tobacco distributors who will continue to sell tobacco products to out-of-state consumers regardless of whether the credit is available. Extension of the credit reduces the tax liability for these taxpayers, thereby reducing state revenue.

Table 2
Revenue Disbursements Under SB 18-179

Revenue Disbursements	FY 2018-19	FY 2019-20
General Fund	(\$6,250)	(\$7,500)
Tobacco Tax Cash Fund		
HCPF - Children's Basic Health Plan and Medicaid	(\$2,875)	(\$3,450)
HCPF - Comprehensive Primary Care	(\$1,888)	(\$1,425)
CDPHE - Tobacco Education Programs	(\$1,000)	(\$1,200)
CDPHE - Cancer, Cardiovascular, and Pulmonary	(\$1,000)	(\$1,200)
State and Local Governments	(\$188)	(\$225)
Tobacco Tax Cash Fund (Subtotal)	(\$6,250)	(\$7,500)
Total	(\$12,500)	(\$15,000)

Based on information provided from an industry representative, large tobacco distributors are estimated to claim tax credits worth up to \$450,000 per year for sales to out-of-state consumers. Historical tax data indicate that these business operations did not occur in Colorado until the current law credit was authorized in House Bill 15-1301. Because the large tobacco distributors claiming the credit under current law are national companies with a business presence in several states, this fiscal note assumes that out-of-state order fulfillment will no longer occur in Colorado should the credit become unavailable, either because business operations will be relocated elsewhere or because consumers will choose to pay lower prices by purchasing products from other distributors. To the extent that these operations will continue without the passage of this bill, this bill's revenue impact is greater than estimated.

Disbursements. The disbursement amounts in Table 2 represent the constitutional and statutory distributions of tobacco tax revenue. Because disbursed funds are subject to annual appropriation, this bill is assumed not to directly impact expenditures but to reduce the amount available for expenditure in FY 2018-19 and subsequent years.

TABOR Impact

The bill decreases General Fund revenue subject to TABOR by at least \$6,250 in FY 2018-19 and at least \$7,500 in FY 2019-20. State revenue is not currently expected to exceed the TABOR limit in either year and no refund is required. Therefore, the bill is not expected to impact TABOR refunds in these years. However, refunds in future years when the state next collects a TABOR surplus will be reduced.

Because the Tobacco Tax Cash Fund share of tobacco tax revenue is exempt from TABOR as a voter-approved revenue change, reducing this revenue has no TABOR impact.

Local Government

This bill reduces tobacco tax disbursements to counties and municipalities by a minimal amount. Counties and municipalities receive less than 1 percent of Amendment 35 tobacco tax revenue.

Effective Date

The bill takes effect August 8, 2018, if the General Assembly adjourns on May 9, 2018, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Counties
Information Technology
Public Health and Environment

Health Care Policy and Financing
Municipalities
Revenue