



TOBACCO SETTLEMENT FUNDS

SOCIAL SERVICES APPROPRIATIONS SUBCOMMITTEE
STAFF: RUSSELL FRANDBSEN

ISSUE BRIEF

SUMMARY

Receipts for the Tobacco Settlement Restricted Account will likely be lower than appropriations by the following amounts: \$1,557,300 or 7% in FY 2016, \$1.5 million or 6% in FY 2017, and \$8.0 million or 34% ongoing beginning in FY 2018. The Legislature has at least five options to respond to this situation, ranging from “do nothing” to hold-harmless with other revenue.

LEGISLATIVE ACTION (OPTIONS)

1. **Do nothing and allow each agency to address the shortfalls** – the ongoing estimated shortfall beginning in FY 2018 is \$8.0 million. There are also one-time reductions estimated of \$1,557,300 in FY 2016 and \$1.5 million in FY 2017. The Legislature appropriated \$983,200 one-time in FY 2017 to address potential shortfalls. If no action is taken, then the affected programs will have to meet the reductions as shown in the three tables beginning on page 3.
2. **Prioritize the payments from tobacco companies for the Tobacco Settlement Restricted Account** – instead of the current 60%/40% split in statute, change statute to have all funds first go to the restricted account and then the remainder to the General Fund. The use of this mechanism will decrease revenues going to the General Fund.
3. **Change the appropriations from the account** – in FY 2016 the money from this account goes to help fund ten programs. The Legislature could make changes to the amounts appropriated and/or remove recipients altogether.
4. **Base appropriations on prior year receipts** – currently the revenue for a fiscal year arrives in the last quarter of that fiscal year (i.e. - April 2016 for FY 2016). If the Legislature found a one-time source to replace all the money for one year, then the Legislature could know how much revenue would be available in April for the following fiscal year (i.e. - April 2016 for FY 2017). This may help avoid unanticipated program reductions at the end of the year.
5. **Find another funding source to address the shortfall** – the Legislature may be interested in identifying a source to fund some or all of the ongoing \$8.0 million estimated shortfall beginning in FY 2018. There are additional reductions estimated of \$1,557,300 in FY 2016 and \$1.5 million in FY 2017.

DISCUSSION AND ANALYSIS

How Will the State Have Used Its \$639 Million in Tobacco Settlement Payments?

The State of Utah will have received a total of \$639 million through FY 2018 in total tobacco settlement payments since they began in FY 2000. The State will have used the \$639 million in the following three ways as shown in the table on the following page: (1) \$89 million of deposits into the State Endowment Fund, (2) \$381 million in payments to state agencies, and (3) \$169 million in deposits to the General Fund.

What is the Tobacco Settlement Restricted Account?

In April of each year, the Tobacco Settlement Restricted Account receives 60% of annual payments from tobacco companies under the 1998 Master Settlement Agreement (UCA 51-9-201).

End of About \$12 Million From Strategic Contribution Payments Starting in FY 2018

The State of Utah will lose all annual Strategic Contribution Payments of about \$12 million in tobacco settlement funds beginning in FY 2018. As can be seen in the table below, these payments began in FY 2008. Under the current statutory distribution formula and ongoing appropriations, this would result in a shortfall of \$8.0 million in FY 2018 if no action is taken. Further, the payment to the General Fund might be \$4.4 million lower than it was in FY 2017. Strategic Contribution Payments go to states that invested resources into pursuing litigation against tobacco companies.

Statutory vs. Discretionary Appropriations From the Account

UCA 51-9-201 directs that fixed dollar amounts totaling \$20,904,200 be used for seven purposes and that remaining settlement funds can be appropriated for discretionary purposes. Discretionary appropriations by the Legislature appear last in statute and are the lowest legal priority when there are revenue shortfalls. These discretionary appropriations are reduced first before any of the fixed dollar amounts in statute and are indicated in the “discretionary appropriations” column in the three tables beginning on page 3. For FY 2016, FY 2017, and FY 2018 the Legislature appropriated from the account the following amounts respectively as of the close of the 2016 General Session: \$23,719,400, \$23,727,000, and \$23,726,300.

Fiscal Year	Tobacco Settlement Payments	Payments to Endowment Fund	Payments to State Agencies	Payments to General Fund
2000	\$ 27,736,600	\$ 13,868,300	\$ 13,868,300	\$ -
2001	\$ 27,898,400	\$ 13,949,200	\$ 13,949,200	\$ -
2002	\$ 32,551,700	\$ 16,275,900	\$ 16,275,800	\$ -
2003	\$ 32,642,900	\$ (28,113,600)	\$ 16,321,500	\$ 44,435,000
2004	\$ 27,936,000	\$ 5,587,200	\$ 18,348,800	\$ 4,000,000
2005	\$ 28,353,400	\$ -	\$ 19,847,400	\$ 8,506,000
2006	\$ 26,028,600	\$ 6,507,200	\$ 19,521,400	\$ -
2007	\$ 27,244,100	\$ 6,811,000	\$ 20,433,100	\$ -
2008	\$ 42,059,200	\$ 16,823,700	\$ 25,235,500	\$ -
2009	\$ 45,249,700	\$ 18,099,900	\$ 27,149,800	\$ -
2010	\$ 38,191,000	\$ 15,276,400	\$ 22,084,000	\$ 830,600
2011	\$ 35,734,700	\$ 2,943,000	\$ 21,440,800	\$ 11,350,900
2012	\$ 36,426,700	\$ -	\$ 21,006,000	\$ 15,420,700
2013	\$ 36,419,900	\$ -	\$ 21,851,900	\$ 14,568,000
2014	\$ 39,426,500	\$ -	\$ 23,655,900	\$ 15,770,600
2015	\$ 35,412,200	\$ -	\$ 21,247,300	\$ 14,164,900
2016	\$ 36,931,900	\$ 663,600	\$ 21,495,500	\$ 14,772,800
2017 (est.)	\$ 37,000,000	\$ -	\$ 22,200,000	\$ 14,800,000
2018 (est.)	\$ 26,100,000	\$ -	\$ 15,700,000	\$ 10,400,000
Total	\$ 639,343,500	\$ 88,691,800	\$381,632,200	\$169,019,500

What is the Current Status of the Account?

For FY 2016, the Legislature appropriated \$23,719,400 from the account. For FY 2016 there is a shortfall of \$1,557,300 or 7%. One method to reduce appropriations in accordance with statute is to proportionally reduce all of the “discretionary appropriations” not specifically detailed in statute. Because discretionary appropriations would be the first thing to go under this scenario, a \$1,557,300 reduction in overall Tobacco Settlement funds means a 55% reduction in discretionary appropriations. The Division of Finance, under the direction of the Governor's Office of Management and Budget, has indicated that it will implement the

reductions across the board for the discretionary appropriations. The table below shows the final appropriations as well as how a proportional allocation to the “discretionary appropriations” impacts those appropriations.

FY 2016 Uses of Tobacco Settlement Restricted Account					
Agency	Program/Purpose (From Statute)	Statute UCA 51-9-201	Discretionary Appropriations	Potential Reductions	Net Available
Attorney General	enforcement and defense of the Tobacco Settlement Agreement	\$66,600	\$6,900	(\$3,800)	\$69,700
Tax Commission	enforcement of business compliance	\$18,500	\$0	\$0	\$18,500
Health	Medicaid	\$7,505,200	\$1,042,800	(\$576,800)	\$7,971,200
Health	Children’s Health Insurance Program	\$2,947,700		\$0	\$2,947,700
Health	alcohol, tobacco and drug prevention programs	\$3,847,100	\$104,400	(\$57,800)	\$3,893,700
Health	statewide internal service fund impacts	\$0	\$200	(\$100)	\$100
Courts1	drug court	\$193,700	\$172,200	(\$95,300)	\$270,600
Human Services1	drug court	\$2,325,400	\$0	\$0	\$2,325,400
University of Utah	in-state research, treatment, and educational activities	\$4,000,000	\$0	\$0	\$4,000,000
State Endowment Fund	ongoing deposit	\$0	\$1,488,700	(\$823,500)	\$665,200
Total		\$20,904,200	\$2,815,200	(\$1,557,300)	\$22,162,100

FY 2017 Uses of Tobacco Settlement Restricted Account					
Agency	Program/Purpose (From Statute)	Statute UCA 51-9-201	Discretionary Appropriations	Potential Reductions	Net Available
Attorney General	enforcement and defense of the Tobacco Settlement Agreement	\$66,600	\$6,900	(\$1,300)	\$72,200
Tax Commission	enforcement of business compliance	\$18,500	\$0	\$0	\$18,500
Health	Medicaid	\$9,369,700	\$2,530,500	(\$1,470,600)	\$10,429,600
Health	Children’s Health Insurance Program	\$1,083,200		\$0	\$1,083,200
Health	alcohol, tobacco and drug prevention programs	\$3,847,100	\$109,800	(\$21,200)	\$3,935,700
Health	statewide internal service fund impacts	\$0	\$300	(\$100)	\$200
Courts1	drug court	\$193,700	\$175,300	(\$33,800)	\$335,200
Human Services1	drug court	\$2,325,400	\$0	\$0	\$2,325,400
University of Utah	in-state research, treatment, and educational activities	\$4,000,000	\$0	\$0	\$4,000,000
Total		\$20,904,200	\$2,822,800	(\$1,527,000)	\$22,200,000

For FY 2017, the Legislature appropriated \$23,727,000 from the account. The Analyst estimates a shortfall of \$1,527,000 or 6% in FY 2017. As with FY 2016, one way to address the shortfall is to proportionally reduce all of the “discretionary appropriations” not specifically detailed in statute. Because discretionary appropriations would be the first thing to go under this scenario, a \$1,527,000 reduction in overall Tobacco Settlement revenue means a 54% reduction in discretionary appropriations for FY 2017. The table on the previous page shows the original appropriations as well as how a proportional allocation to the “discretionary appropriations” would impact those appropriations.

For FY 2018, there are ongoing appropriations of \$23,726,300 from the account. The Analyst estimates a shortfall of \$8,026,300 or 34% in FY 2018, largely because of the end of approximately \$12 million annual Strategic Contribution Payments. The discretionary appropriations of \$2,822,100 would all be eliminated. This still leaves \$5,204,200 in reductions which would be applied from the bottom of the funding list in UCA 51-9-201 and go as high up the list as needed to meet the shortfall. Current shortfall estimates would eliminate all appropriations to the University of Utah and a \$1,204,200 reduction for the Department of Human Services’ drug courts. The table below shows the original appropriations as well as projected reductions to meet the projected shortfall.

FY 2018 Uses of Tobacco Settlement Restricted Account					
Agency	Program/Purpose (From Statute)	Statute UCA 51-9-201	Discretionary Appropriations	Potential Reductions	Net Available
Attorney General	enforcement and defense of the Tobacco Settlement Agreement	\$66,600	\$6,900	(\$6,900)	\$66,600
Tax Commission	enforcement of business compliance	\$18,500	\$0	\$0	\$18,500
Health	Medicaid	\$0	\$1,488,700	(\$1,488,700)	\$0
Health	Children’s Health Insurance Program	\$10,452,900	\$1,043,100	(\$1,043,100)	\$10,452,900
Health	alcohol, tobacco and drug prevention programs	\$3,847,100	\$108,400	(\$108,400)	\$3,847,100
Health	statewide internal service fund impacts	\$0	\$300	(\$300)	\$0
Courts ¹	drug court	\$193,700	\$174,700	(\$174,700)	\$193,700
Human Services ¹	drug court	\$2,325,400	\$0	\$(1,204,200)	\$1,121,200
University of Utah	in-state research, treatment, and educational activities	\$4,000,000	\$0	(\$4,000,000)	\$0
Total		\$20,904,200	\$2,822,100	(\$8,026,300)	\$15,700,000

What has the Legislature Already Done for the Shortfall?

The Legislature appropriated \$983,200 one-time in FY 2017 to address potential shortfalls. The \$983,200 already appropriated represents 64% of the FY 2017 shortfall.

How is the Tobacco Settlement Restricted Account Money Used?

1. **Attorney General:** uses this money for ongoing defense and enforcement of the settlement agreement.
2. **Tax Commission:** used for part of an FTE to ensure businesses’ compliance with the settlement agreement.
3. **Health - Children’s Health Insurance Program:** provides monthly health insurance coverage to about 17,900 previously uninsured children up to age 19 living in families with incomes less than

200 percent of the Federal Poverty Levels (FPL). Additionally, eligible children must: (1) not be currently covered by health insurance, (2) not have voluntarily terminated private health insurance within the last 90 days, and (3) be U.S. citizens or legal residents. There is no asset test for CHIP eligibility.

4. **Health - Medicaid Children:** provides health insurance coverage to about 203,000 children under the age of 19 with family incomes less than 185 percent of the FPL each month. These children must be U.S. citizens or legal residents to receive full coverage through Medicaid, but can also receive emergency only services otherwise. There is not an asset test for most children.
5. **Health - alcohol, tobacco and drug prevention programs:** The Tobacco Prevention and Control Program (TPCP) provides technical expertise and coordination at State and community levels to prevent and reduce tobacco use in Utah. The goals of the TPCP are to promote quitting among young people and adults, prevent initiation of tobacco use among young people, eliminate nonsmokers' exposure to secondhand smoke, and identify and eliminate disparities in tobacco use among populations groups.
6. **Courts - drug court:** used for "probation officers in juvenile drug courts (for monitoring and testing participants), and for clerks in district courts, who have to handle much of the drug court workload - scheduling, coordinating, issuing warrants, arranging jail transport, etc." 3/1/2011 email from Richard Schwermer, Assistant State Court Administrator
7. **Human Services - drug court:** "Drug courts provide eligible participants intensive court-supervised drug treatment as an alternative to jail or prison. The local area substance abuse authorities provide treatment services. Currently, 42 of the 50 drug courts operating in the state receive funding from the Department of Human Services. Eligibility for Drug Court requires that an individual be identified as high risk for recidivism and in high need of substance abuse treatment services. In most drug courts, offenders enter a guilty plea which is then held in abeyance for the duration of the program. The charges are then dismissed upon successful completion of the program. Drug court participants are enrolled in the program for approximately 73 weeks. Treatment counselors develop individualized treatment plans. The participants are randomly tested for drug use from one to three times a week. The drug court judge reviews compliance with the treatment plan during weekly court reviews. In most programs, participants must be drug-free for at least six months to graduate. Failure to comply with any element of the program or having a positive drug test may result in immediate court action such as being taken to jail. Compliance and progress in the program are rewarded with praise from the court and a gradual decrease in supervision. Utah has four distinct drug court models: 1) Adult Felony Drug Courts, 2) Juvenile Drug Courts, 3) Misdemeanor Drug Courts, and 4) Dependency Drug Courts." Department of Human Services June 2, 2016 email.
8. **University of Utah - in-state research, treatment, and educational activities:** In 2001 President Machen received approval from the Capital Facilities committees to use some of the Tobacco Settlement funds to pay the University's portion of the bond on the cancer clinical research hospital. Since then \$2 million has been allocated to the bond payment and \$2 million to cancer research. When that payment is complete, the full \$4 million will be invested in research as described in the statute.

¹ UCA 78A-5-201(3)(a) requires funds disbursed to a drug court program be allocated 87 percent to the Department of Human Services for testing, treatment, and case management and 13 percent to the Administrative Office of the Courts for increased judicial and court support costs. After the FY 2016 and FY 2017 proportional Tobacco Settlement reductions, allocations will not match this 87/13 split. The Legislature may amend either the 87/13 split statute, or make Courts’ discretionary appropriation statutory instead.

What is the State Endowment Fund?

Article XXII, Section 4 of the Utah Constitution explains the purpose of the State Endowment Fund: “the state treasurer shall, as provided by statute, hold all trust funds and assets in trust and invest them for the benefit of the people of the state in perpetuity.” Additionally, Article XXII, Section 4 of the Utah Constitution directs that money currently in the fund can only be accessed by a ¾ vote of each house of the Legislature and the approval of the Governor. There are no regular expenditures approved for this trust fund. UCA 51-7b outlines the restrictions on investments for the State Endowment Fund. The State Endowment Fund ended FY 2015 with a balance of \$169,066,300.

Additionally, UCA 51-9-202 directs that the fund keep half of its interest earnings from the tobacco payments and the other half be deposited into the General Fund. This fund also receives excess severance tax revenues over statutory limits at the end of each year as per UCA 51-9-305. The table below details the annual changes to the ending balance of the State Endowment Fund.

Fiscal Year	Tobacco Settlement Payments	Interest and Fair Market Adjustments	Severance Taxes	Endowment Fund Ending Balance
2000	\$ 13,868,300	\$ (80,000)	\$ -	\$ 13,788,300
2001	\$ 13,949,200	\$ (216,300)	\$ -	\$ 27,521,200
2002	\$ 16,275,900	\$ (2,266,300)	\$ -	\$ 41,530,800
2003	\$ (28,113,500)	\$ (1,239,900)	\$ -	\$ 12,177,400
2004	\$ 5,587,200	\$ (5,400)	\$ -	\$ 17,759,200
2005	\$ -	\$ 349,700	\$ -	\$ 18,108,900
2006	\$ 6,507,200	\$ 54,700	\$ -	\$ 24,670,800
2007	\$ 6,811,000	\$ 1,739,400	\$ -	\$ 33,221,200
2008	\$ 16,823,700	\$ (4,210,500)	\$ -	\$ 45,834,400
2009	\$ 18,099,900	\$ (7,471,100)	\$ 23,016,800	\$ 79,480,000
2010	\$ 15,276,400	\$ 4,776,800	\$ 7,193,200	\$ 106,726,400
2011	\$ 2,943,000	\$ 11,289,300	\$ -	\$ 120,958,700
2012	\$ -	\$ 2,579,700	\$ -	\$ 123,538,400
2013	\$ -	\$ (2,848,600)	\$ -	\$ 120,689,800
2014	\$ -	\$ 22,259,100	\$ 16,559,500	\$ 159,508,400
2015	\$ -	\$ 8,582,400	\$ 975,500	\$ 169,066,300
Total	\$ 88,028,300	\$ 33,293,000	\$ 47,745,000	