
Issue Brief – Tobacco Settlement Account

NUMBER TAX 08-01

SUMMARY

The Utah State Tax Commission and the Attorney General's Office are responsible for assuring compliance with the Tobacco Master Settlement Agreement (MSA). The Tax Commission plays an integral role in enforcing Utah's cigarette and tobacco statutes. The Tax Commission is requesting one FTE to ensure that the State is doing its due diligence in the areas of reporting and compliance. The cost of this individual would be \$76,800 ongoing, \$35,000 in FY 2008 supplemental.

DISCUSSION AND ANALYSIS

Tobacco Settlement Personnel

The Tobacco Master Settlement Agreement, settled in 1998 with the participating states, required tobacco companies to pay an estimated \$206 billion. Utah's share of the total payment, as agreed upon by the states' attorney generals, is 0.4448869, or approximately \$836 million. Annual adjustments are made to the payment based on three factors, of which one is a Non-participating Manufacturers (NPM) adjustment. The NPM adjustment may be applied to states for the following reasons: (1) participating manufacturers experience a market share loss; (2) an independent economist determines the MSA to be a significant factor in market share loss; or, for this budget briefs purpose, (3) the State fails to diligently enforce statute requiring non-participating manufacturers to contribute to an escrow account. At risk is all or part of the \$33 million the State currently receives under the MSA.

ADMINISTRATION OF FUNDS

In accordance with 63-97-2 of the Utah Code, the Tobacco Settlement Restricted Account is to be appropriated in the following order based on available funds:

1. \$10,300,000 to the Department of Health for the Children's Health Insurance Program;
2. \$4,000,000 to the Department of Health for alcohol, tobacco, and drug prevention programs;
3. \$193,700 to the Administrative Office of the Courts and \$1,296,300 to the Department of Human Services
4. \$77,400 to the Board of Pardons, \$350,900 to the Department of Human Services, and \$81,700 to the Department of Corrections for a drug board pilot program; and
5. \$4,000,000 to the University of Utah Health Sciences Center for health education, research, and treatment.
6. The Legislature may appropriate any fund as desired.

As funding decreases the last item on the list reduces funding. If appropriations continue to decline the University of Utah Health Sciences Center will lose its funding. If the Legislature chooses to prioritize the Tax Commission's request, the Analyst recommends the request be placed last on the priority order.

Tobacco Settlement Restricted Account Payments and Appropriations					
	Statutory Ranking	Actual FY 2006	Actual FY 2007	Estimate FY 2008	Estimate FY 2009
Account Balance as of July 1		\$6,101,800	\$3,190,300	\$954,100	\$418,200
Tobacco Payments		\$19,521,500	\$20,493,500	\$24,300,000	\$24,300,000
Interest/Other		\$158,700	\$170,000	\$150,000	\$150,000
Total Payments		\$25,782,000	\$23,853,800	\$25,404,100	\$24,868,200
Appropriations:					
CHIP	\$10,300,000	\$10,272,400	\$10,321,000	\$12,333,100	\$10,333,100
Tobacco/Alcohol/Drug Prev	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000
Drug Courts	\$1,490,000	\$1,489,700	\$1,490,000	\$1,490,000	\$1,490,000
Drug Board	\$510,000	\$510,000	\$510,000	\$510,000	\$510,000
U of U Health Sciences Center	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000	\$4,000,000
Remaining Funds Discretionary					
Department of Health		\$2,219,600	\$2,303,500	\$2,377,600	\$2,377,600
Attorney General's Office		\$100,000	\$275,200	\$275,200	\$275,200
Total Appropriations	\$20,300,000	\$22,591,700	\$22,899,700	\$24,985,900	\$22,985,900
Account Balance as of June 30		\$3,190,300	\$954,100	\$418,200	\$1,882,300

ACCOUNTABILITY DETAIL

Among the responsibilities this new individual would have are: monthly and quarterly compilation and sending to the Attorney General's office of reported sales of cigarettes and equivalents within Utah; licensing of all manufacturers, distributors, and retailers to sell cigarettes and tobacco; maintaining a directory of products legal for sale in Utah; monitoring certifications of new 'fire safe' cigarettes and administering actions against non-compliance; representing the State Tax Commission at national and regional conferences regarding tobacco and the MSA; monitoring and enforcing requirement to stamp cigarette packs and pay tobacco tax; monitoring of internet sales of tobacco; conducting inspections of retail establishments.

OPTIONS

There are several options the Legislature may wish to consider:

- Fund the Tax Commission's request for a full FTE with the MSA restricted revenues
 1. Prioritize \$76,800 ongoing in Restricted Revenue – Tobacco Settlement
 2. Prioritize \$35,000 one-time as supplemental FY 2008.
- Given the nature of the Tobacco funds, it may not be prudent to fund the Tax Commission's request for a full FTE with Tobacco Settlement funds; instead fund with General Fund revenues
 1. Prioritize \$76,800 ongoing in General Fund
 2. Prioritize \$35,000 one-time as supplemental FY 2008
- Split the position between the Utah State Tax Commission and the Attorney General's Office, funding the position with the MSA restricted revenues.
- Consider the \$275,200 currently allocated to the Attorney General's Office as enough justification for due diligence; by default doing nothing