



# TOBACCO SETTLEMENT FUNDS

SOCIAL SERVICES APPROPRIATIONS SUBCOMMITTEE  
STAFF: RUSSELL FRANSEN

ISSUE BRIEF

**SUMMARY**

The Children’s Health Insurance Program will not be able to use approximately \$2.1 million in FY 2014 and \$6 million in FY 2015 of current appropriations from the Tobacco Settlement Restricted Account based on current statute. The State of Utah has received a total of \$464 million in total tobacco settlement payments since they began in FY 2000. The State has deposited \$88 million of those payments into the State Endowment Fund for future use. This brief recommends changing in statute the appropriations from the Tobacco Settlement Restricted Account.

**LEGISLATIVE ACTION (OPTIONS)**

1. **Broaden allowable uses for children in Medicaid** – change UCA 51-9-201(4)(c) to allow the \$10,452,900 for the Children’s Health Insurance Program to also be used for children in Medicaid.
2. **Reduce the appropriation to CHIP to match need** – change UCA 51-9-201(4)(c) for the \$10,452,900 for the Children’s Health Insurance Program to \$5,483,400 to match the actual need. The remaining funds should then be appropriated to the Medicaid program as discretionary appropriations as allowed by UCA 51-9-201(4) (g).

**DISCUSSION AND ANALYSIS**

***How has the State Used Its \$464 Million in Tobacco Payments?***

The State of Utah has received a total of \$464 million in total tobacco settlement payments since they began in FY 2000. The State has used the \$464 million in the following three ways as shown in the table below: (1) \$88 million of deposits into the State Endowment Fund, (2) \$271 million in payments to state agencies, and (3) \$105 million in deposits to the General Fund.

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	\$ 12,527,300	\$ 9,821,500
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
Total	\$ 464,472,900	\$ 88,028,200	\$271,512,000	\$104,932,700

**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 51-7-12.1 outlines the restrictions on investments for the State Endowment Fund. The State Endowment Fund is estimated to have a balance of \$119,584,400.

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	\$ -	\$ (3,954,000)	\$ -	\$ 119,584,400
<b>Total</b>	<b>\$ 88,028,300</b>	<b>\$ 1,346,100</b>	<b>\$ 30,210,000</b>	

**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).

**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 of \$1,264,300 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 table below. For FY 2014, the Legislature appropriated \$22,168,500 from the account as of the end of the 2013 General Session.

FY 2014 Uses of Tobacco Settlement Restricted Account				
Agency	Program/Purpose (From Statute)	Statute UCA 51-9-201	Discretionary Appropriations	Total Appropriations
Attorney General	enforcement and defense of the Tobacco Settlement Agreement	\$ 66,600	\$ 6,900	\$ 73,500
Tax Commission	enforcement of business compliance	\$ 18,500	\$ -	\$ 18,500
Health	Children's Health Insurance Program	\$10,452,900	\$ 1,033,800	\$ 11,486,700
Health	alcohol, tobacco and drug prevention programs	\$ 3,847,100	\$ 56,200	\$ 3,903,300
Courts <sup>1</sup>	drug court	\$ 193,700	\$ 167,400	\$ 361,100
Human Services <sup>1</sup>	drug court	\$ 2,325,400	\$ -	\$ 2,325,400
University of Utah	in-state research, treatment, and educational activities	\$ 4,000,000	\$ -	\$ 4,000,000
<b>Total</b>		<b>\$20,904,200</b>	<b>\$ 1,264,300</b>	<b>\$ 22,168,500</b>

**What is the Problem in the Children's Health Insurance Program?**

Beginning January 2014 about 69% of children on the Children's Health Insurance Program will become eligible for Medicaid due to federal health care reform changes. As noted in the table above, the Children's Health Insurance Program currently receives \$11,486,700 from the Tobacco Settlement Account. Under current statute, UCA 51-9-201, the Children's Health Insurance Program (CHIP) will not be able to use about \$2.1 million in FY 2014 and \$6 million in FY 2015 of its appropriations from the Tobacco Settlement Account. A statutory change could fix this issue. The table below shows current CHIP appropriations and appropriations needed for CHIP after the change in January 2014. The last line of the table entitled "Tobacco Settlement Unused" identifies how much Tobacco Settlement Restricted Account from current appropriations to CHIP could not be used for the children on CHIP as per statute.

CHIP Funding Now	FY 2014 Revised	FY 2015 Base
General Fund	\$ 6,874,600	\$ 6,874,600
Consensus Caseload Adjustment (est.)	\$ (4,000,000)	\$ (500,000)
General Fund After Consensus	\$ 2,874,600	\$ 6,374,600
Tobacco Settlement Restricted Account	\$ 11,486,700	\$ 11,486,700
Total State Funds	\$ 14,361,300	\$ 17,861,300
<b>CHIP Funding Starting January 2014</b>		
69% CHIP to Medicaid Shift	\$ 4,976,200	\$ 12,377,900
CHIP State Funding Needed	\$ 9,385,100	\$ 5,483,400
Tobacco Settlement Unused	\$ 2,101,600	\$ 6,003,300

**How is the Tobacco Settlement Restricted Account Money Used?**

- Attorney General:** uses this money for ongoing defense and enforcement of the settlement agreement.
- Tax Commission:** used for part of an FTE to ensure businesses' compliance with the settlement agreement.
- Health - Children's Health Insurance Program:** provides health insurance coverage to about 34,900 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 - 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.
5. **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
6. **Human Services - drug court:** "Drug courts offer drug dependent participants intensive court-supervised drug treatment as an alternative to jail or prison. The local area substance abuse authorities and private contractors 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 four 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 May 13, 2013 email.
7. **University of Utah - in-state research, treatment, and educational activities:** In 2011 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.

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<sup>1</sup> 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 2012 and FY 2013 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.