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BILL ANALYSIS

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Senate Bill 1324 (as reported without amendment)
Sponsor: Senator Wayne Kuipers
Committee: Finance

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RATIONALE

With the State's cigarette tax now at \$2 a pack, there is a concern that the State and its retailers will lose badly needed revenue should the higher price drive more Michigan smokers to buy their cigarettes from sellers located on the land of Federally recognized Indian tribes that do not collect the tax. The State currently has agreements in place to collect the cigarette tax from eight of the tribes, but there are four reservations where the tax is not collected.

Under the law, it is illegal to sell cigarettes to non-tribe members without collecting the tax, but there is no way for the State to enforce the collection of the tax on Federally recognized tribal land unless the tribe has signed a voluntary agreement with the State. Some people believe that the Michigan Department of Treasury therefore should be authorized to stop shipments of cigarettes and other taxed items while they are in the State but have not passed onto tribal property, to ensure collection of the tax.

CONTENT

The bill would amend the revenue Act to require the Department of Treasury to use all of its authority and powers under the Act and the laws of the State to ensure the proper collection of all taxes administered under the Act if a Federally recognized Indian tribe did not enter into a tribal agreement with the Department or had terminated or breached a tribal agreement, or for any tax not covered by a tribal agreement.

The Department would be authorized to take action against any person conducting

business with an Indian tribe or individual tribal member who was in violation of the tax laws of the State administered under the revenue Act. The Department would have to search for contraband and other illegal, untaxed, or undertaxed goods, and use appropriate search methods to ensure that every person conducting business with an Indian tribe or individual tribal members was in compliance with the tax laws of the State administered under the Act.

MCL 205.30c

BACKGROUND

Public Act 616 of 2002 amended the revenue Act to allow the Department of Treasury to enter into a tribal agreement with a Federally recognized Indian tribe specifying the applicability of a State tax to that tribe, its members, and any person conducting business with them. The tribe, its members, and any person conducting business with them remain fully subject to the State's tax laws, except as specifically provided by an agreement in effect for the period at issue.

A tribal agreement must contain provisions regarding administration, collection, and enforcement, including provisions for the collection of taxes on tobacco products under the Tobacco Products Tax Act.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Beginning July 1, Michigan's cigarette tax was increased from \$1.25 per pack to \$2, the second highest rate in the nation. While the tax increase is expected to raise the State's revenue significantly, its impact could be dampened if smokers are able to avoid the tax by purchasing their cigarettes on Indian land where it is not collected. Currently, the State has agreements in place for the collection of the tax from retailers located on the property of eight of Michigan's 12 Federally recognized tribes. It is the Department of Treasury's position that it is illegal to supply cigarettes to retailers located on tribal land who, in turn, sell them to non-tribe members, regardless of whether an agreement is in place. (It is legal, however, for tribal retailers to sell cigarettes untaxed to members of the tribe.)

Since most of the wholesalers of the cigarettes sold on tribal land are located out of State where Michigan cannot enforce the tax, the only opportunity the Department has to intercept the cigarettes and ensure they are taxed is while they are being transported through the State on their way to tribal land. The bill would give the Department the authority to make such stops, in order to ensure that the tax was collected before the cigarettes reached their destination.

Supporting Argument

With some tribes not collecting the tax, cigarette retailers located near the land of the noncollecting tribes suffer from lost sales when smokers buy from retailers on those tribes' land. State and Federal cigarette taxes make up more than a third of the cost of a pack of cigarettes sold in Michigan, so those sold untaxed are significantly less expensive than those that are taxed, now that the State tax is \$2 per pack. Cigarettes make up a large percentage of the sales at the State's convenience stores, which may see a considerable decrease in their profits if smokers opt to buy their cigarettes on tribal property. By taking steps to enforce the collection of the tax on all tribal land, the Department would ensure that all of the State's cigarette retailers were playing on a level field.

Opposing Argument

The bill states that the Department "shall search for contraband and other illegal, untaxed, or undertaxed goods, and use

appropriate search methods to ensure that every person conducting business with an Indian tribe or individual tribal members is in compliance with the tax law of this state administered under this act". There is a concern that this requirement could lead to roadblocks so the Department could search vehicles heading onto tribal property. The Department's authority to stop and search vehicles randomly is not clear.

Opposing Argument

Officials from the Department of Treasury have stated that they would not be comfortable with a requirement that the Department target a particular ethnic group in its enforcement efforts. The bill would authorize the Department to take action against any person "conducting business with an Indian tribe or individual tribal members". Singling out retailers who sell to a particular race could raise State and Federal equal protection and civil rights issues.

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would have an indeterminate impact on State government. The State currently has eight tribal agreements, one pending, and three tribes without agreements. The agreements include sharing of revenue collected between the State and the tribes. The tribes receive two-thirds of the revenue. Due to the fact that these agreements are fairly recent, no data are available regarding collections. The Department of Treasury also does not have an estimate of tax revenue that is not being collected.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.