SB 546

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 546 (Senator Exum, *et al.*)
Finance Economic Matters

Cigarettes - Direct Sales and Shipping

This bill prohibits a person engaged in the business of selling or distributing cigarettes from selling or shipping cigarettes directly to a consumer or other unlicensed recipient in Maryland, including cigarettes ordered or purchased through a computer, telephone, or other electronic network, with one exception. A licensed retailer may deliver up to two cartons of cigarettes if the delivery is made by the retailer or a retailer's employee.

A violator is subject to license suspension or revocation and is guilty of a felony. On conviction, the violator is subject to a fine of up to $50 for each carton of cigarettes and/or imprisonment for up to two years.

Fiscal Summary

State Effect: The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations. Enforcement provisions could be handled with existing resources.

Local Effect: Potential minimal increase in revenues and expenditures due to the bill's penalty provision.

Small Business Effect: Minimal.

Analysis

Current Law: Cigarettes may be purchased by Maryland residents via computer, telephone, or other electronic network.

Background: Numerous companies sell cigarettes and other tobacco products over the Internet. Many of these online cigarette sellers, which charge no taxes, are based on Native American reservations where states have limited authority to enforce collection of their cigarette taxes. However, the purchasers of these cigarettes are supposed to remit sales taxes to their state government on these purchases.

In 2000, the New York State Legislature adopted a law that prohibited the sale of cigarettes directly to consumers over the Internet, by telephone, or by mail-order catalog. It is the first law of its kind enacted by any state. Brown and Williamson Tobacco Corporation sued New York, arguing that the law unlawfully restricts interstate commerce. In addition, many Native American online cigarette dealers argued that the bill violated the 1842 sovereignty treaty between the United States and the Seneca Indians of New York. Traditionally, Native Americans have been able to sell products such as cigarettes and alcohol without having to pay federal excise taxes and state sales taxes.

In November 2000, the U.S. District Court for the Southern District of New York ruled New York's law unconstitutional on the basis that it violated the Commerce Clause of the U.S. Constitution. A temporary restraining order was issued that prevented New York from enforcing the law. However, on February 13, 2003, the U.S. Court of Appeals for the Second Circuit reversed the lower court's decision.

State Effect: While the number of cases that would result from the bill's provisions cannot be reliably estimated at this time, based on discussions with the Comptroller's Division of Enforcement, it is assumed that the number would be minimal. The Division of Enforcement indicates that the bill's provision would be difficult to enforce unless it was notified that such transactions were occurring.

Additional Information

Prior Introductions: A similar bill was introduced as SB 528 in 2004 and SB 228 in 2001. Both received an unfavorable report from the Senate Finance Committee.

Cross File: None.

Information Source(s): Comptroller's Office (Alcohol and Tobacco Tax Division), National Conference of State Legislatures, Department of Legislative Services

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