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DATE: April 30, 2019

TO: Honorable Jennifer Williamson, Chair of the House Judiciary Committee

FROM: Kate Denison, Legislative Policy Analyst

SUBJECT: SB 185 – Tobacco Master Settlement Agreement Maintenance Legislation

This testimony is presented in support of SB 185.

Background: In 1998, Oregon and 45 other states entered into the Tobacco Master Settlement Agreement (MSA). The MSA requires tobacco manufacturers that joined the agreement to make significant annual payments to the settling states in perpetuity and to cease marketing practices that target youth. Since 1998, Oregon has received $60-$80 million per year ($120-$160 million per biennium) in settlement payments.

In exchange for these payments, the MSA required each settling state to enact and enforce Model Escrow Statutes. In 1999, Oregon enacted its Escrow Statutes which are now codified at ORS 323.800 to 323.806. The Escrow Statutes require cigarette manufacturers who have not joined the MSA (non-participating manufacturers, or NPMs) to pay a certain sum into an escrow account each year based on their sales in Oregon. Funds are held in the escrow account as a source of collection if the state brings a claim against the NPM.

During the 2003 legislative session, Oregon enacted additional statutes to enhance Oregon's ability to enforce the Escrow Statutes. This additional legislation is referred to as "Complementary Legislation" and is located at ORS 180.400 to 180.455. Among other things, these statutes impose reporting obligations on distributors to enhance DOJ's ability to ensure that NPMs are making the required payments into the escrow accounts.

Concept: SB 185 will improve distributor reporting and provide a mechanism for an NPM to assign the funds in its escrow account to the state.

a. **Direct Buy**: Section 3 of the bill amends ORS 180.440 to require distributors to purchase untaxed cigarettes and roll-your-own tobacco directly from the manufacturer or first importer. The concept would eliminate downstream, distributor-to-distributor sales of unstamped cigarettes and untaxed roll-your-own tobacco. A distributor could purchase cigarettes or roll-your-own tobacco from another distributor if it purchases the products tax-paid. This change will improve accuracy in distributor reporting, streamline escrow enforcement, and reduce the risk of unstamped cigarettes being diverted from the legal distribution chain.

b. **Escrow Account Assignment**: Many of the NPMs that established escrow accounts in the early 2000s are no longer in the tobacco business and no longer wish to pay fees or otherwise maintain their escrow accounts. SB 185, Section 5 adds a provision to the Escrow Statute that will allow an NPM to assign their escrow account to the state. Any assigned funds would be deposited in the Tobacco Settlement Funds Account, which is the same account where MSA payments are deposited. An assignment would not prevent the state from later bringing a claim against the tobacco manufacturer, but any assigned funds would be credited on a dollar-for-dollar basis against any future judgment or settlement. The bill also provides that if an NPM abandons its escrow account, a court may assign the abandoned account to the state on the same terms as a voluntary assignment.

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