

DEPARTMENT OF TAXATION

2006 Fiscal Impact Statement

1. **Patron** Charles R. Hawkins

3. **Committee** Senate Finance

4. **Title** Cigarette Tax; Roll-Your-Own Tobacco

2. **Bill Number** SB 729

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would make roll-your-own tobacco subject to the state cigarette tax instead of the tobacco products tax. The cigarette tax on roll-your-own tobacco, however, would be imposed at the same rate and in the same manner as the tobacco products tax. This bill would also provide that roll-your-own tobacco for which the Commonwealth collects the cigarette tax would be deemed to bear the Virginia excise stamp.

The effective date of this bill is not specified.

6. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

7. **Budget amendment necessary:** No.

8. **Fiscal implications:**

Revenue Impact

As the cigarette tax on roll-your-own tobacco would be imposed at the same rate as the tobacco products tax, this bill should have no impact on state tax revenues and the amounts deposited in the Virginia Health Care Fund.

Administrative Expenses

Assuming that the suggested amendments are adopted, TAX has not assigned any administrative costs to this bill. The changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either

house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

In order to make the administration of the cigarette excise tax on roll-your-own tobacco consistent with the tobacco products tax, the following technical amendments are suggested:

Page 2, Line 107, After: Department

Insert: , which may be the form required under § 58.1-1021.03,

Page 3, Line 175, After: The beginning of the line.

Insert: 2. That except as specifically provided in this Act, the tax imposed pursuant to subsection B of § 58.1-1001 of the Code of Virginia shall be imposed and administered in the same manner as the tax imposed pursuant to Article 2.1 of Chapter 10 of Title 58.1 of the Code of Virginia, *mutatis mutandis*.

11. Other comments:

Virginia Cigarette Tax

Virginia imposes a state cigarette tax at the rate of 30 cents per pack. The cigarette tax is paid by wholesaler dealers who have obtained a stamping agent permit from TAX through the purchase of stamps, which must be affixed to each container from which cigarettes are sold. A discount equal to two percent of the purchase price of the cigarette stamps is available to stamping agents. Wholesalers file a monthly report with TAX showing the quantities of cigarettes purchased and stamped.

Cigarettes are any roll of tobacco wrapped in paper or in any substance not containing tobacco, and any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

Virginia Tobacco Products Tax

Under current law, a tobacco products tax is imposed on cigars, smokeless tobacco, pipe tobacco and roll-your-own tobacco. Cigarettes are not subject to the tax on tobacco products. Tobacco products include the following:

- Cigars -- any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette).

- Smokeless tobacco --
 - Snuff -- any finely cut, ground, or powdered tobacco not intended to be smoked.
 - Chewing tobacco -- any leaf tobacco not intended to be smoked.
- Pipe tobacco -- any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to be smoked in a pipe.
- Roll-your-own tobacco -- any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

The tax is imposed at the rate of 10% on the "manufacturers sales price," which is defined as the actual price for which a manufacturer, manufacturers' representative, or any other person sells tobacco products to an unaffiliated distributor. The tax is imposed on the first "distributor" who possesses the taxable product in Virginia. Out-of-state distributors are allowed, but not be required to obtain a license. A "distributor" is:

- Any person engaged in the business of selling tobacco products within Virginia who brings, or causes to be brought, tobacco products into Virginia for sale.
- Any person who manufactures or stores tobacco products in Virginia for sale in Virginia.
- Any person engaged in the business of selling tobacco products without the Commonwealth who ships or transports tobacco products to any person in the business of selling tobacco products in the Commonwealth.
- Any retail dealer in possession of untaxed tobacco products in the Commonwealth.

The tobacco products tax was first imposed on March 1, 2005. The provisions of the tax were substantially changed beginning January 1, 2006 by 2005 House Bill 1885 (Chapter 71, Acts of Assembly, 2005 Regular Session). The most significant change made by House Bill 1885 was to impose the tobacco products tax on the actual price paid by distributors of tobacco products rather than the selling price charged by wholesalers. House Bill 1885 also required distributors to obtain a license from TAX, pay a licensing fee and undergo a background check prior to selling tobacco products. Additionally, House Bill 1885 changed the due date of the tobacco products tax return from the tenth to the twentieth of each month, provided detailed recordkeeping and audit requirements for the tax, and authorized TAX to seize tobacco products from persons who fail to pay the tax and destroy the products.

Proposal

This bill would make roll-your-own tobacco subject to the state cigarette tax instead of the tobacco products tax. The cigarette tax on roll-your-own tobacco, however, would be imposed at the rate of 10% of the manufacturers sale price and the tax would be administered much like the tobacco products tax. As with the tobacco products tax, distributors of roll-your-own tobacco would file a monthly report with TAX regarding their purchases of roll-your-own tobacco in the preceding month and remit the tax due with the report. Containers of roll-your-own tobacco would not be subject to the cigarette stamping requirements and would not be reported on the monthly stamping report required of cigarette wholesalers. Roll-your-own tobacco, however, for which the Commonwealth collects the cigarette tax would be deemed to bear the Virginia excise stamp.

Other Legislation

House Bill 1277 would require that (1) the annual certification required of cigarette manufacturers regarding their status as participating or nonparticipating manufacturers under the Master Settlement Agreement and (2) the quarterly report required of cigarette stamping agents listing the cigarettes they have stamped be filed with the Office of the Attorney General rather than TAX. This bill would also provide that these reports would continue to be considered confidential taxpayer information.

cc : Secretary of Finance

Date: 02/07/2006 JEM