DEPARTMENT OF TAXATION
2010 Fiscal Impact Statement

1. Patron Terry G. Kilgore

2. Bill Number HB 626

House of Origin:
X **Introduced**
_____ **Substitute**
_____ **Engrossed**

Second House:
_____ **In Committee**
_____ **Substitute**
_____ **Enrolled**

3. Committee House Finance

4. Title Tobacco Products Tax; Moist Snuff

5. Summary/Purpose:

This bill would impose the tobacco products tax on moist snuff at the rate of $0.17 per ounce based on net weight. Moist snuff would be defined as any finely cut, ground, or powdered tobacco that is not intended to be smoked but shall not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity. This bill would provide that for each Fiscal Year beginning with Fiscal Year 2011, 50 percent of the amount by which the revenues collected from the Tobacco Products Tax exceed the revenue collected in Fiscal Year 2010 from the Tobacco Products Tax on smokeless tobacco would be deposited into a new Tobacco Enforcement Fund. The bill would also require manufacturers shipping tobacco products into the Commonwealth to file an annual report with TAX of the names and addresses of the persons receiving the shipments, and the type of product, brand, and quantities of tobacco products that were shipped.

Under current law, the tobacco products tax is imposed on all tobacco products, including moist snuff, at the rate of 10% of the manufacturer's sales price.

The effective date on this bill is January 1, 2011.

6. Fiscal Impact Estimates are: Preliminary. (See Line 8.)

6a. Expenditure Impact on Introduced Executive Budget: (Department of Medical Assistance Services)

Fiscal Year	***Dollars***	***Fund***
2010-11	$4.3 million	GF
2011-12	$4.8 million	GF
2002-13	$5.6 million	GF
2003-14	$6.2 million	GF
2014-15	$6.7 million	GF
2015-16	$7.3 million	GF

6b.Revenue Impact:

Fiscal Year	*Dollars*	*Fund*
2010-11	$4.4 million	TEF
2011-12	$5.0 million	TEF
2002-13	$5.4 million	TEF
2003-14	$5.9 million	TEF
2014-15	$6.5 million	TEF
2015-16	$7.0 million	TEF

7. Budget amendment necessary: Yes.
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297, Medicaid Program Services, Department of Medical Assistance Services

8. Fiscal implications:

Administrative Costs

TAX considers implementation of this bill as routine, and does not require additional funding.

Revenue Impact

Overall, compared to current law, imposition of the Tobacco Products Tax based on net weight at 17 cents per ounce would increase revenues by $0.08 million in Fiscal Year 2011, $0.16 million in Fiscal Year 2012, and decrease revenues by $0.11 million in Fiscal Year 2013, $0.23 million in Fiscal Year 2014, $0.25 million in Fiscal Year 2015, and $.29 million in Fiscal Year 2016.

This bill would provide that, beginning in Fiscal Year 2011, 50 percent of the amount by which the revenues collected from the Tobacco Products Tax exceed the revenue collected in Fiscal Year 2010 from the Tobacco Products Tax on smokeless tobacco would be allocated to the new Tobacco Enforcement Fund each Fiscal Year. The Tobacco Products Tax is estimated to generate $17.9 million in Fiscal Year 2011, $19.1 million in Fiscal Year 2012, $20.0 million in Fiscal Year 2013, $21.0 million in Fiscal Year 2014, $22.1 million in Fiscal Year 2015, and $23.2 million in Fiscal Year 2016. The Tobacco Products Tax on smokeless tobacco is estimated to generate $9.1 million in Fiscal Year 2010. This would generate revenues for the new Tobacco Enforcement Fund of $4.4 million in Fiscal Year 2011, $5.0 million in Fiscal Year 2012, $5.4 million in Fiscal Year 2013, $5.9 million in Fiscal Year 2014, $6.5 million in Fiscal Year 2015, and $7.0 million in Fiscal Year 2016. To the extent that the additional enforcement of the Cigarette Tax and the Tobacco Products Tax brings in additional taxes, penalties, and interest, the revenues would be deposited into the Health Care Fund.

Compared to current law, the imposition of the Tobacco Products Tax based on net weight and the allocation of revenues to the Tobacco Enforcement Fund, would result in a revenue loss to the Health Care Fund of $4.3 million in Fiscal Year 2011, $4.8 million in Fiscal Year 2012, $5.6 million in Fiscal Year 2013, $6.2 million in Fiscal Year 2014, $6.7 million in Fiscal Year 2015, and $7.3 million in Fiscal Year 2016. Pursuant to *Va. Code* § 32.1-366, all Tobacco Products Tax revenue must be deposited into the Health Care Fund. If funds are diverted from the Virginia Health Care Fund, as directed by this bill, the

Health Care Fund would need to be reimbursed dollar for dollar by the General Fund to avoid a reduction in Medicaid services and a loss of federal match.

9. Specific agency or political subdivisions affected:

Department of Taxation
Office of the Attorney General
Health Care Fund
Department of Medical Assistance Services

10. Technical amendment necessary: No.

11. Other comments:

<u>Tobacco Products Tax</u>

Under current law, a tobacco products tax is imposed on cigars, smokeless tobacco, and pipe 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.

The tax is imposed at the rate of 10% on the "manufacturer's 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. Retail and wholesale dealers are allowed a discount of 2% of the Tobacco Products Tax due.

As of January 1, 2010, 31 states taxed moist snuff tobacco based on price and 18 states taxed moist snuff using some form of weight based taxation.

Under current law, all revenues from the Tobacco Products Tax are deposited into the Health Care Fund. The federal government matches state funds spent on Medicaid, based on a state's federal medical assistance percentage (FMAP) match rate. The FMAP determined for each state has a statutory minimum of 50 percent and maximum of 83 percent; although Medicaid expenditures for some selected services and supports are matched at a higher rate for all states.

Proposal

This bill would impose the tobacco products tax on moist snuff at the rate of $0.17 per ounce based on net weight. Moist snuff would be defined as any finely cut, ground, or powdered tobacco that is not intended to be smoked but shall not include any finely cut, ground, or powdered tobacco that is intended to be placed in the nasal cavity.

This bill would provide that for each Fiscal Year beginning with Fiscal Year 2011, 50 percent of the amount by which the revenues collected from the Tobacco Products Tax exceed the revenue collected in Fiscal Year 2010 from the Tobacco Products Tax on smokeless tobacco would be deposited into a new Tobacco Enforcement Fund. This fund would be appropriated exclusively for investigations, prosecutions, and other enforcement duties related to the Master Settlement Agreement, the Non-Participating Manufacturers Statute, the Cigarette Tax, Cigarette Delivery Sale Requirements, tobacco-related investigations and enforcement actions under the Virginia Racketeer Influenced and Corrupt Organization Act and other tobacco related laws.

The bill would also require manufacturers shipping tobacco products into the Commonwealth to file an annual report with TAX of the names and addresses of the persons receiving the shipments, and the type of product, brand, and quantities of tobacco products that were shipped.

The effective date on this bill is January 1, 2011.

Similar Legislation

Senate Bill 478 is identical to this bill.

House Bill 820 and **Senate Bill 476** would reduce and simplify the penalties related to unstamped cigarettes.

House Bill 874 would change the time for affixing tax stamps to cigarette packs from one business day after receipt to prior to shipping to other wholesale dealers or retail outlets.

Senate Bill 701 would impose an annual fee on manufacturers that are not participating in the Master Settlement Agreement.

cc : Secretary of Finance

Date: 1/25/2010 AM
DLAS File Name: HB626F161