

# DEPARTMENT OF TAXATION

## 2013 Fiscal Impact Statement

1. **Patron** Mark L. Keam

3. **Committee** House Finance

4. **Title** Tobacco Products Tax; Imposition at Retail Level

2. **Bill Number** HB 2332

**House of Origin:**

  X   **Introduced**

      **Substitute**

      **Engrossed**

**Second House:**

      **In Committee**

      **Substitute**

      **Enrolled**

### 5. **Summary/Purpose:**

This bill would repeal the current Tobacco Products Tax and impose the Tobacco Products Tax at the retail sales level at a rate of 5 percent effective July 1, 2014. Retail dealers would be required to file monthly returns showing the quantity and retail sales price of each tobacco product sold in the Commonwealth during the preceding month and would be allowed a dealer discount of 2 percent as compensation for accounting for and for timely remitting the tax. Retail dealers would be required to be licensed by the Department and pay a \$30 license fee per year per location prior to selling tobacco products.

The Department would be required to conduct a background investigation prior before issuing a license and maintain a current list of licensed retail dealers, updated on a semiannual basis and published on the Department's website. Such license would be valid for a period of 5 years. The Department would be authorized to establish an application or renewal fee not to exceed \$750 for processing applications, conducting background investigations, and issuing licenses. Any amount collected in excess of such costs as of June 30 in even-numbered years would be required to be reported to the State Treasurer and deposited into the state treasury. The Department also would be required to promulgate guidelines with the necessary information for the licensure of retail dealers by January 1, 2014.

Under current law, the tobacco products tax is imposed on moist snuff at a rate of \$0.18 per ounce based on net weight. The tobacco products tax is imposed on loose leaf tobacco at rates of \$0.21 for each unit that is less than 4 ounces, \$0.40 for each unit that is at least 4 ounces but not more than 8 ounces, and \$0.70 for each unit more than 8 ounces but not more than 24 ounces. Units of loose leaf tobacco that exceed 24 ounces are subject to the Tobacco Products Tax at a rate of \$0.21 per unit plus \$0.21 for each 4 ounce increment that the unit exceeds 16 ounces. The tax continues to be imposed on all other tobacco products at the rate of 10% on the manufacturer's sales price.

The provisions of the act would be effective July 1, 2014.

**6. Budget amendment necessary:** Yes.

Item(s): Page 1, Revenue Estimates

307, Medicaid Program Services, Department of Medical Assistance Services

273, Department of Taxation

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

**7a.Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Positions</b></i>	<i><b>Fund</b></i>
2012-13	\$120,000	0	GF
2013-14	\$2.3 million	6	GF
2014-15	\$1.5 million	6	GF
2015-16	\$1.1 million	13	GF
2016-17	\$1.1 million	13	GF
2017-18	\$1.1 million	13	GF
2018-19	\$1.1 million	13	GF

**8. Fiscal implications:**

Administrative Costs

The Department would incur administrative expenses of approximately \$120,000 in Fiscal Year 2013, \$2.3 million in Fiscal Year 2014, \$1.5 million in Fiscal Year 2015, \$1.1 million in Fiscal Year 2016, \$1.1 million in Fiscal Year 2017, \$1.1 million in Fiscal Year 2018, and \$1.1 million in Fiscal Year 2019. The administrative costs would include costs to make systems and forms changes, costs for 6 full time employees to administer the retail licensing program beginning in Fiscal Year 2014 and 7 auditors beginning in Fiscal Year 2016. The Department would be authorized to establish an application or renewal fee not to exceed \$750 for processing applications, conducting background investigations, and issuing licenses.

Revenue Impact

Currently, the Tobacco Products Tax is imposed on moist snuff and loose leaf tobacco based on net weight. The Tobacco Products Tax is imposed on all other tobacco products at the rate of 10% on the manufacturer's sales price. Imposing the Tobacco Products Tax at the rate of 5 percent of the retail sales price would result in a total revenue decrease of approximately \$6.9 million in Fiscal Year 2015, \$7.8 million in Fiscal Year 2016, \$7.9 million in Fiscal Year 2017, \$8.0 million in Fiscal Year 2018, and \$8.1 million in Fiscal Year 2019. The chart below shows the estimated revenue impact of the bill to the Health Care Fund.

**Retail License Fee (\$30 per year), Imposition of the Tobacco Products Tax at the Retail Level  
(5%)**

<u>Fiscal Year</u>	<u>License Fees</u>	<u>Moist Snuff</u>	<u>Loose Leaf</u>	<u>Non-Moist Snuff, Non-Loose Leaf OTP</u>	<u>Health Care Fund</u>
2015	\$600,000	(\$3,685,164)	(\$85,140)	(\$3,744,592)	<b>(\$6,914,896)</b>
2016	\$600,000	(\$4,204,727)	(\$71,870)	(\$4,085,009)	<b>(\$7,761,606)</b>
2017	\$600,000	(\$4,342,747)	(\$59,341)	(\$4,085,009)	<b>(\$7,887,098)</b>
2018	\$600,000	(\$4,483,083)	(\$46,061)	(\$4,085,009)	<b>(\$8,014,154)</b>
2019	\$600,000	(\$4,625,558)	(\$31,985)	(\$4,085,009)	<b>(\$8,142,552)</b>

**9. Specific agency or political subdivisions affected:**

Department of Taxation  
Virginia Health Care Fund

**10. Technical amendment necessary:** Yes.

If the intent of the bill is to require the Department to promulgate guidelines exempt from the Administrative Process Act, the following technical amendment is suggested:

Page 3, Line 181, After end of line

Insert: Such guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**11. Other comments:**

Tobacco Products Tax

Prior to January 1, 2011, the tobacco products tax was imposed on tobacco products at the rate of 10% on the manufacturer's sales price. 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.

Effective January 1, 2011, the tobacco products tax is imposed on moist snuff at a rate of \$0.18 per ounce based on net weight. Moist snuff is defined as any tobacco product consisting of 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.

Effective January 1, 2011, the tobacco products tax is imposed on loose leaf tobacco at rates of \$0.21 for each unit that is less than 4 ounces, \$0.40 for each unit that is at least 4 ounces but not more than 8 ounces, and \$0.70 for each unit more than 8 ounces but not more than 24 ounces. Units of loose leaf tobacco that exceed 24 ounces are subject to the Tobacco Products Tax at a rate of \$0.21 per unit plus \$0.21 for each 4 ounce increment that the unit exceeds 16 ounces. Loose leaf tobacco is defined as any leaf tobacco that is not intended to be smoked, but does not include moist snuff.

The tax continues to be imposed on all other tobacco products at the rate of 10% on the manufacturer's sales price.

#### Roll-Your-Own Tobacco

Under current law, roll-your-own tobacco is included in the definition of "cigarette" and subject to the Virginia Cigarette Tax at the rate of 10% of the manufacturer's sales price. This bill would continue to impose the Cigarette Tax on roll-your-own tobacco at the rate of 10% of the manufacturer's sales price.

#### Health Care Fund

Under current law, all revenues from the Cigarette Tax, the tax on roll-your-own tobacco and 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.

Currently, the revenues from the Cigarette Tax are dedicated to the Health Care Fund and used solely for the provision of health care services including, but not limited to, Medicaid payments, disease diagnosis, prevention and control, and community health services.

#### Other States

A few states, including California, Massachusetts, New York and Washington, and many localities require a permit or license in order to sell tobacco products at the retail level. However, of the states that impose a tobacco products tax, none impose the tax at the retail level.

## Proposal

This bill would repeal the current Tobacco Products Tax and impose the Tobacco Products Tax at the retail sales level at a rate of 5 percent effective July 1, 2014. Retail dealers would be required to file monthly returns showing the quantity and retail sales price of each tobacco product sold in the Commonwealth during the preceding month and would be allowed a dealer discount of 2 percent as compensation for accounting for and timely remitting the tax. Retail dealers would be required to be licensed by the Department and pay a \$30 license fee per year per location prior to selling tobacco products.

The Department would be required to conduct a background investigation prior before issuing a license and maintain a current list of licensed retail dealers, updated on a semiannual basis and published on the Department's website. Such license would be valid for a period of 5 years. The Department would be authorized to establish an application or renewal fee not to exceed \$750 for processing applications, conducting background investigations, and issuing licenses. Any amount collected in excess of such costs as of June 30 in even-numbered years would be required to be reported to the State Treasurer and deposited into the state treasury. The Department also would be required to promulgate guidelines with the necessary information for the licensure of retail dealers by January 1, 2014.

The provisions of the act would be effective July 1, 2014.

## Similar Legislation

**House Bill 2219** and **Senate Bill 1092** would authorize the Tax Commissioner to reduce the face amount of the required bond or irrevocable letter of credit filed by a stamping agent in order to obtain Virginia cigarette revenue stamps without concurrent payment.

**Senate Bill 1021** would authorize the Attorney General and the Department of Taxation to allow the reports required to be submitted by stamping agents to be filed electronically. The bill would also authorize the Department of Taxation to allow the reports required to be submitted by manufacturers producing cigarettes and tobacco products to be filed electronically. Additionally, the bill would authorize the Department to allow for the electronic purchase and payment of Virginia cigarette tax revenue stamps.

cc : Secretary of Finance

Date: 1/22/2013 AM  
DLAS File Name: HB2332F161