

DEPARTMENT OF TAXATION

2009 Fiscal Impact Statement

1. **Patron** Terry G. Kilgore

2. **Bill Number** HB 2645

3. **Committee** House Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. **Title** Tobacco Products Tax; Moist Snuff

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would impose the Tobacco Products Tax on moist snuff at the rate of \$0.26 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 also provide that for each Fiscal Year beginning with Fiscal Year 2010, 50 percent of the amount by which the revenues collected from the Tobacco Products Tax exceed the revenue collected in Fiscal Year 2009 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 a monthly 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, and the revenues are deposited into the Health Care Fund.

The effective date on this bill is not specified.

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

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

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Fund</i>
2008-09	\$0	GF
2009-10	\$2.83 million	GF
2010-11	\$3.06 million	GF
2011-12	\$3.25 million	GF
2012-13	\$3.47 million	GF
2013-14	\$3.67 million	GF
2014-15	\$3.90 million	GF

6a. Expenditure Impact: (Department of Taxation)

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2008-09	\$0	0	GF
2009-10	\$47,800	1	GF
2010-11	\$48,400	1	GF
2011-12	\$49,400	1	GF
2012-13	\$50,400	1	GF
2013-14	\$51,400	1	GF
2014-15	\$52,400	1	GF

7. Budget amendment necessary: Yes.ITEM(S): Page 1, Revenue Estimates270, Department of Taxation56, Legal Services, Office of the Attorney General306, Medicaid Program Services, Department of Medical Assistance Services**8. Fiscal implications:**Administrative Costs

TAX would incur costs of \$47,800 in Fiscal Year 2010, \$48,400 in Fiscal Year 2011, \$49,400 in Fiscal Year 2012, \$50,400 in Fiscal Year 2013, \$51,400 in Fiscal Year 2014, and \$52,400 in Fiscal Year 2015 for an additional full time employee to reconcile the Tobacco Products Tax returns with the new report.

Revenue Impact

The introduced Executive Budget incorporates the elimination of the discount provided to dealers of other tobacco products as compensation for accounting for and timely remitting the Tobacco Products Tax and the imposition of the Tobacco Products Tax on moist snuff at a rate of \$0.25 per ounce. The revenue estimate for this bill assumes the elimination of the Tobacco Products Tax discount contained in the introduced Executive Budget.

The introduced Executive Budget continues to allocate the revenues collected from the Tobacco Products Tax to the Health Care Fund. House Bill 2645 would provide that, beginning in Fiscal Year 2010, 50 percent of the amount by which the revenues collected from the Tobacco Products Tax exceed the revenue collected in Fiscal Year 2009 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 \$15.20 million in Fiscal Year 2010, \$15.68 million in Fiscal Year 2011, \$16.09 million in Fiscal Year 2012, \$16.51 million in Fiscal Year 2013, \$16.95 million in Fiscal Year 2014, and \$17.40 million in Fiscal Year 2015. The Tobacco Products Tax on smokeless tobacco is estimated to generate \$8.9 million in Fiscal Year 2009. This would generate revenues for the new Tobacco Enforcement Fund of \$3.15 million in Fiscal Year 2010, \$3.39 million in Fiscal Year 2011, \$3.59 million in Fiscal Year 2012, \$3.81 million in Fiscal Year 2013, \$4.02 million in Fiscal Year 2014, and \$4.25 million in Fiscal Year 2015. 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, passage of this bill would result in a revenue loss to the Health Care Fund of \$2.29 million in Fiscal Year 2010, \$2.63 million in Fiscal Year 2011, \$3.02 million in Fiscal Year 2012, \$3.44 million in Fiscal Year 2013, \$3.85 million in Fiscal Year 2014, and \$4.30 million in Fiscal Year 2015. Compared to the introduced Executive Budget, passage of this bill would result in a revenue loss to the Health Care Fund of \$2.83 million in Fiscal Year 2010, \$3.06 million in Fiscal Year 2011, \$3.25 million in Fiscal Year 2012, \$3.47 million in Fiscal Year 2013, \$3.67 million in Fiscal Year 2014, and \$3.90 million in Fiscal Year 2015. 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.

Overall, compared to current law, this bill would increase revenues by \$0.86 million in Fiscal Year 2010, \$0.76 million in Fiscal Year 2011, \$0.57 million in Fiscal Year 2012, \$0.37 million in Fiscal Year 2013, and \$0.17 million in Fiscal Year 2014 and decrease revenues by \$0.05 million in Fiscal Year 2015.

The following chart shows the current revenue generated by the Tobacco Products Tax on moist snuff at 10% of the manufacturer's sales price, the incremental revenue impact of the imposition of the Tobacco Products Tax on moist snuff at the rate of \$0.26 per ounce provided in this bill, and the incremental revenue impact of the imposition of the Tobacco Products Tax on moist snuff at the rate of \$0.25 per ounce assumed in the introduced Executive Budget. Both revenue impacts assume the elimination of the Tobacco Products Tax discount contained in the introduced Executive Budget.

Revenue Impact
(millions of dollars)

	Current Law Moist Snuff Taxation at the rate of 10% of manufacturer's sales price	House Bill 2645 Moist Snuff Taxation at the rate of \$0.26 per ounce compared to Current Law	Introduced Executive Budget Moist Snuff Taxation at the rate of \$0.25 per ounce compared to Current Law
FY 2010	\$7.58	\$0.86	\$0.54
FY 2011	\$7.88	\$0.76	\$0.43
FY 2012	\$8.20	\$0.57	\$0.23
FY 2013	\$8.53	\$0.37	\$0.03
FY 2014	\$8.87	\$0.17	(\$0.18)
FY 2015	\$9.22	(\$0.05)	(\$0.40)

The following chart compares the estimated revenue impact of this bill, assuming the elimination of the Tobacco Products Tax discount, with the revenue impact of the imposition of the Tobacco Products Tax on moist snuff at a rate of \$0.25 per ounce and the elimination of the Tobacco Products Tax discount assumed in the introduced Executive Budget.

Revenue Impact

(millions of dollars)

	House Bill 2645 Moist Snuff Taxation with the elimination of the dealer discount		Introduced Executive Budget Moist Snuff Taxation and elimination of the dealer discount		Difference between the House Bill 2645 and the Introduced Executive Budget Moist Snuff Taxation	
	HCF	TEF	HCF	TEF	HCF	TEF
FY 2010	(\$2.29)	\$3.15	\$0.54	\$0	(\$2.83)	\$3.15
FY 2011	(\$2.63)	\$3.39	\$0.43	\$0	(\$3.06)	\$3.39
FY 2012	(\$3.02)	\$3.59	\$0.23	\$0	(\$3.25)	\$3.59
FY 2013	(\$3.44)	\$3.81	\$0.03	\$0	(\$3.47)	\$3.81
FY 2014	(\$3.85)	\$4.02	(\$0.18)	\$0	(\$3.67)	\$4.02
FY 2015	(\$4.30)	\$4.25	(\$0.40)	\$0	(\$3.90)	\$4.25

9. Specific agency or political subdivisions affected:

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

10. Technical amendment necessary: Yes.

TAX believes that it can adequately enforce the provisions of the Tobacco Products Tax if manufacturers file annual reports instead of monthly reports, as required by this bill. Annual reports will give TAX the information it needs for enforcement and lessen the filing burden on manufacturers. Accordingly, TAX recommends the following technical amendments:

Page 2, Line 71, after § 58.1-1021.02:1.

Strike: Monthly

Insert: Annual

Page 2, Line 73, after than

Strike: the 20th day of each month

Insert: January 20 of each year

Page 2, Line 74, after preceding

Strike: month

Insert: year

11. Other comments:

Tobacco Products Tax

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.

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 \$0.26 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 also provide that, for each Fiscal Year beginning with Fiscal Year 2010, 50 percent of the amount by which the revenues collected from the Tobacco Products Tax exceed the revenue collected in Fiscal Year 2009 from the Tobacco Products Tax on smokeless tobacco would be deposited into a new special nonreverting trust fund to be known as the Tobacco Enforcement Fund. This fund would be appropriated to the Office of the Attorney General 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 a monthly 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. TAX has suggested a technical amendment to require manufacturers shipping tobacco products into the Commonwealth to file the report annually.

The effective date on this bill is not specified.

Similar Legislation

Senate Bill 1516 is identical to this bill.

House Bill 2389 and **Senate Bill 947** would increase the Cigarette Tax from 30 cents per pack to 60 cents per pack of 20 cigarettes and would eliminate the discount provided as compensation to stamping agents on their purchases of Virginia revenue stamps and to dealers for the Tobacco Products Tax. The bill would also impose the Tobacco Products Tax on moist snuff at the rate of \$0.25 per ounce based on net weight.

House Bill 2249 would authorize all counties, cities and towns to impose a local cigarette tax at a rate not exceeding 30 cents per pack. Any county cigarette tax authorized by this bill would apply within the limits of any town located in such county only with the town's consent. This bill would remove the grandfather clause that enabled localities that were authorized to impose a local cigarette tax prior to January 1, 1977 to continue to do so.

House Bill 2379 would increase the Cigarette Tax from 30 cents per pack to \$1.19 per pack of 20 cigarettes, with the additional revenue dedicated to funding for the Medicaid program and for public schools. The bill would also increase the excise tax on roll-your-own tobacco from 10% to 30% of the manufacturer's sales price.

cc : Secretary of Finance

Date: 1/30/2009 AM
DLAS File Name: HB2645F161