

# DEPARTMENT OF TAXATION

## 2011 Fiscal Impact Statement

1. **Patron** Christopher K. Peace

3. **Committee** House Finance

4. **Title** Local Cigarette Tax; Enforcement

2. **Bill Number** HB 2038

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

TAX understands that the patron plans to introduce a substitute bill. This impact statement addresses the substitute bill.

This bill would require the Tax Commissioner to convene a working group to review the current policies on i) appeals of penalties related to the cigarette tax assessed on wholesalers and retailers; ii) the desirability of having a single stamp for state and local taxes; iii) methods of determining the validity of partially visible cigarette tax stamps; and iv) other related issues. The working group would consist of representatives the Virginia Wholesalers and Distributors Association, Virginia Retail Merchants Association, the Retail Alliance, the Virginia Petroleum, Convenience and Grocery Association, the Northern Virginia Cigarette Tax Board, the Virginia Municipal League, those counties that levy a local cigarette tax, and other individuals as deemed necessary

The bill requests the working group to begin as soon as possible after the conclusion of the 2011 General Assembly Session and provide a report and recommendations to the chairmen of the Senate and House Committees on Finance no later than December 1, 2011.

The effective date of this bill is not specified.

6. **Budget amendment necessary:** No.

7. **No Fiscal Impact** (See Line 8.)

### 8. **Fiscal implications:**

TAX would incur no costs in the implementation of this bill. As this bill simply convenes a working group, it would have no impact on state or local revenues.

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

Department of Taxation  
Localities imposing the local cigarette tax

**10. Technical amendment necessary:** No.

**11. Other comments:**

Background

TAX has issued procedures for the state cigarette tax to allow retailers who have been audited by TAX and found to possess unstamped cigarettes to obtain affidavits from stamping agents stating that the stamping agent was the source of the unstamped cigarettes. Once a stamping agent has issued such an affidavit, TAX will typically issue a warning letter or penalty to the stamping agent instead of the retailer. The stamping agent may then file an appeal or offer-in-compromise with TAX and seek a reduction or abatement of the penalty.

In addition, TAX discovered situations where stamping agents failed to affix stamps to cigarettes due to machine error or where stamping agents inadvertently ship unstamped cigarettes to retailers due to human error. Under the *Va. Code* at that time, these stamping agents were subject to overly harsh penalties. TAX worked with stamping agents to develop policies to ameliorate this situation and issued two Tax Bulletins, Virginia Tax Bulletin 07-3 (March 15, 2007) and Virginia Tax Bulletin 08-13 (December 11, 2008), setting out more relaxed penalty structures.

House Bill 820 and Senate Bill 476 (2010 *Acts of Assembly*, Chapters 35 and 471) reduced the penalties related to unstamped cigarettes. As a result, TAX issued comprehensive Guidelines and Rules Related to Cigarette Tax Enforcement (August 13, 2010) in order to provide guidance to taxpayers regarding the civil penalties, the appeals process, and other matters regarding the enforcement of the state cigarette tax.

Cigarette Taxes

All cities and towns with general taxing powers are currently authorized to impose a cigarette tax with no rate limitations. According to Tax Rates 2009, Virginia's Cities, Counties, and Selected Towns, by Weldon Cooper Center for Public Policy, thirty cities and forty-three towns currently report imposing a cigarette tax. Only two counties, Arlington and Fairfax, are authorized to impose a local cigarette tax, which is limited to the amount of the state cigarette tax rate. The state cigarette tax rate is currently 30 cents per pack of 20 cigarettes. Local cigarette taxes are typically administered and enforced at the local level. The Northern Virginia Cigarette Tax Board administers and enforces the local cigarette tax on behalf of 16 northern Virginia jurisdictions.

## Proposal

This bill would require the Tax Commissioner to convene a working group to review the current policies on i) appeals of penalties related to the cigarette tax assessed on wholesalers and retailers; ii) the desirability of having a single stamp for state and local taxes; iii) methods of determining the validity of partially visible cigarette tax stamps; and iv) other related issues. The working group would consist of representatives the Virginia Wholesalers and Distributors Association, Virginia Retail Merchants Association, the Retail Alliance, the Virginia Petroleum, Convenience and Grocery Association, the Northern Virginia Cigarette Tax Board, the Virginia Municipal League, and other individuals as deemed necessary

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## Similar Legislation

**Senate Bill 1085** is identical to this bill.

**House Bill 2138** would authorize all counties, cities and towns to impose a local cigarette tax. Any cigarette tax authorized by this bill would be limited to 5 cents per pack or the amount levied under state law, whichever is greater.

cc : Secretary of Finance

Date: 1/25/2011 AM  
DLAS File Name: HB2038F161