

DEPARTMENT OF TAXATION

2024 Fiscal Impact Statement

1. **Patron** Terry G. Kilgore

3. **Committee** House Finance

4. **Title** Heated tobacco; Taxation

2. **Bill Number** HB 1099

House of Origin:

X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would redefine “cigarette” for Cigarette Tax purposes to include any product containing nicotine that is intended to be burned or heated under ordinary conditions of use and would subject cigarettes intended to be heated to taxation at the rate of 2.25 cents per stick.

Under current law, heated tobacco products are not considered “cigarettes” for purposes of the Cigarette Tax but are instead taxed under the Tobacco Products Tax. Heated tobacco products are currently subject to the tax at the rate of 2.25 cents per stick.

If enacted during the regular session of the 2024 General Assembly, this bill would become effective July 1, 2024.

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

7. **No Fiscal Impact.**

8. **Fiscal implications:**

Administrative Costs

This bill would have no impact on local costs.

The Department of Taxation (“the Department”) considers implementation of this bill to be routine and does not require additional funding.

Revenue Impact

This bill would have no impact on state or local revenues. The rate of taxation and distribution of the revenues from the tax on heated tobacco products is unchanged by the bill.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Taxation of Heated Tobacco Products

“Heated tobacco products” are currently defined as “a product containing tobacco that produces an inhalable aerosol (i) by heating the tobacco by means of an electronic device without combustion of the tobacco or (ii) by heat generated from a combustion source that only or primarily heats rather than burns the tobacco.” These items are currently distinct from “cigarettes” for purposes of taxation because they are intended to be heated and not burned. Cigarettes are subject to the Cigarette Tax at a rate of 3 cents per cigarette.

§ 3-5.21 of the 2023 Appropriation Act (Chapter 1, 2023 *Acts of Assembly*, Special Session I) provides that heated tobacco products are subject to the tobacco products tax at a rate of 2.25 cents per stick. The Tobacco Products Tax is currently imposed on cigars, smokeless tobacco, pipe tobacco, loose leaf tobacco, liquid nicotine, and heated tobacco products. Revenue from the tobacco products tax and the cigarette tax are both currently allocated to the Virginia Health Care Fund. If this bill is enacted, Item 3-5.19 of the budget bill for the 2024-2026 biennium (House Bill 30/Senate Bill 30) should be amended consistent with this bill.

The Cigarette Tax is paid through the purchase and application of stamps by cigarette stamping agents and, therefore, no returns are due to the Department. The Tobacco Products Tax, by contrast, is collected at the time of sale and is remitted to the Department by monthly return.

Proposal

This bill would redefine “cigarette” for cigarette tax purposes to include any product containing nicotine that is intended to be burned or heated under ordinary conditions of use. Cigarettes intended to be burned would remain subject to the 3 cent rate of tax whereas cigarettes intended to be heated would be subject to the 2.25 cent rate.

If enacted during the regular session of the 2024 General Assembly, this bill would become effective July 1, 2024.

Similar Bills

House Bill 1069 and **Senate Bill 550** would require any person that receives, stores, sells, handles, or transports liquid nicotine or nicotine vapor products to preserve all records relating to the purchase, sale, exchange, receipt, or transportation of all liquid nicotine or nicotine vapor products for a period of three years. The bill provides that all such records are subject to audit or inspection at any time by any duly authorized representative of the Attorney General or by the Department of Taxation, Attorney General, or any other Virginia

or federal law-enforcement agency conducting a criminal investigation involving the trafficking of liquid nicotine.

House Bill 790 and **Senate Bill 582** would provide a definition for “Retail Tobacco Product” that would encompass (i) any product containing, made of, or derived from tobacco or that contains nicotine, including a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (ii) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; and (iii) any component, part, or accessory of a product described in clause (i) or (ii), whether or not such component, part, or accessory contains tobacco or nicotine, including filters, rolling papers, blunt or hemp wraps, and pipes. This definition also includes any nicotine vapor product. The bills would also impose a tax, beginning July 1, 2024, upon liquid nicotine by any person engaged in business as a distributor, (i) upon liquid nicotine in closed systems at the rate of \$0.066 per milliliter; (ii) upon liquid nicotine in open systems at the rate of 10% of the wholesale price.

cc : Secretary of Finance

Date: 1/28/2024 VB
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