

# DEPARTMENT OF TAXATION

## 2024 Fiscal Impact Statement

1. **Patron** Terry G. Kilgore

2. **Bill Number** HB 1099

3. **Committee** Passed House and Senate

**House of Origin:**

           **Introduced**

           **Substitute**

           **Engrossed**

4. **Title** Heated tobacco; Taxation

**Second House:**

           **In Committee**

           **Substitute**

  X   **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. The bill would also clarify that a “cigarette intended to be heated” is excluded from the definition of “heated tobacco product” for purposes of the Tobacco Products Tax.

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: Yes.

Item(s): 258 and 260, Department of Taxation

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

#### 7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2024-25	\$403,000	0	GF
2025-26	\$297,000	0	GF
2026-27	\$297,000	0	GF
2027-28	\$297,000	0	GF
2028-29	\$297,000	0	GF
2029-30	\$297,000	0	GF

### 8. Fiscal implications:

#### Administrative Costs

The Department of Taxation (“the Department”) understands that the intent of this bill is to ensure that cigarettes intended to be heated are stamped. Because the products would be

subject to a different tax rate than other cigarettes and because the product is sold in custom size packaging, the Department would need to work with an external vendor to develop a new custom stamp that would apply to these items. As a result, the Department would incur estimated costs of \$403,000 in Fiscal Year 2025 and \$297,000 in Fiscal Year 2026, and every year thereafter, in stamp testing and design as well as updates to forms and processes. The Department would also require a one-year timeline for implementation of the new stamp and stamping process. As a result, this legislation would not be implemented until July 1, 2025.

This bill would have no impact on local costs.

#### 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 would be 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.

Item § 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. The bill would also clarify that a “cigarette intended to be heated” is excluded from the definition of “heated tobacco product” for purposes of the Tobacco Products Tax.

The bill would define “cigarette intended to be heated” as a cigarette 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.

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

cc : Secretary of Finance

Date: 3/6/2024 VB  
HB1099FER161