

**DEPARTMENT OF TAXATION
2024 Fiscal Impact Statement**

- | | |
|---|--|
| <p>1. Patron Terry G. Kilgore</p> <p>3. Committee Senate Finance and Appropriations</p> <p>4. Title Heated tobacco; Taxation</p> | <p>2. Bill Number <u>HB 1099</u></p> <p>House of Origin:
 <input type="checkbox"/> Introduced
 <input type="checkbox"/> Substitute
 <input type="checkbox"/> Engrossed</p> <p>Second House:
 <input checked="" type="checkbox"/> In Committee
 <input type="checkbox"/> Substitute
 <input type="checkbox"/> Enrolled</p> |
|---|--|

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 “cigarette” includes “heated tobacco products” that are currently subject to 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 heated tobacco products 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 heated tobacco products. 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 “cigarette” includes “heated tobacco products” that are currently subject to the Tobacco Products Tax.

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, a heated tobacco product, 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: 2/23/2024 VB
HB1099FH1161