

DEPARTMENT OF TAXATION

2022 Fiscal Impact Statement

1. **Patron** Ryan T. McDougale

2. **Bill Number** SB 748

3. **Committee** Passed House and Senate

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Tobacco Products Tax; Remote Retail Sales

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. **Summary/Purpose:**

This bill would clarify the provisions of the Tobacco Products Tax on cigars and pipe tobacco sold by “remote retail sellers” to consumers in the Commonwealth. It would also require remote retail sellers to be licensed and to collect and remit the tax based on the actual price paid by the remote retail seller for each individual stock keeping unit.

Under current law, the Tobacco Products Tax is generally paid by licensed distributors based on the “manufacturer’s sales price,” which is the actual price for which a manufacturer, manufacturer’s representative, or any other person sells tobacco products to an unaffiliated distributor.

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

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

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

8. **Fiscal implications:**

Administrative Costs

The Department of Taxation considers implementation of this bill as routine and does not require additional funding.

Revenue Impact

There would be no impact to state revenues as a result of this bill because under Item 3-5.21 of the Appropriation Act, distributors of tobacco products are currently required to pay the Tobacco Products Tax on their remote sales.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: No

11. Other comments:

Tobacco Products Tax

Under current law, the Tobacco Products Tax is imposed on cigars, smokeless tobacco, pipe tobacco, loose leaf tobacco, liquid nicotine, and heated tobacco products. Cigarettes are not subject to the tax on tobacco products.

Cigars are any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco other than any roll of tobacco that is a cigarette. Pipe tobacco is 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.

Effective July 1, 2020, Item 3-5.21 of House Bill 30 (the 2020 Appropriation Act) increased the tobacco products tax rates on all products subject to the tax. Most tobacco products, other than moist snuff, loose leaf tobacco, and liquid nicotine are subject to the tax at the rate of 20% of the manufacturer's sales price. This includes cigars and pipe tobacco.

The tobacco products tax is generally paid by licensed distributors based on the "manufacturer's sales price," which is the actual price for which a manufacturer, manufacturer's representative, or any other person sells tobacco products to an unaffiliated distributor.

Under the Appropriation Act, a distributor of tobacco products is deemed to have sufficient activity within the Commonwealth to require registration, if such distributor:

- Receives more than \$100,000 in gross revenue, or other minimum amount as may be required by federal law, from sales of tobacco products in the Commonwealth in the previous or current calendar year, provided that in determining the amount of a dealer's gross revenues the sales made by all commonly controlled persons as defined in subsection D of Va. Code § 58.1-612 shall be aggregated; or
- Engages in 200 or more separate tobacco products sales transactions, or other minimum amount as may be required by federal law, in the Commonwealth in the previous or current calendar year, provided that in determining the total number of a dealer's retail sales transactions the sales made by all commonly controlled persons as defined in subsection D of Va. Code § 58.1-612 shall be aggregated.

Proposal

This bill would clarify the provisions of the Tobacco Products Tax on cigars and pipe tobacco sold by "remote retail sellers" to consumers in the Commonwealth. It would require remote retail sellers to be licensed and to collect and remit the tax based on the

“actual cost” paid by the remote retail seller for each individual stock keeping unit. If the actual cost is not available, the average of the actual cost over the 12 calendar months before January 1 of the year in which the sale occurs would be used.

The tax would be imposed:

- At the time of retail sale by a retail dealer or distributor; or
- At the time the distributor makes, manufactures, or fabricates tobacco products in the Commonwealth for sale in the Commonwealth; or
- At the time the distributor ships, or transports tobacco products to retailers in the Commonwealth to be sold by those retailers.

If enacted during the regular session of the 2022 General Assembly, this bill would become effective July 1, 2022.

Similar Legislation

House Bill 1199 is identical to this bill.

cc : Secretary of Finance

Date: 3/1/2022 SK
SB748EFR161