



MEMORANDUM

To: RRRC Executive Committee and Chief Administrative Officers
From: Patrick L. Mauney, Executive Director
Subject: Regional Cigarette Tax

As requested by the Regional Commission in February, the attached document outlines some of the key considerations related to a regional cigarette tax program, given the new authority granted to counties to levy such a tax. The document also includes estimates for revenue based on existing cigarette tax revenues in various cities and towns in Virginia and preliminary expenses based on staff's understanding of program requirements.

In general, should a regional cigarette tax board be formed by one or more jurisdictions, my suggestion would be for that board to then develop a contract or memorandum of agreement with the Regional Commission (or other entity) to handle administrative and fiscal functions.

Background

In 2020, the Virginia General Assembly passed legislation authorizing all counties to levy a tax on cigarettes, effective July 1, 2021. Previously, only cities, towns and two counties were authorized to levy a cigarette tax.

In 2021, General Assembly passed Senate Bill 1326 clarifying Regional cigarette tax boards, defining Regional Cigarette Tax Boards as “a board established by a group of at least six member localities pursuant to their powers under this article, Chapter 13 (§ 15.2-1300 et seq.) of Title 15.2, and the Regional Cooperation Act (§ 15.2-4200 et seq.), with the purpose of administering local cigarette taxes on a regional basis subject to the provisions of this section, and further authorizing such regional boards the following duties:

1. Providing for the use of a uniform meter impression or stamp as evidence of payment of any local cigarette tax within the region.
2. Entering into an arrangement, on behalf of or in cooperation with its member localities, with the Department [of Taxation] pursuant to the provisions of subsection A of §58.1-3830, for the use of a dual die or stamp as evidence of payment of any applicable local and state tax.
3. Providing a single point of contact for a stamping agent authorized under this article or Chapter 10 (§58.1-1000) to remit local cigarette taxes due to any member locality.
4. Providing a discount to a stamping agent as compensation for accounting for the tax due under this article. The discount shall be in amount of two percent of the tax otherwise due.
5. Distributing any local cigarette taxes collected by the Board to the appropriate member locality.
6. Enforcing all local cigarette tax ordinances within the region.
7. Promoting uniformity of cigarette tax ordinances among its member localities.
8. To the extent possible, encouraging uniformity of cigarette tax rates among its member localities.
9. Accomplishing any other purpose that helps promote the uniform administration of local cigarette taxes throughout the region.

Regional Considerations

In February 2021, the Rappahannock-Rapidan Regional Commission requested staff to provide a summary outline for a potential Regional Cigarette Tax Board in the Rappahannock-Rapidan (Planning District 9) region.

As of January 2021, four towns within the region levy cigarette taxes. Three of these towns – Culpeper, Gordonsville and Orange – administer their programs internally. One – the Town of Warrenton – is a member of the Northern Virginia Cigarette Tax Board, which was established in 1970 and currently has 19 member localities.

As noted above, the Code of Virginia requires at least six member localities to form a cigarette tax board. In the Rappahannock-Rapidan region, this would require each County along with one town or an additional County outside the region to meet that statutory requirement.

Should a regional cigarette tax board in the Rappahannock-Rapidan region form based on agreement of local governments, the suggested method would be for the local governments to adopt ordinances and grant the regional board authority for the duties enacted in the Code of Virginia. The regional board would then be able to develop administrative memorandums of agreement with a suitable administrative and fiscal agent to carry out organizational day to day operations, as outlined below.

Regional Program Requirements & Resource Estimates

There are two primary functions for a cigarette tax program: administration and compliance.

Of the three towns in the Rappahannock-Rapidan region and other cities/towns in Virginia that currently administer their own cigarette tax collection, the overall indication is that the administrative burden is minimal and largely consists of purchasing and distributing tax stamps to wholesalers and/or retailers. A regional administration may require more administrative activity related to tracking sales by locality depending upon the scope of the program.

The compliance needs are less known, as this function within local programs may be complaint-based rather than through active auditing and enforcement, and would likely be enforced by local law enforcement. A regional program would likely require some capacity for enforcement or significant collaboration with individual local law enforcement agencies as an alternative. It is likely that a regional program would require at least one employee and vehicle to fulfill compliance requirements assuming a regional Cigarette Tax Board and adopted local ordinances are proactive in auditing and enforcement.

While ongoing administrative costs could likely be derived as a percentage of program revenue, compliance costs would require startup funds in terms of direct full-time equivalent (FTE) costs based on local government members' desire to have a centralized enforcement mechanism, as opposed to utilizing any existing locality business compliance mechanisms.

Administrative Time Estimate: 20 hours per month (first 6 months); 5 hours per month thereafter;
associated supplies, materials

Compliance Time Estimate: up to 1 FTE position (ongoing) + benefits. Estimated cost for FTE compliance position is based on midpoint Deputy Sheriff's salary in Culpeper & Fauquier counties, plus associated benefits. Compliance costs also include estimated costs for travel, though these may be adjusted depending on whether a vehicle is procured for use in compliance activities.

Direct costs for the program may be covered in total or as a percentage of program revenue.

Monthly Cost Estimates	Administrative	Compliance	Total
Startup (First Year)	\$18,000	\$100,000	\$118,000
Ongoing	\$9,000	\$80,000	\$89,000

*NOTE: These are basic estimates based on RRRC cost burdens and subject to change

Regional Program Revenue Estimates

There is currently no data available as to how many packs of cigarettes are sold per County to provide a strong foundation for projecting revenues based on a regional cigarette tax. Using budget and revenue data from those localities currently levying the tax shows that the amount of tax generated per capita varies widely.

Revenue = (Rate) x (Population) x (per capita revenue per cent of tax) where we know the budgeted revenue, rate and population.

Locality	Rate	Revenue (FY 19)	Population (2019)	Per Cent of Tax Per Capita
Town of Culpeper	\$.20	\$247,326	18,873	\$0.5961
Town of Gordonsville	\$.20	\$45,000	1,624	\$1.3855
Town of Orange	\$.12	\$77,520	5,096	\$1.2677
Town of Warrenton	\$.20	\$184,943	10,027	\$0.9222
City of Charlottesville	\$.55	\$671,562	47,266	\$0.2583
City of Fredericksburg	\$.31	\$474,305	29,036	\$0.5269
City of Manassas	\$.65	\$605,900	41,085	\$0.2269
City of Manassas Park	\$.75	\$179,952	17,478	\$0.1373
Town of Leesburg	\$.75	\$726,665	53,727	\$0.1803
Town of Purcellville	\$.65	\$209,943	10,178	\$0.3173

Using the FY 2019 revenues in the four towns in the region, the average of revenue generated as per cent of tax per capita is \$1.05. However, other nearby jurisdictions generate much lower revenues per cent of tax per capita. The six selected jurisdictions generate an average of \$0.27 per cent of tax per capita. The table below shows revenue estimates at various rates using the lower average (\$0.2745), the average of all 10 localities listed above (\$0.5878), and the Rappahannock-Rapidan towns' average (\$1.0576) per cent of tax per capita estimate.

Effective July 1, 2020, § 58.1-3830 of the Code of Virginia sets the maximum tax rate imposed by a locality on cigarettes as not exceeding two cents (\$0.02) per cigarette sold, unless such locality had a higher rate in effect on January 1, 2020. For jurisdictions in the Rappahannock-Rapidan region, this limits the maximum tax rate on cigarettes at forty cents (\$0.40) per pack sold.

NEARBY LOCALITIES AVERAGE (\$0.2745)

Rate	Revenue	Population (Counties Minus Towns with Existing Tax)	Per Cent of Tax Per Capita
\$.20	\$800,931	145,889	\$0.2745
\$.30	\$1,201,396	145,889	\$0.2745
\$.40	\$1,601,861	145,889	\$0.2745

AVERAGE OF ALL 10 LOCALITIES ABOVE (\$0.5878)

Rate	Revenue	Population (Counties Minus Towns with Existing Tax)	Per Cent of Tax Per Capita
\$.20	\$1,715,071	145,889	\$0.5878
\$.30	\$2,572,607	145,889	\$0.5878
\$.40	\$3,430,142	145,889	\$0.5878

RRRC TOWNS AVERAGE (\$1.0576)

Rate	Revenue	Population (Counties Minus Towns with Existing Tax)	Per Cent of Tax Per Capita
\$.20	\$3,085,844	145,889	\$1.0576
\$.30	\$4,628,766	145,889	\$1.0576
\$.40	\$6,171,688	145,889	\$1.0576

It should be noted that the estimates above may overestimate revenues due to a number of factors. First, cigarette taxes are a declining revenue stream for most places where such a tax is in place. Second, the towns in the Rappahannock-Rapidan region have more retail locations and may be generating per cent of tax per capita at a higher rate than would be expected from the unincorporated areas of the region's counties. Conversely, due to stamps being sold to retailers or wholesalers in large rolls, there may be an initial revenue bump that may offset some of the startup costs.

County Revenue Estimates

If we use the lowest average above – the \$0.2745 average of nearby localities – and assume adoption of the maximum \$0.40 rate, the tax would generate an estimated \$1,600,000 in the region. Estimated first year costs are \$118,000, leaving a total of \$1,482,000.

Using proportional population figures less towns that levy the cigarette tax, that estimated revenue could be distributed as outlined in the table below.

County	Population (Less Towns with Existing Tax)	Proportion	Revenue Estimate
Culpeper	33,732	0.23	\$342,663
Fauquier	61,195	0.42	\$621,644
Madison	13,261	0.09	\$134,711
Orange	30,331	0.21	\$308,115
Rappahannock	7,370	0.05	\$74,867

Additional Materials

The following documents are included here for reference.

Code of Virginia §58.1-3830 (as amended):

<https://law.lis.virginia.gov/vacodefull/title58.1/chapter38/article7/>

Fairfax County Code, Chapter 4, Article 11 – Cigarette Tax

Final Report of the Cigarette Stamping Work Group (October 30, 2020)

Northern Virginia Cigarette Tax Agreement

Mount Rogers Cigarette Tax Board Agreement

ADDITIONAL ATTACHMENTS

- i. [Code of Virginia §58.1-3830 \(as amended\)](#)
- ii. [Fairfax County Code, Chapter 4, Article 11 – Cigarette Tax](#)
- iii. [Final Report of the Cigarette Stamping Work Group \(October 30, 2020\)](#)
- iv. [Northern Virginia Cigarette Tax Agreement](#)
- v. [Mount Rogers Cigarette Tax Board Agreement](#)

Code of Virginia
Title 58.1. Taxation
Chapter 38. Miscellaneous Taxes

Article 7. Cigarette Tax.

§ 58.1-3830. (Effective until July 1, 2021) Local taxes not prohibited; use of dual die or stamp to evidence payment of both county, city, or town and state tax on cigarettes.

A. No provision of Chapter 10 (§ 58.1-1000 et seq.) of this title shall be construed to deprive counties, cities and towns of the right to levy taxes upon the sale or use of cigarettes, provided such county, city or town had such power prior to January 1, 1977. The governing body of any county, city or town which levies a cigarette tax and permits the use of meter impressions or stamps to evidence its payment may authorize an officer of the county, city or town or joint enforcement authority to enter into an arrangement with the Department of Taxation under which a tobacco wholesaler who so desires may use a dual die or stamp to evidence the payment of both the county, city, or town tax, and the state tax, and the Department is hereby authorized to enter into such an arrangement. The procedure under such an arrangement shall be such as may be agreed upon by and between the authorized county, city, town or joint enforcement authority officer and the Department.

B. Any county cigarette tax imposed shall not apply within the limits of any town located in such county where such town now, or hereafter, imposes a town cigarette tax. However, if the governing body of any such town shall provide that a county cigarette tax, as well as the town cigarette tax, shall apply within the limits of such town, then such cigarette tax may be imposed by the county within such town.

Code 1950, § 58-757.27; 1960, c. 392, § 27; 1962, c. 473; 1977, c. 595; 1984, c. 675.

§ 58.1-3830. (Effective July 1, 2021) Local cigarette taxes authorized; use of dual die or stamp to evidence payment.

A. Any county, city, or town is authorized to levy taxes upon the sale or use of cigarettes. The governing body of any county, city, or town that levies a cigarette tax and permits the use of meter impressions or stamps to evidence its payment may authorize an officer of the county, city, or town or joint enforcement authority to enter into an arrangement with the Department of Taxation under which a tobacco wholesaler who so desires may use a dual die or stamp to evidence the payment of both the county, city, or town tax, and the state tax, and the Department is hereby authorized to enter into such an arrangement. The procedure under such an arrangement shall be such as may be agreed upon by and between the authorized county, city, town or joint enforcement authority officer and the Department.

B. Any county cigarette tax imposed shall not apply within the limits of any town located in such county where such town now, or hereafter, imposes a town cigarette tax. However, if the governing body of any such town shall provide that a county cigarette tax, as well as the town cigarette tax, shall apply within the limits of such town, then such cigarette tax may be imposed by the county within such town.

C. The maximum tax rate imposed by a locality on cigarettes pursuant to the provisions of this section shall be as follows:

1. If such locality is (i) a city or town that, on January 1, 2020, had in effect a rate not exceeding two cents (\$0.02) per cigarette sold or (ii) a county, then the maximum rate shall be two cents (\$0.02) per cigarette sold.
2. If such locality is a city or town that, on January 1, 2020, had in effect a rate exceeding two cents (\$0.02) per cigarette sold, then the maximum rate shall be the rate in effect on January 1, 2020.

Code 1950, § 58-757.27; 1960, c. 392, § 27; 1962, c. 473; 1977, c. 595; 1984, c. 675; 2020, cc. [1214](#), [1263](#).

§ 58.1-3831. (Repealed effective July 1, 2021) Tax in certain counties.

Fairfax and Arlington Counties shall have the power to levy tax upon the sale or use of cigarettes. Such tax shall be in such amount and on such terms as the governing body may by ordinances prescribe, not to exceed five cents per pack or the amount levied under state law, whichever is greater. The provisions of § 58.1-3830 shall apply to such counties, mutatis mutandis.

Code 1950, § 58-757.28; 1970, c. 512; 1971, Ex. Sess., c. 213; 1984, c. 675.

§ 58.1-3832. Local ordinances to administer and enforce local taxes on sale or use of cigarettes.

Any county, city or town having a tax upon the sale or use of cigarettes may by ordinance, provide for the administration and enforcement of any such cigarette tax. Such local ordinance may:

1. Provide for the registration of any distributor, wholesaler, vendor, retailer or other person selling, storing or possessing cigarettes within or transporting cigarettes within or into such taxing jurisdiction for sale or use. Such registration may be conditioned upon the filing of a bond with a surety company authorized to do business in Virginia as surety, which bond shall not exceed one and one-half times the average monthly liability of such taxpayer. The county, city or town may revoke registration if such bond is impaired, but for no other reason. Any such distributor, wholesaler, retailer or other person whose business and residence is outside the taxing jurisdiction, who shall sell, store or possess in the taxing jurisdiction therein any cigarettes shall, by virtue of such sale, storage or possession submit himself to its legal jurisdiction and appoint as his attorney for any service of lawful process such officer or person as may be designated in the local ordinance for that purpose. A copy of any such process served on the said officer or person shall be sent forthwith by registered mail to the distributor, wholesaler or retailer.
2. Provide for the use of a tax stamp or meter impression as evidence of payment of the tax or other method or system of reporting payment and collection of such tax. Any local tax stamp or meter impression required to be used to evidence payment of the tax shall be of the same stamp technology that is used or required by the Commonwealth for the state cigarette tax stamp pursuant to Chapter 10 (§ 58.1-1000 et seq.). The purchase price of any tax stamps purchased under this section shall be refunded, without penalties or additional fees, upon verification by the county, city, or town imposing the tax that the stamps have been returned to such county, city, or town.
3. Provide that tobacco products found in quantities of more than six cartons within the taxing jurisdiction shall be conclusively presumed for sale or use within the jurisdiction and may be seized and confiscated if:
 - a. They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and of the consignee or purchaser, and the brands and quantity of cigarettes so transported, or are in transit and accompanied by a bill of lading or other document which is false or fraudulent, in whole or in part; or
 - b. They are in transit and are accompanied by a bill of lading or other document indicating:
 - (1) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or District of destination has been paid and the said products bear the tax stamps of that state or District; or
 - (2) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia sales and use tax certificate, a Virginia retail cigarette license and, where applicable, both a business license and retail cigarette license issued by the local jurisdiction of destination; or
 - c. They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subparagraph shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the taxing jurisdiction that those cigarettes are temporarily within the taxing jurisdiction and will be sent to consignees or purchasers outside the jurisdiction in the normal course of business.
4. Provide that cigarettes and other property, other than motor vehicles, used in the furtherance of any illegal evasion of the tax so seized and confiscated may be disposed of by sale or other method deemed appropriate by the local taxing authority. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.
5. Provide that persons violating any provision thereof shall be deemed guilty of a Class 1 misdemeanor, and require the payment of penalties for late payment not to exceed 10 percent per month, penalties for fraud or evasion of the tax not to exceed 50 percent, and interest not to exceed three quarters of one percent per month, upon any tax found to be overdue and unpaid. The mere possession of untaxed cigarettes in quantities of not more than six cartons shall not be a violation of any such ordinance.
6. Provide for the forfeiture and sale of any property seized; provided, however, that proper notice of such seizure shall be given to the known holders of property interests in such property and shall include procedures for administrative appeal as well as affirmative defenses which may be asserted by such holders which procedures must be set forth in reasonable detail.
7. Provide that any coin-operated vending machine, in which any cigarettes are found, stored or possessed bearing a counterfeit or bogus cigarette tax stamp or impression or any unstamped tobacco products, or any cigarettes upon which the tax has not been paid, may be declared contraband property and shall be subject to confiscation and sale as provided in subsection 6. When any such vending machine is found containing such cigarettes it shall be presumed that such cigarettes were intended for distribution,

sale or use therefrom. In lieu of immediate seizure and confiscation of any vending machines used in an illegal evasion of the tax it may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any cigarettes, and may be left unmoved until other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine had been seized. Such seal may be removed and the machine declared eligible for operation only by authorized enforcement authorities. Nothing in this section shall prevent seizure and confiscation of a vending machine at any time after it is sealed.


8. Provide that any counterfeit stamps or counterfeit impression devices may also be seized and confiscated.

9. Any county, city or town may enact an ordinance which would delegate its administrative and enforcement authority under its cigarette tax ordinance to one agency or authority pursuant to the provisions of § 15.2-1300. Such agency or authority may promulgate rules and regulations governing the display of cigarette stamps in vending machines, tax liens against property of taxpayers hereunder, extend varying discount rates and establish different classes of taxpayers or those required to collect and remit the tax, requirements concerning keeping and production of records, administrative and jeopardy assessment of tax where reasonably justified, required notice to authorities of sale of taxpayer's business, audit requirements and authority, and criteria for authority of distributors and others to possess untaxed cigarettes and any other provisions consistent with the powers granted by this section or necessarily implied therefrom. Such ordinance may further provide that such agency or authority created may issue a common revenue stamp, employ legal counsel, bring appropriate court action, in its own name where necessary to enforce payment of the cigarette taxes or penalties owed any member jurisdiction and provide cigarette tax agents, and the necessary enforcement supplies and equipment needed to effectively enforce the cigarette tax ordinance promulgated by each such county, city or town. Any cigarette tax agents shall meet such requirements of training or experience as may be promulgated from time to time by the enforcement authority when performing their duties and shall be required to carry proper identification and may be armed for their own protection and for the enforcement of such ordinance. Any such agent shall have the power of arrest upon reasonable and probable cause that a violation of any tobacco tax ordinance has been committed. Any common revenue stamp issued by such agency or authority shall be of the same stamp technology that is used or required by the Commonwealth for the state cigarette tax stamp pursuant to Chapter 10 (§ 58.1-1000 et seq.).

Code 1950, § 58-757.29; 1974, c. 472; 1977, c. 595; 1984, c. 675; 2012, cc. 89, 258; 2017, c. 113.

3/22/2021

Virginia Law Library

The Code of Virginia, Constitution of Virginia, Charters, Authorities, Compacts and Uncodified Acts are now available in both EPub and MOBI eBook formats. 

Helpful Resources

[Virginia Code Commission](#)
[Virginia Register of Regulations](#)
[U.S. Constitution](#)

For Developers

The Virginia Law website data is available via a web service. 

Follow us on Twitter



ARTICLE 11. - Cigarette Tax.

Section 4-11-1. - Short title.

This Article shall be known and may be cited as the Fairfax County Cigarette Tax Ordinance. (29-78-4.)

Section 4-11-2. - Definitions.

For the purposes of this Article, the following words and phrases have the meanings respectively ascribed to them by this Section, except in those instances where the context clearly indicates a different meaning:

- (a) *Board* or *NVCTB* means the Northern Virginia Cigarette Tax Board.
- (b) *Carton* means any container, regardless of material used in its construction, in which packages of cigarettes are placed.
- (c) *Cigarette* means and includes any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.
- (d) *Cigarette Machine Operator* means any individual, partnership or corporation engaged in the sale of packages of cigarettes from vending machines.
- (e) *County* means Fairfax County, Virginia.
- (f) *Dealer* means and includes every manufacturer's representative,, wholesaler, retailer, cigarette machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the County.
- (g) *Package* means and includes any container, regardless of the material used in its construction, in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which they are consumed by their ultimate user. Ordinarily a package contains twenty cigarettes; however, "package" includes those containers in which fewer or more than twenty cigarettes are placed.
- (h) *Person* means and includes any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership and conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members thereof, and as applied to a corporation, includes all the officers and directors thereof.
- (i) *Place of business* means and includes any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a dealer within the County.
- (j) *Registered agent* means and includes every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of this Article.
- (k) *Retail dealer* means and includes every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the County to the ultimate

consumer; or any person who, in the usual course of business, owns, leases or otherwise operates within his own place of business, one or more cigarette vending machines for the purpose of sale within the County of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers or deals in cigarettes for the purpose of sale within the County to the ultimate consumer, who is not licensed as a wholesaler or vending machine operator.

- (l) *Sale or sell* means and includes every act or transaction, regardless of the method or means employed, including barter, exchange or the use of vending machines or other mechanical devices or a criminal or tortious act whereby either ownership or possession, or both, of any cigarettes shall be transferred within the County from a dealer as herein defined to any other person for a consideration.
- (m) *Stamp* means a small gummed piece of paper or decal used to evidence provision for payment of the tax as authorized by the Northern Virginia Cigarette Tax Board, required to be affixed to every package of cigarettes sold, distributed, or used within the County.
- (n) *Store or storage* means and includes the keeping or retention of cigarettes in this County for any purpose except sale in the regular course of business.
- (o) *Use* means and includes the exercise of any right or power over any cigarettes or packages of cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.
- (p) *User* means any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this Article incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.
- (q) *Wholesale Dealers* means any individual, partnership or corporation engaged in the sale of packages of cigarettes for resale into or within the County. (29-78-4; 35-04-4.)

Section 4-11-3. - Levy and rate.

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the County upon every person who sells or uses cigarettes within the County an excise tax at a rate of five cents for each package containing twenty cigarettes and two and one-half mills for each cigarette contained in packages of fewer or more than twenty cigarettes sold or used within the County prior to September 1, 2004, and at a rate of one cent for each such cigarette sold, stored, or received on and after September 1, 2004, through June 30, 2005, and at a rate of one and one-half cents for each cigarette sold, stored, or received on and after July 1, 2005. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the County shall be paid but once. (29-78-4; 35-04-4.)

Section 4-11-4. - Methods of collection.

- (a) The tax imposed by this section shall be evidenced by the use of a tax stamp and shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the Board to carry out the provisions of this Article. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect, pay the tax and report all packages of cigarettes on forms prescribed for this purpose by the Board:

- (1) The quantity of NVCTB-stamped cigarettes sold or delivered to:
 - (A) Each registered agent appointed by the Board for which no tax was collected;
 - (B) Each manufacturer's representative; and
 - (C) Each separate person and place of business during the preceding calendar or fiscal month; and
 - (2) The quantity of NVCTB stamps on hand, both affixed and unaffixed on the first and the last day of the preceding calendar or fiscal month and the quantity of NVCTB stamps or NVCTB stamped cigarettes received during the preceding calendar or fiscal month; and
 - (3) The quantity of cigarettes on hand to which the NVCTB stamp had not been affixed on the first and last day of the preceding calendar or fiscal month and the quantity of cigarettes received during the preceding calendar or fiscal month to which the NVCTB stamp had not been affixed; and
 - (4) Such further information as the administrator for the board may require for the proper administration and enforcement of this article for the determination of the exact number of cigarettes in the possession of each dealer or user.
- (b) Each dealer or other person liable for the tax shall file such reports with the Board and pay the tax due to the Board prior to the due date, and shall furnish copies of all cigarette tax reports submitted to the Virginia Department of Taxation.
 - (c) When, upon examination and audit of any invoices, records, books, cancelled checks or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the Board of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The Board shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due, impose a penalty of ten per cent and may impose interest of three-quarters per cent per month of the gross tax due.
 - (d) When any dealer or other person liable for the tax files a false or fraudulent report or fails to file a report or fails to perform any act or performs any act to evade payment of the tax, the board shall administratively assess the tax due and impose a penalty not to exceed fifty per cent of the tax due and interest of three-quarters per cent per month of the gross tax due.
 - (e) The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten days after notice of such deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to insure that the NVCTB stamp has been affixed thereto prior to offering them for sale.
 - (f) Any dealer or other person liable for the tax who shall receive cigarettes not bearing the NVCTB stamp shall, within one hour of receipt of such cigarettes, commence and with all reasonable diligence continue to affix the NVCTB stamp to each and every package of cigarettes until all unstamped packages of cigarettes have been stamped and before offering such cigarettes for sale. Any dealer or other person liable for the tax who has notified the Board that he is engaged in interstate or intrastate business shall be permitted to set aside such part of his stock as may be legally kept for the conduct of such interstate or intrastate business (that is, cigarettes held for sale outside the jurisdiction of the Board) without affixing the stamps required by this Article. Any such interstate or intrastate stock shall be kept entirely separate and apart from the NVCTB-stamped stock, in such a manner as to prevent the commingling of the interstate or intrastate stock with the

NVCTB stock. Any dealer or other person liable for the tax found to have had untaxed cigarettes which have been lost, whether by negligence, theft or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.

- (g) It shall also be the duty of each dealer or other person liable for the tax to maintain and keep for a period of three years, not including the current calendar year, records of all cigarettes received, sold, stored, possessed, transferred or handled by him in any manner whatsoever, whether the same were stamped or unstamped, to make all such records available for audit, inspection and examination at all reasonable times, as well as the means, facilities and opportunity for making such audit, inspection or examination upon demand of the Board. (29-78-4; 35-04-4.)

Section 4-11-5. - Registered agents.

- (a) Any dealer or other person liable for the tax who shall sell, use, store, possess, distribute or transport cigarettes within or into the County shall first make application to the Board to qualify as a registered agent. Such application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by said applicant, as the Board deems necessary for the administration and enforcement of this article. There is a yearly Registration Fee for all Wholesale Dealers [and] all Cigarette Machine Operators. Applicant shall provide a surety bond to the Board of 150 percent of his average monthly tax liability with a surety company authorized to do business in the Commonwealth of Virginia. Such bond shall be so written that, on timely payment of the premium thereon, it shall continue in force from year to year. Any applicant whose place of business is outside the County shall automatically, by filing his application, submit himself to the Board's legal jurisdiction and appoint the Administrator for the Board as his agent for any service of lawful process.

Upon receipt of the properly completed required application forms, and the required surety bond executed, the Board shall determine whether the said applicant qualifies to be a registered agent. The Board will issue to said qualified applicant a yearly registered agent permit to qualify him to purchase, sell, use, store, possess, distribute or transport within or into the County, NVCTB-stamped cigarettes.

- (b) Registered agents shall agree to the reporting and payment requirements placed upon him by this Article and the rules and regulations as from time to time may be promulgated by the Board. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the Board shall impose a late reporting penalty of ten per cent of the gross tax due or ten dollars whichever is greater, but in no event more than \$1,000. The Board also may require such registered agent to provide proof that he has complied with all applicable laws of the Commonwealth of Virginia to legally conduct such business and to file financial statements showing all assets and liabilities. The Board may revoke or suspend any registered agent's permit due to failure to file tax reports in a timely manner, non-payment of taxes due, or if the cigarette tax surety bond should become impaired for any reason.
- (c) All money collected as cigarette taxes under this ordinance shall be deemed to be held in trust by the dealer collecting the same until remitted to the Board.
- (d) Registered agents must account for all NVCTB authorized tax stamps purchased. Periodic audits may be conducted to determine any unaccounted variance between the number of stamps purchased and the number of stamps reported and an assessment will be made for all unaccounted for stamps. Any assessment of registered agents located outside the jurisdictions of the Board will be based upon the average sales of packages of cigarettes by jurisdiction during the audit period. For registered agents located within the

jurisdictions of the Board, any assessment will be based upon the tax rate of the jurisdiction in which they are located. In addition, there will be a penalty for non-reporting of ten per cent of the gross tax due. (29-78-4; 35-04-4.)

Section 4-11-6. - Requirements for retail dealers.

- (a) Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes for the purpose of sale within the County shall purchase cigarettes only from registered agents giving or supplying the business trade name and business address of the location where the cigarettes will be placed for sale to the public. Cigarettes purchased for personal use cannot be brought into a business for resale. Only properly registered and licensed retail stores may sell cigarettes to the public. To be properly registered and licensed, a retail store must first have a valid Virginia state sales and use tax certificate and valid retail business license. Cigarettes must be purchased and stored separately for each business location. All copies of cigarette purchase invoices/receipts must be retained by the retailer for a period of three years and shall be made available to Agents of the NVCTB upon request for use in conducting audits and investigations. All copies of cigarette purchase invoices/receipts must be stored at the business retail location for a period of one year from date of purchase. Failure to provide cigarette invoices/receipts may result in confiscation of cigarettes until receipts can be reviewed by the Board to verify the proper tax has been paid. It is the responsibility of each retail location to insure that all cigarettes placed for sale or stored at that location be properly taxed and stamped. Cigarettes found without the NVCTB stamp or the proper jurisdictional tax paid will be seized by the Agents of the Board.
- (b) Retail dealers must make their place of business available for inspection by Tobacco Revenue Agents to insure that all cigarettes are properly tax-stamped and all cigarette taxes are properly paid. (29-78-4; 35-04-4.)

Section 4-11-7. - Presumption of illegality; seizure of contraband goods, sealing/seizing of machines.

- (a) If any cigarette machine operator or other person liable for the tax imposed by this Article is found to possess any cigarettes without the jurisdictional tax paid or the proper tax stamp affixed, there shall be a rebuttable presumption that any such operator or other person shall be in possession of untaxed cigarettes in violation of this section.
- (b) If any cigarettes are placed in any vending machines within the County, then there shall be a rebuttable presumption that such cigarettes were placed in that machine for sale within the County. If [a]ny vending machine located within the County contains cigarettes upon which the NVCTB tax stamp has not been affixed or on which the jurisdictional tax has not been paid or containing cigarettes placed so as to not allow visual inspection of the NVCTB tax stamp through viewing area as provided for by the vending machine manufacturer, then there shall be a rebuttable presumption that the machine contains untaxed cigarettes in violation of this Article.
- (c) Any cigarettes, vending machines, cigarette tax stamps or other property found in violation of this Article shall be declared contraband goods and may be seized by the Board. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes or tax stamps shall be subject to civil and criminal penalties herein provided.
- (d) In lieu of seizure, the Board may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a

violation of this Article. Nothing in this Article shall prevent the seizure of any vending machine at any time after it is sealed.

- (e) All cigarette vending machines shall be plainly marked with the name, address and telephone number of the owner of said machine. (29-78-4; 35-04-4.)

Section 4-11-8. - Illegal acts.

- (a) It shall be unlawful and a violation of the Article for any dealer or other person liable for the tax:
- (1) To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this Article or of any part thereof, or to fail or refuse to perform any of the duties imposed upon him under the provisions of this Article or to fail or refuse to obey any lawful order which may be issued under this Article; or
 - (2) To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps; or
 - (3) To sell, offer for sale, or distribute any cigarettes upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid; or
 - (4) To possess, store, use, authorize or approve the possession, storage or use of any cigarette packages upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid; or
 - (5) To transport, authorize or approve the transportation of any cigarette packages in quantities of more than sixty packages into or within the county upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid, if they are:
 - (A) Not accompanied by a receipt/bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or
 - (B) Accompanied by a receipt/bill of lading or other document which is false or fraudulent in whole or part; or
 - (C) Accompanied by a receipt/bill of lading or other document indicating:
 - (i) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid unless the tax on the jurisdiction of destination has been paid and said cigarettes bear the tax stamps of that jurisdiction; or
 - (ii) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax Certificate and, where applicable, any licenses issued by the Commonwealth or local jurisdiction of destination; or
 - (6) To reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or
 - (7) To remove from any package any stamp with intent to use or cause the same to be used after same has already been used or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person, or to reuse any stamp which had theretofore been used for evidence of the

- payment of any tax prescribed by this Article or to sell, or offer to sell, any stamp provided for herein; or
- (8) To sell, offer for sale or distribute any loose or single cigarettes; or
 - (9) To perform any act that violates the resolutions promulgated by the Board.
- (b) It shall be unlawful and a violation of the Article for any person or individual to transport, possess, store, use, authorize or approve the possession, storage or use of any cigarette in quantities of more than sixty packages upon which the NVCTB tax stamp has not been affixed or upon which the jurisdictional tax has not been paid. (29-78-4; 35-04-4.)

Section 4-11-9. - Establishment of the Northern Virginia Cigarette Tax Board.

- (a) The ordinance adopted by the County Board, dated April 29, 1996, pertaining to the establishment of the Northern Virginia Cigarette Tax Board is hereby continued in effect and made a part of this Article by reference.
- (b) Any inconsistencies between the powers granted to the Board in the ordinance adopted by the County Board, dated April 29, 1996, and herein incorporated by reference and the powers granted to the Board in Section 4-11-10 shall be resolved in favor of those provisions in Section 4-11-10.
- (c) The Board's fiscal year shall be from July 1 through June 30. (29-78-4; 19-96-4.)

Section 4-11-10. - Powers of the Northern Virginia Cigarette Tax Board.

The board may delegate any of its powers to its Administrator or employees and may adopt regulations regarding the administration and enforcement of the provisions of this Article.

- (a) The Board shall be granted the following powers:
 - (1) To assess, collect and disburse the cigarette tax for each participating jurisdiction;
 - (2) To audit sales of cigarettes for each participating jurisdiction;
 - (3) To provide information to Commonwealth's attorneys or County attorney for each participating jurisdiction;
 - (4) To designate an Administrator;
 - (5) To manage the Northern Virginia Cigarette Tax Funds;
 - (6) To retain a certified public accountant to audit its books;
 - (7) To designate a depository bank or banks;
 - (8) To contract with member jurisdiction for administrative services;
 - (9) To hold and convey real and personal property;
 - (10) To enter into contracts;
 - (11) To hire, supervise and discharge its own employees;
 - (12) To sue and be sued in its own name;
 - (13) To prescribe the design of a stamp(s) and to issue and sell said stamps to authorized dealers;
 - (14) To establish different classes of taxpayers;
 - (15) To promulgate resolutions for the assessment and collection of cigarette taxes and the enforcement of this ordinance; and
 - (16) To conduct inspections of any place of business in order to enforce the provisions of this ordinance

and all resolutions of the Board.

- (b) The Board may employ legal counsel, bring appropriate court action in its own name to enforce payment of the cigarette tax or penalties owed and file tax liens against property of taxpayers hereunder.
- (c) The Board is authorized to enter into an agreement with the Virginia Department of Taxation under which a registered agent with the NVCTB who is also qualified to purchase Virginia Revenue Stamps, may qualify to purchase Dual Virginia - NVCTB stamps from the Virginia Department of Taxation. Authority to purchase dual Virginia - NVCTB stamps is granted solely by the Board and may be revoked or suspended for violations of this ordinance or resolutions adopted by the Board.
- (d) The Board may appoint certain employees as Tobacco Revenue Agents, who shall be required to carry proper identification while performing their duties. Tobacco Revenue Agents are further authorized to conduct inspections of any place of business and shall have the power to seize or seal any vending machines, seize any cigarettes, counterfeit stamps or other property found in violation of this Article and shall have the power of arrest upon reasonable and probable cause that a violation of this Article has been committed. The Board is authorized to provide its tobacco revenue agents with (1) firearms for their protection; (2) emergency equipped vehicles while on duty; and (3) other equipment deemed necessary and proper.
- (e) The Board may exchange information relative to the sale, use, transportation or shipment of cigarettes with an official of any other jurisdiction entrusted with the enforcement of the cigarette tax laws of said other jurisdiction. (29-78-4; 35-04-4.)

Section 4-11-11. - Jeopardy assessment.

If the Administrator of the Board determines that the collection of any tax or any amount of tax required to be collected and paid under this Article will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including penalties and interest. In the case of a current period, for which the tax is in jeopardy, the Administrator may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the terms otherwise allowed by this Article for filing a return and paying the tax has expired. (29-78-4.)

Section 4-11-12. - Erroneous assessment: notices and hearings in event of sealing of vending machines or seizure of contraband property.

- (a) Any person assessed by the Board with a cigarettes tax, penalties and interest or any person whose cigarettes, vending machines and other property have been sealed or seized under processes of this Article, who has been aggrieved by such assessment, seizure or sealing may file a request for a hearing before the Administrator for the Board for a correction of such assessment and the return of such property seized or sealed.
- (b) Where holders of property interest in cigarettes, vending machines or other property are known at time of seizure or sealing, notice of seizure or sealing shall be sent to them by certified mail within twenty-four hours. Where such holders of property interests are unknown at time of seizure or sealing, it shall be

sufficient notice to such unknown interest holders to post such notice to a door or wall of the room or building which contained such seized or sealed property. Any such notice of seizure or sealing shall include procedures for an administrative hearing for return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.

- (c) Such hearing shall be requested within ten days of the notice of such assessment, seizure or sealing and shall set forth the reasons why said; tax, penalties and interest, cigarettes, vending machines or other property should be returned or released. Within five days after receipt of such hearing request the Administrator shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within fifteen days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest has not been paid as required or if the request is received more than ten days from first notice to the petitioner of such seizure or sealing. Within five days after the hearing, the Administrator shall notify the petitioner, by registered mail, whether his request for a correction has been granted or refused.
- (d) Appropriate relief shall be given by the Administrator if he is convinced by the preponderance of the evidence that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the Administrator is satisfied that the tax was erroneously assessed, he shall refund the amount erroneously assessed together with any interest and penalties paid thereon and shall return any cigarettes, vending machines or other property seized or sealed to the petitioner. Any petitioner who is dissatisfied with the written decision of the Board may within thirty days of the date of such decision, appeal such decision to the appropriate Court in the jurisdiction where the seizure or sealing occurred. (29-78-4; 35-04-4.)

Section 4-11-13. - Disposal of seized property.

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the Board after any petitioner has exhausted all administrative appeal procedures. No credit from any sale of cigarettes, vending machines, or other property seized shall be allowed toward any tax and penalties assessed. (29-78-4.)

Section 4-11-14. - Extensions.

The Administrator, upon a finding of good cause may grant an extension of time to file a tax report upon written application for a period not exceeding thirty days. Except as hereinafter provided, no interest or penalty shall be charged, assessed or collected by reason of the granting of such an extension. (29-78-4; 35-04-4.)

Section 4-11-15. - Penalty for violation of article.

Any person violating any of the provisions of this Article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$2,500.00 or imprisonment for not more than twelve months or by both such fine and imprisonment. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty or interest imposed by this Article. (29-78-4; 35-04-4.)

Section 4-11-16. - Each violation a separate offense.

The sale of any quantity, the use, possession, storage or transportation of more than sixty packages of cigarettes upon which the NVCTB tax stamp has not been affixed or the proper jurisdictional tax has not been paid shall be and constitute a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense. (29-78-4; 35-04-4.)

Section 4-11-17. - Severability.

If any section, phrase, or part of this Article should for any reason be held invalid by a Court of competent jurisdiction, such decision shall not affect the remainder of the Article; and every remaining section, clause, phrase or part thereof shall continue in full force and effect. (29-78-4.)



COMMONWEALTH of VIRGINIA

Department of Taxation

October 30, 2020

To: The Honorable Janet D. Howell
Chairwoman, Senate Finance and Appropriations Committee

The Honorable Luke E. Torian
Chairman, House Appropriations Committee

The Honorable Vivian E. Watts
Chairwoman, House Finance Committee

Effective July 1, 2021, House Bill 785 and Senate Bill 588 (2020 Acts of Assembly, Chapters 1214 and 1263), authorize all counties to levy a tax on cigarettes. Under prior law, only cities, towns, and two counties were authorized to tax cigarettes.

In addition, the sixth enactment clause of this legislation directed the Department of Taxation to convene a work group of stakeholders to identify and make recommendations for modernizing the process for using stamps to certify that tax has been paid on cigarettes and unifying the stamping process so that it is administered solely by the Department of Taxation.

Attached is the report summarizing the findings of the work group mandated by and the sixth enactment clause of 2020 House Bill 785 and Senate Bill 588. Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "CMB", written over the printed name and title.

Craig M. Burns
Tax Commissioner

c: The Honorable Aubrey L. Layne, Jr., Secretary of Finance
The Honorable Emmett W. Hanger, Jr.

Workgroup on Modernizing and Unifying Cigarette Stamping
Pursuant to 2020 Senate Bill 588 and House Bill 785

Final Report

Department of Taxation

October 30, 2020

Table of Contents

	Page
Executive Summary	3
Background	6
Workgroup Meetings	9
Conclusion	13
Findings	13
Appendix A: Legislative Mandate	
Appendix B: Comments of the Virginia Wholesalers and Distributors Association	
Appendix C: Comments of the Commissioners of the Revenue Association of Virginia	
Appendix D: Comments of Virginia Association of Counties	
Appendix E: Comments of Virginia Municipal League	

Executive Summary

Effective July 1, 2021, Senate Bill 588 and House Bill 785 (2020 Acts of Assembly, Chapters 1263 and 1214), authorize all counties to levy a tax on cigarettes. Under prior law, only cities, towns, and two counties were authorized to tax cigarettes.

In its sixth enactment clause, the legislation directed the Department of Taxation (the "Department") to convene a work group of stakeholders to identify and make recommendations for:

- Modernizing the process for using stamps to certify that tax has been paid on cigarettes; and
- Unifying the stamping process so that it is administered solely by the Department of Taxation

Background on Cigarette Taxes in Virginia

In Virginia, cigarettes are subject to a state cigarette tax administered by the Department of Taxation (the "Department"). Additionally, all cities and towns and two counties (Arlington and Fairfax) are authorized to levy local cigarette taxes.

The state tax is paid by wholesalers who are licensed as stamping agents by the Department. Wholesalers pay the tax by purchasing rolls of stamps from the Department and recover the cost of the stamps when they sell the cigarettes to retailers. Alternatively, stamping agents may post a bond to obtain stamps prior to payment. The stamps must be affixed to each individual package of cigarettes and serve as proof that the tax has been paid. As with the state tax, most cities and towns that impose a local cigarette tax, require the use of their own tax stamp. Wholesalers pay the tax by purchasing rolls of stamps from each locality.

The Northern Virginia Cigarette Tax Board (the "NVCTB") administers and enforces local cigarette taxes on behalf of 19 Northern Virginia jurisdictions. The Department of Taxation sells a dual stamp at the state rate for use in NVCTB localities. Since jurisdictions have different tax rates, wholesalers remit the local cigarette tax to the NVCTB using a monthly return that lists sales to retailers by jurisdiction. The NVCTB audits stamping agents to verify the local cigarette tax has been paid on all stamps sold. The NVCTB conducts retail inspections to ensure proper tax payments and to prevent retailers from shifting stamped cigarettes from lower tax localities to high tax localities.

Work Group

Stakeholders were identified by the Department and placed in three groups for initial discussions. The groups were cigarette wholesalers, cigarette retailers, and local governments. Representatives in each group were contacted to participate in an initial teleconference with Department staff. When contacted by the Department, representatives of cigarette retailers declined to participate in the workgroup.

The initial teleconference for representatives of cigarette wholesalers was held on July 27, 2020. The initial teleconference for local government representatives was held on July 29, 2020. A joint virtual meeting was held on October 14, 2020 with representatives of cigarette wholesalers and local governments. At the conclusion of these meetings, official comments were solicited from attendees. Those comments are attached. This is the final report of the workgroup studying cigarette stamping procedures in Virginia.

VWDA Proposal

The Virginia Wholesalers and Distributors Association (the "VWDA") primarily represents the businesses that stamp cigarettes and sell them to retailers. The VWDA expressed its concerns about the difficulty its members would have complying with new local cigarette taxes in up to 93 counties, each potentially with its own tax stamp. Wholesalers would need to invest significant capital in an inventory of different local tax stamps. Different localities would also have different ordinances and different enforcement policies.

The VWDA advocates for a county cigarette tax board structure to manage the new county taxes. With either one board or several regional boards, wholesalers would benefit from a process that is more uniform and consistent throughout all the new taxing jurisdictions. The board or boards would enforce the county taxes much like the NVCTB. The Department of Taxation would sell dual stamps to wholesalers at the state tax rate. Wholesalers would file a monthly report with the board listing sales to retailers by jurisdiction. The board would distribute revenues to each locality. Administration and enforcement of the tax would be the same in each locality covered by the board. The VWDA acknowledges that it will be difficult to stand up a new board or boards in time for the possible July 1, 2021 effective date of the new county taxes. Accordingly, the effective date of the authority for the new taxes may need to be extended past July 1, 2021 if the new board or boards cannot be implemented by July 1, 2021.

Reaction to VWDA Proposal

Representatives of counties that do not currently tax cigarettes recognized that they will face challenges implementing and administering new cigarette taxes.

Generally, all participants recognize the potential benefits of forming regional cigarette tax enforcement bodies similar to the NVCTB. Localities can share the costs of administering and enforcing their local cigarette taxes. Wholesalers can benefit from uniform compliance provisions in every locality that is a member of the same board. Wholesalers can avoid the cost of financing inventories of different local cigarette stamps because they can pay local cigarette taxes after they have sold the cigarettes. All participants recommend that localities consider this approach. All localities are currently authorized to form or join such regional bodies under current law. There is also an example, the Northern Virginia Cigarette Tax Board (the "NVCTB"), of how such boards can be established and operated.

No county, however, expressed any interest in delaying the effective dates of its new cigarette taxes for the time necessary to form such bodies and get them in operation. A few county representatives also expressed doubt that there is sufficient interest among their neighboring localities to form regional enforcement bodies so they would not be viable in the near term unless the state mandated that counties join regional boards. Most county representatives have no interest in making regional bodies mandatory.

Representatives of local governments that currently impose local cigarette taxes made it clear that they are not interested in any changes that would affect their administration and enforcement of their local cigarette taxes, including delegating their enforcement powers.

Background

History and Rate

The Virginia Cigarette Tax was enacted in 1960 at the rate of 3 cents per pack of 20 cigarettes. In 1966, the rate was lowered to 2.5 cents per pack when the Retail Sales and Use Tax was enacted. The rate was increased to 20 cents per pack in 2004, and again to 30 cents per pack in 2005, and most recently to 60 cents per pack on July 1, 2020.

Administration of State Tax

The tax is paid by state licensed stamping agents through the purchase of stamps from the Department. Stamping agents may post a bond to obtain stamps prior to payment. Stamps must be affixed to individual packages in which cigarettes are sold.

Sales Tax on Cigarettes

Cigarettes sold at retail in Virginia are subject to the Retail Sales and Use Tax. For many years, those involved in the illicit transportation and sale of cigarettes improperly used resale exemption certificates to purchase stamped cigarettes without paying sales and use tax. Legislation passed during the 2017 General Assembly, House Bill 1913 and Senate Bill 1390 (2017 *Acts of Assembly*, Chapters 112 and 453) was aimed at stopping this activity by prohibiting the use of the self-executed resale exemption certificate when purchasing stamped cigarettes. The legislation required that businesses have a Department-issued exemption certificate when purchasing stamped cigarettes exempt from the sales and use tax.

Local Cigarette Stamps

Other than Virginia, local cigarette taxes are only common in Alabama and Missouri. New York City; Anchorage, Alaska; and Cook County, Illinois also have local cigarette taxes.

As of June 2020, over 120 Virginia cities and towns and 2 Virginia counties (Arlington and Fairfax) have local cigarette taxes. These local taxes are typically administered and enforced at the local level. Localities generally sell stamps to wholesalers or retailers. Some localities require the tax to be paid by monthly returns.

Northern Virginia Cigarette Tax Board

Current law authorizes any locality that imposes a cigarette tax to delegate its cigarette tax administrative and enforcement authority, including the authority to issue a revenue stamp, to an agency or authority pursuant to the provisions of *Va. Code* § 15.2- 1300.

The Northern Virginia Cigarette Tax Board (the "NVCTB"), which was established in 1970, administers and enforces local cigarette taxes on behalf of 19 Northern Virginia jurisdictions:

- Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas and Manassas Park;
- County of Fairfax; and
- Towns of Clifton, Dumfries, Haymarket, Herndon, Hillsboro, Leesburg, Lovettsville, Middleburg, Purcellville, Round Hill, Vienna, and Warrenton.

Stamping agents remit the local cigarette tax to the NVCTB using a monthly return that lists all retailers by jurisdiction. The Department does not collect any revenues for the NVCTB. The NVCTB audits stamping agents to verify the local cigarette tax has been collected on all stamps sold. The NVCTB conducts retail inspections to ensure proper tax payments and to prevent retailers from shifting stamped cigarettes from lower tax localities to high tax localities.

The Department of Taxation sells a dual stamp at the state rate for use in NVCTB localities. The NVCTB pays for the dual stamps as part of a statewide contract which allows them to acquire the stamps at a lower rate than individual localities because they can take advantage of larger purchase volumes. Since jurisdictions have different tax rates, wholesalers remit the local cigarette tax to the NVCTB using a monthly return that lists sales to retailers by jurisdiction.

2011 Working Group Report

House Bill 2038 and Senate Bill 1085 (2011 *Acts of Assembly*, Chapters 366 and 293), enacted by the 2011 General Assembly, required the Department to convene a working group to review policies on (i) appeals of penalties related to the cigarette tax assessed on wholesalers and retailers, (ii) the desirability of having a single cigarette tax stamp for state and local taxes, (iii) methods of determining the validity of cigarette tax stamps that are only partially visible, and (iv) related issues that are identified by the working group.

While the working group did not recommend fundamental changes to the stamping process in place at the time, it did recommend the following:

- That local governments ensure that notices of seizures include procedures for administrative appeals as well as the affirmative defenses that may be asserted.
- That local governments that administratively establish their procedures for seizing cigarettes and appeals publish such procedures in a manner that will inform stamping agents, retailers, and other possessors of cigarettes.
- That the General Assembly direct representatives of stamping agents, retailers, and local government to continue to work towards drafting best management practices that set forth recommendations regarding 1) types of stamps required,

2) monetary penalty structures, 3) procedures for seizing cigarettes, and 4) more uniform local appeals processes.

2020 Legislative Changes

Senate Bill 588 and House Bill 785 (2020 Acts of Assembly, Chapters 1263 and 1214) extend to all localities the authority to levy a tax cigarettes.

Effective July 1, 2021, any county, city, or town will be authorized to levy taxes on the sale or use of cigarettes subject to rate limitations:

- If a locality is (i) a city or town that, on January 1, 2020, had in effect a rate not exceeding two cents (\$0.02) per cigarette sold or (ii) a county, then the maximum rate shall be two cents (\$0.02) per cigarette sold; or
- If a locality is a city or town that, on January 1, 2020, had in effect a rate exceeding two cents (\$0.02) per cigarette sold, then the maximum rate shall be the rate in effect on January 1, 2020.

No county cigarette tax will apply within the limits of a town if the town imposes a cigarette tax unless the town allows the county cigarette tax to apply within the town.

The Department was directed by the sixth enactment clause of the above-referenced legislation to convene a work group of stakeholders to identify and make recommendations for:

- Modernizing the process for using stamps to certify that tax has been paid on cigarettes; and
- Unifying the stamping process so that it is administered solely by the Department of Taxation.

Work Group Meetings

Interested parties were identified by the Department and were placed in three groups for initial discussions with the individual groups. The groups identified were those who work in wholesale and distribution of cigarettes, local government officials and their representatives, and representatives of retailers. Interested parties were contacted to schedule initial teleconferences with the identified groups individually. When contacted by the Department, retailers did not indicate interest in being part of the work group.

Initial Meeting with VWDA

The Virginia Wholesalers and Distributors Association (the "VWDA") represents the businesses that stamp cigarettes and sell them to retailers. A teleconference was held for representatives of the VWDA on July 27, 2020.

The topic of new technology was discussed and it was agreed that stamp technology exists that could solve many current stamping problems. However, funding for such technology is a significant challenge.

The VWDA expressed its members' concerns about the difficulty they will have complying with new local cigarette taxes in up to 93 counties, each with its own tax stamp. For example, some local jurisdictions only sell their stamps in a 15,000 stamp roll, which could last more than a year if the wholesaler has only one customer in the jurisdiction. This requires the wholesaler to invest significant capital in an inventory of different local tax stamps. If the wholesaler loses its only customer in the locality, some localities refuse to pay refunds on unused returned stamps, claiming that a refund is time-barred by a statute of limitations, a provision of their local ordinances, or their records retention policies. Different localities also have different ordinances and different enforcement policies.

The VWDA put forward options for changes to local cigarette tax administration:

- **Option 1: Department Would Assume Responsibility for Local Cigarette Excise Taxes**

Under this proposal, the Department would be the sole administrative agency for state and local cigarette taxes. The Department would distribute all revenues, either for all localities or solely for counties. Local governments would do their own enforcement.

Distributors stated that if new technology is needed, there are many companies and products that could fulfill such requirements. Research suggests that some companies could provide reader machines that meet current stamping needs.

Industry representatives stated that distributors are not willing to pay for that technology and should not bear the cost of taxing a product and enforcing the tax.

They believe this should be accomplished through either tax revenue or a General Fund appropriation from General Assembly.

- **Option 2: Regional Boards Similar to NVCTB**

This proposal would create a more regional approach. To begin this process, the NVCTB could add some counties to its current membership after July 1, 2021.

- **Option 3: Move All Local Stamping to Retail Establishments**

In this proposal, distributors would not stamp locally when delivering a product, as long as it bears a state stamp. Local retailers would apply stamps at the point of sale. This would put compliance on retail establishments instead of distributors.

- **Option 4: Do Nothing**

The last proposal would continue under the current procedures. This idea is less palatable for distributors as the number of taxing jurisdictions could increase significantly depending on the number of counties that enact a cigarette tax beginning July 1, 2021.

Initial Meeting with Local Officials

A teleconference was held on July 29, 2020 with local officials, their representatives, and staff from the Department. One concern raised initially was the funding for any proposed modernization of the stamping process. Currently, there is no funding to cover the additional cost of new stamping technologies. Local representatives stated that this was one of the main issues with the 2011 Study on Local Cigarette Tax Enforcement Policies, and the main reason that the study made no recommendations in this area.

Discussion then turned to the ideas put forward by VWDA:

- **Option 1: The Department Would Assume Responsibility for Local Cigarette Excise Taxes**

Most local officials opposed this option. Others in attendance, while not opposing this idea outright, did raise some concerns about the level of enforcement the Department would be able to provide and what portion of the cigarette tax revenues would be needed to support the Department's costs.

- **Option 2: Regional Boards Similar to NVCTB**

Local officials expressed interest in learning more about establishing such local or regional boards. The NVCTB has offered to help in this regard. If a locality is planning to implement a cigarette tax independently, the NVCTB can provide copies of forms and notices, or provide education and resources to counties that

have never had a cigarette tax. A suggestion was presented that there should be a "grandfather clause" for existing cigarette tax boards. Any localities participating would be allowed to continue to participate in their current board.

Questions about the implementation process for such boards were also raised. Attendees asked whether this tax could be implemented quickly or would require a two to three year period. Current state law authorizes localities to join into regional organizations, so they would not need a law change to establish an entity like the NVCTB. There was a suggestion that it could take 2 or 3 years for a regional body to be created and staffed, however the exact timeframe for creating such an organization is uncertain.

- **Option 3: Move All Local Stamping to Retail Establishments**

Local officials discussed the challenges involved with Option 3. The NVCTB representative shared her belief that this is not a workable option. She shared her experiences in attempting to investigate retail establishments and the difficulty it presents.

- **Option 4: Do nothing**

No comments were put forward for Option 4, which is to do nothing and continue with the current system of administration and enforcement.

After consideration of the VWDA options, officials from some smaller communities asked for additional information on the stamping process. They explained that they are in the learning phase because they have never had the tax and indicated that insight from localities that have had a local tax would be helpful. County representatives also expressed concerns about how enforcement would work and what they may need to spend in order to administer and enforce the tax as compared to revenues that would be generated. The representative from the NVCTB stated that expenses for the NVCTB are minimal (less than 5%) and that boards work well. Originally, the NVCTB had five members. It currently has 19 members, as additional localities applied to join based on the success of NVCTB. Potentially, regional boards could be formed by a small number of localities and grow gradually over time. The board would not need to have all localities as members by July 1, 2021.

Meeting with All Interested Parties

The work group held a meeting for all interested parties on October 14, 2020. This meeting was attended by representatives from the VWDA, local governments, and the NVCTB.

Industry representatives stated that they have no interest in the Department administering local taxes unless new technology is put in place. They made a strong recommendation that a county cigarette tax board structure be put in place, involving either one board for

all counties or multiple regional boards. They believe this would create a more manageable way to handle additional taxing jurisdictions. It would create a single process (like the NVCTB) that is uniform and consistent throughout all the jurisdictions. On a monthly basis, distributors would remit taxes to the regional boards and file reports to report where the cigarettes were sold. They suggested making it mandatory for any county imposing the tax to participate in such a structure.

One challenge identified with this approach is getting such boards operational within short timeframe. The wholesalers suggested that the Department, NVCTB, and a group of county administrators work together to find solutions to this challenge. Further, they suggest extending the effective date of the tax beyond July 1, 2021 if it is not possible to implement boards within short timeframe.

Representatives from the NVCTB reiterated that they are open to helping anyone set up a new board and would help answer questions about what should be in the ordinance. They pointed out that stamps are less expensive for a board because it is part of the state contract and costs are shared among members. The NVCTB shared its experiences with administering the tax for multiple jurisdictions and explained that they are also able to assist with other business tax issues, such as business license verification.

Local government representatives stated their position that local taxes should be administered locally, and they would not want to delay in the effective date for county authority to impose cigarette taxes because many counties are relying on this funding. They suggested creating a few boards for localities that want to pursue this option on July 1, 2021 and add additional boards or increase current board membership as needed.

The issue of current NVCTB capacity and membership was discussed. There was general support and agreement among the group for allowing current NVCTB members to continue as part of the Board, and to allow Virginia cities and towns that currently impose and administer the Cigarette Tax locally to continue to do so. Two other members of the board expressed their experience that the cigarette tax is the one tax that was easy to administer because of the NVCTB.

There are, however, capacity concerns for NVCTB. The Board is currently at its limit and cannot add additional localities without more staffing and funding. Under current state law, each county needs to make its own decision regarding implementing a cigarette tax and joining a local or regional board. In addition to Arlington and Fairfax, there are 93 counties that could potentially impose a cigarette tax beginning on July 1, 2021. Many of these localities are small and do not have resources to build the framework necessary for imposing the tax, so the idea of a regional board is a desirable option.

Conclusion

The work group mandated by 2020 Senate Bill 588 and House Bill 785 brought together different constituencies involved in cigarette tax administration in Virginia. The work group had three official meetings, as well as informal discussion with representatives from all the different groups. The Department is grateful to all those who participated and provided input for this report.

Findings

The work group identified the following areas of consensus:

1. As regional cigarette tax boards can provide many benefits to local governments and wholesalers, the work group members expressed interest in exploring the creation of regional cigarette tax boards under current law.
2. Given opposition to mandates on local governments, there was consensus among local officials that localities should not be required to join regional cigarette tax boards.
3. Local governments, wholesalers, and any other interested parties should continue to work together to make the local taxation of cigarettes, including the addition of counties as taxing jurisdictions, as efficient as possible.

APPENDIX A

CHAPTER 1263

An Act to amend and reenact §§ 58.1-3818, 58.1-3819, 58.1-3823, as it is currently effective and as it may become effective, 58.1-3825.3, 58.1-3830, 58.1-3833, 58.1-3834, and 58.1-3840 of the Code of Virginia and to repeal §§ 58.1-3818.01, 58.1-3818.03, 58.1-3818.04, 58.1-3820, 58.1-3821, and 58.1-3831, relating to local taxing authority.

[S 588]

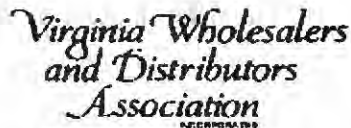
Approved April 22, 2020

Be it enacted by the General Assembly of Virginia:

* * *

6. That the Department of Taxation (the Department) shall convene a workgroup of stakeholders to identify and make recommendations for (i) modernizing the process for using stamps to certify that tax has been paid on cigarettes and (ii) unifying the stamping process so that it is administered solely by the Department of Taxation. The Department shall submit a summary of its recommendations, including any proposed amendments to the Code of Virginia, to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance and Appropriations no later than October 31, 2020.

APPENDIX B



ALL RIGHTS RESERVED
REPRODUCTION OF THIS
DOCUMENT IS PROHIBITED
WITHOUT PERMISSION

The Virginia Wholesalers and Distributors Association (VWDA) is the statewide business trade group representing the interests of corporations and individuals involved in the manufacturing, sales, and distribution of convenience and grocery store products. Our membership plays a key role in tax administration through cigarette excise stamp purchasing and application. This experience provides us a front row seat to the many shortfalls of cigarette tax ordinances around the State for local governments.

Outside economic surveys have reported that VWDA members handle better than 86% of all tobacco products arriving and moving through the Virginia Market. Currently there are over 125 cities and towns and two counties that impose cigarette taxes which require each distributor stamping agent to purchase tax stamps and apply prior to all deliveries. Exposing VWDA member stamping agents to include 95 additional jurisdictions that could impose a cigarette tax will not work under the current local tax process.

There is no interest in our group for Dept. of TAX to take over local tax administration unless new technology was purchased and put in place, stamps provided at no charge, tax discounts provided with uniform reporting and remittance. Additional stamping machines may be required at some point where distributors would need reimbursements or tax credits.

As an alternative:

The NVCTB has been in place since the early 1970's (Va Code 58.1-3832 (9)) and a good example where they have created a uniform process that is administratively manageable, efficient and cost effective among their 19 jurisdictions they serve. They provide free stamps to distributors upfront and the tax is remitted monthly based on retail delivery reports. They do not provide the distributor a tax discount when remitting taxes which needs addressing since distributors do their work by imposing, collecting, reporting and enforcing their taxes.

Using this historic example and in the spirit of compromise, it would be the VWDA position that cities and towns could remain status quo with their tax process, but that counties would be required to form among themselves a county tax board /boards and require counties that decide to impose a tax to participate. The newly formed board/boards would follow the NVCTB process and those counties located in adjacent jurisdictions to NVCTB cities and towns would join the NVCTB.

Although this does not solve the problems we have with current cities and towns it does create a uniform manageable and efficient process with all counties deciding to tax. Any legislation needed can be done in January and the county board structure needs to be in place in some form prior to July 1, 2021 unless date extended.

APPENDIX C



COMMISSIONERS OF THE REVENUE ASSOCIATION OF VIRGINIA

October 14, 2020

The Commissioners of the Revenue's Association has reviewed SB588. The legislation extends the cigarette taxing authority to counties. Approximately 96 cities and towns have adopted an ordinance to tax cigarettes. The counties of Fairfax and Arlington are the only two counties granted this taxing authority by the General Assembly.

The Commissioners recognize the cigarette tax as a local tax. There are other similar taxes such as meals, lodgings or admissions which are local taxes and are administered by the local tax official. Local administration of these taxes ensures compliance and a constant revenue stream to the local government.

The Northern Virginia Cigarette Tax Board (NVCTB) is also an option which has worked well on a regional basis. The NVCTB is composed of 19 localities which includes 12 towns, 6 cities and the County of Fairfax. The NVCTB allows smaller localities with limited resources to benefit from combining of resources in the region. This regional board provides limited local involvement in the administration of the local tax by including a representative from each locality on the board.

To summarize, the Commissioners of the Revenue prefer to have the administration of the cigarette tax performed by the local assessing official. Issuing the stamps and collecting the revenue by local officials allows the best option for compliance. We also recognize that some localities without the necessary resources may be best served by combining efforts with other localities through a regional board. In all situations, the local administration of this tax is preferred.

APPENDIX D

Virginia Association of Counties

Connecting County Governments since 1934



President
Stephen W. Bowen
Nottoway County

President-Elect
Jeffrey C. McKay
Fairfax County

First Vice President
Mog Bohmke
Stafford County

Second Vice President
Jason D. Bellows
Lancaster County

Secretary-Treasurer
Donald L. Hart, Jr.
Accomack County

Immediate Past President
Sherrin C. Alsop
King and Queen County

Executive Director
Dean A. Lynch, CAE

General Counsel
Phyllis A. Emko, Esq., CAE

VIA ELECTRONIC MAIL

October 22, 2020

Mr. Steve Klos
Policy Analyst
Office of Tax Policy, Policy Development Division
Virginia Department of Taxation
Post Office Box 27185
Richmond, VA 23261-7185

Dear Mr. Klos:

On behalf of the Virginia Association of Counties, please allow me to extend our appreciation for the work of the Department of Taxation in carrying out the study of streamlining the cigarette tax stamping process directed by HB 785 and SB 588. We are grateful for the opportunity to share the county perspective and appreciate being included in the stakeholder workgroup that the Department convened.

As you know, the authority to impose a cigarette tax has been long sought by our members, and we view it as an important avenue of revenue diversification that will help counties to raise necessary funds to meet local needs. Many of our member counties are in the process of determining how best to implement the new authority when it takes effect on July 1, 2021.

We understand from the discussion at the stakeholder workgroup on October 14 that the representatives of the cigarette wholesalers and distributors would prefer that all counties imposing a cigarette tax belong to a regional board similar to the Northern Virginia Cigarette Tax Board. Based on our informal survey of members this summer, some counties would be interested in establishing such an entity in their respective regions, and we stand ready to assist and support those counties in these efforts. However, we would not support mandating participation in such a regional body. Similarly, we would not support delaying the effective date of the new authority.

As stamping technology evolves, such as through the development of enhanced technology that may allow a consolidated state/local stamp, we would be interested in working with the state on ways to update the process of affixing stamps.

We look forward to continuing to work with the Department and other interested parties as counties move toward implementing this important new authority. Thank you for including us in the workgroup and for the opportunity to provide comments.

Sincerely,

Dean A. Lynch, CAE
Executive Director

cc: Members, Virginia Association of Counties Board of Directors

1207 E. Main St., Suite 300
Richmond, Va 23219-3627

Phone: 804 788 0852
Fax: 804 788 0083

Email: mail@vaco.org
Website: www.vaco.org

APPENDIX E



Officers

President

Willie Greene
Gaines Mayor

President-Elect

Jar Shah
Fairfax Council Member

Vice President

Jill Carson
Farrington Gap
Vice Mayor

Past President

Thomas R. Sengul, Jr.
Norfolk Council Member

Executive Director

Michelle Gowdy

Publications

Virginia Town & City
affairs

P.O. Box 12164
Richmond, VA 23241

BC4/549 8471
www.vml.org

October 29, 2020

Mr. Steve Klos
Policy Analyst
Office of Tax Policy, Policy Development Division
Virginia Department of Taxation
Post Office Box 27185
Richmond, Virginia 23261-7185

Dear Steve,

Thank you for the opportunity to comment on the TAX report. Although the issue targeted by the 2020 legislation focuses on counties, VML is always interested in ways to improve the efficiency and effectiveness of tax administration.

VML does support the concept of establishing regional cigarette boards where geographically and politically practical. As in the case of the Northern Virginia Cigarette Tax Board, the regional idea has proven to be both efficient and effective and shows that regional cooperation can work. Several VML localities belong to the NVCTB, and it is our understanding that the arrangement has worked well.

To that end, VML believes that as part of the TAX Study the issue of state financial assistance to encourage the formation of regional cigarette tax boards should be raised. It is safe to assume that local governments would incur costs to develop forms, regulations and policies, hire, train and supervise enforcement staff, and administer a board. State assistance could persuade localities or, at the very least, consider launching a regional board. Perhaps the NVCTB could assist TAX in developing the cost estimates to establish one or two pilot projects to prove the concept will work in areas outside of Northern Virginia.

Sincerely,

A handwritten signature in black ink, appearing to be "Michelle Gowdy", written over a dotted line.

Michelle Gowdy, Executive Director
Virginia Municipal League

NORTHERN VIRGINIA CIGARETTE TAX AGREEMENT

THIS AGREEMENT, is entered into and dated as of the latest execution and acknowledgment by any party hereto, by and between

- (1) Fairfax County, Virginia;
- (2) City of Alexandria, Virginia;
- (3) City of Falls Church, Virginia;
- (4) City of Fairfax, Virginia;
- (5) Town of Clifton, Virginia;
- (6) Town of Herndon, Virginia;
- (7) Town of Vienna, Virginia;
- (8) Town of Warrenton, Virginia;
- (9) City of Manassas, Virginia;
- (10) Town of Leesburg, Virginia;
- (11) Town of Purcellville, Virginia;
- (12) Town of Dumfries, Virginia;
- (13) Town of Haymarket, Virginia;
- (14) Town of Middleburg, Virginia;
- (15) Town of Hillsboro, Virginia;
- (16) Town of Lovettsville, Virginia;
- (17) Town of Round Hill, Virginia;
- (18) City of Fredericksburg, Virginia or any two or more of the foregoing;

WHEREAS, the parties hereto desire to enter an Agreement for the purpose of the reestablishment of the Northern Virginia Cigarette Tax Board for the joint administration, collection and enforcement of their respective Cigarette Tax Ordinances pursuant

to the provisions of these ordinances and Section 15.2-1300 and 58.1-3832, *et seq.*, of the Code of Virginia, (1950), as amended;

NOW THEREFORE, the parties enter into the following agreement, which hereby revokes and replaces any prior similar agreements between or among the parties.

1. **NAME AND DURATION**

The Board shall be called the Northern Virginia Cigarette Tax Board. Its duration shall be perpetual, subject to the provisions of Paragraph 8 hereof.

2. **MEMBERSHIP AND VOTING POWERS**

The Board shall be composed of one representative from each jurisdiction hereinbefore named or later added with consent of the Northern Virginia Cigarette Tax Board. Said representative may designate an alternate to attend meetings and vote in his or her place; however, each jurisdiction shall be entitled to only one vote. Action of the Board shall be by majority vote.

3. **OFFICERS AND MEETINGS**

Each year, the Board shall elect a Chairman, Vice-Chairman and Secretary/Treasurer, who shall serve at the pleasure of the Board. The Officers of the Board shall be chosen from the jurisdictional representatives. Said officers shall be empowered to sign in the name of the Board on all legal documents, including bank deposits and withdrawals. The Board shall meet from time to time as deemed necessary by the Chairman.

4. **POWERS OF THE BOARD**

The Board shall be delegated the following powers:

- a. Assessment, collection and disbursement of the cigarette tax for each participating jurisdiction;
- b. Audit of the sale or use of cigarettes within each participating jurisdiction;
- c. Provision of information for criminal prosecution by the affected participating jurisdictions;
- d. Designation of an Administrator;
- e. Management of a general operating fund to ensure proper funding of Board operations on an ongoing basis;
- f. Employment of an Auditor;
- g. Designation of a depository bank or banks;
- h. Contracting with a member jurisdiction for provision of administrative services;
- i. To hold and convey personal property. The Board shall have no power to hold or convey real property;
- j. To enter into contracts;
- k. To hire, supervise and discharge its own employees;
- l. To contract for benefits for Board Employees; and
- m. Any other powers granted to the Board by the respective local ordinances and the Code of Virginia (1950), as amended.

5. **LIABILITY INSURANCE**

The Board shall maintain and have authority to secure insurance coverage as deemed appropriate. General liability insurance shall be maintained through a commercial policy, in limits of not less than \$500,000.00. Any liability in excess of the amounts of insurance coverage will be shared by the members of the Board proportionately based upon each jurisdiction's share of the number of taxable packs of cigarettes reported in the twelve (12) months preceding the incident which gave rise to the liability, as compared to the taxable packs of cigarettes reported during that same time period in all the participating jurisdictions.

6. **ADMINISTRATOR**

Normal routine duties of the Board in administration and supervision of the Cigarette Tax Ordinances shall be delegated to an Administrator, who shall be appointed by the Board to serve at the will of the Board under such terms and conditions as it deems appropriate. Actions and decisions of the Administrator shall bind the Board unless patently wrongful or the result of willful misconduct, but the Board may at anytime overrule a decision or action by the Administrator subject to lawful rights of third parties.

The duties of the Administrator shall include, but are not limited to, the following:

- a. Preparation of annual administrative cost estimates;
- b. As authorized by the Board, employment of or contracting for staff assistance, equipment and supplies; providing employee benefits; and the establishment and administration of a retirement system covering officers and employees of the Board not covered by the retirement systems of participating jurisdictions or the Commonwealth of Virginia;
- c. Preparation of reports as the Board may require;
- d. Authorization of disbursements from Board accounts including, but not limited to, disbursements to the participating jurisdictions.

7. **COLLECTION OF THE CIGARETTE TAX**

The cigarette tax shall be assessed and collected on the basis of the "reporting method" according to the respective ordinances and according to the rules, regulations and procedures adopted by the Board.

8. **DISBURSEMENT OF RECEIPTS, MANAGEMENT OF FUNDS**

a. Disbursements shall be made to each participating jurisdiction on a monthly basis. Prior to disbursement to jurisdictions, expenses for the month shall be deducted from total revenues and allocated to the jurisdictions proportionately based upon the number of taxable packs of cigarettes reported within the jurisdiction during the month as compared to the total number of taxable packs of cigarettes reported in all the participating jurisdictions. The disbursement to each participating jurisdiction shall be determined by the tax rate of the jurisdiction multiplied by the taxable packs of cigarettes reported within the jurisdiction, plus interest and penalties, plus the jurisdiction's proportional share of all other revenues, less discounts and proportional expenses.

b. Total expenses for the fiscal year shall not exceed six (6) percent of total Board revenues for that year. The Board may, by majority vote, authorize an increase in expenses not to exceed an amount greater than an additional one (1) percent of the total Board revenues for that year. The Board shall maintain an operating fund of \$25,000.00.

c. All monies shall be deposited in the name of the Northern Virginia Cigarette Tax Board. All checks drawn on Board accounts shall require signature by the Administrator and one Board Officer.

9. **TERMINATION**

a. In the event any participating jurisdiction decides, by ordinance, to terminate its participation in the Board, notice to the Board shall be given sixty (60) days prior to its date of termination. The terminating jurisdiction shall receive within thirty (30) days of its date of termination its share of total revenues less proportionate expenses, operating fund, and depreciated value of physical property used by the Board. The representative of such terminating jurisdiction shall not serve on the Board beyond the termination date.

b. In the event the number of jurisdictions which desire to continue to participate in the Board is less than two (2) in number, the Board shall be dissolved and shall cease to exist. In such event, the Board shall liquidate all assets and disburse to each jurisdiction participating at the time each such jurisdiction's share of the liquidated assets and all proceeds and monies held. Such distribution shall be based upon each jurisdiction's proportionate share of the number of taxable packs of cigarettes reported in the preceding twelve (12) months as compared to the taxable packs of cigarettes reported during that same time period in all the jurisdictions participating in the Board at the time the Board is dissolved.

10. **IMPLEMENTATION**

Each jurisdiction shall by ordinance signify its desire to be a member of the Board and its acceptance of the provisions of this Agreement.

This Agreement shall take effect upon the signature of the proper officials of any two (2) of the jurisdictions below and shall take effect as to any other jurisdiction upon signature of the proper official of such jurisdiction.

NORTHERN VIRGINIA CIGARETTE TAX BOARD AGREEMENT

SIGNATURE PAGE

Fairfax County, Virginia

By: _____

Printed Name

Title

City of Alexandria, Virginia

By: _____

Printed Name

Title

City of Falls Church, Virginia

By: _____

Printed Name

Title

City of Fairfax, Virginia

By: _____

Printed Name

Title

City of Manassas, Virginia

By: _____

Printed Name

Title

Town of Clifton, Virginia

By: _____

Printed Name

Title

Town of Dumfries, Virginia

By: _____

Printed Name

Title

Town of Haymarket, Virginia

By: _____

Printed Name

Title

Town of Herndon, Virginia

By: _____

Printed Name

Title

Town of Leesburg, Virginia

By: _____

Printed Name

Title

Town of Middleburg, Virginia

By: _____

Printed Name

Title

Town of Purcellville, Virginia

By:

Printed Name

Title

Town of Vienna, Virginia

By:

Printed Name

Title

Town of Warrenton, Virginia

By:

Printed Name

Title

Town of Hillsboro, Virginia

By:

Printed Name

Title

Town of Lovettsville, Virginia

By:

Printed Name

Title

Town of Round Hill, Virginia

By:

Printed Name

Title

City of Fredericksburg, Virginia

By:

Printed Name

AN ORDINANCE APPROVING THE FORMATION OF A JOINT ENTITY TO BE KNOWN
AS THE MOUNT ROGERS CIGARETTE TAX BOARD AND BESTOWING ON SUCH
ENTITY ALL POWERS NECESSARY AND PROPER FOR THE PERFORMANCE OF ITS
DUTIES AS PROVIDED BY LAW

WHEREAS, pursuant to the authority granted to localities under § 15.2-1300 of the Code of Virginia, 1950, as amended, the Board of Supervisors of Smyth County has determined that it would serve the public interest to establish a joint entity to be known as the Mount Rogers Cigarette Tax Board (the "Board") in order to efficiently administer the collection, accounting, disbursement, compliance monitoring and enforcement of cigarette taxes assessed by the localities desiring to join the Board; and

WHEREAS, the Smyth County Board of Supervisors has reviewed an agreement establishing the Board and defining its' powers, duties and other procedures, the text of which is attached hereto and incorporated herein as "Exhibit A," and is in agreement with the terms as set forth therein; and,

WHEREAS, the aforementioned agreement provides that it shall become effective upon the approval by the governing bodies of at least two (2) localities within the Mount Rogers Planning District and the execution of said agreement by their authorized representatives; and,

WHEREAS, the Smyth County Board of Supervisors wishes to authorize the formation of the Board with the County of Smyth as a member thereof, and authorize the execution of said agreement by the County Administrator on its behalf.

NOW WHEREFORE, the Board of Supervisors of Smyth County hereby ORDAINS AS FOLLOWS:

1. Under authority of 15.2-1300, and upon the approval and execution of two (2) or more localities within the Mount Rogers Planning District, there is hereby created and established the Mount Rogers Cigarette Tax Board, which shall act as the agent of the localities for the administration of their respective cigarette tax ordinances.

2. The agreement, attached hereto as Exhibit A, is hereby APPROVED and the County Administrator is authorized to execute the same on behalf of the governing body; and

3. The powers and authority of the Board, as set forth in the agreement are hereby APPROVED.

This Ordinance shall be effective _____.

Member

Vote

Charles E. Atkins

Roscoe D. Call

Lori H. Deel

Kristopher S. Ratliff, DPh

Charles P. Stevenson

Michael L. Sturgill

Judy Wyant

Adopted this the ____ day of _____, 2021.

Attest:

Clerk of the Smyth County Board of Supervisors

MOUNT ROGERS AREA CIGARETTE TAX AGREEMENT

This Agreement, dated the ____ day of _____, 2021 is entered into by and between

- 1) The City of Galax, Virginia;
- 2) The County of Carroll, Virginia;
- 3) The County of Grayson, Virginia;
- 4) The County of Wythe, Virginia;
- 5) The Town of Hillsville, Virginia;
- 6) The Town of Independence, Virginia;
- 7) The County of Smyth, Virginia;
- 8) The County of Bland, Virginia;
- 9) The County of Washington, Virginia;
- 10) The Town of Rural Retreat, Virginia
- 11) The Town of Wytheville, Virginia
- 12) The Town of Chilhowie, Virginia
- 13) The Town of Marion, Virginia
- 14) The Town of Saltville, Virginia

or any two or more of the foregoing, and provides as follows:

WHEREAS, the parties hereto (the "Member Jurisdictions") desire to enter into an Agreement for the purpose of the establishment of the Mount Rogers Cigarette Tax Board (the "Board") for the joint administration, collection, and enforcement of their respective Cigarette Tax Ordinances pursuant to the provisions of these ordinances and § 15.2-1300 and §§ 58.1-3830, *et. seq.*, of the Code of Virginia, 1950, as amended.

NOW, THEREFORE, the parties hereby enter into the following agreement.

1. NAME AND DURATION

The Board shall be called the Mount Rogers Cigarette Tax Board. Its duration shall be perpetual, subject to the provisions of Paragraph 8 herein.

2. MEMBERSHIP AND VOTING POWERS

The Board shall be composed of one representative from each jurisdiction currently named herein and one representative from those jurisdictions later added with the consent of the Board in conformity with Section 10. The chief administrative officer of each of the member jurisdictions (County Administrator, City Manager or Town Manager, as applicable) shall constitute that jurisdiction's Board representative, and such officer may designate an alternate to attend meetings and vote in his or her place by written notice delivered to the Board Chair prior to the meeting at which the alternate will attend. A majority of the representatives from the member jurisdictions shall constitute a quorum for transaction of business. Action of the Board shall be by majority vote of those present and voting, with the exception of adding new members to the Board, which shall require the approval by the majority of the entire Board membership. In all matters, each jurisdiction shall be entitled to only one vote.

3. OFFICERS AND MEETINGS

Each year, the Board shall elect a Chair, Vice-Chair, and Secretary/Treasurer, who shall serve for a term of one (1) year, unless removed by majority action of the Board. The aforementioned officers shall be chosen from the members of the Board, and shall be empowered to sign in the name of the Board on all legal documents, including bank deposits and withdrawals. The Board shall meet from time to time as needed, and shall meet at least quarterly, however, additional meetings may be called at any time by action of the Chair or upon the request of three (3) or more members by submitting such request to the Chair in writing.

The Board may adopt bylaws, procedural rules and other policies to regulate its affairs not inconsistent with this Agreement. Minutes shall be kept for all meetings in conformity with the Virginia Freedom of Information Act.

4. POWERS OF THE BOARD

The Board shall be delegated the following powers from the member jurisdictions:

- a. The power to assess, collect and disburse the cigarette taxes levied by and for each member jurisdiction;
- b. The power to audit the sale or use of cigarettes within each member jurisdiction;
- c. The power to provide information to the appropriate law enforcement agencies of the affected member jurisdictions for the purpose of prosecution of criminal violations of the member jurisdiction's cigarette tax laws and ordinances;
- d. The power to hire, supervise, discharge and manage an Administrator to oversee the day-to-day operations of the Board;
- e. The power to establish and manage general operating funds to ensure proper funding of Board operations on an ongoing basis;
- f. The power to employ auditors for review of the Board's finances, and employ accountants, legal counsel, and other advisors as the Board deems necessary or advisable to discharge its' duties;
- g. The power to designate one or more depository bank or banks for tax funds collected;

- h. The power to contract with one or more member jurisdictions for provision of administrative, fiscal and personnel services;
- i. The power to hold and convey personal property. The Board shall have no power to hold or convey real property;
- j. The power to enter into contracts, including without limitation the power to enter into contracts with public bodies for the availability and provision of office and storage space, office and other equipment, and for the use of motor vehicles;
- k. The power to hire, supervise and discharge such other employees as the Board may deem necessary or expedient to carry out its duties and powers;
- l. The power to contract for benefits for Board employees;
- m. Any other powers granted to the Board by other provisions of this Agreement, by the respective local ordinances of the member jurisdictions, and by the Code of Virginia (1950), as amended.

5. LIABILITY INSURANCE

The Board is hereby authorized and directed to maintain insurance coverage appropriate to the nature of the Board's operations. General liability insurance shall be maintained through a commercial general liability policy in limits of not less than One Million Dollars (\$1,000,000) the Board shall maintain worker's compensation coverage in at least the statutorily required minimum amounts.

6. ADMINISTRATOR

The Board shall appoint an Administrator, who shall be responsible for the normal, day-to-day operations of the Board in administration of the Cigarette Tax Ordinances adopted by each of the member jurisdictions. The Administrator shall serve at the pleasure of the Board and under such terms and conditions of employment as the Board shall deem appropriate, which may include the power of the Administrator to hire, train, discipline and discharge subordinate employees as needed to carry into effect the purposes and duties of the Board, contingent upon creation by the Board of such subordinate positions. The Administrator shall act as the chief employee of the Board, and shall answer to and be under the supervision of the Board. The Administrator shall attend Board meetings and report to the Board on expenditures of the Board, projected revenues, and other matters relevant to the efficient administration of the Board. The Board may adopt such contracting and purchasing policies as it may deem appropriate, consistent with the Virginia Public Procurement Act and other applicable laws and regulations, and delegate to the Administrator the authority and responsibility for administration thereof. The duties of the Administrator shall include, but are not limited to the following:

- a. Preparation of annual administrative cost estimates;
- b. Reporting to the Board with recommendations as to the creation of employment positions needed to carry into effect the purposes and duties of the Board;
- c. Hiring, management, evaluation, training, discipline and discharge of employees in such employment positions created by the Board;
- d. Contracting, with the approval of the Board, for equipment, supplies, employee health and retirement benefits and other benefits as approved by the Board;
- e. Preparation of such other reports as the Board may require;

- f. Review and authorization of disbursements from Board accounts, including without limitation regular disbursements of tax revenue from member jurisdictions.

7. COLLECTION OF THE CIGARETTE TAX

The cigarette tax shall be assessed and collected according to the respective ordinances and according to the rules, regulations and procedures adopted by the Board.

8. DISBURSEMENT OF RECEIPTS, MANAGEMENT OF FUNDS

- a. Disbursements shall be made to each member jurisdiction on a monthly basis. Prior to disbursement to member jurisdictions, expenses for the applicable period shall be deducted from total revenues and allocated to the jurisdictions proportionately based upon the number of taxable packs of cigarettes reported within the jurisdiction during the period as compared to the total number of taxable packs of cigarettes reported in all the member jurisdictions. The disbursement to each member jurisdiction shall be determined by the tax rate of the jurisdiction multiplied by the taxable packs of cigarettes reported within the jurisdiction, plus interest and penalties assessed within the jurisdiction in question, plus the jurisdiction's proportional share of all other revenues, less discounts and proportional expenses.
- b. The Board shall adopt an annual budget and provide a copy thereof to each of the member jurisdictions. The Board shall establish an operating fund, taking into account the anticipated revenues and expenditures for each year.
- c. All monies shall be deposited in the name of the Mount Rogers Cigarette Tax Board. All checks drawn on Board accounts shall require the signature of the Administrator and at least one Board Officer.

9. TERMINATION

- a. In the event any member jurisdiction decides, by ordinance, to terminate its participation in the Board, notice thereof shall be given to the Board no fewer than sixty (60) days prior to the effective date of such termination. The terminating jurisdiction shall receive within thirty (30) days of the effective date of termination its proportionate share of total revenues less its proportionate share of expenses, operating fund, and depreciated value of tangible personal property owned by the Board. The representative of such terminating jurisdiction shall cease to be a member of the Board as of the effective date of the termination and thereafter the terminating jurisdiction shall have no rights to participate in the business or operations of the Board, and the terminating jurisdiction shall thereafter have sole rights and responsibility for collection and enforcement of its local cigarette tax.
- b. In the event the number of member jurisdictions is less than two (2) in number, the Board shall dissolve and cease to exist. In such event, the Board, prior to dissolution, shall liquidate all assets and disburse the proceeds to each member jurisdiction that has not previously received a payment pursuant to Paragraph 9(a). Such distribution shall be proportionate to the number of taxable packs of cigarettes reported in the jurisdiction in question during the preceding twelve (12) months as compared to the taxable packs of cigarettes reported in the preceding twelve (12) months in all jurisdictions constituting the Board at the time of dissolution.

10. IMPLEMENTATION

Each member jurisdiction shall by ordinance signify its desire and agreement to become a member of the Board and its acceptance of the provisions of this Agreement. This Agreement shall become effective upon the adoption of such ordinances and execution of this agreement by any two (2) of the jurisdictions below, and thereafter any jurisdiction named below may join as a member upon the adoption of such ordinance and execution by its authorized representative, and upon payment of any shared expenses as may be determined by the Board. Upon such execution and payment, this agreement shall become operative as to the jurisdiction in question.

Jurisdictions other than those named below may be added to the Board by upon agreement of a majority of the Board, and upon adoption of an ordinance by the governing body of the jurisdiction to be added, execution of this Agreement, and payment into the Board of any shared expenses as may be determined by the Board.

REMAINDER OF THIS PAGE SHALL REMAIN BLANK

MOUNT ROGERS CIGARETTE TAX BOARD AGREEMENT SIGNATURE PAGE.

The City of Galax, Virginia

Signature

Printed Name

Title

The County of Grayson, Virginia

Signature

Printed Name

Title

The County of Smyth, Virginia

Signature

Printed Name

Title

The County of Carroll, Virginia

Signature

Printed Name

Title

The County of Bland, Virginia

Signature

Printed Name

Title

The County of Wythe, Virginia

Signature

Printed Name

Title

SIGNATURES CONTINUED ON FOLLOWING PAGE

**MOUNT ROGERS CIGARETTE TAX BOARD AGREEMENT SIGNATURE PAGE
(contd.)**

The Town of Hillsville, Virginia

Signature

Printed Name

Title

The Town of Independence, Virginia

Signature

Printed Name

Title

The Town of Rural Retreat, Virginia

Signature

Printed Name

Title

The Town of Wytheville, Virginia

Signature

Printed Name

Title

The County of Washington, Virginia

Signature

Printed Name

Title

The Town of Chilhowie, Virginia

Signature

Printed Name

Title

SIGNATURES CONTINUED ON FOLLOWING PAGE

**MOUNT ROGERS CIGARETTE TAX BOARD AGREEMENT SIGNATURE PAGE
(contd.)**

The Town of Marion, Virginia

The Town of Saltville, Virginia

Signature

Signature

Printed Name

Printed Name

Title

Title

