

# Discussion of Cigarette Tax

September 14, 2021

## State Code Authority – Cigarette Tax

- In 2020, the Virginia General Assembly allowed counties to adopt a cigarette tax (similar to legislation in place for Cities); § 58.1-3830

- Maximum 40 cents per pack beginning July 1, 2021

# State Code Authority – Regional Cigarette Tax Board

- § 58.1-3832.1 added to the Code to authorize **at least six localities** who collect a local cigarette tax to establish a regional cigarette tax board
  - Purpose
    - To collect cigarette tax revenues for each member
    - Distribute tax revenue to each member\*
    - Enforce all local cigarette tax ordinances among member localities
    - Promote uniformity of cigarette tax ordinances among member localities
    - Encourage uniformity of cigarette tax rates among member localities (to the extent possible)

\*Net of board expenditures

# Regional Discussions

- Kevin Massengill, County Administrator for Dinwiddie County has spearheaded regional discussions about forming a regional cigarette tax board
- Bill Hefty (Hefty, Wiley & Gore) has provided advice on navigating the process
- Who is “at the table” to **discuss** forming a regional cigarette tax board
  - Dinwiddie County
  - Prince George County
  - Greensville County
  - Surry County
  - Sussex County
  - Amelia County
  - Nottoway County
  - Brunswick County
  - City of Colonial Heights (currently collects tax - 35¢)
  - City of Petersburg (currently collects tax - 90¢)
  - City of Hopewell
  - City of Emporia

# Regional Cigarette Tax Boards

- Northern Virginia has operated a regional cigarette tax board since 1970
  - 19 members [Fairfax County; City of Alexandria; City of Fredericksburg and several other small cities and towns in region]
  - 5 employees
- Other areas of the state considering
  - Mount Rogers Planning District Commission
  - Northern Neck Middle Peninsula Planning District Commission
  - Thomas Jefferson Planning District Commission
  - Northern Shenandoah Planning District Commission
  - Rappahannock-Rapidan Planning District Commission

# Regional Cigarette Tax Boards – Key Points / Questions

- Advantages
  - Each locality would not have to administer and enforce its own program
  - Uniform enforcement across the region
  - If all regional localities had a cigarette tax, harder for consumers to cross jurisdictional lines to purchase to avoid the tax

# Regional Cigarette Tax Boards – Key Points / Questions

- How much revenue?
  - No study that shows exact amount for each locality
  - Would differ depending on number of retailers
  - “Ball park” estimate 20 packs per capita per year with 30¢ tax
    - $[34,000 \text{ general population} \times 20 \times 0.30 = \$204,000]$  – *before covering share of regional board costs*
- What is the board “makeup” and much would it cost each locality to participate in the regional board?
  - 2 or 3 employees approx. \$200,000\* annual budget {one/two vehicles; office space; \*3 employees}
    - One office employee
    - One or two in field
  - Expenses divided among participating members based on percentage of packs sold (not tax collected)
    - i.e. locality that sells 1% of cigarettes would pay 1% of expenses

# Regional Cigarette Tax Boards – Key Points / Questions

- Takes six (6) localities to form a regional cigarette tax board
  - Once there are six localities that have adopted a cigarette tax ordinance, the Board can begin operation
    - As long as ordinance has been adopted, Board can be formed even if effective date of ordinance is sometime in the future
- Once Board formed:
  - Each jurisdiction has a board member, CEO (one alternate recommended)
  - Decide number of employees needed
  - Housed in a locality office or rental space
  - Whether one locality would be fiscal agent
  - When board would start operations
  - Would be initial start-up costs to fund before tax actually collected
    - Could be reimbursed to localities



# Regional Cigarette Tax Boards – Key Points / Questions

- **Timing**
  - Preferable that localities that have not adopted an ordinance do so to **take effect beginning July 1, 2022** to coincide with the fiscal year
  - In order to form a board and get operational by July 1, 2022, important for localities to **adopt ordinance and join board by January 1, 2022**
    - So everyone knows who will be members
- **Rates**
  - Do each member locality's rates need to be the same?
    - No, but recommended / logical or “boundary hopping” will occur
- Agreement would need to be executed by regional participants - draft provided by Mr. Hefly

# Cigarette Tax and Regional Board – Next Steps

## Next Steps -

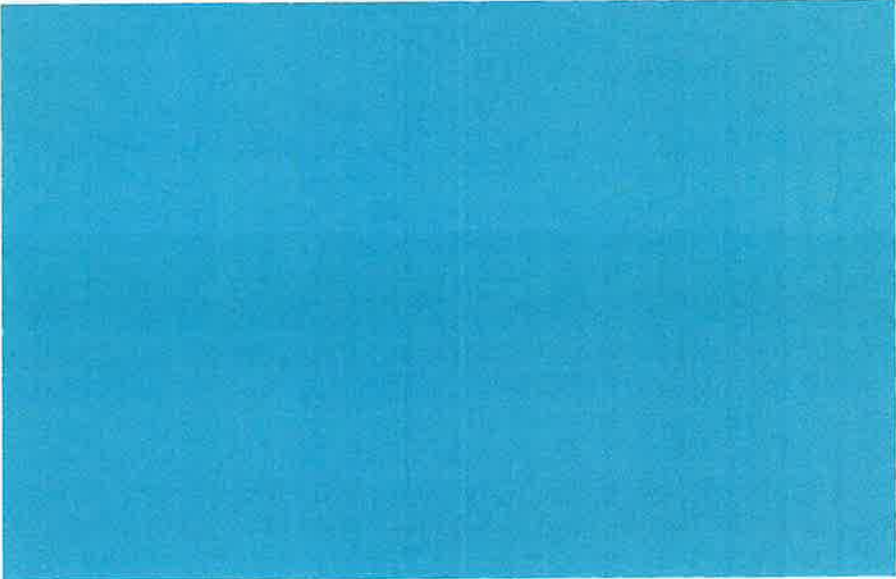
- Adopt Ordinance to collect tax; establish rate
  - Could advertise Ordinance October 12
  - Could hold Public Hearing November 10
- Work with participating localities to develop Regional Board and enter agreement
  - Could approve resolution to enter into a joint agreement on November 10

# Cigarette Tax Use of Funds?

How would Prince George County use funds if Cigarette Tax implemented?

- General Fund at large?
- Special Revenue Fund for specific purpose?
  - Wellness Initiative-Related?
- FY2023 Budget
  - Revenues
  - Expenditures\*
    - Board expenditure contribution\*
    - USES of funds?

\*Not sure if board expenditures are "taken off the top" from tax remittances



- Questions?

## § 58.1-3830. Local cigarette taxes authorized; use of dual die or stamp to evidence payment

A. Any locality is authorized to levy taxes upon the sale or use of cigarettes. The governing body of any locality that levies a cigarette tax and permits the use of meter impressions or stamps to evidence its payment may authorize an officer of the local 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 local 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 local 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; 2021, Sp. Sess. I, c. 61.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia  
Title 58.1. Taxation  
Subtitle III. Local Taxes  
Chapter 38. Miscellaneous Taxes  
Article 7. Cigarette Tax

## § 58.1-3832.1. Regional cigarette tax boards

A. As used in this section:

"Member locality" means a locality that elects to become a member of a regional cigarette tax board and have its local cigarette tax administered by the board.

"Region" means the group of localities for which the regional cigarette tax board administers local cigarette taxes.

"Regional cigarette tax board" means 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.

B. A regional cigarette tax board shall have 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 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 the 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.

2021, Sp. Sess. I, c. 61.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters

whose provisions have expired.

To: Kevin Massengill

From: Bill Hefty

Re: Regional Cigarette Tax Board

Date: July 27, 2021

The General Assembly in 2020 adopted legislation allowing counties for the first time to adopt a cigarette tax. The maximum rate is 40 cents per pack. The county tax does not apply to cigarette sales in a town where the town imposes its own tax, either now or in the future, unless the town agrees that both the town and county tax should apply.

Earlier this year the General Assembly amended the legislation to allow at least six localities to create a Regional Cigarette Tax Board for the purpose of jointly administering cigarette taxes in a region. The regional tax board would be responsible for cigarette stamping in the localities who are members, collecting the tax for each locality and distributing it, and enforcing the cigarette tax ordinances to make sure that retailers and wholesalers were following the local ordinances.

There has been a Regional Cigarette Tax Board in Northern Virginia since 1970, which is comprised of Fairfax County, the City of Alexandria, the City of Fredericksburg, and several other small cities and towns in the region. There are currently 19 members. They have five employees, and it seems to have worked well.

Other areas of the state are considering establishing regional cigarette tax boards as well. Members of the Mount Rogers Planning District Commission, the Northern Neck/s Middle Peninsula Planning District Commission, the Thomas Jefferson Planning District Commission, the Northern Shenandoah Planning District Commission, and the Rappahannock-Rapidan Planning District Commission. Other counties are considering adopting a cigarette tax without forming a regional cigarette tax board, which is the other option.

Several key points/questions:

1. Some advantages of a regional cigarette tax board are that each locality would not have to administer and enforce its own program, there would be uniform enforcement across the region, and if all of the localities had a cigarette tax it would be harder for a consumer to go across jurisdictional lines to buy cigarettes to avoid the tax, to the extent that would occur.
2. How much revenue would be generated for each locality if the governing body adopted a cigarette tax? There is no study that shows the amount for each locality, and it obviously will differ depending on the population and number of cigarettes sold in each locality. Colonial Heights adopted a cigarette tax in 2019 and collects about \$800,000 a year in tax. A study for the Middle Peninsula Planning District Commission estimated that a county with 11,000 population with a tax of 30 cents per pack would collect approximately \$60,000 (using an



average of 20 packs sold per capita per year) and a county of 17,000 would collect approximately \$100,000. In urban areas, where there are more convenience stores, the amount may be higher than for rural counties.

3. How much would it cost each locality to participate in a regional board? It is anticipated that it would require two or three employees depending on the number of localities that were members of the Board. One would be an office employee in charge of collecting and distributing the tax, and one or two would be in the field visiting retailers to enforce the tax. One or two vehicles would be required, as well as office space. If there were three employees, the annual operating budget for the Board could be approximately \$200,000. The expenses would be divided based on the percentage of packs of cigarettes sold in the region (not on tax collected), so a county selling 1% of the cigarettes would pay 1% of the expenses.
4. It takes six localities to form a regional cigarette tax board. Once there are six localities that have adopted a cigarette tax ordinance, the Board can begin operation. As long as the ordinance has been adopted, the Board can be formed even if the effective date of the ordinance is sometime in the future.
5. Once the Board were formed, the Board would decide how many employees it would need, whether they would be housed in locality office space or rental space, whether one of the localities would be the fiscal agent, and when the Board would actually start operations. There would be initial start up costs that would have to be funded before the tax was actually collected, which could be reimbursed to the localities from tax proceeds.
6. There is a question of timing. It would seem preferable that localities that have not adopted a cigarette tax do so beginning July 1, 2022 to coincide with a fiscal year. In order to form the Board and get it operational by that date, however, it would be important for localities that want to have a cigarette tax and to join the Board do so sometime prior to January 1, 2022 so that everyone knows who will be members.
7. One caveat for counties is that a county cigarette tax applies to sales in towns within the county unless the town adopts its own tax. Since many convenience stores are in towns, that might be a large percentage of the sales within a county. If the town adopts a cigarette tax, they collect the revenue, and the county does not. If the residents will pay the same tax regardless of whether the county or town imposes it, there is little incentive for a town not to adopt a tax if the county does.
8. One question is whether each locality needs to adopt the same rate on cigarette tax sales. The answer is no.

## AGREEMENT

**WHEREAS**, the Virginia General Assembly has authorized counties to charge a cigarette tax not in excess of 40 cents per pack beginning July 1, 2021, which authority previously was given only to cities and towns; and

**WHEREAS**, the legislation adds a new section to the Code of Virginia, Section 58.1-3832.1, which authorizes at least six localities who collect a local cigarette tax to establish a regional cigarette tax board for the purpose of collecting cigarette tax revenues for each member and distributing them to the member localities, enforcing all local cigarette tax ordinances among the member localities, promoting uniformity of cigarette tax ordinances among the member localities, and to the extent possible encouraging uniformity of cigarette tax rates among the member localities; and

**WHEREAS**, pursuant to such legislation, several localities in the Southside Virginia region which have adopted cigarette taxes in the past or after July 1, 2021 wish to establish a regional cigarette tax board.

**NOW THEREFORE, IT IS AGREED** by the undersigned localities (the "Member Jurisdictions") as follows:

### **1. ESTABLISHMENT OF SOUTHSIDE REGIONAL CIGARETTE TAX BOARD.**

Pursuant to Section 58.1-3832.1 of the Code of Virginia, the Member Jurisdictions hereby establish the Southside Regional Cigarette Tax Board, which shall become effective upon the adoption of a resolution approving this agreement by at least six localities which have adopted a local cigarette tax ordinance.

### **2. BOARD.**

The Board shall consist of one member from each Member Jurisdiction, which shall be the chief executive officer of that Member Jurisdiction. Each Member shall have one vote. Each Member Jurisdiction may also appoint one alternate member, who may attend meetings if the appointed member is unavailable. The terms of the members shall be as determined by each Member Jurisdiction.

**3. TERM.**

The term of the Board shall be perpetual, subject to dissolution pursuant to Section 8 hereof.

**4. POWERS AND DUTIES.**

The Board shall have the following powers and duties:

- a. Providing for the use of a uniform meter impression or stamp as evidence of payment of any local cigarette tax within the region.
- b. Entering into an arrangement with the Department of Taxation for the use of a dual die or stamp as evidence of payment of any applicable local and state tax.
- c. Providing a single point of contract for a stamping agent to remit local cigarette taxes due to any Member Jurisdiction.
- d. Providing a discount to a stamping agent as compensation for accounting for the tax due in the amount of two percent.
- e. Distributing any local cigarette taxes collected by the Board to the appropriate Member Jurisdiction.
- f. Enforcing all local cigarette tax ordinances within the region.
- g. Promoting uniformity of cigarette tax ordinances among the Member Jurisdictions.
- h. To the extent possible, encouraging uniformity of cigarette tax rates among the Member Jurisdictions.
- i. Accomplishing any other purpose that helps promote the uniform administration of local cigarette taxes throughout the region.
- j. Any other power of duty that is authorized by Virginia law.

**5. EMPLOYEES.**

Draft Agreement [William Hefty]

The Board shall have the authority to hire employees to carry out the duties of the Board. Such employees may be deemed to be employees of the Board itself or the Board may enter into an agreement with one of the Member Jurisdictions to be the employer.

**6. DISBURSEMENT OF RECEIPTS AND MANAGEMENT OF FUNDS.**

- A. The Board shall approve a budget prior to March 1 of each year for the next fiscal year, which it shall distribute to the Member Jurisdictions. The expenses of the Board shall be paid out of the taxes collected prior to distribution in proportion to the amount of cigarette tax collected in each Member Jurisdiction in the previous fiscal year or, for the first fiscal year, the expected percentages of cigarette taxes to be collected from each Member Jurisdiction.
- B. The Board shall collect the cigarette taxes in each of the Member Jurisdictions and deposit the tax receipts in an account set up solely for that purpose. The account may be in the name of the Board, or the Board may contract with one of the Member Jurisdictions to serve as the fiscal agent.
- C. In order to have start up funds for the Board, each Member Jurisdiction agrees to contribute an amount determined by the Board to be necessary based on the expected percentage of taxes to be collected from the Member Jurisdictions. Such start up funds may be reimbursed by the Board from cigarette tax revenues.

**7. LOCATION OF OFFICES.**

The Board may rent space for its offices from the private sector, or may enter into an agreement with one of the Member Jurisdictions to use office space in that Member Jurisdiction on such terms as may be agreed upon.

**8. DISSOLUTION AND WITHDRAWAL.**

- A. Any member may withdraw from the Board by giving six months' written notice to the Board.
- B. In the event the Board has less than six Member Jurisdictions, the Board shall be considered dissolved. In addition, the Board may dissolve upon agreement of the Members. Upon dissolution, the assets of the Board shall be distributed to the Member Jurisdictions based upon each Member Jurisdiction's proportionate share of the number of taxable packs of cigarettes reported in the preceding twelve month period.

**Draft Agreement [William Hefty]**

**This Agreement shall be effective upon the signature of at least six Member Jurisdictions, whose governing bodies have adopted a resolution approving this Agreement and which have adopted a cigarette tax ordinance.**

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