

Department of Legislative Services
 Maryland General Assembly
 2007 Session

FISCAL AND POLICY NOTE

House Bill 1144 (Delegate Barve)
 Ways and Means

Tobacco Tax - Moist Snuff

This bill alters the existing State tax on moist tobacco snuff from 15% of its wholesale value to \$0.39 per ounce.

The bill takes effect July 1, 2007.

Fiscal Summary

State Effect: General fund revenues would increase by \$329,500 in FY 2008 due to increased other tobacco products (OTP) and sales tax collections. Future years reflect decreasing amounts of additional revenues before turning negative in FY 2012. No effect on expenditures.

| (in dollars) | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
|--------------|-----------|-----------|-----------|---------|-------------|
| GF Revenue | \$329,500 | \$237,800 | \$130,800 | \$6,100 | (\$102,600) |
| Expenditure | \$0 | \$0 | \$0 | \$0 | \$0 |
| Net Effect | \$329,500 | \$237,800 | \$130,800 | \$6,100 | (\$102,600) |

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Current Law: OTP, including moist tobacco snuff, are taxed at a rate equal to 15% of the wholesale price. In addition, the State sales tax of 5% is imposed on the final retail price of OTP.

Background: Tobacco snuff, a fine ground tobacco, comes in cans or pouches and it can be dry or moist. Data from the U.S. Centers for Disease Control and Prevention (CDC) showed that among adults aged 18 and older in 2004, about 3% of people (6% of men and 1% of women) were current users of either chewing or tobacco snuff (spit tobacco). Rates among young people, however, are higher. According to CDC's 2005 National Youth Risk Behavior Surveillance, about 14% of male high school students and 2% of female high school students were using spit tobacco. The CDC 2004 Tobacco Survey reported that 2.9% of middle school students reported using spit tobacco at least once in the 30 days before the survey. Regardless of race, male students were more likely to use spit tobacco than female students. A more recent influence increasing the use of spit tobacco is the newly enacted smoking bans many states and localities are enforcing.

The existing OTP tax is an ad valorem tax, one that is based on the value of the good being taxed. The amount of revenue collected depends on changes in the quantity sold and value of the good. The bill proposes to impose a per unit tax on moist tobacco snuff, one that is dependent only on the quantity sold. As a result, moist tobacco snuff products would be taxed equally without regard to their price. In addition to any change in the total amount of tax collected, the incidence of the tax would shift in relative terms from higher-priced goods to lower-priced goods.

Moist tobacco snuff retail prices vary considerable with many products selling for less than half the price of premium products at the retail level. United Smokeless Tobacco (UST), which sells mainly premium products, had approximately two-thirds of the market in 2005. It is the largest producer, although its market share has declined from about 80% 10 years ago. According to its most recent 10-K financial filing, UST generated revenues of \$2.40 per can of smokeless tobacco sold in the first nine months of 2006. UST and three other companies sold an estimated 1 billion cans of moist tobacco snuff in 2005. Sales have recently increased by approximately 6% annually, although value product sales increased by 30% in 2005.

Of the 49 states that impose an OTP tax, 9 impose the tax on the basis of weight while the other 40 impose an ad valorem tax. In 2006, three states switched from an ad valorem tax to an excise tax – New Jersey, Rhode Island, and Vermont. Alabama, Arizona, Connecticut, Kentucky, Montana, and North Dakota also impose a weight-based tax as well as the federal government. Legislation has been introduced in North Dakota to revert back to an ad valorem tax. Of the surrounding states, only New Jersey taxes moist snuff tobacco on a per unit basis. Cigarettes in Maryland are taxed on both a per unit basis (excise tax of \$1.00 per pack) and ad valorem (5% sales tax).

The OTP tax totaled \$8.7 million in fiscal 2006. Of the monthly wholesaler reports filed with the Comptroller's Office, approximately 55% of taxes were generated from cigars, 32% from snuff, 10% from chewing tobacco, and less than 4% from pipe and other tobacco.

State Revenues: The bill would alter the OTP tax on moist snuff tobacco tax beginning July 1, 2007. The OTP tax would remain unchanged for cigars, chewing tobacco, and all other products. As a result, general fund revenues could increase by \$329,500 in fiscal 2008. This estimate is based on the following facts and assumptions:

- the total value of OTP sold in fiscal 2008 is estimated to be \$22.3 million;
- two-thirds of the OTP tax is collected from moist snuff tobacco;
- based on data from the Regulatory Enforcement Division of the Comptroller's Office, the average retail markup for moist snuff tobacco is slightly over 3%;
- each can sold weighs 1.2 ounces;
- the Board of Revenue Estimates estimates that the OTP tax will grow by 9% annually from fiscal 2008 to 2012;
- prices increase by 2.5% annually; and
- the average retail price before taxes is \$2.94.

Legislative Services advises that the average retail price is estimated and not based on actual Maryland price data. To the extent that the average retail price is currently higher than estimated, revenue gains would be less than estimated or possibly negative. **Exhibit 1** details the fiscal impact of the bill.

**Exhibit 1
HB 1144 Fiscal Impact**

| <u>Current Law</u> | <u>FY 2008</u> | <u>FY 2009</u> | <u>FY 2010</u> | <u>FY 2011</u> | <u>FY 2012</u> |
|-----------------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
| OTP Tax | \$3,345,600 | \$3,646,840 | \$3,974,940 | \$4,332,620 | \$4,688,940 |
| Sales Tax | <u>1,325,060</u> | <u>1,444,370</u> | <u>1,574,310</u> | <u>1,715,980</u> | <u>1,857,100</u> |
| Total | \$4,670,660 | \$5,091,210 | \$5,549,250 | \$6,048,600 | \$6,546,040 |
| <u>Under HB 1144</u> | | | | | |
| OTP Tax | 3,664,700 | 3,884,730 | 4,117,970 | 4,365,210 | 4,627,300 |
| Sales Tax | <u>1,335,460</u> | <u>1,444,310</u> | <u>1,562,040</u> | <u>1,689,500</u> | <u>1,816,120</u> |
| Total | \$5,000,160 | \$5,329,040 | \$5,680,010 | \$6,054,710 | \$6,443,420 |
| Net Impact | \$329,500 | \$237,830 | \$130,760 | \$ 6,110 | (\$102,620) |

Additional Information

Prior Introductions: None.

Cross File: SB 404 (Senator Hogan, *et al.*) – Budget and Taxation.

Information Source(s): Comptroller's Office, Federal Trade Commission, Securities and Exchange Commission, Department of Legislative Services

Fiscal Note History: First Reader - March 14, 2007
ncs/hlb

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