

MEMORANDUM



To: Board of Supervisors
From: Charles M. Culley, Jr. County Administrator *CMC*
Alan L. Partin, Deputy County Administrator *AP*
Date: March 3, 2022
Subject: Possible Implementation of Local Cigarette Tax

Background

As of July 1, 2021, all localities in Virginia may impose a cigarette tax of up two cents per cigarette (\$0.02) or 40 cents (\$0.40) per pack of 20 cigarettes. This local tax is in addition to the 60 cents per pack tax imposed by the Commonwealth of Virginia. Prior to the new law taking effect, only cities, towns and two counties (Arlington and Fairfax) were authorized to tax cigarettes.

The tax applies only to cigarettes. It does not apply to cigars, chewing tobacco, electronic cigarettes (“vaping”) or other tobacco products.

The Commissioner of the Revenue’s Office is working on an estimate of the amount of annual revenue that a cigarette tax would generate in Caroline County, but it is likely to be in excess of \$100,000 at a minimum. The memorandum is intended to give the Board of Supervisors the

information it needs to decide whether to move forward with the implementation of a cigarette tax.

What Counties in Proximity to Caroline Have Done

The table below depicts whether localities in proximity to Caroline County have implemented a local cigarette tax as of March 3, 2022:

| Locality | Cigarette Tax | Amount of Tax |
|--------------|---------------|--|
| Hanover | No | N/A; not currently under consideration |
| Essex | Yes | \$0.40 per pack of twenty cigarettes |
| King George | Yes | \$0.40 per pack of twenty cigarettes |
| Orange | Yes | \$0.12 per pack |
| Spotsylvania | Yes | \$0.30 per pack of 20; \$0.02 for each cigarette in packages of fewer or more than 20 |
| Stafford | Yes | \$0.30 per pack of 20 |
| King & Queen | No | N/A |
| King William | No | N/A; possible implementation has been previously discussed; still under consideration |
| Middlesex | Yes | Forty cents (\$0.40) for each package containing 20 cigarettes and two cents (\$0.02) for each cigarette |
| Lancaster | Yes | \$0.40 per pack of twenty cigarettes |
| Westmoreland | Yes | Forty cents (\$0.40) for each package containing 20 cigarettes and two cents (\$0.02) for each cigarette |

Options to Implement, Administer and Enforce

There appear to be two options available to implement, administer and enforce a cigarette tax: 1) join a regional cigarette tax board; or 2) implement the tax on our own through the Commissioner of the Revenue’s Office (referred to as “self-implementation”).

Option #1 - Regional Cigarette Tax Board

The majority of counties enacting a cigarette tax have opted to join a regional cigarette tax board, which administers and enforces the tax on behalf of its member localities.

The following regional cigarette tax boards currently exist in the Commonwealth of Virginia:

Blue Ridge Cigarette Tax Board – member localities are Albemarle, Augusta, Charlottesville, Fluvanna, Greene, Madison County, Town of Madison and Orange County.

Chesapeake Bay Region Cigarette Tax Board – member localities are Colonial Beach, Essex, Lancaster, Middlesex, Montross, Urbana, Warsaw and Westmoreland.

Mount Rogers Cigarette Tax Board – member localities are Bland, Chilhowie, Dublin, Marion, Pulaski County, Rural Retreat, Saltville, Smythe, Wythe and Wytheville.

Northern Virginia Cigarette Tax Board – member localities Alexandria, Clifton, Dumfries, Fairfax City, Fairfax County, Falls Church, Fauquier, Fredericksburg, Haymarket, Herndon, Hillsboro, Leesburg, Loudoun, Lovettsville, Middleburg, Prince William, Purcellville, Manassas, Manassas Park, Round Hill, Spotsylvania, Stafford, Vienna and Warrenton.

The Northern Neck Planning District Commission (NNPDC) serves as the administrative fiscal agent for the newly formed Chesapeake Bay Region Cigarette Tax Board (CBRCTB). Staff has spoken with NNPDC Executive Director Jerry Davis and determined that the CBRCTB will readily accept Caroline County as a member should the County adopt a cigarette tax. The Board of Supervisors would only need to approve the attached Chesapeake Bay Region Cigarette Tax Agreement to join the regional board.

How the Chesapeake Bay Region Cigarette Tax Board Works

Cities, towns and counties that impose a local cigarette tax require the use of their own tax stamp that must be placed on every pack of cigarettes sold in each locality. Wholesalers pay the tax by purchasing rolls of stamps from each locality or a regional board. The appropriate local stamp is then placed on the cigarettes that wholesalers distribute to retail establishments.

In the case of the Chesapeake Bay Region Cigarette Tax Board, a single stamp has been created for all member localities. The Northern Neck Planning District Commission (acting as the fiscal administrative agent) has an agreement in place that allows wholesalers to purchase dual CBRCTB/Commonwealth of Virginia cigarette stamps directly from the Virginia Department of Taxation. Wholesalers then provide a monthly report to the NNPDC indicating how many stamps and cigarettes have been sold by locality and individual retail location and the amount of tax money generated. NNPDC verifies the numbers, collects the tax money from the distributors and pays each locality its share each month, minus a 5% administrative fee. The 5% charge covers all costs to implement the cigarette tax including periodic spot checks at retail stores to ensure compliance.

No inquiry has been made to date about possible Caroline membership in the Northern Virginia Cigarette Tax Board. Staff will do so at the Board's direction.

Advantages of Joining Regional Cigarette Tax Board

- Easiest and least burdensome way to implement tax
- Commissioner of the Revenue's Office does not have to purchase and maintain inventory of stamps locally

- Stamps purchased and sold by regional board through an agreement with the Virginia Department of Taxation

Disadvantages of Joining Regional Cigarette Tax Board

- Tax distributed to localities after retail sale of cigarettes, not when stamps are sold to wholesalers/distributors
- County pays for service out of taxes collected, thereby reducing total revenue
- Must rely on regional tax board to confirm accuracy of cigarette stamp sales by locality

Option #2 – Self-Implementation

Under the self-implementation option, the County itself (the Commissioner of the Revenue's Office) would buy stamps and sell them to cigarette wholesalers and distributors. Upon adoption of an ordinance by the Board of Supervisors, the Commissioner of the Revenue's Office would send a notice to retail businesses licensed to sell cigarettes in Caroline notifying them of the upcoming tax, applicable regulations and the implementation date. The letter would require the retailer to send back a form identifying where they purchase cigarettes. The Commissioner's Office would then purchase and maintain an inventory of stamps and send stamp ordering information to these wholesalers and distributors. The wholesalers and distributors would purchase County stamps from the Commissioner's Office and affix them to cigarettes sold to Caroline retailers.

The local cigarette tax would be collected upon the sale of stamps to the wholesaler.

Staff and Commissioner of the Revenue Mark Bissoon met with a representative of Ashton Potter (one of two companies that manufacture cigarette stamps) to discuss how the self-implementation process works. Stamps are most commonly sold in rolls of 15,000 with 36 rolls

to a case (or 540,000 stamps). The cost is typically quoted per thousand stamps at a cost of less than \$6 per thousand stamps. Stamp inventory would be maintained by the Commissioner's Office and sold to wholesalers on an as needed basis.

Advantages of Self-Implementation

- County receives maximum available revenue without having to pay administration fee
- Tax received immediately upon sale of stamps to wholesaler/distributor. County does not have to rely on accurate tracking of retail sales by third-party to collect revenue

Disadvantages of Self-Implementation

- More work for Commissioner of Revenue staff
- Must determine how compliance will be audited at retail establishments

Analysis of Options

To date, King George and Page County are the only localities that staff is aware of that have opted for self-implementation of the cigarette tax through the Commissioner of the Revenue's Office. County Administrator Charles Culley, Deputy County Administrator Alan Partin and Commissioner of the Revenue Mark Bissoon spoke with Page County Commissioner Becky Smith about her office's experience with self-implementing the local cigarette tax. Ms. Smith shared that implementing the tax had not proven to be burdensome for her office and indicated that it "one of the easiest programs she has ever done." She believes selling the Page County cigarette stamp to wholesalers through her office rather than a regional board is well worth it to obtain the maximum possible revenue for the County. She also shared that no new positions have been added and compliance with the cigarette tax is being handled by the Commissioner's Office.

We also spoke with King George County Commissioner Judy Hart, who has also had a good experience with administering the cigarette tax from her office rather than using a regional cigarette tax board.

As a result of these conversations, Mr. Bissoon is comfortable with assuming responsibility for implementing and possibly enforcing the program.

Recommendation

After analyzing the available information, the County Administrator's Office recommends self-implementation should the Board of Supervisors decide to move forward with a local cigarette tax. As previously indicated, this approach will generate the maximum revenue for the County by eliminating the need to pay an administrative fee of 5% to a regional board to implement the tax. In addition, the County will collect the tax immediately upon the sale of stamps to wholesalers and any concerns about whether retail sales are being properly tracked and reported will be eliminated.

While not a financial windfall, a cigarette tax will provide a significant new source of revenue for Caroline County. As can be seen, many neighboring localities have previously chosen to implement the tax with no apparent negative impact. The contiguous counties of Hanover, King William and King and Queen have yet to adopt the tax to date. However, staff does not believe the implementation of a cigarette tax in Caroline will drive consumers to purchase cigarettes from other non-tax localities in any meaningful way.

Next Steps

If the Board wishes to move forward it will need to conduct a public hearing on an ordinance to establish, levy, administer and enforce a local tax upon the sale of cigarettes within Caroline County. Staff has been gathering sample ordinances from other localities that have already

implemented a cigarette tax. If the Board wishes to proceed, staff and County Attorney Ben Emerson will develop an ordinance for a first reading at an upcoming Board meeting.