



Legislator's Guide

A Legislator's Guide to Taxation Cigarette & Tobacco Tax

September 2019

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Overview

Virginia imposes both a cigarette tax and a tobacco products tax. Currently, the state tax is 30¢ per pack of cigarettes and 10 percent of the sales price of other tobacco products.¹ Cities and towns, as well as two counties, may impose an additional tax on cigarettes, and many do, at amounts ranging from 4¢ per pack to \$1.15 per pack.²

The cigarette tax is an excise tax—which means that it applies to a specific good or activity—in addition to the general sales tax. Accordingly, buying a \$5.00 pack of cigarettes could result in total taxes of 77¢ for a total price of \$5.77, consisting of state sales tax of 21.5¢ (at a rate of 4.3 percent, although the state rate is as high as 6.0 percent in some localities), local sales tax of 5¢; state cigarette tax of 30¢; and local cigarette tax of 20¢ (the median local rate).

History

Virginia began taxing cigarettes in 1960 at 3¢ per pack. The tax did not increase for over four decades, until the General Assembly raised it to 20¢ per pack in 2004 and again to 30¢ per pack the following year.³ The 2005 legislation also established a tax on other tobacco products like cigars, pipe tobacco, loose leaf tobacco, and chewing tobacco. The tobacco products tax is exclusively a state tax, and since 2005 it has been imposed at a rate of 10 percent of the sales price. Initially, the 10 percent rate was assessed based on the wholesaler's price to retailers (which is higher because it includes dealer markup), but since 2006 it has been based on the manufacturer's price (which is lower).⁴

Revenue Collection and Distribution

Use of State Tax Revenue

State tobacco tax revenues do not accrue to the general fund. Instead, they are dedicated to the Virginia Health Care Fund and must be used for health care services like Medicaid payments and community health services.⁵

¹ Va. Code §§ 58.1-1001 and 58.1-1021.02.

² Va. Code §§ 58.1-3830 and 58.1-3831.

³ Chapter 3, Acts of Assembly of 2004, Special Session I.

⁴ Chapter 71, Acts of Assembly of 2005.

⁵ Va. Code §§ 58.1-1001, 58.1-1018, and 58.1-1021.05.

Distribution of Local Tax Revenue

In fiscal year 2018, localities collected \$65 million in cigarette tax revenues, or about 0.3 percent of all local tax collections.⁶ Collections were primarily concentrated in two areas: Hampton Roads and Northern Virginia. The three largest collectors were Virginia Beach (\$11 million), Norfolk (\$7 million), and Fairfax (\$7 million), which together accounted for almost 40 percent of all local cigarette tax revenues.

Localities have increasingly relied on cigarette taxes as a revenue source, especially in towns. Since 2007, the number of towns imposing the tax has increased from 34 to 59. The rate of the tax also has gone up. In 1996, the highest local tax rate was 35¢ per pack in Hampton. Today, Alexandria imposes the highest rate, which is three times higher at \$1.15 per pack.

Downward Trend in Tobacco Tax Revenues

Generally, revenue sources like income tax and real property tax increase over time. But tobacco tax revenues have decreased over the past two decades. In 2018, combined cigarette and tobacco tax revenues were \$160 million; this was down 13 percent from 2008, when revenues were \$184 million. Many factors contributed to the downward trend, including high overall tax rates, decreasing consumption, substitution of other products like electronic cigarettes, and smuggling.

Cigarettes are one of the most heavily taxed commodities, subject to as many as five distinct taxes: a federal excise tax, a state sales tax, a local sales tax, a state cigarette tax, and a local cigarette tax. In 2019, the federal excise tax was \$1.01 per pack and the median state tax was \$1.66 per pack.⁷ The average aggregate of all state and local taxes per pack was \$2.14 per pack.⁸ That average, combined with the federal tax, resulted in a tax that accounts for 39 percent of the average total cost of a pack of cigarettes.

High prices and health concerns have combined with other factors to drive down consumption, leading to lower tax revenues. In 2007, people in the United States smoked 360 billion packs of cigarettes, but by 2017 that number was down by 30 percent to 250 billion packs.⁹ However, smokers are substituting and increasing their consumption of other tobacco products, especially electronic cigarettes. From 2012 to 2016, electronic cigarette consumption increased 140 percent from 27 million units to 65 million units.¹⁰

Administration

Like many excise taxes, the cigarette tax is not administered at the point of sale; rather, wholesalers purchase stamps from the Department of Taxation and attach them to packs before

⁶ Auditor of Public Accounts, *Comparative Report of Local Government* (2018), http://www.apa.virginia.gov/APA_Reports/LG_ComparativeReports.aspx. For a list of revenues by locality, see the Auditor's report.

⁷ Federation of Tax Administrators, *State Excise Tax Rates on Cigarettes* (2019), <https://www.taxadmin.org/assets/docs/Research/Rates/cigarette.pdf>.

⁸ Orzechowski & Walker Consulting Group, *The Tax Burden on Tobacco, 1970-2018* (2019), <https://chronicdata.cdc.gov/Policy/The-Tax-Burden-on-Tobacco-1970-2018/7nwe-3aj9>.

⁹ Centers for Disease Control and Prevention, *Adult Tobacco Consumption in the U.S., 2000-Present* (2018), <https://healthdata.gov/dataset/adult-tobacco-consumption-us-2000-present>.

¹⁰ Nicole Kuiper et al., *Trends in Unit Sales of Flavored and Menthol Electronic Cigarettes in the United States, 2012–2016* (2018), https://www.cdc.gov/pcd/issues/2018/17_0576.htm. This study accounted for the various types of vapor products by setting a standard unit, which could be any of the following: one rechargeable e-cigarette, one disposable e-cigarette, one package of five prefilled cartridges, or one bottle of e-liquid.

distributing them to retailers. The stamp serves as proof that the tax has been paid. State law allows wholesalers a two percent discount off of stamp cost as compensation for their assistance in administering the tax.¹¹ Localities may provide a discount, but they are not required to do so.

Localities may administer their local cigarette tax themselves, or they may arrange for the Department of Taxation to collect the tax on their behalf.¹² Most localities have enacted local ordinances that provide for local administration. Under legislation enacted in 2017, localities are required to provide a refund to wholesalers that return unused stamps.¹³

No stamp is used to administer the tobacco products tax. Instead, wholesalers submit monthly returns to the Department of Taxation. They report the quantity and price of each product distributed to retailers.¹⁴

Comparison with Other States

Every state taxes cigarettes. Virginia's 30¢ state cigarette tax is the second-lowest rate among the 50 states and Washington, D.C.¹⁵ Only Missouri, at 17¢ per pack, has a lower tax. The average tax, \$1.81 per pack, is six times that of Virginia's, and the highest rate, \$4.50 per pack in Washington, D.C., is 15 times higher.

Virginia's tax is well below those of its neighbors, which tax cigarettes as follows: 45¢ in North Carolina, 62¢ in Tennessee, \$1.10 in Kentucky, \$1.20 in West Virginia, \$2.00 in Maryland, and \$4.50 in Washington, D.C. The rates as of 2019 in the 50 states and the District of Columbia are shown in the following table.¹⁶

State	Tax	Rank
Washington, D.C.	\$4.50	1
Connecticut	\$4.35	2
New York	\$4.35	2
Rhode Island	\$4.25	4
Massachusetts	\$3.51	5
Hawaii	\$3.20	6
Vermont	\$3.08	7
Minnesota	\$3.04	8
Washington	\$3.03	9
Illinois	\$2.98	10
California	\$2.87	11
New Jersey	\$2.70	12

State	Tax	Rank
Pennsylvania	\$2.60	13
Wisconsin	\$2.52	14
Delaware	\$2.10	15
Oklahoma	\$2.03	16
Alaska	\$2.00	17
Arizona	\$2.00	17
Maine	\$2.00	17
Maryland	\$2.00	17
Michigan	\$2.00	17
New Mexico	\$2.00	17
Nevada	\$1.80	23
New Hampshire	\$1.78	24

¹¹ Va. Code § 58.1-1009.

¹² Va. Code § 58.1-3832.

¹³ Chapter 113, Acts of Assembly of 2017.

¹⁴ See Va. Code § 59.1-1021.03.

¹⁵ See Orzechowski & Walker Consulting Group, *The Tax Burden on Tobacco, 1970-2018* (2019),

<https://chronicdata.cdc.gov/Policy/The-Tax-Burden-on-Tobacco-1970-2018/7nwe-3aj9>. This rank is for state taxes only and does not include local taxes. Adding the local component would move Virginia higher in the ranking. For example, the combined state and local tax rate in Alexandria is \$1.45 per pack, which would put Virginia at twenty-seventh among the states.

¹⁶ Ibid.



State	Tax	Rank
Montana	\$1.70	25
Utah	\$1.70	25
Ohio	\$1.60	27
South Dakota	\$1.53	28
Texas	\$1.41	29
Iowa	\$1.36	30
Florida	\$1.34	31
Oregon	\$1.33	32
Kansas	\$1.29	33
West Virginia	\$1.20	34
Arkansas	\$1.15	35
Kentucky	\$1.10	36
Louisiana	\$1.08	37
Indiana	\$1.00	38

State	Tax	Rank
Colorado	\$0.84	39
Mississippi	\$0.68	40
Alabama	\$0.68	40
Nebraska	\$0.64	42
Tennessee	\$0.62	43
Wyoming	\$0.60	44
Idaho	\$0.57	45
South Carolina	\$0.57	45
North Carolina	\$0.45	47
North Dakota	\$0.44	48
Georgia	\$0.37	49
Virginia	\$0.30	50
Missouri	\$0.17	51

Local Cigarette Tax

Virginia is one of nine states that allow a local cigarette tax in addition to the state tax.¹⁷ Currently, 30 cities, two counties, and 59 towns impose a local tax.¹⁸ Rates range from 4¢ per pack in Clifton Forge to \$1.15 per pack in Alexandria.¹⁹ The median rate is 22¢ per pack.

Fairfax and Arlington are the only two counties authorized to impose a cigarette tax.²⁰ They are statutorily limited to a maximum rate of 30¢ per pack.²¹

Recent Policy Issues

Increasing the Tax Rate

In 2011, 2012, 2015, and 2016, Virginia legislators introduced bills to increase the state cigarette tax rate. The most recent bill would have raised the rate to \$1.50 per pack for cigarettes and to 50 percent of the manufacturer's price for other tobacco products. The Department of Taxation estimated that the tax increase would have raised \$300 to \$400 million per year in revenues; however, it also projected that a higher overall cost would have reduced cigarette sales, resulting in lost sales tax revenue of about \$30 million per year.²²

Smuggling or Trafficking

In nearby states, cigarette tax rates vary widely, creating an opportunity for profiting from the rate discrepancies. Smugglers buy large volumes of cigarettes in Virginia, which has lower overall prices, and then resell them in other states at higher prices. Smuggling occurs both at a

¹⁷ The other eight are New York, Pennsylvania, Alaska, Alabama, Illinois, Missouri, Ohio, and Colorado.

¹⁸ Stephen Kulp, *Virginia Local Tax Rates, 2016* (35th ed., 2017).

¹⁹ For a complete list of local tax rates, see Stephen Kulp, *Virginia Local Tax Rates, 2016* (35th ed., 2017).

²⁰ Va. Code § 58.1-3831.

²¹ Va. Code § 58.1-3831.

²² Department of Taxation, *Fiscal Impact Statement for HB 830* (2016), <http://lis.virginia.gov/cgi-bin/legp604.exe?161+oth+HB830F161+PDF>.

commercial level (organized trafficking) and at a casual level (occasional individual cross-border purchases).

Smuggling activity has increased in recent years. New York, which has the second-highest tax rate at \$4.35 per pack, has an extremely high smuggling rate. In 2017, an estimated 55 percent of cigarette consumption in New York was of smuggled cigarettes.²³ Virginia, which has a tax rate that is \$4.05 per pack lower than that of New York, had an estimated 24 percent of its cigarette consumption go to outbound smuggling.

The General Assembly has taken action to discourage smuggling. In 2017, at the recommendation of the Virginia State Crime Commission, it passed legislation requiring cigarette retailers to register with the Department of Taxation.²⁴ Retailers must keep records of sales of over 50 cartons or over \$10,000. The Department of Taxation is authorized to conduct background investigations of applicants and to inspect their place of sale. The Department of Taxation estimated that reducing tax evasion could increase sales tax revenues by as much as \$10 million annually; on the other hand, smugglers might purchase fewer cigarettes, which could decrease revenues by up to \$600,000.²⁵

Vapor Products

Unlike sales of cigarettes and tobacco products, sales of vapor products are not subject to an excise tax in addition to a sales tax.

Responding to decreased cigarette consumption and increased vapor product consumption, Virginia legislators introduced bills in 2015, 2016, 2017, and 2019 that would have taxed electronic cigarettes and vapor products. The bills failed to report out of committee. The 2019 bill would have imposed a tax of 40 percent of the wholesale price, which the Department of Taxation estimated would have increased state tax revenues by up to \$20 million per year.²⁶

As of 2019, 18 states and the District of Columbia have enacted taxes on vapor products, as shown in the following table.²⁷

State	Tax
California	59% of wholesale price
Delaware	5¢ per mL
Washington, D.C.	96% of wholesale price
Illinois	15% of wholesale price
Kansas	5¢ per mL
Louisiana	5¢ per mL
Maine	43% of wholesale price
Minnesota	95% of wholesale price
State	Tax
Nevada	30% of wholesale price
New Jersey	10¢ per mL
New Mexico	12.5% of manufacturer price
New York	20% of retail price
North Carolina	5¢ per mL
Ohio	10¢ per mL
Pennsylvania	40% of wholesale price
Vermont	92% of wholesale price

²³ Michael LaFaive and Todd Nesbit, *Cigarette Taxes & Smuggling* (2017), <https://www.mackinac.org/smokes>.

²⁴ Chapters 112 and 453, Acts of Assembly of 2017.

²⁵ Department of Taxation, *Fiscal Impact Statement for HB 1913* (2017), <http://lis.virginia.gov/cgi-bin/legp604.exe?171+oth+HB1913FER161+PDF>.

²⁶ Department of Taxation, *Fiscal Impact Statement for SB 1606* (2019), <http://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+SB1606F161+PDF>.

²⁷ Ann Boonn, *State Excise Tax Rates for Non-Cigarette Tobacco Products* (2019), <https://www.tobaccofreekids.org/assets/factsheets/0169.pdf>; Janelle Cammenga, *How High Are Vapor Excise Taxes in Your State?* (2019).



State	Tax
Washington	27¢ per mL
West Virginia	7.5¢ per mL

State	Tax
Wisconsin	5¢ per mL

In 2018, the General Assembly passed legislation directing the Joint Subcommittee to Evaluate Tax Preferences, an interim committee, to study updating state tax laws "to reflect advances in science and technology in the area of tobacco harm reduction, and the role innovative non-combustible tobacco products can play in reducing harm, including products that produce vapor or aerosol from heating tobacco or liquid nicotine."²⁸ The Joint Subcommittee met twice in 2018 and heard reports from research organizations and the Department of Taxation.²⁹ In its 2019 Session, the General Assembly extended the study's completion date to November 2019.³⁰

County Taxing Authority

As with other local taxes (such as taxes on admissions, meals, and transient room rentals), counties are more restricted than cities in imposing a cigarette tax.³¹ Only Arlington and Fairfax Counties may impose it, and unlike cities and towns that have no rate limit, Arlington and Fairfax are limited to the state rate of 30¢ per pack.³²

In recent years, some legislators have attempted to give counties the same taxing powers as cities and towns with respect to the cigarette tax. In eight of the past 10 sessions, legislation has been introduced that would have allowed all counties to levy a cigarette tax without any restriction on the rate charged. The legislation did not pass in either house.

For more information, contact the Division of Legislative Services staff:

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²⁸ Chapter 2, Item 3-5.17, Acts of Assembly of 2018, Special Session I.

²⁹ Meeting materials and information about upcoming meetings can be found at <http://dls.virginia.gov/commissions/tax.htm?x=mtg>.

³⁰ Chapter 790, Acts of Assembly of 2019.

³¹ Any city or town incorporated under the Uniform Charter Powers Act may tax any subject so long as no other law prohibits it from doing so. Va. Code § 15.2-1104. *See also* Va. Code § 58.1-3840.

³² Va. Code § 58.1-3831.