



Joint Subcommittee to Evaluate Tax Preferences Executive Summary of 2019 Interim Activity

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<http://dls.virginia.gov/commissions/tax.htm>

Pursuant to the powers and duties authorized under Chapter 52 (§ 30-336 et seq.) of Title 30 of the Code of Virginia, the Joint Subcommittee to Evaluate Tax Preferences (the Subcommittee) held one meeting during the 2019 interim, with Delegate R. Lee Ware, Jr., chair, presiding. Materials presented at the meetings are accessible through the [Subcommittee's website](#).

The Subcommittee's meeting occurred on October 7, 2019. Pursuant to Chapter 2 of the 2018 Acts of Assembly, Special Session I, and Chapter 790 of the 2019 Acts of Assembly, the Subcommittee continued to study information and policy proposals related to modernizing Virginia's tobacco tax system and providing fairness for local governments in tobacco tax structure. Previously, the Subcommittee held meetings related to the study on October 23, 2018, and November 19, 2018. At those meetings, the Subcommittee heard presentations on the harms caused by tobacco products and efforts to reduce those harms, as well as how tobacco taxes currently are administered at the state and local levels. A summary of the 2018 meetings is [available online](#). In 2019, the Subcommittee concluded its work on the tobacco tax study and did not recommend any changes to existing policy.

October 7, 2019, Meeting

Senator Adam P. Ebbin spoke to the Subcommittee regarding SB 1606 (2019), legislation he introduced that would have imposed a tax on vapor products at 40 percent of the wholesale price of the product sold. Senator Ebbin stated that electronic cigarettes are dangerous, especially to children, because of their high nicotine content and their addictiveness. He observed that the devices are not currently taxed by the federal government but at least 15 states are taxing them, so the time is appropriate for state action, he said. Delegate Ware asked if Senator Ebbin had worked with businesses in the vapor products industry to evaluate the impacts of a tax. Senator Ebbin responded he would welcome any input that could improve the tax policy and lead to a consensus.

After Senator Ebbin concluded his presentation, Delegate Mark L. Keam noted that the Virginia Department of Health recently identified a fatality in Virginia correlated with use of vapor products. Delegate Keam said his main concern is that vapor products be made unavailable to children. Even though Virginia prohibits children from using vapor products, children still find ways to obtain them. In evaluating an appropriate tax regime for vapor products, the General Assembly should not lose sight of its primary goal of preventing access by children, he said.

During the public comment period that followed Senator Ebbin's presentation, Delegate R. Steven Landes asked an industry representative whether vapor products should be treated as separate from conventional tobacco products, like cigarettes, in how they are taxed. The

representative answered that separate treatment would make it easier for a state agency to administer the tax.

Following Senator Ebbin's presentation, Stephen E. Baril presented on behalf of the Virginia Smoke Free Association. He told the Subcommittee that the General Assembly has two questions to answer with respect to vapor products: whether to tax them and, if so, how to do it. He stated that differentiating between the types of products available is critical to resolving those two questions. He noted that the legislation authorizing the Subcommittee's tobacco tax study directed it to take into account the role of technology in reducing the health harms associated with tobacco use.

Mr. Baril then explained the difference between the two main types of vapor products that are available. There are open-system products, which are sold in neighborhood vape shops and which allow the user to reduce nicotine content using a toggle switch. Mr. Baril stated that these are primarily used by adults as smoking cessation devices. They are physically large products and are difficult to hide. They represent about 30 percent of the market.

The alternative to open-system products are closed-system devices or pods, which are mainly sold in convenience stores and do not allow the user to change the nicotine content. According to Mr. Baril, younger users tend to prefer closed-system devices because they are smaller and easier to hide. These products represent about 70 percent of sales of vapor products.

Mr. Baril provided information from Public Health England indicating that vaping is more effective than nicotine patches or lozenges in helping smokers quit. He emphasized that the General Assembly's policy goal should be harm reduction. Since some vapor products are effective smoking cessation aids, he reasoned, they should not be taxed.

However, if they were to be taxed, Mr. Baril stated that some tax regimes more effectively take into account the risk-reduction effects of certain products. According to Mr. Baril, a per-milligram tax, based on the nicotine content of the fluid used in the product, is the best way to encourage smoking cessation. He concluded his presentation by recommending that the General Assembly not tax vapor products and distributed a list of 10 alternative remedial actions that would help protect children from harms associated with smoking.

Senato Bill R. DeSteph, Jr., asked if it was true that most of the deaths associated with vapor product use were connected with users who purchased black-market cartridges containing tetrahydrocannabinol (THC) oil. Mr. Baril responded affirmatively: 80 percent of the deaths were attributable to cartridges containing THC sold on the black market.

Senator Ebbin expressed two points of disagreement with Mr. Baril's presentation: first, most vapor products do not help smokers quit, he said, and second, whatever smoking cessation effects other products have, they do not make the products worthy of preferential tax treatment.

Referred Legislation and Policy Proposals

The Subcommittee did not formally vote on any legislative proposals for the 2020 Session, and it did not recommend that any tax preferences be eliminated, expanded, or otherwise modified. It did not reach a consensus on any policy recommendations related to the tobacco tax study authorized pursuant to Chapter 2 of the 2018 Acts of Assembly, Special Session I, and Chapter 790 of the 2019 Acts of Assembly. The Subcommittee's findings consist of the research and



comments made by its members over the course of the two-year study; therefore, this document is its final report.

For more information, see the [*Commission's website*](#) or contact the Division of Legislative Services staff:

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