

**REPORT OF THE VIRGINIA  
DEPARTMENT OF TAXATION**

**Report of the Task Force on  
the Modernization of Cigarette  
Stamping in Virginia and  
Regional Cigarette Tax Boards  
(Chapter 61, 2021 SSI)**

**TO THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 11**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2021**





# *COMMONWEALTH of VIRGINIA*

*Department of Taxation*

October 29, 2021

Dear Member of the Virginia General Assembly:

Senate Bill 1326 of the 2021 General Assembly noted that it is the policy of the Commonwealth that, where practical, local cigarette stamping and tax collection is encouraged to be accomplished through regional cigarette tax boards modeled on the Northern Virginia Cigarette Tax Board. Recognizing that the current system of stamping and tax collection is antiquated and places a burden on wholesalers and distributors, the Department of Taxation was required to establish a task force to develop methods for modernizing the system; and provide assistance as appropriate to localities seeking new regional cigarette tax boards.

Attached is the report summarizing the findings of the task force required by Senate Bill 1326. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig M. Burns".

Craig M. Burns  
Tax Commissioner

c: The Honorable K. Joseph Flores, Secretary of Finance  
The Honorable Emmett W. Hanger, Jr.



**Report of the Task Force on the Modernization of Cigarette Stamping in Virginia  
and Regional Cigarette Tax Boards**

**Final Report**

**Department of Taxation**

**October 2021**

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## **Executive Summary**

2021 Senate Bill 1326 declared that it is the policy of the Commonwealth that, where practical, local cigarette stamping and tax collection is encouraged to be accomplished through regional cigarette tax boards modeled on the Northern Virginia Cigarette Tax Board. Recognizing that the current system of stamping and tax collection is antiquated and places a burden on wholesalers and distributors, the Department of Taxation (“the Department”) was required to establish a task force to:

- Develop methods for modernizing the system; and
- Provide assistance as appropriate to localities seeking new regional cigarette tax boards.

The task force was required to include local government representatives, local commissioners of the revenue, cigarette wholesalers and distributors, and representatives of the Northern Virginia Cigarette Tax Board. The task force was required to submit its recommendations to the Virginia General Assembly by November 1, 2021. The Department reached out to interested parties to solicit their input and conducted a survey of those involved. Participants were also provided a draft of the report to review and offer further comments.

### **Background on Cigarette Taxes in Virginia**

In Virginia, cigarettes are subject to a state cigarette tax administered by the Department. The state tax is paid by wholesalers who are licensed as stamping agents by the Department. Wholesalers pay the tax by purchasing rolls of stamps from the Department and recover the cost of the stamps when they sell the cigarettes to retailers. The stamps must be affixed to each pack of cigarettes and serve as proof that the tax has been paid. Recent legislation extended to all localities the authority to tax cigarettes. Previously, only cities and towns and the counties of Arlington and Fairfax were authorized to impose local cigarette taxes. As with the state tax, most localities that impose a local cigarette tax, require the use of their own tax stamp. Wholesalers pay these taxes by purchasing rolls of stamps from each locality or a regional cigarette tax board.

### **Modernization of the Virginia Cigarette Stamping Process**

Virginia law requires the state cigarette tax to be paid by affixing stamps equaling the amount of the tax to each pack in such a manner that their removal will require continued application of water or steam. The current process of stamping in Virginia relies on heat transfer to affix stamps to packs of cigarettes. The Department sells stamps to stamping agents holding a current permit for use on the cigarettes they will sell.

As part of this study, the Department reached out to providers of cigarette stamping technology. Representatives from the stamping industry stated that there is technology available that would upgrade the current system used in Virginia, to streamline the process of stamping at both the state and local levels. These new stamping methods could work either with existing machines or allow for transition to a different type of stamp that would require new equipment. According to technology providers, the benefits of such upgrades would include better tracing technology for individual stamps, better inventory management, more automated payment options at the state and local levels, and enhanced tools that could be used for enforcement. A similar system recently implemented in Louisiana cost approximately \$4.5 million over 5 years. The greatest portion of that total is the cost is for maintenance. The new stamps themselves could cost between five and ten times more than the stamps currently used in Virginia.

### **Regional Cigarette Tax Boards**

Current law authorizes any locality that imposes a cigarette tax to delegate its cigarette tax administrative and enforcement authority, these typically take the form of regional cigarette tax boards, the longest-standing of which is the Northern Virginia Cigarette Tax Board (the “NVCTB”).

The NVCTB, which was established in 1970, administers and enforces local cigarette taxes on behalf of 19 Northern Virginia jurisdictions. Stamping agents remit the local cigarette tax to the NVCTB using a monthly return that lists all retailers by jurisdiction. The Department of Taxation sells a dual stamp at the state rate for use in NVCTB localities. The NVCTB pays for the dual stamps as part of a statewide contract which allows them to acquire the stamps at a lower cost than individual localities because they can take advantage of larger purchase volumes. Since jurisdictions have different tax rates, wholesalers remit the local cigarette tax to the NVCTB using a monthly return that lists sales to retailers by jurisdiction. Additionally, the Chesapeake Bay Regional Cigarette Tax Board (CBRCTB) was formed in 2021 and is modeled after the NVCTB.

Many of the new taxing jurisdictions and some established cigarette taxing jurisdictions have formed or are in the process of forming regional boards. However, there are only two regional cigarette tax boards currently operating, the NVCTB (established in 1970) and the Chesapeake Bay Regional Cigarette Tax Board (established in 2021). There are two additional regional boards, the Mount Rogers Regional Cigarette Tax Board and the Blue Ridge Cigarette Tax Board planning for an implementation date of January 1, 2022. The process of establishing a regional board is ultimately a local process and the state has a limited role in the actual formation of the boards beyond providing dual stamps for



evidence of payment of local and state taxes. However, the Department has offered advice and guidance to localities looking to form regional boards.

### **Study Mandate**

Legislation enacted in Special Session I of the 2021 General Assembly, Senate Bill 1326 (2021 Acts of Assembly Special Session I, Chapter 61) declared that it is the policy of the Commonwealth that, where practical, local cigarette stamping and tax collection is encouraged to be accomplished through regional cigarette tax boards modeled on the Northern Virginia Cigarette Tax Board. Recognizing that the current system of stamping and tax collection is antiquated and places a burden on wholesalers and distributors, the Department of Taxation (the “Department”) was required to establish a task force to:

- Develop methods for modernizing the cigarette stamping system; and
- Provide assistance as appropriate to localities seeking new regional cigarette tax boards.

The task force was required to include local government representatives, local commissioners of the revenue, cigarette wholesalers and distributors, and representatives of the Northern Virginia Cigarette Tax Board. The task force was required to submit its recommendations to the Virginia General Assembly by November 1, 2021. (See Appendix A for the full text of Senate Bill 1326.)

The Department reached out to interested parties to solicit their input regarding the modernization of cigarette stamping and the establishment of regional cigarette tax boards. The Department also conducted a survey of interested parties to further clarify their recommendations. Participants were provided a draft of the report for their review and further collaboration. This is the final report of the task force.

## **Virginia Taxes on Cigarettes**

### **Virginia Cigarette Tax**

The Department administers Virginia’s state cigarette tax. The tax is paid by wholesalers who are licensed as stamping agents by the Department. Wholesalers pay the tax by purchasing rolls of stamps from the Department and recover the cost of the stamps when they sell the cigarettes to retailers. Alternatively, stamping agents may post a bond to obtain stamps prior to payment. The stamps must be affixed to each individual package of cigarettes and serve as proof that the tax has been paid.

## **Local Cigarette Taxes**

Legislation enacted during Regular Session of the 2020 General Assembly, House Bill 785 and Senate Bill 588 (2020 *Acts of Assembly*, Chapters 1214 and 1263), gave all counties the authority to impose local cigarette taxes. Prior to this law change, all cities and towns could impose local cigarette taxes, but only two counties (Arlington and Fairfax) had the same authority. This legislation also required the Department to convene a workgroup of stakeholders to identify and make recommendations for (i) modernizing the process for using stamps to certify that tax has been paid on cigarettes and (ii) unifying the stamping process so that it is administered solely by the Department of Taxation. The Department convened such a workgroup and issued its final report on October 30, 2020.

Localities imposing a cigarette tax may use a specific local stamp as evidence of payment of the tax. Virginia is relatively unique in its authorization of local cigarette taxes. Alabama is the only other state comparable to Virginia in terms of local taxation of cigarettes. A few other states (including Missouri and Washington) allow for limited local cigarette taxation in certain cities or areas. Any local tax stamp or meter impression required for the local tax must be of the same stamp technology that is required by the Commonwealth for the state cigarette tax stamp.

With regard to tax rates, the 2020 legislation put limits on tax rates 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.

The Northern Virginia Cigarette Tax Board (the "NVCTB") administers and enforces local cigarette taxes on behalf of 19 Northern Virginia jurisdictions. The Department of Taxation sells a dual stamp to stamping agents at the state cigarette tax rate for use in NVCTB localities to evidence payment of both the state and local taxes. The NVCTB pays the cost of the dual stamps as this allows them to acquire the stamps at a lower cost than individual localities can obtain stamps because it can take advantage of larger purchase volumes.

Since jurisdictions have different tax rates, wholesalers remit the local cigarette tax to the NVCTB using a monthly return that lists sales to retailers by jurisdiction. The Department does not collect any revenues for the NVCTB.

The NVCTB audits stamping agents to verify the local cigarette tax has been collected on all stamps sold. The NVCTB also conducts retail inspections to ensure proper tax payments and to prevent retailers from shifting stamped cigarettes from lower tax localities to high tax localities.

### **Retail Sales and Use Tax**

Cigarettes are subject to the Retail Sales and Use Tax administered by the Department. In general, retail merchants are allowed to purchase items that they intend to resell to their customers exempt from sales tax because they will collect the tax from their customers at the time of sale. This general resale exemption does not apply to cigarettes. During the 2017 General Assembly Session, legislation was enacted to stem the growing loss of sales tax revenues caused by cigarette smugglers posing as legitimate retail merchants in order to purchase large quantities of cigarettes without paying sales tax. Under current law, retailers purchasing cigarettes for resale are required to pay sales tax on them unless they have been issued a Form ST-10C Cigarette Retail Sales and Use Tax Exemption Certificate by the Department. When the Department receives an application for an Exemption Certificate, staff complete a criminal history background check on the owner, a tax compliance check, and finally a retail site inspection.

Additionally, compliance audits are conducted to verify that stamping agents are making tax exempt sales only to holders of a valid sales tax exemption certificate. The stamping agent is assessed sales tax if tax exempt sales of cigarettes have been made to a retail dealer that does not hold a Form ST-10C exemption certificate issued by the Department.

The Form ST-10C exemption certificate is not required to buy or sell cigarettes. It simply allows retailers to purchase cigarettes exempt from sales tax. Any person can purchase and sell cigarettes without an exemption certificate. In such a case, the retailer would have to pay the sales tax at the time of purchase and collect the tax when selling at retail.

### **Modernization of the Virginia Cigarette Stamping Process**

Virginia law requires the state cigarette tax to be paid by affixing stamps equaling the amount of the tax to each individual package, bag, box or can in such a manner that their removal will require continued application of water or steam. The current process of stamping in Virginia relies on heat transfer to affix stamps to packs of cigarettes. If packages of cigarettes are returned by a distributor to the manufacturer, the manufacturer provides the distributor with an affidavit that the product was returned and received, which is used to provide the distributor with a State tax stamp credit on Form TT-12 Virginia

Application for Tobacco Tax Credit Certificate (See Appendix I). The Department may revoke a stamping permit if a stamping agent violates any provision of cigarette tax laws and rules.

As part of this study, the Department reached out to providers of cigarette stamping technology. Representatives from the stamping industry explained that they can provide technology that would upgrade the current system used in Virginia, to streamline the process of stamping at both the state and local levels. The new technologies work with existing stamping machines or would allow for a transition to a different type of stamp that would require new equipment.

According to technology providers, the benefits of such upgrades would include better tracing technology for individual stamps, better inventory management, more automated payment options at the state and local levels, and enhanced tools that could be used for enforcement. A similar system recently implemented in Louisiana cost approximately \$4.5 million over a 5-year period. The new stamps themselves could cost between five and ten times more than the stamps currently used in Virginia. Depending on the system employed and the specifics of the contract with the technology provider, there may be no upfront costs to the Commonwealth to switch to a new stamping system because no new machinery would need to be purchased. There would be, however, recurring costs associated with stamps and maintenance.

### **Regional Cigarette Tax Boards**

Current law authorizes any locality that imposes a cigarette tax to delegate its administrative and enforcement authority to one agency or authority. For the purposes of cigarette taxation this joint exercise of powers will typically take the form of regional cigarette tax boards, the longest-standing of which is the NVCTB. While the authority to delegate local administrative and enforcement authority is granted to localities and the term "regional cigarette boards" is defined in state law, a locality is not specifically required to use a regional board for such a delegation. Currently, the majority of localities with cigarette taxes are not part of a regional cigarette tax board.

A regional cigarette board is defined in the Virginia Code as a board established by a group of at least six member localities, with the purpose of administering local cigarette taxes on a regional basis. Such boards have the following duties:

- Providing for the use of a uniform meter impression or stamp as evidence of payment of any local cigarette tax within the region.

- Entering into an arrangement, on behalf of or in cooperation with its member localities, 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.
- Providing a single point of contact for a stamping agent to remit local cigarette taxes due to any member locality.
- Providing a discount to a stamping agent as compensation for accounting for the tax due under this article. The discount must be in the amount of two percent of the tax otherwise due.
- Distributing any local cigarette taxes collected by the board to the appropriate member locality.
- Enforcing all local cigarette tax ordinances within the region.
- Promoting uniformity of cigarette tax ordinances among its member localities.
- To the extent possible, encouraging uniformity of cigarette tax rates among its member localities.
- Accomplishing any other purpose that helps promote the uniform administration of local cigarette taxes throughout the region.

Several of the counties taking advantage of their new authority to tax cigarettes along with some established cigarette taxing jurisdictions have formed or are in the process of forming regional boards. However, there are only two regional cigarette tax boards currently operating, the NVCTB, established in 1970, and the Chesapeake Bay Regional Cigarette Tax Board, established in 2021 (See Appendix B and Appendix C). There are two additional regional boards, the Mount Rogers Regional Cigarette Tax Board and the Blue Ridge Cigarette Tax Board planning for an implementation date of January 1, 2022.

The Department has worked with localities to establish a process for forming regional cigarette tax boards, and has had meetings and discussions with localities and their representatives as they work toward implementation. This has included working with vendors and local representatives to generate unique regional stamps for use in tax board localities. The Department has also created a checklist (See Appendix G) for localities to follow during the implementation process. This checklist is designed to help localities ensure that state requirements are met for the formation of the regional boards. It should be noted, however, that state law provides authority to localities, not the state, to form regional boards. The process of establishing a regional board is ultimately a local process and the state has a limited role in the actual formation of the boards beyond providing dual stamps for evidence of payment of local and state taxes. However, the Department does offer advice and guidance to localities looking to form regional boards.

## **Local Ordinances**

Although localities have a great deal of flexibility in enacting local cigarette taxes, state law does set forth a number of requirements and restrictions on local cigarette tax ordinances, including:

- A locality may provide for the registration of any distributor, wholesaler, vendor, retailer or other person selling, storing or possessing cigarettes within or transporting cigarettes within or into such taxing jurisdiction for sale or use.
- A locality may use a tax stamp or meter impression as evidence of payment of the tax or other method or system of reporting payment and collection of such tax. Any local tax stamp or meter impression is required to be used to evidence payment of the tax must be of the same stamp technology that is used or required by the Commonwealth for the state cigarette tax stamp.
- Any county, city or town may enact an ordinance that would delegate its administrative and enforcement authority under its cigarette tax ordinance to one agency or authority.
- Any county cigarette tax imposed may not apply within the limits of any town located in such county where such town imposes a town cigarette tax. However, if the governing body of any such town provides that a county cigarette tax, as well as the town cigarette tax, applies within the limits of the town, then such cigarette tax may be imposed by the county within such town.

In most cases, the imposition of a local cigarette tax and the formation of the board have been accomplished using at least two separate ordinances; one joining the regional board and the other imposing the cigarette tax itself. As mentioned earlier, localities do not have to form a regional cigarette tax board in order to impose a tax or to work with other localities to jointly administer their taxes. However, Senate Bill 1326 makes it clear that it is the policy of the Commonwealth that, where practical, local cigarette stamping and tax collection is encouraged to be accomplished through regional cigarette tax boards modeled on the Northern Virginia Cigarette Tax Board.

## **Survey**

The Department developed a survey that was distributed to the interested parties for completion (See Appendix J). The respondents were representative of the groups involved with the cigarette stamping issues in Virginia, specifically stamping agents, local government officials and representatives, and those involved in cigarette stamping technology. The responses showed:

- Most respondents believe that a lack of regional boards was the biggest challenge facing local cigarette taxation in Virginia.
- Respondents also indicated a desire for more modern stamping technology.
- There was no consensus among the working group as to who should bear the increased costs associated with any new stamping technology.
- Most respondents believe that regional cigarette tax boards would address the challenges involved in the current stamping system.
- A majority of those surveyed also believed that lack of clear guidance and lack of regional cooperation were the most significant obstacles to establishing regional boards.
- Use of a dual stamp for state and local taxes was singled out as the main advantage to regional boards.
- A majority of respondents indicated that they do not favor a requirement that taxpayers provide copies of state cigarette tax returns to localities as part of the administration of local taxes.

### **Stakeholder Perspectives**

This study was guided by comments and insights of parties currently involved in cigarette taxation and stamping in Virginia. Comments were solicited from stakeholders and the Department used that input, along with research conducted by staff to prepare this report. The Department is grateful to all who participated in this study. Following, is a summary of the comments received from interested parties.

#### **Distributors and Wholesalers**

Distributors and wholesalers are the main stamping agents for cigarette taxes in Virginia. They ensure that cigarette stamps are affixed to packages of cigarettes to evidence payment of the tax. Based on comments provided by the Virginia Wholesalers and Distributors Association (“VWDA”), they believe that while the changes to local taxing authority are well known among local officials, the stamping process is not. Examples of stamping agents main concerns are:

- Many localities are not providing a tax discount to stamping agents to do their work and monthly reporting.
- Some localities are requesting stamping agents file copies of all monthly state cigarette tax reports with them.
- Jurisdictions approving an ordinance without the regional board being formed first

- Some jurisdictions are considering using “decals” instead of heat transfer tax stamps as required by state code.
- Stamping agents would like to see localities provide for the use of tax affidavits.
- Transparency issues with some localities in that notice of what is being proposed in terms of tax changes is not known until after the changes are implemented.
- Jurisdictions had difficulty in determining where cigarette retailers are located and distributors in many cases had to provide information.
- In some cases, there is no process when a locality runs out of stamps because they did not know the quantity needed.
- There have been situations where a town has reduced its tax from \$5.00/carton to \$4.00/carton because of the tax cap and continues to use existing tax stamps, but there is no plan for a refund to distributors that paid the \$5.00/carton tax prior to the tax reduction date.
- *Virginia Code* § 58.1-3830 should be amended to require local taxes “by ordinance” rather than providing that a locality “may impose” such a tax.
- The VDWA would support legislation requiring the Department to review regional board member ordinances and have corrections made by localities where they are not in compliance with *Virginia Code*, before the Department executes the MOU for regional tax stamps. Alternatively, there could be a control point of some kind to review and correct illegal ordinances before they go into effect.

Stamping agents believe that more regional boards and improved stamp technology are the direction that could resolve many cigarette stamping issues, implement uniform tax policy and serve as a repository for regional tax information. Such boards would further reduce the upfront distributor costs for tax stamps. For example, one roll of 30,000 stamps with a tax of \$0.40 per pack costs the distributor \$12,000. When multiplied by the number of different jurisdictions where distributors have retailers, this becomes a significant cost.

### **County Perspective**

Virginia Association of Counties (“VACo”) provided the county government perspective for the study. VACo reported that counties were most interested in getting information about the requirements for forming regional boards.

Counties would specifically like assistance with stamp inventory management. Currently, wholesalers may purchase the regional NVCTB stamp from state offices, which eliminates the administrative workload on NVCTB staff to track inventory of stamps. Other regional boards have expressed interest in taking part in a similar arrangement.

Localities implementing a new tax could also benefit from a how-to guide for establishing regional boards that sets out the issues and decision points that must be addressed when



establishing a regional board, and the sequencing and timing of those decisions. Such a document could draw upon the experiences of NVCTB and the boards currently being established to assist in future efforts.

VACo contends that regional boards are helpful in many areas but are not always the right solution in every part of the state. In some areas, there is not enough of a critical mass of localities that are implementing the tax, or geography makes it challenging for some localities that may want to participate in a regional board to do so. They also noted that regional boards that are set up outside an existing administrative structure (such as the planning district commission) may incur start-up costs for personnel, office space, stamps, and other initial needs before they begin to generate revenue from collections. Counties propose a grant funding that would assist with start-up costs in order to help new boards in getting off the ground.

In order to form regional boards, localities need revenue and cost estimates to determine whether it makes sense to pool resources or to administer the tax on their own. They need to decide whether to operate the board under an existing structure, such as a planning district commission, or to form a new structure. They need to develop an agreement among the members and a process for collecting revenue and distributing revenue among the localities where the cigarettes are sold, as well as an arrangement for sharing administrative costs among the localities. They need to develop a regional stamp and arrange for wholesalers to be able to buy the stamp (ideally, from the state offices where the wholesalers obtain state stamps). They may need to set up office space and hire staff, depending on where the board is housed and how it is structured.

Counties assert that they also need to know which retailers are selling cigarettes in their localities, so that they can spot-check for unstamped cigarettes. They need to have a process set up to ensure that the correct taxes are remitted to the regional board by the wholesalers and distributed to the member localities.

In terms of modernization, VACo believes the state should explore whether new machinery might be needed to implement such a system, and if so, whether the state's buying power could be leveraged to assist with these costs or other costs to transition to a unified stamp.

Many VACo members are interested in regional administration, as evidenced by the efforts underway to establish the Mount Rogers and Chesapeake Bay regional boards, as well as the desire of counties near the NVCTB to join that board and the conversations happening among local governments in several other regions of the state about the formation of boards. The process of establishing these boards takes some time, but VACo

believes that future boards can benefit from the experiences of the boards being developed now.

### **City and Town Perspective**

Virginia Municipal League provided the perspective of cities and towns for this study. From their perspective, no single stakeholder wants to assume the costs of modernizing the cigarette stamping process in Virginia. Past efforts to modernize the stamping process always encountered challenges regarding who will pay for the replacement of current technology. The inquiry, therefore, should focus on the total cost of modernizing rather than who will pay for it. Wholesalers are, in effect, the tax agents for the Commonwealth and the localities. In discussions for previous studies on this issue, neither the state nor the localities were willing to take on all the funding for modernization. Wholesalers have administrative duties that go beyond that of retailers (*i.e.*, purchasing and affixing the stamps on each cigarette package, remitting the revenue to the appropriate level of government, and replacing cigarette packages or cartons for retailers when the stamps were damaged). Because of this, stamping agents are not ready to bear the burden of funding new stamping technology. VML would, therefore, leave the funding question to the General Assembly to be addressed through the budget process.

### **Findings**

After conducting a study of the modernization of the Virginia cigarette tax stamping system and the establishment of regional boards, the Department makes the following findings:

1. The current process of stamping in Virginia relies on heat transfer to affix stamps to packs of cigarettes. Providers of stamping technology state that technology exists to provide a more efficient stamping system to Virginia using either existing or new machinery depending on the platform adopted. A similar stamping system in Louisiana was recently updated at a cost of \$4.5 million over 5 years. The new stamps themselves could cost between five and ten times more than the stamps currently used in Virginia.
2. Depending on the system employed and the specifics of the contract with the technology provider, there may be no upfront costs to the Commonwealth to switch to a new stamping system because no new machinery would need to be purchased. There would be, however, recurring costs associated with stamps and maintenance.
3. There was no consensus among the working group as to who should bear the increased costs associated with any new stamping technology.

4. According to the *Virginia Code*, any local tax stamp or meter impression required to be used to evidence payment of the tax must be of the same stamp technology that is used or required by the Commonwealth for the state cigarette tax stamp.
5. With a few exceptions, cigarettes are not subject to local taxation in other states. Other than Virginia, local cigarette taxes are only common in Alabama and Missouri. New York City, Anchorage, Alaska and Cook County, Illinois also have local cigarette taxes.
6. Currently, the majority of Virginia localities with a cigarette tax are not part of a regional cigarette tax board.
7. While the authority to delegate local administrative and enforcement authority is granted to localities and the term "regional cigarette board" is defined in state law, a locality is not specifically required to use a regional board for such a delegation.
8. Based on a survey of interested parties, the use of regional cigarette tax boards could address many of the concerns of those involved in the stamping process. Use of a dual stamp for state and local taxes was singled out by such parties as the main advantage to regional boards. Lack of clear guidance and regional cooperation were the most significant obstacles to establishing regional boards.
9. Efforts should be made to give adequate notice to stamping agents of new local cigarette tax laws or changes to existing laws. Stamping agents need to be aware of changes to tax rates and procedures, as well as any new cigarette taxes that are enacted and local boards that are established so that they can comply with the stamping requirements.
10. The *Code of Virginia* provides authority to localities, not the state, to form regional boards. The process of establishing a regional board is ultimately a local process and the state has a limited role in the actual formation of the boards beyond providing dual stamps for evidence of payment of local and state taxes. The state, however, can offer advice and assistance to localities seeking to establish a regional board.

## Appendix A

### VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I CHAPTER 61

*An Act to amend and reenact § 58.1-3830 of the Code of Virginia and to amend the Code of Virginia by adding in Article 7 of Chapter 38 of Title 58.1 a section numbered 58.1-3832.1, relating to local cigarette taxes; regional cigarette tax boards.*

[S 1326]

Approved March 11, 2021

**Be it enacted by the General Assembly of Virginia:**

**1. That § 58.1-3830 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Article 7 of Chapter 38 of Title 58.1 a section numbered 58.1-3832.1 as follows:**

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

A. Any county, city, or town *locality* is authorized to levy taxes upon the sale or use of cigarettes. The governing body of any county, city, or town *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 county, city, or town *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 county, city, or town *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 county, city, town *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.

**§ 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.*

**2. That the Northern Virginia Cigarette Tax Board shall be considered a regional cigarette tax board for purposes of this act.**

**3. That it is the policy of the Commonwealth that, where practical, local cigarette stamping and tax collection is encouraged to be accomplished through regional cigarette tax boards modeled on the Northern Virginia Cigarette Tax Board. Recognizing that the current system of stamping and tax collection is antiquated and places a burden on wholesalers and distributors, the Department of Taxation shall establish a task force to develop methods for modernizing the system and shall provide assistance as appropriate to localities seeking new regional cigarette tax boards. The taskforce shall include local government representatives, local commissioners of the revenue, cigarette wholesalers and distributors, and representatives of the Northern Virginia Cigarette Tax Board. The task force shall submit its recommendations to the Virginia General Assembly by November 1, 2021.**

## **Appendix B**

### **NVCTB Agreement from Fairfax County**

#### **Section 1. Creation; purpose; organization.**

Under authority of § 15.1-21, Va. Code Ann., and upon adoption of a resolution of agreement by the governing bodies of three (3) or more local government jurisdictions in Northern Virginia, there is hereby created the Northern Virginia Cigarette Tax Board, hereinafter called the board, which shall act as agent for the participating jurisdictions for the administration of their respective cigarette tax ordinances. The board shall meet from time to time as it deems necessary. At its first meeting the board shall elect one (1) of its members as chairman, one (1) as vice-chairman and one (1) as secretary-treasurer who shall serve at the pleasure of the board. Actions of the board shall be by majority vote of the members of the board. Roberts Rules of Order shall apply. Actions of the board may be taken upon signed approval of its members.

#### **Section 2. Duration of participation.**

Participation by each member jurisdiction shall continue until termination by resolution of its governing body.

#### **Section 3. Membership.**

The membership of the board shall consist of the city, county or town manager of each participating jurisdiction, or in the case of Fairfax County, the county executive or the designee of the manager or executive.

#### **Section 4. Powers delegated to the board.**

The powers delegated by the participating jurisdictions to the board are:

4.1 Assessment, collection and disbursement of the cigarette tax for each participating jurisdiction;

4.2 Audit of the sales of cigarettes by wholesalers and retailers within each participating jurisdiction;

4.3 Provision of information for criminal prosecution by the commonwealth's attorneys of the affected participating jurisdictions;

4.4 Designation of an administrator;

4.5 Management of the Northern Virginia Cigarette Tax Fund, hereinafter called the "fund";

4.6 Employment of an auditor;

4.7 Designation of a depository bank or banks;

4.8 Contracting with a member jurisdiction for provision of administrative services.

#### **Section 5. Duties of the administrator.**

The administrator shall be responsible to the board for the administration and supervision of the cigarette tax ordinances, including:

5.1 Preparation of annual administrative costs estimates;

5.2 As authorized by the board, employment of or contracting for staff assistance, equipment and supplies;

5.3 Preparation of reports as the board may require;

5.4 Authorization of disbursements to the participating jurisdictions;

5.5 Authorization of disbursements from the fund;

#### **Section 6. Duties of the treasurer.**

The treasurer shall be the custodian of the fund and the cigarette tax receipts. He shall give bond, payable to the board, in such amounts and with such surety as the board requires, conditioned upon the faithful performance of his duties and the proper accounting of all monies coming into his hands, the cost of the bond to be paid by the fund.

#### **Section 7. Collection of the cigarette tax.**

The cigarette tax shall be assessed and collected on the basis of the "reporting method" according to the respective ordinances and according to the rules, regulations and procedures adopted by the board.

#### **Section 8. Disbursement of receipts; management of the fund.**

8.1 Cigarette tax receipts, as assessed, shall be paid monthly into the Northern Virginia Cigarette Tax Fund. Proportional disbursement shall be made monthly to each participating jurisdiction on the basis of taxable packs of cigarettes sold within the jurisdiction.

8.2 The board shall retain one tenth of one percent (.1%) of the monthly tax receipts in the fund to cover anticipated expenses. Prior to the last day of July of each year, all amounts over Five Thousand Dollars (\$5,000.00) in the fund shall be disbursed to the

participating jurisdictions on the basis of taxable packs of cigarettes sold within the jurisdiction over the preceding twelve (12) months.

8.3 All disbursements shall be on warrants authorized by the board on either blanket approval by class of expenditures or approval by specific item, which authorization shall be entered in the records of the board.

8.4 All monies shall be deposited in the name of the board and disbursements made only on warrants approved by the administrator as having been authorized by the board and signed by the treasurer.

#### **Section 9. Allocation of administrative costs.**

The administrative costs of the board shall be shared pro-rata by each jurisdiction on the basis of the number of taxable packs of cigarettes sold within the jurisdiction, as determined monthly.

#### **Section 10. Termination.**

In the event any participating jurisdiction decides, by resolution, to terminate its participation in the board, notice to the board shall be given sixty (60) days prior to its date of termination. It shall receive within thirty (30) days of its date of termination its pro-rata share of receipts and administrative reserve. The pro-rata share shall be based on the number of taxable packs of cigarettes sold within the jurisdiction as determined by the receipts of the month next preceding adoption of the termination agreement. The representative of such terminating jurisdiction shall not serve on the board beyond the termination date; neither shall such jurisdiction be contracted with for the provision of services.



## Appendix C

### CHESAPEAKE BAY REGION CIGARETTE TAX AGREEMENT

THIS AGREEMENT, is entered into and dated as of the latest execution and acknowledgment by any party hereto, by and between

- (1) Westmoreland County, Virginia;
- (2) Lancaster County, Virginia;
- (3) Middlesex County, Virginia;
- (4) Essex County, Virginia;
- (5) Town of Montross, Virginia;
- (6) Town of Colonial Beach, Virginia;
- (7) Town of Urbanna, Virginia; or any two or more of the foregoing;

WHEREAS, the parties hereto desire to enter an Agreement for the purpose of the establishment of the Chesapeake Bay Region Cigarette Tax Board for the joint administration, collection and enforcement of their respective Cigarette Tax Ordinances pursuant to the provisions of these ordinances and Section 15.2-1300 and 58.1-3832, *et seq.*, of the Code of Virginia, (1950), as amended;

NOW THEREFORE, the parties enter into the following agreement:

1. **NAME AND DURATION**

The Board shall be called the Chesapeake Bay Region Cigarette Tax Board. Its duration shall be perpetual, subject to the provisions of Paragraph 8 hereof.

2. **MEMBERSHIP AND VOTING POWERS**

The Board shall be composed of one representative from each jurisdiction hereinbefore named or later added with consent of the Chesapeake Bay Region Cigarette Tax Board. Said representative may designate an alternate to attend meetings and vote in his or her place; however, each jurisdiction shall be entitled to only one vote. Action of the Board shall be by majority vote.

3. **OFFICERS AND MEETINGS**

Each year, the Board shall elect a Chairman, Vice-Chairman and Secretary/Treasurer, who shall serve at the pleasure of the Board. The Officers of the Board shall be chosen from the jurisdictional representatives. Said officers shall be empowered to sign in the name of the Board on all legal documents, including bank deposits and withdrawals. The Board shall meet from time to time as deemed necessary by the Chairman.

4. **POWERS OF THE BOARD**

The Board shall be delegated the following powers:

- a. Assessment, collection and disbursement of the cigarette tax for each participating jurisdiction;
- b. Audit of the sale or use of cigarettes within each participating jurisdiction;
- c. Provision of information for criminal prosecution by the affected participating jurisdictions;
- d. Provide guidance and oversight to the designated Administrative/Fiscal Agent;
- e. Management of a general operating fund to ensure proper funding of Board operations on an ongoing basis;
- f. Designation of a depository bank or banks;

- g. To hold and convey personal property. The Board shall have no power to hold or convey real property;
- h. To enter into contracts;
- i. Any other powers granted to the Board by the respective local ordinances

and the Code of Virginia (1950), as amended.

5. **LIABILITY INSURANCE**

The Board shall maintain and have authority to secure insurance coverage as deemed appropriate. General liability insurance shall be maintained through a commercial policy, in limits of not less than \$500,000.00. Any liability in excess of the amounts of insurance coverage will be shared by the members of the Board proportionately based upon each jurisdiction's share of the number of taxable packs of cigarettes reported in the twelve (12) months preceding the incident which gave rise to the liability, as compared to the taxable packs of cigarettes reported during that same time period in all the participating jurisdictions.

6. **Operational Provisions**

The Northern Neck Planning District Commission (NNPDC) is designated as the administrative/fiscal agent. Normal routine duties of the Board in administration and supervision of the Cigarette Tax Ordinances shall be delegated to the NNPDC. Actions and decisions of the NNPDC shall bind the Board unless patently wrongful or the result of willful misconduct, but the Board may at anytime overrule a decision or action by the NNPDC subject to lawful rights of third parties. The duties of the Administrative/Fiscal Agent shall include, but are not limited to, the following:

- a. Preparation of annual administrative cost estimates;

- b. As authorized by the Board, employment of or contracting for staff assistance including providing employee benefits, and, equipment and supplies.
- c. Preparation of reports as the Board may require;
- d. Authorization of disbursements from Board accounts including, but not limited to, disbursements to the participating jurisdictions.

Each member jurisdiction will be charged a fee of 5% of the tax revenue to cover the NNPDC cost to act as administrative/fiscal agent as described above. In the event that the NNPDC costs exceed the amount collected from the 5% fee, each jurisdiction will be charged its pro-rata share of that amount based on its tax revenues as a percentage of the total tax revenues from all member jurisdictions collected.

**7. COLLECTION OF THE CIGARETTE TAX**

The cigarette tax shall be assessed and collected on the basis of the "reporting method" according to the respective ordinances and according to the rules, regulations and procedures adopted by the Board.

**8. DISBURSEMENT OF RECEIPTS, MANAGEMENT OF FUNDS**

Disbursements shall be made to each participating jurisdiction on a monthly basis. Prior to disbursement to jurisdictions, the 5% administrative fee shall be deducted from total revenues and allocated to the jurisdictions proportionately based upon the number of taxable packs of cigarettes reported within the jurisdiction during the month as compared to the total number of taxable packs of cigarettes reported in all the participating jurisdictions. The disbursement to each participating jurisdiction shall be determined by the tax rate of the jurisdiction multiplied by the taxable packs of cigarettes reported within the jurisdiction, plus interest and penalties, plus the jurisdiction's proportional share of all other revenues, less discounts and proportional expenses.

All monies shall be deposited in the name of the Chesapeake Bay Region Cigarette Tax Board. All checks drawn on Board accounts shall require signature by the NNPDC Executive Director and a Board Officer.

9. **TERMINATION**

a. In the event any participating jurisdiction decides, by ordinance, to terminate its participation in the Board, notice to the Board shall be given sixty (60) days prior to its date of termination. The terminating jurisdiction shall receive within thirty (30) days of its date of termination its share of total revenues less proportionate expenses, operating fund, and depreciated value of physical property used by the Board. The representative of such terminating jurisdiction shall not serve on the Board beyond the termination date.

b. In the event the number of jurisdictions which desire to continue to participate in the Board is less than two (2) in number, the Board shall be dissolved and shall cease to exist. In such event, the Board shall liquidate all assets and disburse to each jurisdiction participating at the time each such jurisdiction's share of the liquidated assets and all proceeds and monies held. Such distribution shall be based upon each jurisdiction's proportionate share of the number of taxable packs of cigarettes reported in the preceding twelve (12) months as compared to the taxable packs of cigarettes reported during that same time period in all the jurisdictions participating in the Board at the time the Board is dissolved.

10. **IMPLEMENTATION**

Each jurisdiction shall by ordinance signify its desire to be a member of the Board and its acceptance of the provisions of this Agreement.

This Agreement shall take effect upon the signature of the proper officials of any two (2) of the jurisdictions below and shall take effect as to any other jurisdiction upon signature of the proper official of such jurisdiction.

**Westmoreland County, VA**

By: \_\_\_\_\_

\_\_\_\_\_

**Printed Name**

\_\_\_\_\_

**Title**

**Lancaster County, VA**

By: \_\_\_\_\_

\_\_\_\_\_

**Printed Name**

\_\_\_\_\_

**Title**

**Middlesex County, VA**

By: \_\_\_\_\_

\_\_\_\_\_

**Printed Name**

\_\_\_\_\_

**Title**

**Essex County, VA**

**By:** \_\_\_\_\_

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

**Town of Montross, VA**

**By:** \_\_\_\_\_

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

**Town of Colonial Beach, VA**

**By:** \_\_\_\_\_

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

**Town of Urbanna, VA**

**By:** \_\_\_\_\_

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

**Appendix D**  
**Comments from Virginia Association of Counties**

Dear Mr. Klos,

Thank you for the opportunity to offer some initial comments on the cigarette tax stamping process and ways that localities may be supported in establishing new regional cigarette tax boards. As you know, several regional efforts are currently underway, and we appreciate the assistance provided by the Department in getting these boards up and running. We have worked to support these efforts by facilitating the sharing of information, in particular by connecting county and planning district commission representatives with resources available from the Northern Virginia Cigarette Tax Board (NVCTB). We have shared many of those resources, such as the NVCTB agreement and a participating county's ordinance, on our Cigarette Tax Toolkit, a dedicated page on our website, and we know that many of our members have benefited greatly from the willingness of NVCTB leadership and staff to share their knowledge.

In response to your email, we solicited comments from representatives of the counties that are moving forward to implement cigarette taxes on their own, as well as representatives from the regions that are establishing, or planning to establish, regional boards. We received several suggestions in response:

- Assistance with stamp inventory management: It is our understanding that wholesalers may purchase the regional NVCTB stamp from state offices, which eliminates the administrative workload on NVCTB staff to track inventory of stamps. Other regional boards have expressed interest in taking part in a similar arrangement.
- "How-to" guide: Interest has been expressed in developing a guide for localities establishing new regional boards that would set out the issues and decision points that must be addressed when establishing a regional board, and the sequencing and timing of those decisions. Such a document could draw upon the experiences of NVCTB and the boards currently being established to assist in future efforts.

We would also note that regional boards that are set up outside an existing administrative structure (such as the planning district commission) may incur start-up costs for personnel, office space, stamps, and other initial needs before they begin to generate revenue from collections. It may be useful to establish some grant funding that would assist with these start-up costs in order to help new boards in getting off the ground.



We appreciate the work of the Department to assist counties in implementing this new authority and are happy to participate in further discussions.

Thank you,

## Appendix E

### Comments of Virginia Municipal League

Thanks for the opportunity to comment.

It seems to me that after participating in previous task forces the conundrum is always reduced to money.

Who will pay for modern machinery and “smart” stamps? Who will be responsible for the inspections and enforcement required by federal and state laws and local ordinances? How can the process be made less burdensome for wholesalers and localities? Are some regions of the state more problematic than others?

No single stakeholder wants to assume the costs to bring the process into the 21st century. So, perhaps a different approach is required. Perhaps instead of asking “who will pay” we should ask ourselves “what would it take to . . .” achieve the aims of SB 1326.

We know that in response to Senator Hanger’s bill that regional efforts are being explored or developed in the Northern Neck, the greater Charlottesville area, and elsewhere. But, are these the geographic and market areas of greatest concern for the wholesalers?

What would it take?

What would it take for the Wholesalers to identify three regions of the state that currently give their members or potentially would give their members the greatest heartburn? Instead of getting bogged down by trying to address the challenges of SB 1326 on a statewide basis, the approach could be targeted to problem areas first. In other words, we’ll phase in other areas of the state as we gain experience as to what works and what doesn’t and develop sets of best management practices.

If one of the problem regions is Hampton Roads where cities far outnumber counties, then the question is what would it take for cities and their Finance Directors and the Commissioners of the Revenue to agree to a regional board approach with a common stamp? Perhaps a regional board in Hampton Roads would rely on and contract with the local Commissioners of the Revenue for inspection and enforcement responsibilities instead of adopting the Northern Virginia Regional Cigarette Tax Board model of keeping in-house the inspection and enforcement activities. That approach may lessen the opposition to resolve Senator Hanger’s concerns.

What would it take to modernize the stamping process? Wholesalers are, in effect, the tax agents for the Commonwealth and the localities. Past efforts to modernize the stamping process always floundered on who will pay for the replacement of cutting edge 1940s technology? Neither TAX nor localities were willing to do so. And, the Wholesalers whose administrative duties go beyond what is done by Retailers (i.e., affixing the stamps on each cigarette package, selling the stamps and remitting the revenue to the appropriate level of government, replacing cigarette packages or cartons for Retailers when the stamps were damaged or fell off or otherwise flunked government inspection, etc.) clearly had no interest to do so.

Because this issue has traditionally surfaced in the General Assembly, perhaps the task force should ignore the “who pays” question and focus instead on the “how much will it cost” question. If the issue is important to the General Assembly, then let the legislature determine if it is a priority or even feasible to pay for modernizing the stamping equipment and glue-based stamps.

The bottom line is figuring out how to effectively accomplish the task. I’d be surprised if the amount of cigarettes sold in the Northern Neck is great enough to make a great deal of difference for the Wholesalers. Let’s try to first find solutions for the biggest headache areas.

## Appendix F

### Comments from VWDA

## VWDA Local Tax Issues---- SB 1326 Study

Steve,

Now that the July 1, 2021 threshold has passed, we are providing a narrative list of issues we faced with changes to the local cigarette tax process. Our intent is to once again set forth our known concerns with the tax stamping process for local governments and request you include in continuing discussions with the interim study/review. Had mandatory regional cigarette tax boards been formed along with improved stamp technology, these issues could have been avoided.

Also, have (attached) the updated VWDA tax chart that now includes those counties imposing a new tax. This list is developed with NATO, our office and members who have to purchase tax stamps and is as best we know as of July 1, 2021. There are a number of other counties considering a new cigarette tax during the balance of 2021. If a question on a jurisdiction or tax rate, best to contact the jurisdiction.

#### VWDA Member Company Issues:

1. The changes to VA Code 58.1-3830 (tax authority) is well known among local officials; however VA Code 58.1-3832 (tax process) is not, as we find many violations where fees are being charged for returned tax stamps-as an example.
2. Many are not providing a tax discount to the distributor stamping agent to do their work and monthly reporting. Especially the case with regional boards that require extensive monthly reports involving multiple jurisdictions-----CBRCTB, Mt Rogers, Jefferson, and the existing NVCTB.
3. Some localities requesting stamping agents to file copies of all monthly State cigarette tax reports? Particularly jurisdictions contemplating joining a regional board, but in those cases they should have their own report that provides information they need where the State report does not. Additionally, jurisdictions approving their ordinance without the regional board being formed yet?
4. Some towns/cities, with no interest in a cigarette tax, have had to approve a very low tax rate with no stamps or ordinance just to keep county tax out. Reason: Counties not sharing cigarette tax revenue derived from non-taxing towns. This needs to be addressed in the Code.

5. Some jurisdictions consider using “decals” instead of heat transfer tax stamps as required in 58.1-3832 2. Others have ordered stamps from different vendors with no research or test runs before ordering----- time will tell if they are compatible with our machine set ups? Additionally, we find localities do not have a provision to allow continued marketplace distribution when they run out of tax stamps. We have successfully suggested the use of tax affidavits. (Attached)

6. Examples of these issues can be found particularly in jurisdictions where they approve a new tax, but have had to delay the effective date because they are not ready.

7. There have been transparency issues with some localities in that we can't find out what is being proposed with tax changes until after the fact, they don't have tax stamps or draft ordinances available ---but being presented to BOS as a budget line item. This includes the absence of a contact person locally in charge of the tax and stamps that we can communicate with to address the draft ordinance or the stamps or effective dates. We get bounced between county attorneys, COR's, clerks and finance departments.

8. Jurisdictions had difficulty in determining who/where cigarette retailers located and distributors ---thus had no sales data to determine tax revenue or initial stamp quantity needed. In many cases we had to provide information. Additionally, no process when a locality runs out of stamps if they have "under ordered" because they didn't know the quantity needed.

9. In cases where a town has reduced their tax from \$5.00/carton to \$4.00/ carton because of the tax cap and will use existing tax stamps, but has no plan for a refund to distributors that paid the \$5.00/carton tax prior to the tax reduction date?

10. There needs to be an amendment to 58.1-3830 that allows local taxes "by ordinance" rather than "may impose". We have had comments back to us indicating no ordinance required in the law?

The regional board process and improved stamp technology are certainly the direction that could resolve many of the issues, implement uniform tax policy and serve as a repository for regional tax information. It would further reduce the upfront distributor costs for tax stamps. One roll of 30k stamps with a tax of .40/pack costs the distributor \$12,000.00--- then multiplied by the number of different jurisdictions where distributors have retailers--- thus reducing and or eliminating distributor capital stamp costs that could be used for infrastructure improvements, employees and expansions -----not tied up in tax stamp inventory.

Regards,

## Additional Comments from VWDA

Stephen,

We understand that the survey deadline has passed, but would like to submit one additional comment from VWDA and industry members in hopes that you would consider adding to our list--- today's MOU between Dept of TAX and the CBRCTB created the reason for this issue as our previous efforts were unsuccessful.

Under 58.1-3832.1, localities are permitted to form a regional cigarette tax board, and the regional board may enter into an arrangement with Tax for the use of a dual tax stamp pursuant to 58.1-3830. 58.1-3830 provides that a locality (or group of localities) may:

"enter into an arrangement with the Department of Taxation under which a tobacco wholesaler...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." Add the required amendment for the Dept of TAX to correct local ordinances and regional agreements before signing.

We believe legislation is needed to require Dept of TAX to review regional agreements and it's member ordinances to make sure all are in compliance with State Code before the MOU is executed. Currently there is no transparency or enforcements on local governments to correct any State Code violations and this MOU requirment would solve going to court procedures.

Regards

## Appendix G



### Regional Cigarette Tax Board Implementation Checklist

*This checklist is designed to assist localities with the creation of a new regional cigarette tax board.*

1. Confirm approval and signing of local ordinance(s) allowing participation in Regional Cigarette Tax Board ("Board"); provide a copy to the Virginia Department of Taxation ("Virginia Tax").
  - ▶ By default, this should include a listing of participating localities and their effective start date with the board.
2. Open a checking account to pay Board expenses and deposit cigarette tax revenues.
3. Secure signatures from both the Regional Cigarette Tax Board and Virginia Tax on a Memorandum of Understanding (MOU).
4. Design and present a dual stamp to Virginia Tax's vendor.
5. Secure approval for the new dual stamp proof; submit it to the vendor.
6. Provide projected stamp volume to Virginia Tax.
7. Confirm that Virginia Tax has ordered the new dual stamp.
8. Design and print the Board stamp order form.
9. Develop a stamping agent return reporting process; design, produce, and procure return forms.
  - ▶ The return process will be the primary mechanism to collect the Board's tax revenue.
10. Set up administrative software system to be used in tracking revenue, roll numbers sold, and receivables as well as assessing stamping agents.
11. Establish implementation plan to address placement of stamps on retailers' shelves prior to tax effective date but remaining for sale on or after the effective date.
  - ▶ Examples: floor tax return and payment; adhesive stamps to be affixed by retailers.
  - ▶ A start date for stamping agents to begin affixing stamps must also be documented.
12. Identify stamping agents that distribute cigarettes within the Board localities.
13. Notify stamping agents (that distribute within the Board's localities) of the new Board, its new stamp, and an effective date for the cigarette excise tax.
14. Provide dual stamp purchase instructions to stamping agents (that distribute cigarettes within the Board's localities).
  - ▶ List accepted payment methods – for example, ACH/EFT, check, cashier's check, credit card (fees charged), etc.

Regional Cigarette Tax Board Implementation Checklist  
*Last updated June 9, 2021*



15. Confirm receipt by the Board of bonds from authorized stamping agents to cover the risk of assessing cigarette tax in arrears.
16. Document process for returned, unused stamps for credit, to include notifying Virginia Tax (via affidavit or internal form) of state cigarette revenues to be refunded.
17. Provide to Virginia Tax a list of stamping agents authorized to purchase the region's dual stamps.
18. Develop and draft compliance or enforcement policies and procedures.
19. Train Compliance staff.
20. Train Administrative staff.
21. Provide list of Board contacts and contact information to Virginia Tax.

**Virginia Tax Contacts:**

Bank Services Supervisor — 804.367.6375

Tobacco Accountant — 804.367.8465



# Appendix H

## Form TT-12 Virginia Application For Tobacco Tax Credit Certificate

Virginia Department of Taxation  
P.O. Box 1301  
Richmond, VA 23218-1301

- Please print or type **all** information below.
- If applying for a Bad Debt Credit, also complete and attach Schedule A.

Stamping Agent Name	Permit Number	(Do Not Use This Space)	
Number and Street			
City	State	ZIP Code	
Contact Person	Phone Number (    )		

The above named stamping agent hereby makes application to the Virginia Department of Taxation for a tobacco tax credit certificate for the reason or reasons and in the amount stated below:

Reason	Number Of Stamps	Tax Value Each Stamp	Gross Tax Value
1. Stamps Applied on Carton Flaps			
2. Unusable Stamps on Defective Rolls			
3. Usable Stamps on Unopened Rolls			
4. Stamps On Unsalable Tobacco Products Returned to Manufacturer: Attach Cigarette Manufacturer Affidavit			
<b>NOTE:</b> You may consolidate multiple affidavits on this application.			
5. Other (Specify)			
6. Bad Debt Credit (Attach a Schedule A for each bad debt credit application.)			
7. Total (Add Lines 1 through 6.)			\$
8. Less 2% Discount:			\$
9. Net Amount of This Application For Credit Certificate (Line 7 minus Line 8.)			\$

I certify that this application is true and accurate.

Name of Stamping Agent: \_\_\_\_\_ Date: \_\_\_\_\_

By (Authorized Signature): \_\_\_\_\_ Title: \_\_\_\_\_

# Schedule A Additional Information Required For Bad Debt Credit

## Form TT-12

- See the reverse side for instructions.

Stamping Agent Name		Permit Number		
Contact Person		Phone Number (     )		
<b>I. Invoice Information</b>				
a. Customer Name	b. Invoice Number	c. Invoice Amount	d. Invoice Date	e. Delivery Date
f. Number of Cigarette Cartons		g. Amount of Credit Claimed		
h. Were any partial payments received on this invoice? <input type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, please complete i and j.			i. Amount Received	j. Date Received
<b>II. Collection Information - Must be verifiable.</b>				
<b>1st Collection Contact</b>	a. Date	b. Method Of Contact <input type="checkbox"/> Phone <input type="checkbox"/> Mail	c. Results	
<b>2nd Collection Contact</b>	d. Date	e. Method Of Contact <input type="checkbox"/> Phone <input type="checkbox"/> Mail	f. Results	
<b>3rd Collection Contact - "Demand for Payment" sent by Certified Mail</b>		g. Date Sent	h. Date Certified Mail Received By Customer	
i. Sent to a Collection Agency? <input type="checkbox"/> Yes <input type="checkbox"/> No    If Yes, please complete j through n.				j. Date Sent
k. Name of Collection Agency		l. Address of Collection Agency		
m. Dates Customer Was Contacted		n. Results		
<b>III. Write-Off Information</b>				
a. Date Written-Off		b. Journal Entry Number		
<b>IV. Other Information</b>				
a. Date of Most Recent Invoice to This Customer		b. Amount of Most Recent Invoice to This Customer		

# Schedule A Additional Information Required For Bad Debt Credit Instructions

Form TT-12

- Complete Schedule A to apply for a credit for a bad debt.
- A separate Schedule A must be completed for each invoice charged-off.
- Credit is only valid for cigarette stamps.
- The following must be attached to Schedule A:
  1. Copy of unpaid invoice. Invoice must contain:
    - Customer name;
    - Customer address;
    - Customer phone;
    - Invoice number;
    - Invoice date (must be at least 75 days earlier than date of application);
    - Invoice amount;
    - Delivery date; and
    - Number of cartons of cigarettes shipped.
  2. *Copy of delivery receipt*
  3. *Copy of at least two collection letters to customer. At least one of the collection letters must be a "Demand for Payment" sent by Certified Mail at least 45 days after the date of the invoice. In lieu of the collection letters, the stamping agent may submit a copy of a judgement.*
    - "Bad debt" means the taxes attributable to any portion of a debt that is related to a sale of cigarettes that has become worthless or uncollectible in the time period between the date when taxes accrue to the department for the stamping agent's preceding tax return and the date when the taxes accrue to the department for the present return, and that is eligible to be claimed, or could be eligible to be claimed if the stamping agent kept accounts on an accrual basis, as a deduction pursuant to section 166 of the Internal Revenue Code.
- A bad debt does not include:
  - Any interest on the wholesale price of cigarettes;
  - Uncollectible amounts on property that remain in the possession of the stamping agent until the full purchase price is paid;
  - Expenses incurred in an attempt to collect any account receivable or any portion of the debt recovered;
  - Any accounts receivable that have been sold to a third party for collection; nor
  - Repossessed property.
- Any bad debt credit claimed on Form TT-12 must also be reported on Form TT-13/TT-14, Monthly Report of Cigarette Stamping Agent.
- If all or part of a bad debt with respect to which a stamping agent claimed a deduction is recovered, the stamping agent shall be liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received and shall include this amount on its next Order for Virginia Cigarette Tax Stamps, (Form TT-2 line 9).
- A subsequent recovery on an invoice should be calculated as follows:

(cigarette tax/total invoice) X amount of invoice recovered = tax payable
- A credit will only be granted for debts which have been deemed worthless or uncollectible on or after July 1, 2006.

## Appendix I

# Virginia Department of Taxation - Task Force for the Modernization of the Cigarette Stamping System and Regional Cigarette Tax Boards

[stephen.klos@tax.virginia.gov](mailto:stephen.klos@tax.virginia.gov) [Switch account](#)

\* Required

Email \*

Your email

1. What type of entity is the respondent for this survey?

- City
- County
- Town
- Wholesaler
- Distributor
- Organization Representing Localities
- Organization Representing Wholesalers or Distributors
- Regional Cigarette Tax Board
- Software/Technology Provider

2. What is the most significant challenge facing the system of local cigarette taxation in Virginia?

- Current Virginia stamping technology
- Lack of centralized administration
- Lack of regional boards
- Lack of funding

3. Who should be responsible for funding any new cigarette stamping technology?

- The State
- Localities that impose a local cigarette tax
- Wholesalers and distributors
- Combination of state, local, and stamping agents

4. Would regional cigarette tax boards address most challenges facing the current cigarette stamping system?

- Yes
- No

5. What issue presents the most significant challenge to establishing a regional board?

- Start-up costs
- Lack of regional cooperation
- Lack of clear guidance

6. Which aspect of regional boards is most helpful in making local cigarette taxation more efficient?

- Use of dual stamp
- Regional administration of the tax
- Enforcement
- Collaboration among members

7. Should local ordinances that impose cigarette taxes require the taxpayer to provide copies of state tax returns to the locality?

- Yes
- No

8. What changes should be made to modernize the cigarette stamping system in Virginia?

Your answer

9. What information is needed to establish regional boards, and who could best provide that guidance?

Your answer

10. Are there specific geographic regions in Virginia that would benefit more from regional boards than other regions?

Your answer

11. What areas of concern have arisen from ordinances imposing local cigarette taxes?

Your answer

12. What should be included in a local ordinance that imposes cigarette taxes?

Your answer



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13. What notice should localities provide to affected parties prior to the passage of a local cigarette tax?

Your answer

14. What other concerns or comments do you have about the modernization of cigarette taxation in Virginia?

Your answer

15. What other concerns or comments do you have about the establishment of regional cigarette tax boards?

Your answer

Submit

Clear form

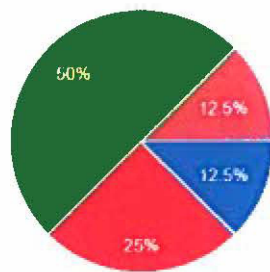
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Google Forms

1. What type of entity is the respondent for this survey?

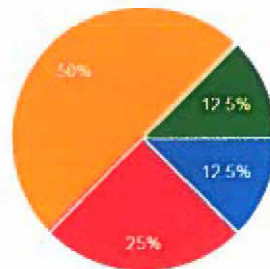
8 responses



- City
- County
- Town
- Wholesaler
- Distributor
- Organization Representing Localities
- Organization Representing Wholesalers or Distributors
- Regional Cigarette Tax Board
- Software/Technology Provider

2. What is the most significant challenge facing the system of local cigarette taxation in Virginia?

8 responses



- Current Virginia stamping technology
- Lack of centralized administration
- Lack of regional boards
- Lack of funding

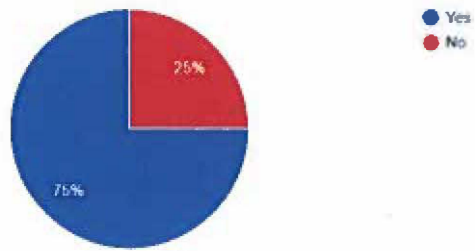
3. Who should be responsible for funding any new cigarette stamping technology?

8 responses



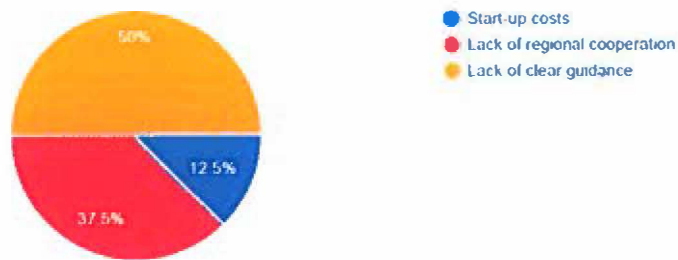
4. Would regional cigarette tax boards address most challenges facing the current cigarette stamping system?

8 responses



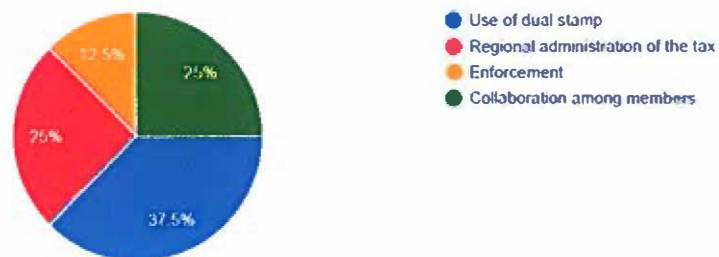
5. What issue presents the most significant challenge to establishing a regional board?

8 responses



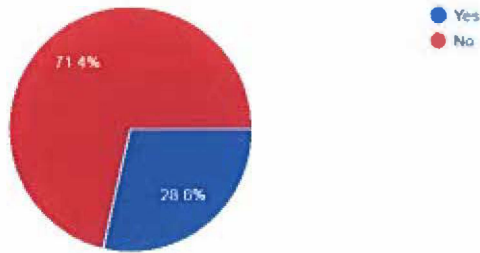
6. Which aspect of regional boards is most helpful in making local cigarette taxation more efficient?

8 responses



7. Should local ordinances that impose cigarette taxes require the taxpayer to provide copies of state tax returns to the locality?

7 responses



8. What changes should be made to modernize the cigarette stamping system in Virginia?

7 responses

Upgraded equipment

Not enough information at this time to answer this question.

Take away the need for a stamp for all jurisdictions.

A quality stamp is needed that adheres to the pack of cigarettes the best and updated stamping machines are to apply the stamps. This is the states responsibility. All stamps should be from the same manufacturer. Wholesalers preform the work of the state in the application of the various stamps, collection, reporting and accounts receivable carrying cost along with risk of the sale to retailers.

State investment in new stamping technology

A full on track and trace system

9. What information is needed to establish regional boards, and who could best provide that guidance?

7 responses

Department of tax and nova regional board

Startup procedures as well as administration and enforcement of the tax

People who understand the tax implications from the manufacturing of the stamps, stamping agents having to purchase, store, and apply them. This person also needs to understand the burden on retailers who are expected to inspect all cartons & packs, which is not feasible

The VA DOR & The VA Wholesalers & Distributors Association .

Right now it's haphazard. Perhaps the state could define the regions (and grandfather the NVCTB since it's an established region, but allow us to accept others upon request)

Wholesaler representative/Lobbyist, existing Boards

10. Are there specific geographic regions in Virginia that would benefit more from regional boards than other regions?

6 responses

No

No, all areas will benefit from regional boards.

Those areas with several tax jurisdictions established that requires several different stamps in addition to the state stamp. Hampton Roads would be one area I can think of.

Where the cities that tax with no county jurisdiction ( primarily Hampton Roads cities) the process is working. Where the need for Tax boards is apparent is in smaller towns & counties that a wholesale distributor may only have 1 or 2 stores they supply at most. You are asking a roll of 30,000 stamps be purchased and stored by the wholesaler distributor to apply the tax. This is a problem. Stores switch suppliers and wholesalers are left with unused stamps. The management of this stamp inventory is also problematic. 1 stamp and monthly reporting & collection of tax is what is needed.

Throughout Virginia

11. What areas of concern have arisen from ordinances imposing local cigarette taxes?

6 responses

No communication at all

None known at this time.

Many concerns. Having to purchase the stamps and taking a very long time to go through them. There might be one store we service as a wholesaler in that ordinance. The other is how the stamp is applied and will it cause issues for us or the retailer. The newer stamps being manufactured by a different company have caused us issues.

Huge inventory cost increases with the purchase of ALL the different stamps. Additional slow moving stamp inventories. Labor issues wholesale distributors are facing. The more different stamps the more chance of error.

N/A

12. What should be included in a local ordinance that imposes cigarette taxes?

4 responses

The tax rate, who administers the tax, what are the enforcement responsibilities, and what are the penalties for non conformance.

A reporting method instead of the use of a physical stamp.

Refunds for unused stamps. A stamping discount to wholesale distributors of a minimum of 5% for doing the work of stamping, inventory, reporting, collecting & remitting the tax.

N/A

13. What notice should localities provide to affected parties prior to the passage of a local cigarette tax?

4 responses

A written statement should be given to all who would be affected

They should notify any businesses who are within that locality of this change. This could be only those under the retail category or not.

Before enacting any cigarette tax local cities, towns or counties should have the stamps in hand and a clear process of how to order the stamps, apply for credit of unused stamps in the case of lost retail accounts and reporting procedures. The process to eliminate the (120 cities & towns and 90 counties each having their own stamp is needed!). The Regional Tax boards m(5 to cover the state) is a way to minimize the number of different stamps required without moving to new digital technology which will be costly for the state as new stamping equipment will be required and need to be in place prior to these increased taxes being imposed.

Normal communication whenever a new tax is imposed

14. What other concerns or comments do you have about the modernization of cigarette taxation in Virginia?

4 responses

None at this time.

I feel that we do not have a good system already with just the state stamp. Why do we add to that problem by allowing localities to implement stamps when they do not understand or have any knowledge about how the stamps are applied and the issues they represent.

The other issue is the sell thru period of retailers inventories that does not have the "new tax & tax stamp" on packs in their inventory. Many stores have over a year of inventory on slow movers they have in stock. We stock over 500 different brands of cigarettes. At retail there is some very slow movers and as most all manufacturers do not allow returns of cigarettes for credit, retailers are reluctant to discard this inventory as cigarettes are expensive. In a retail audit for stamp compliance how will this old inventory be treated? The packs are not able to be stamped back thru the wholesale distributors stamping equipment as it involves loose packs out of the carton or sealed cartons with the VA state stamp applied.

N/A

15. What other concerns or comments do you have about the establishment of regional cigarette tax boards?

4 responses

No concerns. I believe this is the best method for administering this tax.

We need to simplify this for all parties. The enforcement needs to have a better relationship with both the stamping agents and retailers so we can work together. When the enforcement goes out and seizes or confiscates cigarettes it is not solving anything. The wholesalers are all doing the right thing and mistakes and errors are going to happen within this current system.

This is a mess for us wholesale distributors the VA DOR needs to take charge of or at a minimum Regional Boards need to be formed. These additional county / city taxes are already in process and there has been NO direction. We want to support this measure but with over 200 local or county taxes it is unrealistic to expect us to comply. We are the ones loosing thru the whole process.

None. The NVCTB has been working well for decades.





