

**COMMONWEALTH OF KENTUCKY FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2020 REGULAR SESSION**

MEASURE

2020 BR NUMBER 32

HOUSE BILL NUMBER 32

TITLE AN ACT relating to the taxation of tobacco products.

SPONSOR Representative Jerry Miller

FISCAL SUMMARY

STATE FISCAL IMPACT: YES NO UNCERTAIN

OTHER FISCAL STATEMENT(S) THAT MAY APPLY: ACTUARIAL ANALYSIS
 LOCAL MANDATE CORRECTIONS IMPACT HEALTH BENEFIT MANDATE

APPROPRIATION UNIT(S) IMPACTED: _____

FUND(S) IMPACTED: GENERAL ROAD FEDERAL RESTRICTED _____

FISCAL ESTIMATES	2019-2020	2020-2021	2021-2022	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES		\$44.7 Million	\$49.4 Million	
EXPENDITURES				
NET EFFECT		\$44.7 Million	\$49.4 Million	

() indicates a decrease/negative

PURPOSE OF MEASURE: HB 32 changes the excise tax on snuff, chewing tobacco and other tobacco products and adds vapor products to the definition of tobacco products which will make vapor products subject to the tobacco products excise tax. Under the provisions of HB 32, all tobacco products (excluding cigarettes) will be subject to a 27.5% tax on the wholesale price.

Under current statutes, the excise tax on snuff and chewing tobacco is on a unit basis and all other tobacco products (excluding cigarettes) are taxed at 15% of the wholesale price. Vapor products are subject to the sales and use tax under current statutes but are not included in the definition of tobacco products; therefore, vapor products are not currently subject to the tobacco products excise tax.

Under HB 32, the change in the tobacco excise tax rates is effective as of August 1, 2020. Key provisions of HB 32 are listed below.

- Includes vapor products as a tobacco product and defines vapor products in accordance with KRS 438.305. The definition of vapor products in KRS 438.305 is summarized below.
 - Electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar device, and any vapor cartridge or other container of a liquid solution that is intended to be used with an electronic device.

- Changes the excise tax rate on snuff from \$0.19 per each one and one-half ounces to 27.5% of the wholesale price (actual price for which the distributor sells tobacco products);
- Changes the excise tax rate on chewing tobacco from \$0.19 per single unit, \$0.40 per half-pound unit, and \$0.65 per each pound unit to 27.5% of the wholesale price;
- Changes the excise tax rate on tobacco products other than snuff and chewing tobacco from 15% to 27.5% of the wholesale price;
- Imposes the excise tax rate on vapor products at a rate of 27.5% of the wholesale price;
- Imposes a floor stock tax on tobacco products based on inventory as of July 31, 2020. The floor stocks tax is equal to the difference between the new and old tobacco excise tax rates and is applied to all tobacco products including vapor products. The floor stocks tax will be paid in 3 monthly installments beginning on August 10, 2020;
- Removes statutory language which provides a 25% or 50% tax reduction for cigarettes or tobacco products if they were designated as a modified risk tobacco product by the federal government;
- Removes the statutory language which states that smokeless tobacco poses less risk than other forms of tobacco products.

FISCAL EXPLANATION: The provisions of HB 32 are estimated to increase General Fund (GF) receipts by \$44.7 million in FY 2021 and \$49.4 million in FY 2022.

HB 32 Estimated Fiscal Impact	FY 2021	FY 2022
Increase in Tobacco Excise Tax	\$38.8 million	\$46.6 million
Increase in Sales Tax	\$2.3 million	\$2.8 million
Floor Stocks Tax	\$3.6 million	N/A
Increase in General Fund	\$44.7 million	\$49.4 million

Expanding the tobacco excise tax base to include vapor products, and changing current tobacco tax rates to 27.5% of the wholesale price, will result in increased GF tax receipts tied to the tobacco product sales.

GF receipts in FY 2021 include floor stocks tax receipts and 10 months of collections at the 27.5% excise tax rate. FY 2022 GF tax receipts include 12 months of tobacco excise tax receipts at 27.5%, but do not include floor stocks tax receipts since this tax is imposed only on inventory as of July 31, 2020. The overall impact of these two effects in FY 2022 (12 months of collections and no floor stocks tax) is a \$4.7 million dollar increase in the GF when compared to the GF increase in FY 2021.

The tax rate on snuff will change from \$0.19 per one and one-half ounces to 27.5% of the wholesale price. This change is estimated to result in a higher tax on each unit sold. The tax rate on chewing tobacco will increase from \$0.19 per single unit, \$0.40 per half-pound unit, and \$0.65 per each pound unit to 27.5% of the wholesale price. This change from a per-unit tax, to a tax based on the wholesale price, is estimated to result in a higher tax on each unit sold. Increasing the excise tax rate on tobacco products (other than snuff and chewing tobacco) from 15% of the wholesale price to 27.5% will result in a higher tax on each unit sold. Applying the 27.5% excise tax to vapor products will increase GF tax receipts since these products are not currently subject to the tobacco excise tax. It is estimated that imposing a 27.5% tobacco excise tax will cause tobacco product prices to increase, which will lead to higher sales tax receipts.

In developing the fiscal impact estimates, staff utilized current tobacco tax collections for snuff and chewing tobacco to calculate the unit sales of these two products in Kentucky. Estimated wholesale prices and estimated unit sales were then used to estimate total sales of snuff and chewing tobacco in Kentucky. Staff then calculated the estimated tax receipts from snuff and chewing tobacco at the 27.5% rate and compared these receipts to current receipts to estimate the increase in GF receipts. Increased GF receipts

from other tobacco products besides snuff and chewing tobacco were determined based on the relative change in the tobacco excise tax rate for these products. Increased sales tax collections from snuff, chewing and other tobacco products were then calculated based on the estimated increase in sales price of these products. The floor stocks tax was estimated to be one-month of sales at the higher tax rate.

The estimated GF impact from applying the tobacco excise tax to vapor products was developed using prevalence data (i.e., Kentucky adults who purchase e-cigarettes) from the U.S. Centers for Disease Control and Prevention's Behavioral Risk Factor Surveillance Survey and data on U.S. e-cigarette sales (i.e., Nielsen Scanner data and Wells Fargo Securities) to estimate the number of e-cigarette users and total e-cigarette sales in Kentucky. Total estimated e-cigarette sales were then used to estimate the GF increase attributable to the 27.5% excise tax and the sales tax and floor stocks impact.

DATA SOURCE(S): A&R Staff, LRC Office of Economic Analysis, US Centers for Disease Control and Prevention, Wall Street Tobacco Industry Update: 2019, U.S. Bureau of the Census, Kentucky State Data Center, Commonwealth of Kentucky Quarterly Economic and Revenue Report FY 2019 Annual Edition,

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