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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Taxation
Virginia Administrative Code (VAC) Chapter citation(s)	23 VAC 10-370
VAC Chapter title(s)	Cigarette Tax
Date this document prepared	November 13, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

Not Applicable

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Virginia Code § 58.1-203 authorizes the Tax Commissioner to issue regulations relating to the interpretation and enforcement of the laws governing taxes administered by the Department of Taxation

("the Department"). Subtitle I of Title 58.1 of the *Code of Virginia* sets forth the taxes administered by the Department, which include the Cigarette Tax imposed under *Va. Code* §§ 58.1-1000, *et seq.*

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No viable alternatives to the regulation governing the administration of the tax were identified. The regulation is the least burdensome alternative to provide clarification of the cigarette tax statutes and set out administrative policies of the Department as provided in rulings of the Tax Commissioner.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response
Not Applicable		

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The Department of Taxation has determined that the cigarette tax regulation is necessary for the administration of the tax and therefore necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

In 2007 and 2019 regulatory actions, the Department repealed 10 of the 16 Cigarette Tax regulation sections it had promulgated. The 2019 action also streamlined the regulation to reflect current law and strike language that was outdated and provided no additional guidance to statutes that are clear and unambiguous. The only change in the Cigarette Tax statutes subsequent to the amendments was in the 2019 General Assembly Session to amend *Virginia Code* § 58.1-1000 to strike the reference to tobacco which is heated rather than burned from the definition of the term “cigarette.” As “heat not burn” tobacco was not commercially available in Virginia at the time, the product was never subject to the tax and thus never addressed in the regulation. Accordingly, the Department has determined that the cigarette tax regulation should be retained as is without making changes.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The regulation continues to be necessary to clarify the administration of the tax. The Department has received no complaints or comments from the public concerning the regulation. After the Department's 2019 revision of the regulation, it is not complex. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was last evaluated in 2019 and was amended to reflect statutory changes since the regulation was last amended. The Department is not aware of any technology, economic conditions, or other factors that have changed in the area affected by the regulation. As the regulation is concise and up-to-date, it has no economic impact on any businesses, including small businesses.
