

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION

April 23, 2019

TO: Honorable Dustin Burrows, Chair, House Committee on Ways & Means

FROM: John McGeady, Assistant Director Sarah Keyton, Assistant Director
 Legislative Budget Board

IN RE: HB4013 by Miller (relating to sales and use taxes on e-cigarettes and vapor products; imposing taxes; providing an administrative penalty; authorizing the imposition of a fee.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB4013, Committee Report 1st House, Substituted: a positive impact of \$35,988,500 through the biennium ending August 31, 2021.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2020	\$16,560,500
2021	\$19,428,000
2022	\$20,158,000
2023	\$20,918,000
2024	\$21,678,000

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Foundation School</i> <i>Fund</i> 193	Probable Revenue Gain/(Loss) from <i>Cities</i>	Probable Revenue Gain/(Loss) from <i>Transit Authorities</i>
2020	(\$1,480,000)	\$18,980,000	(\$270,000)	(\$90,000)
2021	(\$1,680,000)	\$21,470,000	(\$310,000)	(\$110,000)
2022	(\$1,740,000)	\$22,260,000	(\$320,000)	(\$110,000)
2023	(\$1,800,000)	\$23,080,000	(\$330,000)	(\$110,000)
2024	(\$1,870,000)	\$23,910,000	(\$350,000)	(\$120,000)

Fiscal Year	Probable Revenue Gain/(Loss) from Counties and Special Districts	Probable (Cost) from General Revenue Fund: Administrative Cost to Comptroller 1	Change in Number of State Employees from FY 2019
2020	(\$60,000)	(\$939,500)	6.0
2021	(\$60,000)	(\$362,000)	6.0
2022	(\$70,000)	(\$362,000)	6.0
2023	(\$70,000)	(\$362,000)	6.0
2024	(\$70,000)	(\$362,000)	6.0

Fiscal Analysis

The bill would add Chapter 164 to the Tax Code, regarding a tax on e-cigarettes and vapor products. The bill would impose a sales and use tax on all e-cigarettes and vapor products sold in Texas or purchased from a retailer for use in Texas. The rate of the tax would be ten percent of the sales price of the product. The tax would be in addition to the sales and use taxes imposed by Chapter 151. The taxes imposed by Chapter 164 would be administered, imposed, collected, and enforced in the same manner as the taxes under Chapter 151.

The bill would impose reporting and recordkeeping requirements. Revenue collected under Chapter 164 would be deposited to the Foundation School Fund Account 0193.

The bill would provide the Comptroller the authority to suspend a sales tax permit or levy a fine for a violation of Chapter 161, Subchapter H, of the Health and Safety Code. The Comptroller would establish by rule or policy minimum requirements for seller training programs. The Comptroller would approve applications for programs that meet those requirements and could charge an application fee to defray the cost of processing the applications.

Methodology

The analysis is based in part on e-cigarette tax collections in Pennsylvania. Because cigarettes and e-cigarettes are substitutes for one another, a ratio of the population in Pennsylvania was applied to the population in Texas to estimate what Texas should expect to collect in e-cigarette tax revenue. An adjustment for retail markup was also made to adjust for the tax in the bill being a retail level tax while the tax in Pennsylvania is at the wholesale level. As the tax is based on the sales price, future collections are expected to follow population and inflation growth. The estimate was also adjusted for collections lags.

E-Cigarettes are currently subject to state and local sales taxes. Imposition of this new tax will raise the price and would be expected to slightly decrease consumption, resulting in a modest decrease in state sales tax revenue allocable to the General Revenue Fund 0001, as well as small sales tax collection declines for local governments.

The administrative cost estimate reflects the funds necessary to hire six FTEs to administer and enforce the new tax. The bill would add nearly 20,000 new taxpayers, requiring two accounts examiner IIIs to process new tax applications and handle phone calls and correspondence. Additionally, four taxpayer compliance officer IIs would be required to collect delinquent taxes and provide taxpayer services to promote compliance.

The potential fines for violations of Chapter 161, Subchapter H, of the Health and Safety Code, and the potential application fees for seller training programs could increase state revenue, but the amounts cannot be determined.

This legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either in, with, or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Technology

There would be a one-time technology cost of \$577,500 to build a new system for taxpayers to register and report sales and use taxes on electronic nicotine delivery system vapor products. An estimated 3850 hours of programming across seven different systems is required, encompassing all functions including reporting, remittance, collections, and auditing.

Local Government Impact

The fiscal implications to units of local government are shown in the tables above.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: WP, KK, SD, SMad