

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**April 25, 2021**

**TO:** Honorable Morgan Meyer, Chair, House Committee on Ways & Means

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB211** by Thierry (relating to sales and use taxes on e-cigarette vapor products and alternative nicotine products and the computation of taxes imposed on modified risk tobacco products; imposing taxes; reducing the rates of certain taxes imposed on modified risk tobacco products.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB211, Committee Report 1st House, Substituted : a negative impact of (\$41,661,750) through the biennium ending August 31, 2023. Additionally, the table below includes the estimated loss to the Property Tax Relief Fund of (\$5,610,000) for the 2022-23 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

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:**

<i>Fiscal Year</i>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2022	(\$12,935,250)
2023	(\$28,726,500)
2024	(\$28,396,500)
2025	(\$38,596,500)
2026	(\$85,826,500)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<b>Probable Savings/(Cost) from General Revenue Fund 1</b>	<b>Probable Revenue Gain/(Loss) from General Revenue Fund - E- Cigarette Vapor Tax 1</b>	<b>Probable Revenue Gain/(Loss) from General Revenue Fund - Alternative Nicotine Products Tax 1</b>	<b>Probable Revenue Gain/(Loss) from General Revenue Fund - Modified Risk Tobacco Product Tax Rate Reduction 1</b>
2022	(\$2,825,250)	\$7,130,000	\$1,580,000	(\$18,820,000)
2023	(\$226,500)	\$7,250,000	\$1,600,000	(\$37,350,000)
2024	(\$226,500)	\$7,370,000	\$1,620,000	(\$37,160,000)
2025	(\$226,500)	\$7,490,000	\$1,640,000	(\$47,500,000)
2026	(\$226,500)	\$7,610,000	\$1,670,000	(\$94,880,000)

<i>Fiscal Year</i>	<i>Probable Revenue Gain/(Loss) from Property Tax Relief Fund - Modified Risk Tobacco Product Tax Rate Reduction</i>	<i>Change in Number of State Employees from FY 2021</i>
	<b>304</b>	
2022	(\$1,850,000)	4.0
2023	(\$3,760,000)	4.0
2024	(\$3,840,000)	4.0
2025	(\$5,050,000)	4.0
2026	(\$10,320,000)	4.0

## **Fiscal Analysis**

The bill would add Chapters 164 and 164A to the Tax Code, regarding taxes on e-cigarette vapor products and alternative nicotine products and the computation of tax imposed on certain products containing tobacco or nicotine.

The bill would impose a sales and use tax on all vapor products sold in the state or purchased from a retailer for use in Texas. The rate of the tax would be seven cents per milliliter or fractional part of a milliliter. A sales and use tax on alternative nicotine products, as defined in the bill, would also be imposed. The tax rate would be \$1.22 per ounce or fractional part of an ounce. These taxes 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 also reduce the rate of the Cigarette Tax, Cigar Tax, Other Tobacco Products Tax, E-cigarette Vapor Products Tax, and Alternative Nicotine Products Tax by half for any product that receives a modified risk order and is granted permission by the FDA to be labeled as presenting a lower risk of tobacco-related disease or as less harmful than one or more other commercially marketed tobacco products.

The bill would impose reporting and recordkeeping requirements. Revenue collected under Chapter 164 would be deposited to the General Revenue Fund.

This bill would take effect September 1, 2021.

## **Methodology**

The analysis of the tax on e-cigarettes is based in part on e-cigarette tax collections in North Carolina, the first state to implement a 5 cent per milliliter tax on vapor products. Because cigarettes and e-cigarettes are substitutes for one another, a ratio of the use of cigarettes to e-cigarettes in North Carolina was applied to the cigarette use in Texas to estimate what Texas should expect to collect in e-cigarette tax revenue. Being a volume-based tax, future collections are expected to follow population growth.

The analysis of the tax on alternative nicotine products is based on published convenience store market share information and using tax data from similar product categories to calculate what volumes of alternative nicotine products are estimated to be sold in Texas. As with the e-cigarette tax, collections of the alternative nicotine products tax are also expected to follow population growth.

E-cigarettes and alternative nicotine products are currently subject to state and local sales taxes. Imposition of this additional 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, as well as negligible sales tax collection declines for local governments.

The analysis of the modified risk tobacco product tax rate reduction assumes the pending applications of the sales-leading snuff and snus brands will be approved and the products will be granted modified risk orders early in calendar year 2022. The analysis also assumes that the makers of nearly all similar tobacco products would apply for modified risk soon after and would be granted modified risk orders in fiscal years 2025 and 2026.

The Modified Risk Tobacco Product tax rate reductions estimates in this analysis only considers the products in the other tobacco products category such as snuff and snus which are products that have active or pending requests to be considered modified risk. The bill includes a reduced rate for the Cigarette Tax and the new vapor and nicotine products taxes if a product carries a modified risk order from the FDA. If the products in these categories were to submit and be designated as modified risk, the revenue gain from the E-cigarette Vapor Products Tax and Alternative Nicotine Products Tax could be cut in half by fiscal year 2026. Cigarette Tax revenue could fall significantly if any brands of cigarettes could achieve the designation in that same timespan.

The Comptroller's office anticipates administrative costs of \$2,825,250 in fiscal year 2022 and \$226,500 in each subsequent year. The Comptroller's office anticipates needing to hire three Taxpayer Compliance Officer IIs and one Accounts Examiner III to implement the provisions of the bill. Staffing related costs are anticipated to be \$226,500 annually.

### **Technology**

There would be a one-time technology cost of \$2,598,750 for an estimated 17,325 programming hours to develop taxation systems for each of the three product types – e-cigarette vapor product sales and use, alternative nicotine product sales and use, and modified risk tobacco products as separate subtypes. The estimated programming hours are necessary to address all functions required to implement the provisions of the bill, including reporting, remittance, collections, and auditing.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JMc, KK, SD, BRI