

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

22-2929

SB 314-FN, *relative to modified risk tobacco products.*

Senate Ways & Means

The proposed legislation would reduce the rate of the Tobacco Tax for “modified risk tobacco products” as follows:

- For modified risk tobacco products commercially marketed pursuant to and order of the U.S. Dept. of HHS under 21 U.S.C. section 387k(g)(1), the Tobacco Tax rate as applied to cigarettes, other tobacco products, and electronic cigarettes is reduced by 50%.
- For modified risk tobacco products for which an order issued by the Secretary of the U.S. Dept. of HHS under 21 U.S.C. section 387k(g)(2) that the tobacco product may be introduced or delivered for introduction into interstate commerce, the Tobacco Tax rate as applied to cigarettes, other tobacco products, and electronic cigarettes is reduced by 25%.

The Department of Revenue Administration (DRA) does not have data relative to the current proportion of tobacco products currently subject to the NH Tobacco Tax that would qualify as a “modified risk tobacco product” and we therefore cannot estimate the fiscal impact of reducing the Tobacco Tax rate for those products. We assume that some amount of tobacco products subject to the NH Tobacco Tax would qualify as “modified risk tobacco products” and that the proposed legislation would therefore result in a reduction in revenues.

The Tobacco Tax assessed on other tobacco products and e-cigarettes is assessed and collected by the filing of monthly returns by tobacco wholesalers. Therefore, relative to the modified tax rate applicable to other tobacco products and e-cigarettes, the proposed legislation would require the DRA to update all necessary tax return forms and electronic management systems utilized to administer the Tobacco Tax assessed on other tobacco products and e-cigarettes. The DRA believes that we could administer this portion of the proposed legislation without any additions to our current operating budget.

However, relative to the tax rate applicable to cigarettes, the Tobacco Tax is administered via the application of a tobacco tax stamp to each package of cigarettes. Each stamp has a designated value based on the number of cigarettes in the package as well as whether the manufacturer is a participant or non-participant in the Master Settlement Agreement (MSA). The DRA currently utilizes 4 stamps in order to administer the Tobacco Tax applicable to cigarettes, designated “A stamps” (packages of 25 for participating manufacturers) “B stamps” (packages of 20 for participating manufacturers) “C stamps” (packages of 20 cigarettes for non-participating manufacturers) and “D stamps” (packages of 25 cigarettes for non-participating manufacturers). The DRA believes we would need to create an additional 8 types of stamps pursuant to the proposed legislation, 4 additional stamps for each category A-D for products that are entitled to a 50%

reduction in the Tobacco Tax rate, and 4 additional stamps for each category A-D for products that are entitled to a 25% reduction in the Tobacco Tax rate. The cost to design and purchase these 8 additional types of stamps will result in a one-time indeterminable increase in expenses to the DRA. The DRA assumes that this expense will be incurred in FY 2022 based on the current effective date of the proposed legislation.

The proposed effective date of July 1, 2022 does not provide the DRA adequate time to update all necessary administrative rules, tax return forms and electronic management systems utilized to administer the Tobacco Tax, nor design the additional tobacco tax stamps required to administer the proposed legislation. Additionally, the proposed legislation will likely require stakeholder outreach to educate and alert them to the modified tax rate applicable to “modified risk tobacco products.” The DRA would recommend an effective date of not earlier than January 1, 2023.