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## Finance Committee

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### HB 1550

**Brief Description:** Concerning methods to prevent nicotine addiction.

**Sponsors:** Representatives Pollet, Cody, Callan, Taylor, Duerr, Ryu, Valdez and Senn.

**Brief Summary of Bill**

- Imposes a business and occupation surcharge of 4.4 percent on manufacturers, processors for hire, and distributors of vapor products and tobacco products.
- Replaces the variable milliliter tax imposed on vapor products distributors with a vapor product excise tax of 45 percent of the selling price.
- Modifies the account distribution for receipts of the vapor products tax revenues.

**Hearing Date:** 3/23/21

**Staff:** Rachelle Harris (786-7137).

**Background:**

Vapor Products Tax.

The sale, use, consumption, handling, possession, or distribution of vapor products subject to taxation as follows:

- 9 cents per milliliter of liquid or solution for accessible containers of liquid solution that are larger than 5 milliliters; or
- 27 cents per milliliter of liquid solution for all other vapor products.

"Vapor products" are defined as any noncombustible product containing a solution or other

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consumable substance, regardless of whether it contains nicotine, which employs a mechanical heating element, battery, or electronic circuit that can be used to produce vapor from the solution or other substance. For purposes of taxation, vapor products do not include tobacco cessation products, component ingredients in vapor products, or marijuana or tobacco products. The distributor is responsible for the payment of the tax, but the tax may be imposed on the consumer if it was not previously collected.

#### Foundational Public Health Services Account.

The Foundational Public Health Services Account (FPHS) is an account in the State Treasury. Fifty percent of the funds generated by the vapor products tax is deposited into the account. The account may be used to fund foundational health services, tobacco, vapor product, and nicotine control and prevention, to support increased access and training of public health professionals at public health programs, and for enforcement by the Liquor and Cannabis Board (LCB).

#### Andy Hill Cancer Research Endowment Fund Match Transfer Account.

Fifty percent of the vapor product tax revenues are deposited into the Andy Hill Cancer Research Endowment Fund Match Transfer Account (Andy Hill Account). Funds from the vapor product tax exceeding the \$10 million cap in the Andy Hill Account are deposited into the FPHS.

Every October 15, the Department of Revenue (DOR) estimates any increase in State General Fund (GF-S) revenue collections from the vapor products tax imposed and notifies the Office of the State Treasurer (Treasurer) of these estimated amounts. Each November 1, the Treasurer must transfer the amounts estimated by the DOR to have been collected from the vapor products tax from the GF-S as follows:

- 50 percent to the Andy Hill Account; and
- 50 percent to the FPHS.

#### Tobacco Products Regulation and Tax.

"Tobacco products" are defined as products that include tobacco prepared to be suitable for chewing or smoking, or for both chewing and smoking, as well as any other product that contains tobacco, and is intended for human consumption or placement in the oral or nasal cavity. This includes cigars, stogies, pipe or other smoking tobacco, snuff, and fine-cut and other chewing tobaccos. The term does not include cigarettes or vapor products.

The Other Tobacco Products (OTP) tax is due from a distributor for the sale, use, consumption, handling, and distribution of items defined as "tobacco products," including cigars, pipe tobacco, chewing tobacco, and other forms of tobacco, but excluding cigarettes.

The OTP tax is due when the product is brought into or manufactured in Washington for sale in the state. The OTP tax is distinct from the cigarette tax. The OTP tax rate is imposed on the taxable sales price of most tobacco products at a rate of 95 percent. For cigars, the tax is capped at 65 cents per cigar. Dipping tobacco is taxed based on the net weight at the rate of \$2.526 per single unit of 1.2 ounces or less, and at a proportionate rate for larger single units. All OTP tax revenue is deposited in the GF-S.

### Business & Occupation Tax.

Washington's major business tax is the business and occupation (B&O) tax. The B&O tax is imposed on the gross receipts of business activities conducted within the state, without any deduction for the costs of doing business.

A taxpayer may have more than one B&O tax rate, depending on the types of activities conducted. Major B&O tax rates are 0.471 percent for retailing; 0.484 percent for manufacturing, wholesaling, and extracting; and 1.5 percent (businesses with taxable income of less than \$1 million) or 1.75 percent (businesses with taxable income of \$1 million or more) for services and for activities not classified elsewhere. Several preferential rates also apply to specific business activities.

### Trust Fund Taxes.

The DOR has authority to pursue collection of unpaid trust fund taxes, including penalties and interest. Individuals held liable for unpaid trust funds are subject to the normal tax collection process unless payment is voluntarily made. The individuals liable may include corporate officers, bookkeepers, accountants, or any other person who made the decision to not pay the tax to the Department. Retail sales and use taxes, liquor taxes, and heavy equipment rental taxes are trust fund taxes.

### **Summary of Bill:**

#### B&O Surcharge on Vapor Products.

A B&O surcharge of 4.4 percent is imposed on manufacturers, processors for hire, and distributors of vapor products and tobacco products beginning October 1, 2021. Moneys collected from this surcharge are deposited into the FPHS.

A multiple activities tax credit is available for a person who is engaged in business as both a manufacturer or processor for hire and as a distributor of vapor products or tobacco products.

#### Vapor Products Tax.

The variable milliliter tax imposed on vapor products distributors is eliminated.

Beginning January 1, 2022, a vapor products excise tax is imposed at retail equal to 45 percent of the selling price of vapor products. The tax must be separately itemized from state and local retail sales tax on sales receipts. The tax must be reflected in the price list or quoted shelf price in the vapor products retail store, on the website or sales platform of a delivery seller, and in any advertising of vapor products that includes prices for vapor products. A bundled transaction that includes a vapor product is subject to the excise tax on the entire selling price. The tax does not apply to sales of vapor products by an Indian retailer under a vapor product tax contract or agreement.

Moneys collected from the vapor products tax are distributed as follows:

- the first \$25 million into the FPHS;
- 50 percent of the next \$10 million into the Andy Hill Account; and
- all remaining funds into the FPHS.

A tax credit available for vapor product distributors, to avoid vapor products being subject to double taxation if the variable milliliter tax was paid by a distributor under current law and the same products are sold at retail after January 1, 2022 and subject to the new retail tax.

The vapor products tax is added to the category of trust fund taxes.

The allowable uses of the FPHS account are expanded to include tobacco, vapor, and nicotine cessation and to have an emphasis on community-based strategies addressing health inequity and racial disparities.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 1, 2022, except for sections 2 and 3, relating to the B&O surcharge and multiple activities credit, which take effect October 1, 2022.