COMMONWEALTH OF KENTUCKY FISCAL NOTE STATEMENT
LEGISLATIVE RESEARCH COMMISSION
2021 REGULAR SESSION

MEASURE

2021 BR NUMBER 1244 HOUSE BILL NUMBER 249 HCS

TITLE AN ACT relating to revenue.

SPONSOR Representative Jason Petrie

FISCAL SUMMARY

STATE FISCAL IMPACT: ☒ YES ☐ NO ☐ UNCERTAIN

OTHER FISCAL STATEMENT(S) THAT MAY APPLY: ☐ ACTUARIAL ANALYSIS
☐ LOCAL MANDATE ☐ CORRECTIONS IMPACT ☐ HEALTH BENEFIT MANDATE

APPROPRIATION UNIT(S) IMPACTED: _____

FUND(S) IMPACTED: ☒ GENERAL ☒ ROAD ☐ FEDERAL ☐ RESTRICTED _____

FISCAL ESTIMATES	2020-2021	2021-2022	ANNUAL IMPACT AT FULL IMPLEMENTATION
REVENUES		($250,000) GF (minimal) RF	
EXPENDITURES			
NET EFFECT		($250,000) GF (minimal) RF	

( ) indicates a decrease/negative

PURPOSE OF MEASURE: The proposed house substitute 2 to HB 249 includes various revenue measures necessary to implement the Commonwealth's budget for the 2021-2022 fiscal year. The fiscal explanation below discusses only those revenue measures producing a fiscal impact.

FISCAL EXPLANATION: Most of the revenue measures are administrative issues and have no fiscal impact. There are, however, three revenue measures that may produce a fiscal impact:

1. Vapor products tax on open vaping systems;
2. Clarify language related to the motor vehicle usage tax and U-Drive-It; and
3. Expansion of the Tourism Development Act tax incentives.

Open Vaping Systems

The proposal is to remove the 15% wholesale tax on the hardware used in an open vaping system when the hardware is sold separately from the liquid solution.

Kentucky began taxing vaping products in August 2020. To date, there are 5 months of tax receipt data available on open and closed vaping systems. During the initial 5 months of implementation, the tax on closed systems has generated $1.360 million on average per month, compared to $185,500 on average per month for open systems. The combined $1.545 million monthly average is in-line with initial estimates developed for the enabling legislation which passed in the 2020 Regular Session.

The provisions of the bill would not impact tax receipts tied to sales of closed or disposable vapor products. The bill would impact the portion of tax receipts tied to open vaping products, specifically transactions in which the hardware is sold separately. Primary data is not available to directly estimate the impact of removing the 15% wholesale tax on open system vaping hardware when sold separately from the liquid solution. For this reason, staff had to rely on total current open vapor product sales in Kentucky—based on 5 months of data—to develop an estimate of the amount of hardware sales that are made separately.

Previous analysis by LRC staff estimated there are approximately 65,000 vapor users in Kentucky and that 70% primarily use closed systems and 30% use open vaping systems. Available vapor product tax receipt data (5 months) suggest the percent of Kentucky open vapor users may be closer to 25% (16,250). Vapor hardware, accessories, price points, and frequency of hardware purchases vary considerably in the open vaping market. Users can spend $20 to $150 or more, in upfront hardware costs. Additional costs would be incurred as lower priced hardware and certain components need to be replaced annually. Also, as open vapor users become more accustomed to this product, they may customize their hardware and incur additional costs.

Based on staff's review of publically available data, it was assumed the average Kentucky open vaping user spends $100 annually on hardware. Multiplying the annual $100 expenditure by the number of estimated open users (16,250) and the 15% tax rate suggests the estimated fiscal impact would be a negative impact on the General Fund of $243,750. When compared to Kentucky's open system tax receipts, this estimate suggests that 11% of open vapor sales are for hardware.

Motor Vehicle Usage Tax and U-Drive-It Clarification

Beginning in 1990, a U-Drive-It certificate holder was allowed to pay the motor vehicle usage tax up front on vehicles leased for use in Kentucky based on the retail price of the motor vehicle or was allowed to pay the usage tax on the monthly amount of gross rental or lease charges paid by a customer or lessee renting or leasing a motor vehicle from the certificate holder.

Since that time, there has been confusion within the U-Drive-It certificate holder population related to what was commonly called the U-Drive-It tax, i.e. the monthly tax on the rental charges. Many thought that the U-Drive-It tax was separate and apart from the motor vehicle usage tax and that there were no exemptions from the tax.

Additionally, since that time, there has been an exemption in the motor vehicle usage tax for motor vehicles titled or registered to the United States, or to the Commonwealth of Kentucky or any of its political subdivisions. Some U-Drive-It certificate holders held that this exemption applied to what was commonly called the U-Drive-It tax while other certificate holders did not.

The proposal clarifies the statute to address that there is one tax, the motor vehicle usage tax, with alternate calculations. Additionally, the exemption statute is clarified to specifically exempt the gross rental or lease charges for the rental or lease of a motor vehicle paid by the United States, or the Commonwealth of Kentucky or any of its political subdivisions.

There is no data related to how many vehicles are rented or leased by the United States, or the Commonwealth of Kentucky or any of its political subdivisions. There is at least one U-Drive-It certificate holder that is currently charging the tax on these rental or lease agreements. Therefore, the estimated impact of this clarification is negative but minimal.

Expansion of Tourism Development Act Tax Incentives
The Tourism Development Act (TDA) was enacted effective July 15, 1996. Since that time, the TDA has been amended eleven times to modify the definitions for or expand the provisions of the TDA.

This proposal expands the TDA by changing the definition of a lodging facility to include a facility located within the jurisdiction of a consolidated local government and within a tax increment financing project with state participation, which makes an investment of at least $75 million, and is approved by the authority no later than June 30, 2022. If such a facility qualifies and is approved, a sales tax incentive will be awarded to the approved facility over a period of 20 years beginning with the first year of operation. The sales tax incentive shall not exceed the lesser of the total amount of the sales tax liability of the approved company and its lessees or a percentage of the approved costs as specified by the agreement, not to exceed 50%. Additionally, the Department of Revenue shall hold all tax incentives awarded to the approved company until the tax increment financing project has expired. Then, the Department shall issue the total amount of sales and use tax incentives over a four-year period. While this provision produces a negative fiscal impact, that impact will be realized outside the current biennium.

DATA SOURCE(S): **LRC Staff**

PREPARER: **Jennifer Hays** **NOTE NUMBER**: **53** **REVIEW**: **JAB** **DATE**: **2/23/2021**