Article Brief- *March 12, 2024*

Article 6, sections to be heard:

- **Pension Modification Increase:** Increases the maximum pension modification for personal income taxes.
- **Corporate Minimum Tax Reduction:** Reduces the minimum business corporation tax from $400 to $350.
- **Net Operating Loss Carryforward:** Extends current five-year net operating loss carryforward period to twenty years.
- **Cannabis Tax Changes:** Allows state-licensed cannabis businesses to make certain deductions.
- **Pass-Through Entity Tax Credit:** Reduces the State's pass-through entity tax credit from 100.0 percent to 90.0 percent.
- **Delinquent Taxpayer List:** Expands the criteria used by the Division of Taxation when identifying which delinquent taxpayers it will include on publicly posted lists.
- **E-Cigarettes Tax**: Imposes a tax on electronic nicotine delivery system (ENDS) products, also known as e-cigarettes.
- **Cigarette Tax Increase:** Increases the excise tax on cigarettes by $0.25 per pack.
- **Fee Changes:** Eliminates or amends various fees impacting individuals and business.

ANALYSIS AND BACKGROUND

Pension Modification Increase

The article increases the exemption for retirement income from Social Security, pensions, and annuities of individuals who have reached full social security retirement age from $20,000 to $50,000. The General Assembly last changed the exemption in 2022 when it increased it from $15,000 to $20,000.

Background: A taxpayer's personal income tax liability in Rhode Island is based on federal Adjusted Gross Income (AGI) and is subject to three taxable income brackets with a top rate of 5.99 percent. Federal AGI includes income from pensions and annuities and these are currently subject to Rhode Island personal income tax, albeit with an offsetting exemption described below.

For Tax Year 2023	
Income Between…	**Is Taxed at…**
$0 and $77,450	3.75%
$77,450 and $166,950	4.75%
$166,950 and above	5.99%

- **Current Modifications:** Although there are numerous modifications (credits, exemptions, exclusions, abatements, and other modifications) that may impact personal income liability, they are available only to certain taxpayers, Rhode Island does offer more general deductions that reduce a taxpayer's federal AGI prior to determining the liability.
  - **Standard Deduction:** Rhode Island provides for a basis standard deduction from modified AGI as shown in the table.

Filing Status	TY2023	TY2024
Single	$10,000	$10,550
Married Filing Jointly	20,050	21,150
Head of Household	15,050	15,850
Married Filing Separately	10,025	10,575

  - **Personal and Dependency:** Rhode Island provides for a deduction for each tax filer and dependent that is adjusted annually for inflation. For TY2023, the exemption amount is $4,700 ($4,950 in TY2024) and begins to phase out at the taxable adjusted gross income level of $233,750 ($246,450 in TY2024).

- **Retirement Income:** The State also provides a $20,000 exemption for Social Security, pensions, and annuities of individuals who have reached full official Social Security retirement age. The exemption is limited to those with AGI amounts shown in the table. The exemptions are indexed to adjust annually based on changes to the Consumer Price Index for All Urban Consumers (CPI-U).

Retirement Income Thresholds

Filing Status	TY 2022	TY2023
Single	$95,800	$101,000
Married Filing Jointly	119,750	126,250
Head of Household	95,800	101,000
Married Filing Separately	95,800	101,025

- **State Comparison:** The following table summarizes the various ways states treat pensions for purposes of state personal income tax.

State Comparison: Treatment of Pensions (P) re: Personal Income Tax (PIT)

No PIT, P Not Taxed	PIT, P Not Taxed	PIT, P Partially Taxed
AK	AL	CA
FL	HI	CO
NV	IL	DE
NH	IA	DC
SD	MS	GA
TN	PA	ID
TX		KY
WA		MD
WY		MT
		NM
		OK
		OR
		RI
		SC
		VA
		VT

Source: AARP

Article 6 Changes: The article increases the exemption for retirement income from pensions and annuities of individuals who have reached full social security retirement age from $20,000 to $50,000. The General Assembly last changed the exemption in 2022 when it increased it from $15,000 to $20,000.

Fiscal Impact: The November 2023 Revenue Estimating Conference estimated that personal income taxes would generate $1,853.9 million in FY2024 and $1,910.2 million in FY2025. The exemption increase is estimated to decrease personal income tax revenue by $3.0 million in FY2024 and $6.2 million in FY2025 based on an effective date January 1, 2025. According to the Office of Management and Budget this change would also require the Division of Taxation to alter the personal income tax form and filing system, although no expenditure estimate is provided for this.

According to ORA the average resident taxpayer (as of TY2021) who would benefit from this proposal has an average AGI of $74,000, including an average taxable pension income of $44,000 and average Social Security income of $19,000. The average filer would see an average tax savings of $500.

Corporate Minimum Tax Reduction

The article reduces the corporate minimum tax by $50, from the current $400 down to $350. The corporate minimum tax was last changed in 2016 when the General Assembly decreased it from $450 to $400.

Background: Rhode Island requires firms to remit taxes on a percent of net income at a rate of 7.0 percent or the $400 minimum business corporation tax, whichever is greater. The latter was established at the same time the State's separate franchise tax was repealed in the FY2016. The current the corporate tax rate places Rhode Island roughly in the middle of the pack nationally, and the State currently has the lowest minimum rate in New England. The following table shows how Rhode Island compares with the other New England states.

State	Rate	Min. Tax
MA	8.00%	$456
RI	**7.00%**	**400**
CT	7.50%	250
VT	8.50%	300-751
NH	7.50%	N/A
ME	8.93%	N/A

Article 6 Changes: The article reduces the corporate minimum tax by $50, from the current $400 down to $350. The corporate minimum tax was last changed in 2016 when the General Assembly decreased it from $450 to $400.

Fiscal Impact: The November 2023 Revenue Estimating Conference estimated that business corporations taxes would generate $310.9 million in FY2024 and $314.3 million in FY2025. The changes in Article 6 result in a revenue loss of revenue loss of $2.3 million in FY2025 and $4.7 million in FY2026 based on a January 1, 2025, implementation date.

Net Operating Loss Carryforward

The Governor increases the number of years that a net operating loss may be carried forward from five to 20, beginning in the tax year starting January 1, 2025.

Background: Businesses are taxed on their profit income by the federal government and most states. When determining its federal taxable income, a business deducts it ordinary business expenses (like supplies, wages, and rent), asset depreciation, and other costs from its gross revenue. If the difference is positive, the firm earned a profit, and that corporate income is subject to tax. If the company has more deductions than revenue, the business operated at a loss and has no income to tax. This is known as a net operating loss (NOL) and it generally can be used to offset a business' tax payments in other tax periods. This is allowed because it can smooth business income, reduce entrepreneurial risk, and help businesses survive economic downturn. The treatment of NOLS by taxation systems does vary.

- **Federal NOL Treatment:** Under federal law, businesses may reduce future tax liability by the amount of current or past losses. This is known as a "net operating loss carryforward" and is permitted as long as it does not reduce any future year's tax liability by more than 80.0 percent. There is no limit on how long a carryforward may be used. The purpose of the carryforward is to provide tax relief when a company experiences losses and it accounts for the cyclical nature of some companies' business profits.

Analyst Note: Federal Internal Revenue Service (IRS) rules have changed significantly in recent years in the wake of pandemic relief legislation. NOLs previously were allowed to be applied to previous tax years and the could be used to reduce all taxable income in one year.

- **State NOL Treatment:** According to the Tax Foundation, when states determine how to treat operating losses they typically use federal taxable income as the basis. For example, 19 states conform to the federal NOL provisions. Another 13 restrict carryforwards to 20 years and do not cap the amount of tax that can be offset. A dozen states restrict carryforwards to less than 20 years, including Rhode Island which allows it for five years. Other states include limit how much of the NOL that can be carryforward.

State	# of Years
ME	No limit
MA	20
CT	20
VT	10
NH	10
RI	5

Article 6 Changes: Article 6 increases the number of years that a net operating loss may be carried forward from 5 to 20 beginning in the tax year starting January 1, 2025.

Net Operating Loss – Example

A net operating loss is when deductions exceed income. For example, say in TY 2025 a corporate taxpayer (with 100% apportionment to Rhode Island) had only $10 million in income but $19 million in deductible expenses like salaries. This would generate (in this extremely simplified example) Federal Taxable Income of $(9) million, yielding a $9 million net operating loss. This taxpayer can carry forward this TY 2025 loss indefinitely under federal law, beginning in TY 2026. However, under current state law after five years the entity could no longer claim the NOL deduction on its state taxes. The table below shows the taxpayer carrying forward annually $1 million of this loss for 9 years on their federal taxes. In this scenario, the taxpayer's income bounced back to $20 million per year, their expenses remained at $19 million, so their Federal Taxable Income was $1 million per year. TY 2031 would be the first year this entity's taxes differed from the status quo, under this proposal.

		Proposed New 20 year period			
		Current Five-Year State Carryforward Period			
	TY2025	TY2026 – status quo and proposal	TY2027-TY2030	TY2031 – status quo	TY2031 - proposal
Income	$10 M	$20 M		$20 M	$22 M
Deductions	$19 M	$19 M		$19 M	$19 M
Taxable Income	$(9) M	$1 M		$1 M	$3 M
Net Operating Loss	$9 M loss generated	$1 M loss used $8 M NOL remaining	$1 M loss per year used ($4 M total used and $4 M forfeited due to end of period)	$0 (NOL cannot be used) $0 NOL remaining	$3 M loss used $1 M NOL remaining
Rhode Island Adjusted Taxable Income	$0	$0	$0	$1 M	$0
7% Rhode Island Tax	$400 corporate minimum tax	$400 corp min tax	$400 corp min tax	$70,000	$400 corp min tax
Tax Savings				$0	$69,600

Example provided by the Office of Revenue Analysis

Fiscal Impact: Extending the number of years that a net operating loss may be carried forward to 20 does not have an a near term fiscal impact. The ORA looked at data around how corporations currently spread out their net operating loss overtime for tax purposes. This was then applied to Rhode Island business corporation tax data to come up with an estimate of how corporations would behave with an extended carryforward. Based on these assumptions, the first year Rhode Island should expect to see a change in estimated revenue would be TY2031. ORA forecasts a revenue loss $2.6 million at that time. This loss continues to grow annually until the full effect of the proposal occurs in TY2045. ORA estimates that the loss in revenue at that time will range from $18.2 million to $32.7 million depending on growth assumptions for future net operating losses. These losses will reoccur annually going forward.

Cannabis Tax Changes

Article 6 permits state-licensed, cannabis-related businesses to deduct ordinary business expenses from their federal adjusted gross income for purposes of determining their state tax liability.

Background: In March 2022, Rhode Island legalized the recreational use of cannabis by adults, after many years of having a medical marijuana system. The law created a new marketplace involving state-licensed commercial actors, including retailers, cultivators, and Compassion Centers. There are currently 67 licensed businesses operating in Rhode Island under the program. Another 24 retail licenses will become available in FY2025, as the governing Cannabis Control Council adopts and implements its rules around the license. According to the Office of Cannabis Regulation's latest data report (December 2023) retail sales at the Compassion Centers total $10.2 million.

Across the U.S. 38 states have approved cannabis for medical use and 24 have legalized its recreational use. At the federal level, however, cannabis remains illegal. It is considered a Schedule 1 substance under the federal Controlled Substances Act (high potential for abuse, no accepted medical use treatment, lack of safety). Because of this there are significant implications for businesses involved in its manufacture and sale. For example, under the U.S. Internal Revenue Code Section 280E, tax deductions and credits are not allowed for "trafficking in controlled substances which is prohibited by Federal law or the law of any State in which such trade or business is conducted."

Typically, businesses are allowed to deduct all "ordinary and necessary" expenses that are required to operate from their federal taxable income. These expenses can include such things as employee payroll, health care, rental fees, repairs, and utilities. Most states, including Rhode Island, use a business' federal adjusted gross income (AGI) as the basis for determining its state taxable income. Cannabis-related Rhode Island businesses' AGI includes the value of ordinary businesses expenses that other businesses do not. According to OMB, there are at least 12 states that have legalized the recreational use of cannabis, including Massachusetts, Connecticut, and Vermont, that have amended state law to allow for the deduction of ordinary business expenses from AGI in determining a businesses tax liability.

Article 6 Changes: Article 6 permits state-licensed, cannabis-related businesses to deduct ordinary business expenses from their federal adjusted gross income for purposes of determining their state tax liability.

Fiscal Impact: ORA estimates that allowing these deductions would result in a revenue loss of $824,642 in FY2025 and $1.7 million in FY2026, based on a January 1, 2025 effective date. ORA used data from Colorado, the first state to legalize cannabis and allow deductions, to calculate an average percentage that ordinary business expenses make up of retail sales. This was then adjusted to the Rhode Island market and details of the proposal to arrive at an estimate.

Pass-Through Entity Tax Credit

Background: Many businesses in the United States are not subject to the corporate income tax at the state or federal level. The business' profits flow through to owners (or members) and are taxed as part of their personal income. Examples of these "pass-through entities" include limited liability companies, S-Corporations, partnerships, and sole proprietorships.

Starting in TY2019, Rhode Island began permitting partners of pass-through entities to file returns at the entity level at the highest personal income tax rate (5.99 percent) and authorized a tax credit (worth 100.0 percent of their pro rata share of the entity tax) which partners could then claim on their individual returns. These changes were made as part of Rhode Island coming into conformity with the federal Tax Cuts and Jobs Act in 2018.

Article 6 Changes: Article 6 reduces the amount of the tax credit pass-through entity owners may use on their personal income tax filing from 100.0 percent of their pro rata share of the state tax paid at the entity level to 90.0 percent.

Elective Pass-Through Entity Tax Credit Example

This example assumes a pass-through entity with $1.0 million in income and two equal partners. This example also simplifies to assume the rate paid by the entity is 6% (it's actually 5.99%) and assumes all of the pass-through income is taxed at the top marginal RI income tax rate (which again, is simplified from 5.99% to 6%). This example also assumes that all pass-through income would be taxed at the second-highest federal tax rate of 35%.

The first table shows the tax savings in this hypothetical from having the elective PTE tax in the first place (before considering the impact of the budget proposal).

	Before the RI Elective PTE Tax (pre-2019)	After the RI Elective PTE Tax (post-2019, not factoring in the budget proposal)
Income for Entity	$1,000,000	$1,000,000
RI Elective PTE Tax (6%)	n/a	60,000
Reportable Income	1,000,000	940,000
Federal K-1 to each partner, aka Federal AGI	500,000	470,000
Federal Income Tax at 35%	175,000	164,500
RI Tax (6%)	30,000	30,000
Total Federal and State Tax	205,000	194,500
Tax Savings	-	10,500

This next table shows the state tax difference for one the hypothetical partners from the above entity under the budget proposal. The reduction of the PTE credit that can be claimed by the individual from 100% to 90% does increase their state tax liability. However, this increase ($3,000) is less than the total savings they originally realized from having the elective PTE option ($10,500). An entity whose members didn't realize a savings from using the elective PTE tax option could revert to the traditional method of not paying any tax at the entity level (other than the corporate minimum tax) and passing all that income to the individual members.

	TY 2024 (status quo)	TY 2025 (budget proposal)
RI AGI	$470,000	$470,000
Modification Increasing (to add back the tax paid at the entity level)	30,000	30,000
RI Modified AGI	500,000	500,000
RI Tax (6%)	30,000	30,000
Less Credit for Entity Tax	$30,000 (100% credit)	$27,000 (90% credit)
Balance Due to RI	-	3,000

Fiscal Impact: The reduction in the tax credit is estimated to result in an increase in revenue of $8.1 million in FY2025 and $16.5 million in FY2026 based on a January 1, 2025, implementation date. ORA used past pass-through entity behavior in Rhode Island to determine a credit usage estimate and then used this assumption along November 2023 Revenue Estimating Conference estimates to arrive at a fiscal impact estimate.

Delinquent Taxpayer List

Article 6 permits the Tax Administrator to publicly publish a list of all delinquent taxpayers that owe amounts of $50,000 and over.

Background: Current law permits the State's Tax Administrator to publicly identify up to 100 taxpayers with the largest outstanding state business tax liabilities and whose cases are not on appeal. The Tax Administrator is also permitted to do the same for delinquent personal income taxes. The lists are permitted to include the name and address of the taxpayer, the type of tax owed, the amount of the delinquency, including interest and penalty, as of the end of the most recent quarter. Thirty days prior to publicly posting the delinquency, the Tax Administrator is required to send the taxpayer a formal notice by certified mail. If the taxpayer makes satisfactory arrangements to for payment within the thirty days, the name is not published.

The lists are required to be made available to the public, including via the Division of Taxation's website The outstanding amounts on the current lists (top-100-business-tax-delinquents; top-100-income-tax-delinquents) range from $195,727 to $6.3 million for business taxes and $110,659 to $3.1 million for personal income taxes. The Division of Taxation collects an average of $2.5 million per year from those on the list.

Nineteen states publicly publish lists of delinquent taxpayers with various amount thresholds and types of data (CT, MA, VT, and RI in New England). The size of the tax debt involved varies from state to state, but is typically limited to higher amounts. Massachusetts' threshold amount for appearing on its list is $25,000. Connecticut's list is available upon request only.

Article 6 Changes: Article 6 permits the Tax Administrator to publicly publish a list of all delinquent taxpayers that owe amounts of $50,000 and over. The existing actions and procedures required of the Tax Administrator related to the lists remain unchanged and apply to the expanded delinquencies. According to the Office of Management and Budget, this change is part of a package of budget initiatives recommended by the Governor to enhance collections of outstanding tax debt. In addition to the expanded lists, the Budget includes increased spending on staffing dedicated to collection, new technology, and out-of-state legal services.

Fiscal Impact: The expansion of the delinquent taxpayer lists is estimated by ORA to generate $3.4 million in FY2025 and $3.5 million in FY2026 based on the July 1, 2024, implementation date.

Vaping Regulation and Taxation

Article 6 provides for a new regulatory and taxation regime related to Electronic Nicotine Delivery System (ENDS) products and shifts authority from the Department of Health (DOH) to the Department of Revenue (DOR).

Vaping is a smoking substitute that uses battery-powered devices that create an aerosol vapor containing nicotine, other chemicals, and sometimes flavorings. The regulation of vaping is primarily administered within the DOH.

Definitions

For regulatory and law enforcement purposes, ***vaping devices and their related products*** are formally defined in the State's criminal offense statutes related to the sale tobacco products to individuals under 21. (RIGL 11-9-13 through 11-9-13.20). These include:

- **Electronic Nicotine Delivery Systems (ENDS):** An electronic device that "may be used to simulate smoking in the delivery of nicotine or other substance to a person inhaling from the device, and includes, but not limited to, an electronic cigarette, cigars, cigarillos, little cigars, pipes, hookahs, 'heat-not-burn products' e-liquids, e-liquid products, or any related device and any cartridge or other component of such a device".
- **E-Liquids and E-Liquid Products:** Any liquid or substance placed in or sold for use in an ENDS which generally utilizes a heating element that aerosolizes, vaporizes, or combusts a liquid or other substance

containing nicotine or nicotine derivative". This includes whether it is sold separately as a liquid or substance, or in combination with a personal vaporizer, ENDS, or an electronic inhaler.

- **ENDS Product:** A combination of ENDS and/or e-liquids and/or derivatives thereof, and/or any container". The statute specifically states that ENDS products *do not include* hemp-derived consumable CBD products.

Licensing

The Department of Health is responsible for licensing the commercial actors involved in selling ENDS products in the state. RIGL 23-1-55 through 58 provide the statutory authority to DOH to regulate and license the sale of ENDS products. This authority includes the promulgation of rules and regulations related to licensing applications and administration, setting initial and annual-renewal license fees, and maintaining a license registry website. DOH is prohibited from issuing a license to an applicant that is delinquent in tax filings or has had a license revoked in the previous two years. RIGL 23-1-56 also outlines other limitations on applicants related to the license disposition and behavior of previous license experience. Under its authority DOH issues licenses for the following classifications:

(1) Dealer: A dealer is any person, whether located within or outside of the state, who sells or distributes electronic nicotine-delivery system products to a consumer in the state. Dealers may only obtain ENDs products from a licensed distributor. There are two classes of dealer licenses – retail or vending machine. A separate license is required for each location and machine. Dealer license fees are $25 per license.

(2) Distributor: A distributor is any person (other than a dealer), in state or out, who sells or distributes ENDS products in the state. There are three classes of distributor licenses – wholesaler, manufacturer, and importer. Distributor license fees are $25 per license.

Transaction Limitations: The licensing statutes place important limits on licensees. A manufacturer or importer may only sell or distribute ENDs products in the state to a licensed distributor. An importer may only obtain products from a licensed manufacturer. A distributor may only sell or distribute ENDS products in the state to a licensed distributor or dealer. A distributor may only ENDS products from licensed manufacturers, importers, or distributors. Lastly, a dealer may only get ENDS products from a licensed distributor.

Analyst Note: These transaction limitations are also in effect for manufacturers, importers, distributors, and dealers of cigarettes. According to Taxation, these requirements provide an audit trail for the products, that helps enforcement. RIGL 44-20-13.2(b), however, allows dealers of tobacco products other than cigarettes (OTP), such as cigars, to purchase from unlicensed manufacturers, importers, distributors, and dealers. Taxation indicates that this creates enforcement gaps.

Product Limitations (flavored vapes): Since 2020, DOH regulations (216-RICR-50-15-6.10) have prohibited the sale of flavored ENDS products in the state. The regulations, however, exempt products sold by licensed cannabis Compassion Centers and cultivators. Licensed dealers and distributors self-certify that none of the products they sell have a characterizing flavor. There are five states, including Massachusetts and Rhode Island, and 360 localities that also ban flavored-vaping products. The sale of flavored ENDS products is technically against federal law; however, enforcement is difficult, particularly with online sales.

Analyst Note: In March, 2021 Congress enacted the Preventing all Cigarette Trafficking Act (PACT), which created new rules for the delivery and sale of ENDS products. The PACT Act, among other things, bans the sale of flavored vapes and requires individuals that sell, ship, transfer or otherwise profit from ENDS products to register with the federal Bureau of Alcohol, Tobacco, and Firearms and any state that they ship to.

Penalties

Individuals or businesses found in violation of licensing requirements are given a citation and must appear in district court for a hearing. Convicted violators must pay a $500 fine, plus court costs.

11-9-13.13 outlines the extensive, and progressive penalties to be imposed on licensees who are found in violation of the selling tobacco and ENDS products to individuals under the age of 21.

Taxation

The taxation of ENDS products varies across the country. Methods include levying taxes based on manufacturer, wholesale, or retail price, volume, or with a bifurcated system that has different rates for open and closed tank systems. According to the Tax Foundation, of those that tax wholesale values, the rate ranges from 10.0 percent in Connecticut to 95.0 percent in Minnesota. In states that tax volume, the rates range per milliliter (mL) range from $0.05 per o0mL (DL, KA, NC, WI) to $0.15 per mL (LA).

Rhode Island, along with nineteen other states, do not levy an excise tax on ENDS products (RI is the only state in New England without one). Sales of ENDS products are subject to the State's 7.0 percent sales tax.

Article 6 Changes

Article 6 provides for a new regulatory and taxation regime related to ENDS products and shifts authority from DOH to the Department of Revenue (DOR).

Regulatory Changes

Article 6 makes the numerous technical amendments to necessary to incorporate the regulation of dealers and distributors of ENDS products into statutes governing the sales and distribution of cigarettes and other tobacco products (OTP) in the state. These include:

- **Definitions**
  - Reiterates within 44-20, the ENDS and E-liquid definitions as codified in RIGL 11-9-13.4.
    - Amends the definition of ENDs products in both statutes to now ***include*** hemp-derived CBD products (as defined in RIGL 2-26-3).
  - Amends definitions related to ENDS products within RIGL 11-9.12-20 "Criminal Statutes – Underage Sale of Tobacco Products" including removing references to DOH-issued licenses and holders.
  - Codifies the prohibition of the sale of flavored ENDS product, its related definitions, penalties, an enforcement authority. The exemption for Compassion Centers and licensed cultivators is retained.
- **Licensing**
  - Repeals the statutes (RIGL 23-1-55 through 58) that provide the DOH with the authority to regulate and license the sale of ENDS products.
  - Charges the Division of Taxation with licensing distributors and dealers of ENDS products. It does this by expanding existing definitions of dealer, distributor, importer, manufacturer, place of business, and "sale or sell under RIGL 44-20 "Cigarette and Other Tobacco Products Tax", to include ENDS products.
  - The Division of Taxation will consolidate the distinct licenses for cigarettes, other tobacco products, and ENDS products so that a person does not have to get a separate license for each.

- In addition to ENDS products commercial actors, *requires manufacturers, distributors, importers, engaged in selling tobacco products other than cigarettes* in the state to obtain and annual renew a license from the Division of Taxation. The article also clarifies that when it referring to licensed dealers and distributors, this includes manufacturers and importers.

Class	Fee
Manufacturer	$1,000
Importer	1,000
Distributor	1,000
Non-Stamp Distributor	100
Dealer	25

- Provides for existing ENDS products-related licensees in good standing to be considered properly licensed under the new law until existing renewal date.
- Requires Taxation to implement a consolidated license and renewal application and set fees.
- Incorporate ENDS products licensees with existing cigarettes and other tobacco product transaction limitations. These limitations require that transactions take place between properly licensed entities.

- **Penalties:** Article 6 amends the penalty references in RIGL 11-9 (underage sale of tobacco products) and 44-20 (taxation of cigarettes and OTP) to reflect the shift of regulatory authority from DOH to DOR.

Taxation Changes

- **Excise Tax:** Article 6 subjects ENDS products to an excise tax at the rate 80.0 percent of the wholesale cost of the product. This is the same rate and mechanism for tobacco products other than cigarettes. It also imposes a tax on existing inventory of ENDS products held by dealers, distributors, manufacturers, and importers. The floor tax rate is set at 80.0 percent of the wholesale cost and the article provides for a floor tax filing and collection process. All of these changes take effect on October 1, 2024. With these changes, RI would have the fourth highest rate in the country and the second highest in New England.

Tax Comparison w/ Article 6 Δ

State	% of WS Cost	Volume
VT	92.0%	N/A
RI	80.0%	N/A
MA	75.0%	N/A
ME	43.0%	N/A
CT	10.0%	$0.40/mL
NH	8.0%	$0.30/mL

- **Enforcement and Penalties:** The article incorporate ENDS products into its current cigarettes and other tobacco product tax enforcement regime. This includes how contraband product is treated, investigatory powers of the Division of Taxation, inspections, and hearings. Tax violations related to ENDS products are similarly incorporated into the existing penalty structure for cigarettes and other tobacco products.

Fiscal Impact: ORA estimates that the regulatory, licensing, and taxation changes in Article 6 will result in a $5.3 million increase in excise tax revenue, including $486,814 from floor stock, in FY2025 and $6.4 million in FY2026. ORA based its estimates on an October 1, 2025, start date and collections data from Massachusetts, which approaches ENDS products similar to the proposed changes, with a ban of flavored vapes and a wholesale cost-based excise tax.

The proposed changes will require new tax forms and changes to the tax filing system. The Governor recommends 2.0 new enforcement FTE positions in the DOR budget – 1.0 Tax Investigator and 1.0 Taxpayer Assistance Representative. The Budget includes $163,188 in additional personnel and operating expenses in FY2025 for this work.

Cigarette Tax Increase

The Budget increases the excise tax levied on cigarettes by $0.25 per-pack of cigarettes, raising the total tax from $4.25 to $4.50 per pack of twenty, or to the equivalent of $0.23 per cigarette.

Background: Rhode Island levies taxes on cigarettes sold or held in the State. Cigarettes are taxed at $4.25 per pack of twenty, or the equivalent of $0.21 per cigarette. Dealers and distributors are required to purchase cigarette stamps which are then affixed to packages of cigarettes and provide proof of payment. Stamp rolls are discounted for bulk purchases as a means of compensating dealers for the costs associated with affixing the tax stamps.

When tax increases occur, existing stocks of cigarettes that remain unsold in stores may be assessed a floor stock tax. Taxes are due upon purchase of the tax stamps. Sales and use taxes are also assessed upon tobacco products, and are applied after inclusion of the tobacco taxes into the price.

At $4.25 per pack, Rhode Island had the fourth highest state cigarette excise tax rate in the nation. However, the total cost of a pack of cigarettes can vary based upon minimum markup and other pricing provisions. A comparison of per-pack costs is included in the minimum markup section below.

Impact of Cigarette Excise Increase and Regional State Comparison

	Rhode Island		Massachusetts	Connecticut
	Previous	Proposed		
Base Price per Pack in $	$6.83	$6.83	$5.71	$5.79
Excise Tax in $	4.25	4.50	3.51	4.35
Subtotal base price + Excise	11.08	11.33	9.22	10.14
Wholesale / Retail Markup	0.99	1.01	2.62	1.52
Total Base Cost	$12.07	12.34	11.84	11.66
Sales Tax	0.84	0.86	0.74	0.74
Total Price per Pack	**$12.91**	**$13.21**	**$12.58**	**$12.40**

Note: The Office of Revenue Analysis used data from the Campaign for Tobacco-Free Kids to estimate a status quo average final retail price for cigarettes in each state.

Article 6 Changes: This article increases the excise tax levied on cigarettes by $0.25 per-pack of cigarettes, raising the total tax from $4.25 to $4.50 per pack of twenty, or to the equivalent of $0.23 per cigarette.

Fiscal Impact: The November 2023 Revenue Estimating Conference estimated that cigarette taxes would generate $125.6 million in FY2024 and $114.9 million in FY2025. ORA estimates that the tax increase in Article 6 will generate $2.4 million in FY2025 and $1.9 million in FY2026 based on a September 1, 2025, implementation date. The 20.8 percent reduction from FY2025 to FY2026 is the result of two factor. The FY2025 revenue estimate includes $748,375 in floor tax revenue that does not occur again in FY2026. ORA also uses a -7.3 percent year-over-year growth rate in calculating FY2026 to account for normal decline in smoking behavior.

Cigarette Tax Revenue Impact

Revenue Item	FY2025
Cigarette Excise Tax	$1.9
Cigarette Floor Tax	0.7
Sales and Use Tax	(0.2)
Total	**$2.4**

$ in millions

Source: Office of Revenue Analysis

According to ORA, total retail price will increase by $0.29, from $12.91 to $13.21 per individual pack. This amount is $0.62 more than the total retail price in Massachusetts, and $0.80 per pack above Connecticut. Floor stock tax is assessed at the same rate per pack of cigarettes. The fiscal impact includes estimates for

the additional excise, floor, and associated sales taxes from the change in Article 6. In addition, ORA considers the elasticity of the price of cigarettes when making the estimates. The $0.25 excise tax increase amounts to a 2.3 percent price increase. Applying elasticity from decreased demand as calculated from previous tax increases results in a net estimated revenue increase of 2.2 percent

Fee Changes

Article 6 makes the following changes to various fees:

Sales Tax Exemption Fee: Charitable, educational, and religious organizations may be exempt from the sales and use taxes in Rhode Island. Qualified exempt organizations must to apply to the Division of Taxation for a Sales Tax Exemption Certificate. According to Taxation, this certificate enables these organizations to make purchases without paying sales tax as long as the certificate is presented prior to the sale. Certificates are valid for four years and require a $25 application fee.

Article 6 eliminates the application for the Sales Tax Exemption Certificate. Application requirements and deadlines remain unchanged. ORA estimates a $7,000 revenue loss in FY2025 and a $14,000 loss in FY2026 based on a January 1, 2025, implementation date for this change.

Liquor Manufacture Duplicate License Fee: Firms operating a brewery, distillery, or winery must obtain liquor manufacturing license from the DBR. A distinct license is required for each place of operation and for each type of manufacture. In addition, the manufacture the alcoholic beverage, the license also authorizes the holder to sell the product at wholesale, limited retail, and limited onsite consumption. The license fee structure is summarized in the table.

Manufacture License Fees

License	≤ 50K Gal.	> 50K Gal.
Brewery	$500	$500
Winery	500	1,500
Distillery	500	3,000

Article 6 eliminates the fee requirement for an additional manufacturing license type when a holder of one type expands production to include another type on same premises (a licensed distillery wishes to brew beer as well). The ORA estimates that this change will result in a $6,000 revenue loss in FY2025 based on a July 1, 2025, effective date.

Estate Tax Filing Fee: Rhode Island levies a tax, subject to various credits and applied rates, on the transfer of a decedent's estate. Executors, administrators, and heirs-at-law are required to file a statement with the Division of Taxation within nine months after the death that shows the full and fair cash value of the estate, the amounts paid out from the estate for claims, expenses, charges, and fees. Names and addresses of all persons entitled to take any share or interest of the estate must also be provided. A $50 fee is required when filing the statement.

Article 6 eliminates the $50 filing fee for deaths that occur on or after January 1, 2025. The ORA estimates that this change will reduce revenue in FY2026 by $230,000.