

Department of Finance and Administration

Legislative Impact Statement

Bill: SB347

Bill Subtitle: TO IMPOSE A PRIVILEGE TAX ON E-CIGARETTES; AND TO DESIGNATE THE REVENUES DERIVED FROM THE TAX ON E-CIGARETTES TO BE USED BY THE UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES.

Basic Change :

Sponsors: Senators Bond and Elliott; Representatives McCullough and D. Garner

SB347 amends Arkansas law to add an additional subchapter to Title 26, Chapter 57 to levy an "E-Cigarette Privilege Tax". The tax would be imposed, reported, remitted, and administered in the same manner and at the same time as taxes on tobacco products, other than cigarettes, as levied under the Arkansas Tobacco Products Act. The tax would be levied at the same tax rate as tobacco products at sixty-eight percent (68%) of the invoice price to the retailer of the e-cigarettes which are to be sold in the state. For purposes of the act, an e-cigarette means a vapor product or an e-liquid product as currently defined in the Arkansas Tobacco Products Tax Act.

The revenues received from the tax would be distributed with the first ten million dollars (\$10,000,000.00) in revenue to the University of Arkansas for Medical Sciences National Cancer Institute Designation Fund. Any remaining revenue would be credited to the operating cash fund for the University of Arkansas for Medical Sciences.

This privilege tax would be separately stated and identified on each invoice or statement as the "E-cigarette Privilege Tax." This tax will apply to inventory and stocks of e-cigarettes held by a wholesaler or retailer on and after the effective date of this Act.

This Act would be effective on the first day of the second calendar month following the effective date of this Act, which is expected to be September 1, 2019.

Revenue Impact :

FY2020 -- \$5.4 Million -- 9 Months Deposits to the UAMS National Cancer Institute Designation Fund
FY2021 -- \$7.1 Million -- 12 Months Deposits to the UAMS National Cancer Institute Designation Fund

[Revenue Estimate based on sales volumes of same products in Pennsylvania which levied special excise taxes in 2016. Sales per capita calculated and applied to Arkansas population and proposed 68% excise tax rate.]

Taxpayer Impact :

E-cigarette manufacturers, distributors, wholesalers, and retailers subject to the tax would register with DFA and file monthly reports of taxes due. Taxpayers would establish accounting records and systems to report the new tax.

Resources Required :

If electronic filing of monthly tax reports and electronic tax payment is required in the same manner as current taxpayers reporting cigarette taxes, implementation of the new tax will not require additional personnel or budget resources. If paper filing and payment is allowed, additional resources will be required for DFA for third party data entry costs and tax return imaging services. Additional personnel

Department of Finance and Administration

Legislative Impact Statement

Bill: SB347

Bill Subtitle: TO IMPOSE A PRIVILEGE TAX ON E-CIGARETTES; AND TO DESIGNATE THE REVENUES DERIVED FROM THE TAX ON E-CIGARETTES TO BE USED BY THE UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES.

resources would be needed for tax return error correction, tax return processing and taxpayer support.

Time Required :

If electronic filing and remittance is required, adequate time is provided for implementation. If paper returns are allowed, a minimum of six months for implementation will be required for development of tax forms and processing procedures.

Procedural Changes :

This proposal will require modifications to the state's tax system to allow for the new distribution method of funds collected for this tax type.

Other Comments :

Tobacco excise tax is levied at the wholesale level. The definition of a wholesaler specifically defines wholesaler to mean a person other than a manufacturer or a person owned or operated by a manufacturer. The definition of a manufacturer specifically includes a person that mixes, compounds, repackages, or resizes e-liquids or vapor products. There are many retailers for e-cigarettes and vapor products that also meet the definition of a manufacturer as the result of their own manufacture of products to be sold in their retail stores. It may be recommended that the bill be amended to provide that the tax will be due from retailers that also manufacture their own products and to provide the monetary value upon which the tax is to be levied and calculated by retailers.

Legal Analysis :

SB347 seeks to impose an excise tax on e-cigarettes, as that term is defined by the Arkansas Tobacco Products Tax Act (ATPTA). The ATPTA currently imposes an excise tax on tobacco products at a combined rate of 68%. This Bill would impose the same rate of tax on e-cigarettes. The first ten million dollars (\$10,000,000.00) of revenue collected from the tax would be distributed to the University of Arkansas for Medical Sciences National Cancer Institute Designation Trust Fund. The remaining revenues would be credited to the operated cash fund for the University of Arkansas for Medical Sciences. The bill requires that the tax be separately stated and identified on each invoice or statement as the "E-cigarette Privilege Tax." The bill applies to inventory and stocks of e-cigarettes held by wholesalers or retailers on and after the effective date of the subchapter.

Currently, the 68% tax rate on tobacco products is comprised of five (5) separate statutes:

- § 26-57-208(2)(A) imposes a sixteen percent (16%) rate excise tax rate;
- § 26-57-803(b) imposes a seven percent (7%) excise tax rate;
- § 26-57-805(a)(1) imposes a seven percent (7%) excise tax rate.
- § 26-57-807(a)(1) imposes a thirty-six percent (36%) excise tax rate;
- § 26-57-1102(a)(1) imposes a two percent (2%) excise tax rate.

The revenue derived from the 7% excise tax rate under § 26-57-805(a)(1) is currently credited to the

Department of Finance and Administration

Legislative Impact Statement

Bill: SB347

Bill Subtitle: TO IMPOSE A PRIVILEGE TAX ON E-CIGARETTES; AND TO DESIGNATE THE REVENUES DERIVED FROM THE TAX ON E-CIGARETTES TO BE USED BY THE UNIVERSITY OF ARKANSAS FOR MEDICAL SCIENCES.

General Revenue Fund Account of the State Apportionment Fund, as provided by § 26-57-805(d). The revenue derived from the 36% excise tax rate under § 26-57-807(a)(1) is currently credited to the General Revenue Fund Account of the State Apportionment Fund, as provided by § 26-57-807(e). The revenue derived from the 2% excise tax rate under § 26-57-1102(a)(1) is currently credited to the Breast Cancer Research Fund.

Because the bill is imposing an excise tax that is equal to the combined excise taxes, the revenues from tax on e-cigarettes would go entirely to the Fund and the remaining cash fund for UAMS as described above instead of distributed as other tobacco funds are distributed.

There are the following administrative concerns with SB347:

- It is not clear how the tax would be applied to existing stock as an excise tax if it is being collected and remitted by the wholesalers and it is not clear how the definition of wholesaler will apply to e-cigarette retailers that also manufacturer products.
- Cigarette taxes are currently required to be reported and remitted electronically, but this bill does not have provisions requiring this excise tax to be reported and remitted electronically. If electronic filing of monthly tax reports and electronic tax payment is required in the same manner as current taxpayers reporting cigarette taxes, implementation of the new tax will not require additional personnel or budget resources. If paper filing and payment is allowed, additional resources will be required for DFA for third party data entry costs and tax return imaging services. Additional personnel resources would be needed for tax return error correction, tax return processing and taxpayer support. If electronic filing and remittance is required, adequate time is provided for implementation. If paper returns are allowed, a minimum of 6 months for implementation will be required for development of tax forms and processing procedures.
- Some taxes under the Tobacco Products Act are reported by the 15th of each month and others by the 20th of each month. SB347 does not specify which date would apply to this tax. The 20th of each month is recommended.

SB347 mandates the promulgation of rules by the Department of Finance and Administration, the Director of Arkansas Tobacco Control, and the Arkansas Control Board on an accelerated timeline. The rules are to be finalized sufficiently in advance for approval by the Legislative Council before a September 1, 2019 deadline. This rule's deadline presents several issues for the promulgating agencies. First, it appears that most of the provisions of the bill that require rules will not be effective until after the rules' deadline. The remaining provision would go into effect within thirty days of the deadline. It is unclear whether the agencies would even have authority to promulgate and publish notice for rules that are required by a statute which is not yet effective. Moreover, the accelerated timeline to promulgate rules that would be effective by September 1 would create a significant administrative burden on the promulgating agencies, as the agency would have to begin drafting in February to draft, review, publish, hold public comment, collate public comments, and submit to ALC.