

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1156**

**Amendment Number: H1 (3/19/15 Engrossment)**

**Bill Subtitle: TO IMPOSE A TAX ON E-CIGARETTES; AND TO CREATE THE E-CIGARETTES TAX ACT.**

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**Basic Change :** Sponsor: Representative Blake

Engrossment 03/19/15 --- House Amendment 1 --- The amendment would provide a definition for e-cigarette as a consumable product which may or may not contain nicotine. It would include products containing propylene glycol, vegetable glycerin, nicotine from any source, and flavorings. Products regulated as a drug or device by the US Food and Drug Administration would not be included.

References in the bill to the Department of Finance and Administration (DFA) issuing licenses to taxpayers have been replaced and DFA would issue an E-cigarette excise tax permit to those taxpayers subject to the tax and reporting requirements. The amendment also clarifies that the tax is to be remitted to the DFA instead of the State Treasurer. The amendment also changes the distribution of revenues collected to the following:

- Twenty-Five (30%) shall be credited to the Child Care and Early Childhood Education Fund Account of the Department of Human Services Fund;
- Twenty-five percent (30%) shall be credited to the Miscellaneous Agencies Fund Account to be used exclusively for the benefit of Arkansas Tobacco Control, and any funds distributed under this subdivision (2) shall carry forward to the next fiscal year to be used for the purposes stated in this subdivision (2);
- Twenty-five percent (20%) shall be credited to the Department of Veterans Affairs' cash fund deposited into the State Treasury;
- Twenty-five percent (20%) shall be General Revenues and shall be credited to the State Apportionment Fund.

Original Bill --- The bill creates the E-Cigarettes Tax Act and levy a new tax on electronic cigarettes. The tax would be levied at the tax rate of 7½¢ per fluid milliliter of consumable nicotine liquid product. The tax would be imposed at the wholesale level and paid by the product wholesaler or distributor. If purchased by a retailer from a source other than a registered wholesaler, the retailer would be responsible for payment of the tax. The tax would be due on the 15<sup>th</sup> day of the month following the month of the product purchase by the wholesaler or retailer.

The proposal would be effective on the first day of the second calendar month following the effective date of this act.

### **Revenue Impact :**

\$1.5 Million Potential Annual Increase in State Tax Revenues

- +\$436,500 --- Child Care and Early Childhood Education Fund
- +\$436,500 --- Miscellaneous Agencies Fund Account
- +\$291,000 --- Department of Veterans Affairs' cash fund
- +\$291,000 --- General Revenues
- +\$ 33,000 --- State Central Services
- +\$ 15,000 --- Constitutional Officers

[Impact based on estimated consumption level of nicotine liquid solution using national consumption levels as provided in industry reports factored to the Arkansas population.]

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### **Taxpayer Impact :**

E-Cigarette distributors and wholesalers would register with DFA and monthly report the taxes due. Taxpayer accounting records and systems would require modification to report the new tax.

### **Resources Required :**

None

### **Time Required :**

Adequate time is provided for implementation.

### **Procedural Changes :**

Create new tax forms, modify computer systems, and educate staff.

### **Other Comments :**

At present, Minnesota and North Carolina have adopted tax levies on e-cigarette products. Minnesota has levied the e-cigarette tax in the same manner as their taxes on tobacco products. The tax is levied at 95% of the sales price to the e-cigarette wholesaler, the same tax rate they apply to other tobacco products such as cigars, moist snuff, and chewing tobacco (Arkansas levies the tax on other tobacco products at 68% of the price paid by wholesalers). North Carolina will begin collecting their tax on July 1, 2015 at the rate of \$.05 per fluid milliliter of consumable nicotine liquid product. Other states have not adopted legislation at this time for a special excise tax on e-cigarette product.

### **Legal Analysis :**

Amendment No. 1 to HB1156 expands the definition of "consumable product to a liquid product that may or may not containing nicotine, is vaporized or inhaled using a vapor product, and includes propylene glycol, vegetable glycerin, nicotine from any source, and flavorings. The bill also expands the definition of "e-cigarette" to be more comprehensive of the devices currently marketed and excludes products regulated as drugs or devices by the federal FDA. The bill would allow for direct assessment of Arkansas consumers that purchase untaxed consumable products and clarifies that the Department does not license distributors, wholesalers, manufacturers, or retailers of e-cigarette or consumable products but merely registers those entities for tax purposes.

The bill also increases the percentage of the tax proceeds going to the Child Care and Early Childhood Education Fund Account from 25% to 30%, removes the 25% designated for the Aging and Adult Services Fund Account, and designates 30% of the tax proceeds for the Miscellaneous Agencies Fund Account for sole use by Arkansas Tobacco Control, reduces the 25% designated for the Department of Veteran's Affairs Cash Fund to 20%, and reduces the 25% designation for the State Apportionment Fund to 20%. The bill also clarifies that DFA is not obligated to promulgate regulations if unnecessary to implement the bill.

HB1156 will be effective on the first day of the second calendar month following the effective date of this act.