

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1787

Bill Subtitle: REGULATE THE SALE AND TAXATION OF TOBACCO PRODUCTS, E-LIQUID PRODUCTS, AND VAPOR PRODUCTS; TO AMEND THE ARKANSAS TOBACCO PRODUCTS TAX ACT OF 1977; AND TO CREATE A TAX ON E-LIQUID PRODUCTS AND VAPOR PRODUCTS.

Basic Change :

Sponsor: Rep. L. Johnson

HB1787 regulates the sale and taxation of tobacco products, e-liquid products, and vapor products, amends the Arkansas Tobacco Products Tax Act of 1977 and creates a tax on e-liquid products and vapor products.

County and Municipal Preemption Tobacco Regulation --- The bill provides for the preemption of the enactment and enforcement of any county, municipal or other local regulation of the manufacture, sale, storage, or distribution of tobacco products that is more restrictive than the state provisions or rules. Any county, municipal, or other local regulation that exists as of the effective date of this act is not preempted.

This proposal amends Arkansas law to add an additional subchapter to Title 26, Chapter 57 to levy an "E-Cigarette Excise 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 thirty percent (30%) 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 to General Revenue. This excise tax would be separately stated and identified on each invoice or statement as the "E-Cigarette Excise Tax." This tax will apply to inventory and stocks of e-cigarettes purchased 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 (September 1, 2019).

Revenue Impact :

FY2020 -- \$2.5 Million -- 9 Months Deposits to General Revenue Fund

FY2021 -- \$3.3 Million -- 12 Months Deposits to General Revenue 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 30% 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.

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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 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 :

Tax on Products Manufactured by the Retailer --- 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. The bill should be amended to provide that the tax will be due from retailers that also manufacture their own products.

Tax on Products Manufactured by the Retailer --- The bill should be amended to provide for taxation of products manufactured by retailers and to provide the monetary value upon which the tax is to be levied and calculated by retailers.

Electronic Tax Return Filing --- Cigarette taxes require electronic filing of required tax returns. The proposal does not mandate electronic filing for e-cigarette products. It is recommended that electronic filing of tax reports and tax remittances be required which would provide taxpayers a simpler method of reporting and reduce DFA administrative processes and procedures and reduce additional resource costs of DFA to implement the new tax type.

Due Date of the Tax Return and Remittance --- This proposal requires the privilege tax on e-cigarettes to be imposed, reported, remitted and administered in the same manner and at the same time as taxes on tobacco products under the Arkansas Tobacco Products Act. Cigarette tax returns are due the 15th day of the month; the tax on cigarette paper is due on the 15th while all other tobacco products are due on the 20th day. It is recommended that a due date of the 20th day of the month be specified for the

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reporting of the new tax as levied by the bill.

Legal Analysis :

HB1787 creates a taxation scheme for e-liquid and vapor products and modifies local restrictions on tobacco products. The bill restricts local regulation of the manufacture, sale, storage, or distribution of tobacco products. Accordingly, local regulation that becomes effective after this bill cannot be more restrictive than the requirements of § 26-57-259.

The bill levies an excise tax on e-liquid products and vapor products, when the vapor product is sold as part of a bundled transaction with the e-liquid product. The excise tax is levied at 30% and is to be imposed, remitted, and administered in the same way as the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201, et seq. The bill provides that the revenue generated by the new excise tax be directed to the General Revenue Fund Account of the State Apportionment Fund.

One potential issue is the application of the excise tax to retailers who manufacture e-liquid product. Under the Arkansas Tobacco Products Act, tax is levied on the sale from a wholesaler to a retailer, based upon the invoice price of the product from the manufacturer to the wholesaler. It is unclear how this standard will be applied to retailers who are able to manufacture their own e-liquid product for sale to customers.

All provisions of the bill, excluding rule promulgation, become effective on the first day of the second calendar month following the effective date of the act.

This rules deadline presents a substantial issue for the promulgating agencies. Most of the provisions of the bill that require rule promulgation will not be effective until after the rules deadline. The remaining provision would go into effect shortly before the rule promulgation deadline. It is unclear whether the agencies would 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 would create a significant administrative burden on the promulgating agencies requiring promulgation efforts to begin in earnest before adjournment of the General Assembly. To meet the required deadline of September 1, the Rules would need to be approved by ALC in August requiring submission for the agenda in July, assuming that ALC even chooses to meet in August. To submit the Rules and comments in July will require that they be approved for publication and public comment by the beginning of June at the latest to have the 30 days of publication and time to collate any public comments received. To have the rules prepared would likely require that drafters begin work in March or April at the latest.