

SUMMARY OF PROPOSAL #2
for consideration by the
ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE

TOPIC: Excise Tax on E-Cigarettes

Summary of Proposal for Consideration

To include e-cigarettes in the definition of “tobacco products” under the Arkansas Tobacco Products Tax Act of 1977 so that they would be taxed at a rate of sixty-eight percent (68%) of the manufacturer’s invoice price before discounts.

Fiscal Analysis

Based on the Department of Finance and Administration’s previous fiscal impacts regarding e-cigarettes and vaping, a sixty-eight percent (68%) excise tax on the wholesale value of e-cigarette products would be a twelve million dollar (\$12,000,000) increase in revenue.

Legal Analysis

Background

Arkansas does not currently levy an excise tax on e-cigarettes. The current excise tax rate on tobacco products is sixty-eight percent (68%) of the manufacturer’s invoice price before discounts.

Potential Legal Issues

Amendment 19 to the Arkansas Constitution (incorporated at Article 5, § 38) requires an emergency clause and a ¾-vote of the legislature to increase the rate of certain taxes.¹ The taxes on cigarettes and cigars are generally considered to fall under the Amendment 19 requirements, while the taxes on other tobacco products do not. Some of the states that have imposed a tax on e-cigarettes have indicated that they are doing so because they consider e-cigarettes to be subject to tax in the same manner as other tobacco products because the nicotine in the e-cigarette is derived from tobacco. E-cigarettes are not typically considered to be the same as cigarettes or cigars, which are usually defined as products that contain actual tobacco. Accordingly, it is unlikely that the Amendment 19 requirements would apply to the levy of taxes on e-cigarettes.

¹ Amendment 19 also allows for the General Assembly to refer such tax rate increases to the voters for their approval, in which case the bill would require only a majority vote of each house.