

**SUMMARY OF PROPOSAL #3**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC:       Excise Tax on E-Cigarettes**

**Summary of Proposal for Consideration**

To levy an excise tax on e-cigarettes at a rate that is “middle of the road” in terms of the taxes that other states have enacted on e-cigarettes.

**Fiscal Analysis**

According to the Department of Finance and Administration (DFA), existing excise taxes on e-cigarettes vary between thirty percent (30%) and ninety-five percent (95%) of the wholesale cost. The midpoint between those extremes is sixty-two and five-tenths percent (62.5%) on the wholesale cost. If the wholesale cost is based on sixty-five percent (65%) of the retail price, the estimated fiscal impact would be approximately eleven million twenty-nine thousand dollars (\$11,029,000) in increased revenue.

Based on previous fiscal impacts, DFA has estimated that a seven and one-half cent (\$0.075) per fluid milliliter excise tax on e-cigarette supplies results in an estimated fiscal impact of one million five hundred thousand dollars (\$1,500,000).

**Legal Analysis**

***Background***

Arkansas does not currently levy an excise tax on e-cigarettes. States that currently levy a tax on e-cigarettes generally do so either as a percentage of the wholesale value or as a flat tax per milliliter of consumable product. Based on the information provided by the Tax Foundation at the June 21, 2018 meeting of the Arkansas Task Reform and Relief Legislative Task Force, the percentage taxes levied by states range from forty percent (40%) to ninety-five percent (95%) of the wholesale value. The volume-based taxes levied by states range from five cents (5¢) per milliliter to seven and one-half cents (7.5¢) per milliliter. Some states have local governments that levy separate taxes on e-cigarettes that also vary based on a percentage of the wholesale price or a flat rate by volume.

***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.<sup>1</sup> The taxes

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<sup>1</sup> 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.

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.