

SUMMARY OF PROPOSAL #5
for consideration by the
ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE

TOPIC: Excise Tax on Cigarettes

Summary of Proposal for Consideration

To increase the cigarette tax by fifty cents (\$0.50) per pack for a total tax of one dollar and sixty-five cents (\$1.65) per pack.

Fiscal Analysis

The Department of Finance and Administration (DFA) estimates that a fifty cent (\$0.50) increase per pack in the cigarette tax would result in a fiscal impact increase of seventy-seven million dollars (\$77,000,000). This change would also cause the Texas Cigarette Border Zone to be effective again.

Legal Analysis

Current Law

Arkansas currently levies taxes on the first sale of cigarettes in the state (generally at the wholesale level) at a rate of one dollar and fifteen cents (\$1.15) per pack, which equates to fifty-seven dollars and fifty cents (\$57.50) per one thousand (1,000) cigarettes.¹

Most of the revenue from the cigarette tax are general revenues. However, the first three million dollars (\$3,000,000) of revenue generated by the additional tax of fifty cents (50¢) per one thousand (1,000) cigarettes levied under Act 1211 of 1991 are dedicated to the Aging and Adult Services Fund Account, and the revenues generated by the additional tax of one dollar and twenty-five cents (\$1.25) per one thousand (1,000) cigarettes levied under Act 434 of 1997 are special revenues that are distributed as follows:

- Twenty-nine percent (29%) split as follows:
 - Twenty-five percent (25%) to the University of Arkansas Medical Center Fund;
 - Eight and one-third percent (8 1/3%) to the Breast Cancer Control Fund;
 - Eight and one-third percent (8 1/3%) to the Breast Cancer Research Fund;
 - Eight and one-third percent (8 1/3%) to the Miscellaneous Agencies Fund for the Arkansas Prostate Cancer Foundation; and
 - Fifty percent (50%) to the Aging and Adult Services Fund Account; and
- Seventy-one percent (71%) split as follows:
 - Twenty percent (20%) to the Breast Cancer Research Fund; and
 - Eighty percent (80%) to the Breast Cancer Control Fund.

¹ The cigarette tax can be found in Arkansas Code §§ 26-57-208, 26-57-802 – 26-57-804, 26-57-806, and 26-57-1101.

History

Act 152 of 1929 levied a tax of two dollars (\$2.00) per one thousand (1,000) cigarettes. The tax on cigarettes was increased several times to a rate of six dollars and twelve and one-half cents (\$6.125) in 1969.

Act 546 of 1977 created the Arkansas Tobacco Products Tax Act of 1977 and increased the tax on cigarettes to eight dollars and eighty-seven and one-half cents (\$8.875) per one thousand (1,000) cigarettes.

Act 399 of 1983 increased the cigarette tax to ten dollars and fifty cents (\$10.50) per one thousand (1,000) cigarettes.

Act 1211 of 1991 levied an additional tax of fifty cents (50¢) per one thousand (1,000) cigarettes. The first three million dollars (\$3,000,000) from this additional tax were dedicated to the Aging and Adult Services Fund Account to be used for transportation services benefitting the elderly.

Act 2 of 1992 (2nd Ex. Sess.) levied a temporary tax of six dollars and twenty-five cents (\$6.25) per one thousand (1,000) cigarettes, which was replaced by a tax of four dollars and seventy-five cents (\$4.75) per one thousand (1,000) cigarettes beginning July 1, 1993.

Act 434 of 1997 levied an additional tax of one dollar and twenty-five cents (\$1.25) per one thousand (1,000) cigarettes. Ninety percent (90%) of the revenues from the additional tax levied in this act were dedicated to the Breast Cancer Research Fund and the Breast Cancer Control Fund. The act also provided that this additional tax would not be levied in any fiscal year in which the General Assembly appropriated at least eight hundred thousand dollars (\$800,000) of general revenues to the Breast Cancer Research Fund and at least three million two hundred thousand dollars (\$3,200,000) to the Breast Cancer Control Fund and funded the appropriations in Category A of the Revenue Stabilization Act.

Act 1698 of 2001 changed the distribution of the revenues generated by the additional tax levied under Act 434 of 1997. Under this act, twenty-nine percent (29%) of the revenues would be split evenly between the Aging and Adult Services Fund Account and the Department of Human Services Grants Fund Account, and the remainder would be split with twenty percent (20%) going to the Breast Cancer Research Fund and eighty percent (80%) going to the Breast Cancer Control Fund.

Act 38 of 2003 (1st Ex. Sess.) levied an additional tax of twelve dollars and fifty cents (\$12.50) per one thousand (1,000) cigarettes.

Act 2219 of 2005 changed the distribution of the revenues generated by the additional tax levied under Act 434 of 1997. Under this act, twenty-nine percent (29%) of the revenues would be distributed as follows: twenty-five percent (25%) to the Arkansas Rx Program Fund, eight and one-third percent (8 1/3%) to the Breast Cancer Control Fund, eight and one-third percent (8 1/3%) to the Breast Cancer Research Fund, eight and one-third percent (8 1/3%) to the

Miscellaneous Agencies Fund for the Arkansas Prostate Cancer Foundation, and fifty percent (50%) to the Aging and Adult Services Fund Account. Act 1236 of 2007 later transferred the portion being distributed to the Arkansas Rx Program Fund to the University of Arkansas Medical Center Fund.

Act 180 of 2009 levied an additional tax of twenty-eight dollars (\$28.00) per one thousand (1,000) cigarettes.

Potential Legal Issues

Amendment 19 to the Arkansas Constitution (incorporated at Article 5, § 38) requires an emergency clause and a $\frac{3}{4}$ -vote of the legislature to increase the rate of certain taxes.² The tax on cigarettes is generally considered to fall under the Amendment 19 requirements. Accordingly, increasing the tax rate applicable to cigarettes would require an emergency clause and a $\frac{3}{4}$ -vote of the legislature.

² 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.