

**SUMMARY OF PROPOSAL #8**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Additional Excise Tax on Alcohol and Tobacco**

**Summary of Proposal for Consideration**

To create a separate excise tax at a rate of two and five-tenths percent (2.5%) on all retail receipts or proceeds derived from the sale of cigarettes, tobacco products, e-cigarettes, and alcoholic beverages.

**Fiscal Analysis**

According to the Department of Finance and Administration (DFA), providing a full fiscal impact for this proposal is difficult because DFA does not have immediate access to all of the necessary information. The current cigarette tax is a per-cigarette tax, and DFA does not have immediate access to the amount a wholesaler or producer charges to a retailer for cigarette costs to calculate an excise tax that is not subject to the sale for resale exemption of the gross receipts tax.

The tax on tobacco products other than cigarettes is levied at a percentage of the manufacturer's price based on the first sale within the state and is generally paid by the wholesaler. The estimated revenue impact of an additional two and five-tenths percent (2.5%) tax on tobacco products other than cigarettes is two million one hundred thousand dollars (\$2,100,000) in additional revenue. DFA does not have information regarding the retail price to evaluate an additional two and five-tenths percent (2.5%) retail excise tax.

With regard to e-cigarettes, previous fiscal impacts estimated tax revenue of twelve million dollars (\$12,000,000) based on the current tax on tobacco products other than cigarettes, which would be an estimated eighteen million dollars (\$18,000,000) in wholesale price. On this estimate, a two and five-tenths percent (2.5%) retail excise tax would have a fiscal impact of four hundred fifty thousand dollars (\$450,000). DFA does not have information regarding the retail price to evaluate an additional two and five-tenths percent (2.5%) retail excise tax.

Based on the Beverage Excise Tax, Beer Excise Tax, and the separate Mixed Drink Tax revenue, an additional two and five-tenths percent (2.5%) on all retail sales of alcoholic beverages both in package stores and restaurants has an estimated fiscal impact of thirteen million four hundred thousand dollars (\$13,400,000). This amount does not include beer and wine sold by restaurants in wet counties under an Alcoholic Beverage Control permit because those sales are only subject to the existing gross receipts taxes and are not reported separately.

According to DFA, the total fiscal impact for this proposal is at least fifteen million nine hundred fifty thousand dollars (\$15,950,000) in additional revenue, but this amount does not include the retail revenue for certain components, and it excludes cigarettes based on the data available to DFA.

## Legal Analysis

### *Current Law*

#### Cigarettes and Tobacco Products

Arkansas currently levies taxes on the first sale of tobacco products in the state (generally at the wholesale level) at the following rates<sup>1</sup>:

<b>Product</b>	<b>Tax Rate</b>
Cigarettes	\$1.15 per pack (\$57.50 per 1,000 cigarettes)
Cigars	68% of the manufacturer's invoice price before discounts Max of 50¢ per cigar
Other Tobacco Products	68% of the manufacturer's invoice price before discounts
Cigarette Papers	25¢ per package of 32 sheets

Arkansas does not currently levy a tax on e-cigarettes.

Most of the revenue from the taxes on cigarettes and other tobacco products 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 and the additional tax of two percent (2%) of the manufacturer's invoice price on tobacco products other than 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.

#### Alcoholic Beverages

Arkansas currently levies taxes on alcoholic beverages at the following rates<sup>2</sup>:

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<sup>1</sup> The taxes on cigarettes and other tobacco products can be found in Arkansas Code §§ 26-57-208, 26-57-801 – 26-57-807, and 26-57-1101 – 26-57-1102.

<sup>2</sup> The taxes on alcoholic beverages can be found in Arkansas Code §§ 3-7-104, 3-7-111, 3-7-201, 3-9-213, and 3-9-223

<b>Alcoholic Beverage</b>	<b>Tax Rate</b>
Beer and Hard Cider	\$7.50 per barrel (5% alcohol or less) 25¢ per barrel
Wine (imported and native)	5¢ per case
Imported Vinous Liquor	75¢ per gallon
Imported Light Wine	25¢ per gallon
Spirituosous Liquor	\$2.50 per gallon 20¢ per case
Malt Liquor	20¢ per gallon
Pre-Mixed Spirituous Liquor	\$1.00 per gallon 5¢ per case
Light Spirituous Liquor	50¢ per gallon 5¢ per case
Mixed Drinks (on-premise consumption)	14% of gross receipts

Arkansas also levies a one percent (1%) special excise tax on all retail receipts or proceeds derived from the sale of beer and a three percent (3%) special excise tax on all retail receipts or proceeds derived from the sale of liquor, cordials, liqueurs, specialties, and sparkling and still wines. Ark. Code Ann. § 3-7-201.

Most of the revenues derived from taxes on alcoholic beverages are general revenues. However, the revenues derived from the additional four-percent Mixed Drink Tax are special revenues that are credited to the University of Arkansas Medical Center Fund.

### *History*

#### Cigarettes and Tobacco Products

Act 152 of 1929 levied a tax of ten percent (10%) on the selling price of cigars and 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 274 of 1969 created the Tobacco Products Tax Act and levied a tax of fifteen percent (15%) of the wholesale selling price of tobacco products, not including cigarettes, snuff, cigars, little cigars, and cigarillos.

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 and levied a tax of sixteen percent (16%) on the manufacturer's invoice price of tobacco products other than cigarettes and snuff.

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

Act 628 of 1987 subjected snuff to the tax of sixteen percent (16%) levied on other tobacco products.

Act 1045 of 1987 levied a tax of twenty-five cents (25¢) per package of thirty-two (32) sheets of cigarette paper.

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 (2<sup>nd</sup> 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. The act also levied a temporary additional tax of nine percent (9%) of the manufacturer's invoice price on tobacco products other than cigarettes, which was replaced by an additional tax of seven percent (7%) of the manufacturer's invoice price on tobacco products other than cigarettes.

Act 434 of 1997 levied an additional tax of one dollar and twenty-five cents (\$1.25) per one thousand (1,000) cigarettes and an additional tax of two percent (2%) of the manufacturer's invoice price on tobacco products other than cigarettes. Ninety percent (90%) of the revenues from the additional taxes levied in this act were dedicated to the Breast Cancer Research Fund and the Breast Cancer Control Fund. The act also provided that these taxes 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 taxes 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 (1<sup>st</sup> Ex. Sess.) levied an additional tax of twelve dollars and fifty cents (\$12.50) per one thousand (1,000) cigarettes and an additional tax of seven percent (7%) of the manufacturer's invoice price on tobacco products other than cigarettes.

Act 2219 of 2005 changed the distribution of the revenues generated by the additional taxes 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 and an additional tax of thirty-six percent (36%) of the manufacturer's invoice price on tobacco products other than cigarettes.

Act 510 of 2013 capped the allowable tax on cigars to fifty cents (50¢) per cigar. The act provided that if the total amount of all taxes on cigars is greater than fifty cents (50¢) per cigar, then each tax would be reduced proportionally.

### Alcoholic Beverages

Act 7 of 1933 (1<sup>st</sup> Ex. Sess.) levied a tax of one dollar (\$1.00) per barrel of light wine or beer that has an alcoholic content of three and two-tenths percent (3.2%) or less and that is received, handled, possessed, manufactured, or sold in the state.

Act 109 of 1935 imposed a tax of forty cents (40¢) on each gallon of spirituous liquor, ten cents (10¢) on each gallon of vinous liquor (except native wine), and three cents (3¢) on each gallon of malt liquor.

Act 236 of 1937 imposed an additional tax of twenty-five cents (25¢) on each gallon of spirituous liquor.

Act 18 of 1938 (1<sup>st</sup> Ex. Sess.) levied an additional tax of fifteen cents (15¢) on each gallon of spirituous liquor and increased the tax on vinous liquor to fifty cents (50¢) per gallon.

Act 310 of 1939 levied a sales tax of three dollars and fifty cents (\$3.50) per barrel of beer and a sales tax of three percent (3%) on each gallon of spirituous liquor, vinous liquor, and wine.

Act 393 of 1939 levied an additional tax of thirty-two cents (32¢) for each gallon of spirituous liquor.

Act 266 of 1941 amended the tax rates to provide for a tax of one dollar and twelve cents (\$1.12) for each gallon of spirituous liquor, a tax of sixty cents (60¢) for each gallon of vinous liquor, and a tax of twenty cents (20¢) on each gallon of malt liquor. The act also increased the sales tax on beer to five dollars (\$5.00) per barrel.

Act 313 of 1945 levied a temporary additional tax of thirty-eight cents (38¢) on each gallon of spirituous liquor for the purpose of providing funds for permanent facilities for the Arkansas Livestock Show Association. This additional tax expired May 31, 1947.

Act 108 of 1947 repealed the taxes established under Act 109 of 1935 and imposed a tax of two dollars and fifty cents (\$2.50) on each gallon of spirituous liquor, seventy-five cents (75¢) on each gallon of vinous liquor (except native wine), twenty cents (20¢) on each gallon of malt liquor, and five dollars (\$5.00) per barrel of beer.

Act 282 of 1949 levied a tax of twenty-five cents (25¢) per case of liquor, cordials, liqueurs, and specialties and a tax of ten cents (10¢) per case of sparkling and still wine.

Act 252 of 1951 levied a tax of three percent (3%) on liquor, cordials, liqueurs, specialties, and sparkling and still wine.

Act 385 of 1953 reduced the additional case tax to twenty cents (20¢) per case of liquor, cordials, liqueurs, and specialties and five cents (5¢) per case of sparkling and still wine.

Act 132 of 1969 levied a supplemental tax of ten percent (10%) on the gross proceeds or gross receipts from the sale of all intoxicating beverages other than beer and native wine that were sold for on-premise consumption. This later became known as the “Mixed Drink Tax”.

Act 169 of 1969 increased the tax on beer to seven dollars and fifty cents (\$7.50) per barrel for beer having an alcoholic content of more than three and two-tenths percent (3.2%) but not more than five percent (5%).

Act 271 of 1969 levied an additional tax of five cents (5¢) per case of native wine and twenty-five cents (25¢) per barrel of beer.

Act 844 of 1983 increased the tax on spirituous liquor to two dollars and eighty-seven and one-half cents (\$2.875) per gallon and increased the tax on beer having an alcoholic content of more than three and two-tenths percent (3.2%) to eight dollars and seventy-five cents (\$8.75) per barrel. The act also increased the Mixed Drink Tax to twelve percent (12%) and clarified that the tax does not apply to wine. However, the tax increases under this act were temporary and were set to expire when the sales tax increased, which occurred with Act 63 of 1983 (1<sup>st</sup> Ex. Sess.).

Act 1000 of 1985 and Act 639 of 1987 levied an additional three percent (3%) Mixed Drink Tax for temporary periods and dedicated the funds from the additional three percent (3%) tax to the University of Arkansas Medical Center Fund.

Act 1052 of 1985 subjected native wine to the special alcoholic beverage tax imposed on liquor, cordials, liqueurs, specialties, and sparkling and still wine under Act 252 of 1951.

Act 424 of 1987 levied a tax of one dollar (\$1.00) on each gallon of pre-mixed spirituous liquors, a tax of fifty cents (50¢) on each gallon of light spirituous liquor, and a tax of twenty-five cents (25¢) on each gallon of light wine. This act also extended the tax of seven dollars and fifty cents (\$7.50) per barrel to all beer having an alcoholic content of five percent (5%) or less. Additionally, the act levied a tax of five cents (5¢) on each case of light wine, pre-mixed spirituous liquors with an alcoholic content less than twenty-one percent (21%), and light spirituous liquors, and it levied a tax of twenty cents (20¢) on each case of pre-mixed spirituous liquors having an alcoholic content of at least twenty-one percent (21%).

Act 908 of 1989 and Act 261 of 1989 (1<sup>st</sup> Ex. Sess.) levied an additional four percent (4%) Mixed Drink Tax for a temporary period and dedicated the funds from the additional tax of

four percent (4%) to the University of Arkansas Medical Center Fund for loan repayments. The act excluded beer and wine from the tax.

Act 1841 of 2001 created an additional special excise tax of three percent (3%) on all retail receipts or proceeds derived from the sale of beer. The revenues from the additional tax were dedicated to providing subsidized child care for low-income families and supporting and expanding the Arkansas Better Chance Program. The additional tax was scheduled to sunset June 30, 2003, but it was extended for two years by Act 272 of 2003 and for another two years by Act 2188 of 2005.

Act 1274 of 2005 levied an additional tax of four percent (4%) on all alcoholic beverages except beer and wine. The act dedicated the revenues from the additional tax to the University of Arkansas Medical Center Fund for loan repayments. Once the loans are repaid, the revenues from the additional tax may be used for any purpose provided by law.

Act 869 of 2007 levied an additional excise tax of one percent (1%) on all retail receipts or proceeds derived from the sale of beer.

Act 671 of 2017 extended the tax of seven dollars and fifty cents (\$7.50) per barrel to hard cider.

### ***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.<sup>3</sup> The taxes on cigarettes and cigars and the per-barrel beer tax are generally considered to fall under the Amendment 19 requirements. However, Amendment 19 applies only if the specific rates of tax are being increased; if a new tax is created, it is not subject to Amendment 19. To determine whether a tax is a new tax or an increase of an existing tax, courts consider how similar the two taxes are in terms of what is being taxed, who bears the burden of paying the tax, how the tax is structured, and what the funds generated by the tax are used for. The Attorney General has stated that the courts have made it clear that the party responsible for paying the tax is an important consideration in determining whether the tax is subject to Amendment 19.

This proposal is intended to create a separate excise tax that would be structured as a new tax rather than as an increase of the existing excise taxes. However, the proposed new tax would be similar to the existing taxes in that it would be levied on the same products, and the revenues would likely be general revenues like the revenues from the excise taxes. It would be different from the existing excise taxes in that it would be structured as a percentage tax collected by the retailer. It is unclear whether a court would determine that this proposal would be subject to the requirements of Amendment 19.

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<sup>3</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.