

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

TOPIC: Privilege Tax; E-Cigarettes

Summary of Proposal for Consideration

This proposal would tax e-cigarettes at the same rate as other tobacco products, which are currently taxed at a rate of sixty-eight percent (68%). The excise tax would be effective on and after July 1, 2019.

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.

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.