

**EXCISE TAX 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**

This proposal would levy a separate excise tax at a rate of two percent (2%) on all retail receipts or proceeds derived from the sale of cigarettes, tobacco products, e-cigarettes, and alcoholic beverages, except for the sales of alcoholic beverages sold for on-premise consumption.

**Fiscal Analysis**

The Department of Finance and Administration (DFA) has provided the following estimate based on existing information provided. However, DFA indicates that several components of the estimates are based on extrapolation of information and are not necessarily reliable. Further analysis may refine the amount, but the estimates below are based on DFA's analysis of existing tax revenue.

Cigarettes	<b>\$14,800,000</b> based on the total amount per pack received and as estimate of \$5 gross receipts before per pack tax
Other Tobacco Products	<b>\$1,670,000</b> minimum based on the existing 68% Excise tax total of \$56,800,000 of wholesale cost
E-Cigarettes	<b>\$352,000</b> based on Department estimates on a 68% Excise Tax total of \$12,000,000
Alcoholic Beverages	<b>\$15,000,000</b> based on the existing 3% Beverage Excise Tax total of \$11,000,000 and 1% Beer Excise Tax Total of \$4,000,000
<b>Total</b>	<b>\$32,000,000</b>

**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 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

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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.

consideration in determining whether the tax is subject to Amendment 19. Ark. Att'y Gen. Op. 2003-109 (2003).

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.