



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE April 22, 2019

TO Joint Revenue Committee

FROM Leanne Hoag, Associate Fiscal Analyst
Matthew Sackett, Senior Fiscal Analyst

SUBJECT Electronic Cigarette Tax

Question: Which states enforce taxes on electronic cigarette liquids and at what rate? Will a tax on electronic cigarettes fit into our existing tobacco tax structure?

As of October 2018, nine states and the District of Columbia (California, Delaware, Kansas, Louisiana, Minnesota, New Jersey, North Carolina, Pennsylvania, and West Virginia) have taxes on electronic cigarettes. In addition, three states (Alaska, Illinois, Maryland) have local governments that have imposed their own tax on electronic cigarettes, which, for simplicity, are included in the table below. Generally, the taxes imposed are either by volume or by wholesale price, as summarized in Table 1.

Table 1. State Electronic Cigarette Tax Rates.

| State | Tax | Law |
|-----------------------------|---|--|
| <i>Alaska (Local)</i> | <i>Tax of 45% of wholesale price. (Juneau, NW Artic Borough, and Petersburg) Tax of 55% of wholesale price (Mat-Su Valley)</i> | <i>Local Ordinance</i> |
| California | The State Board of Equalization is directed to adopt regulations implementing tax on electronic cigarettes equivalent to the Cigarette Distribution Tax. For FY18 this is equal to 62.78% of wholesale price. | CAL. REV. & TAX CODE § 30130.51(b) (2018) |
| Delaware | Tax on vapor products at \$0.05 per milliliter | DEL. CODE ANN. tit. 30 § 5305(c)(2) (2018) |
| District of Columbia | Vapor products are taxed at rate equal to tax imposed on cigarette packs, expressed as a percentage of average wholesale price. Effective October 2018 the rate increased to 96% of wholesale price. | D.C. CODE § 47-2402.01(a)(1)(C) (2018) |
| <i>Illinois (Local)</i> | <i>Tax of \$1.50 per unit plus \$1.20 per milliliter (Chicago) Tax of \$0.20 per milliliter (Cook County)</i> | <i>Local Ordinance</i> |

| State | Tax | Law |
|---------------------|--|--|
| Kansas | Privilege tax for sale or dealing of electronic cigarettes “at the rate of \$0.05 per milliliter of consumable material” | KAN. STAT. ANN. § 79-3399(a) (2018) |
| Louisiana | Vapor products and electronic cigarettes taxed at \$0.05 per milliliter of consumable nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used | LA. REV. STAT. ANN. § 47:841(F) (2018) |
| Maryland (Local) | Tax of 30% of wholesale price. (Montgomery County) | Local Ordinance |
| Minnesota | Tax of 95% of wholesale price imposed on tobacco products, including e-cigarettes | MINN. STAT. § 297F.05(3) (2018) and Minn. Dep’t of Revenue Notice #12-10 |
| New Jersey | Liquid nicotine taxed at rate of \$0.10 per fluid milliliter by volume, and a proportionate rate on all fractional parts of fluid milliliter | N.J. STAT. § 54:40B3.2(a) (2018) |
| North Carolina | Vapor products taxed at rate of \$0.05 per fluid milliliter of consumable product | N.C. GEN. STAT. § 105-113.35(a1) (2018) |
| Pennsylvania | Electronic cigarettes taxed at rate of 40% of purchase price charged to the retailer | 72 PA. CONS. STAT. § 8202-A(a.1) (2018) |
| West Virginia | E-cigarette liquid taxed at rate of \$0.075 per milliliter of fraction thereof | W. VA. CODE ANN. § 11-17-4b(b)(1) (2018) |

Source: LSO Analysis of Tax Foundation and the Public Health Law Center’s Tobacco Control Legal Consortium’s report “U.S. E-Cigarette Regulation: A 50-State Review” data.

Wyoming’s current tobacco taxes (W.S. 39-18-104) are established by weight for moist snuff tobacco and by wholesale price for other tobacco products. This does not apply to electronic cigarettes or their liquid because there is no tobacco in the products. However, Wyoming statute provides definitions and restrictions around electronic cigarettes that could be useful in implementing a tax, as seen below:

- Tobacco products means “any substance containing tobacco leaf, or any product made or derived from tobacco that contains nicotine, including, but not limited to, cigarettes, electronic cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco...” (W.S. 14-3-301(a)(i))
- Electronic cigarette means “a product that employs any mechanical heating element, battery, or electronic circuit, regardless of shape or size, that can be used to deliver doses of nicotine vapor by means of heating a liquid nicotine solution contained in a cartridge or other delivery system” (W.S. 14-3-301(a)(v))
- Vapor product means “any noncombustible product containing nicotine that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form [including] any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device, including any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an [aforementioned] device (W.S. 35-7-2001(a)(iii))

WYOMING LEGISLATIVE SERVICE OFFICE Memorandum

- Liquid Nicotine container means “a bottle or other container of a liquid or other substance containing nicotine where the liquid or substance is sold, marketed or intended for use in a vapor product [not including a cartridge that is] prefilled and sealed by the manufacturer and not intended to be opened by the consumer...” (W.S. 35-7-2001(a)(ii))

With these definitions and the current cigarette tax structure, it is possible to adopt a tax on electronic cigarette liquids, either by volume or a percentage of the wholesale price as other states have done.

If you have further questions, please advise.