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Taxation

J-1 Electronic Cigarettes or “E-cigs”

Kansas provides for the taxation of the privilege of selling or dealing electronic cigarettes (e-cigs) at a rate of \$0.20 per milliliter of consumable material. The tax was created by the 2015 Legislature as part of Senate Sub. for HB 2109. The effective date of the new tax was later delayed from July 1, 2016, to January 1, 2017, by 2016 House Sub. for SB 149. The Secretary of Revenue is required to adopt rules and regulation to implement the new tax.

E-cigs, unlike traditional cigarettes, produce no flame and instead use an atomizer, or heated coil, to vaporize the contents of a cartridge containing nicotine fluid. It is the liquid within the cartridge that is subject to taxation on a per milliliter basis.

Revenue Generated from Taxation of Electronic Cigarettes

Original projections, which included a full year of assessed taxes, estimated the new tax on e-cigs would generate \$2.0 million in fiscal year 2017 for the State General Fund, if enacted on July 1, 2016. However, with the postponement of the effective date, the tax will not be assessed until halfway through fiscal year 2017, January 1, 2017. Revised estimates project the new tax to generate \$1.0 million for fiscal year 2017 and \$2.0 million in fiscal year 2018.

Taxation of Electronic Cigarettes in Other States

Currently, 48 states regulate e-cigs in some capacity. Most commonly, the sale of e-cigs to persons under the age of 18 is prohibited. Kansas is one of four states, in addition to the District of Columbia, to assess a tax on electronic cigarettes. However, North Carolina, Louisiana, West Virginia, and the District of Columbia, like Kansas, assess an excise tax on the consumable product located within the electronic cigarette. In each of these states, the tax is assessed per milliliter. Minnesota, meanwhile, imposes a tax on the total cost of the consumable material, under which e-cigs are considered a tobacco product and subject to the state’s Tobacco Tax, which is 95 percent of the wholesale cost of any product containing the consumable material. Additionally, Pennsylvania will require retailers to pay an inventory tax of 40.0 percent beginning in state fiscal year 2017. In 2015, 26 states considered bills to enact taxes on e-cigs and nicotine products. Additionally, numerous counties

across the country have enacted taxes, in various forms, on the sale or distribution of e-cigs. Most commonly, the sale and distribution of e-cigs and the consumable material is taxed under general sales tax provisions.

Federal Regulation

In 2014, the Food and Drug Administration (FDA) publicly announced its intention to extend

regulation authority to vapor products, specifically e-cigs. Still unknown is whether new electronic cigarette products will be subject to a review process by the FDA prior to being released in the open market. Additionally, there are questions as to whether products currently in the market will be subject to a grandfather clause.

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