



**J-1
E-cigarettes or “E-cigs”**

**J-2
Homestead Program**

**J-3
Kansas Income Tax
Reform**

**J-4
Liquor Taxes**

**J-5
Selected Tax Rate
Comparisons**

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Taxation

J-1 E-cigarettes or “E-cigs”

Kansas provides for the taxation of the privilege of selling or dealing electronic cigarettes (e-cigs) at a rate of \$0.05 per milliliter of consumable material. The tax was originally 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 and later delayed to July 1, 2017, by 2017 Sub. for HB 2230.

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 (FY) 2017, if enacted on July 1, 2016, and consumable material was taxed at \$0.20 per milliliter (as set forth in 2015 Senate Sub. for HB 2109).

Sub. for HB 2230 (2017) both delayed the effective date of the new tax and reduced the rate of the tax on e-cigs. House Sub. for SB 149 (2016) delayed the previous effective date for the tax from January 1, 2017, to July 1, 2017. The bill also reduced the rate of the tax from \$0.20 per milliliter of consumable material to \$0.05 per milliliter of consumable material. The tax is now estimated to generate roughly \$750,000 in FY 2018 and approximately \$550,000 each year thereafter.

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 as e-cigs are included in the definition of a tobacco product. Kansas is one of seven states, in addition to the District of Columbia, to assess a tax on e-cigs. California, Louisiana, Minnesota, Pennsylvania, North Carolina, West Virginia, and the District of Columbia, like Kansas, assess an excise tax on the consumable product located within the e-cig.

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 95.0 percent of the wholesale cost of any product containing the consumable material. Pennsylvania requires retailers to pay an inventory tax of 40.0 percent beginning in state FY 2017.

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.

Additionally, 19 states require a retail license for the sale of e-cig products.

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.

For more information, please contact:

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