



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-1162/P5
EKL:cdc&ahe

DOA:.....Gilchrist, BB0158 - Imposing tobacco products tax on e-cigarettes

FOR 2019-2021 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION

GENERAL TAXATION

1. Excise tax on vapor products

The bill imposes the tobacco products tax on vapor products at the rate of 71 percent of the manufacturer's list price. Under the bill, "vapor product" is defined as any noncombustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means that can be used to produce vapor from a solution or other substance, regardless of whether the product contains nicotine. A "vapor product" includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, as well as any container of a solution or other substance that is intended to be used with these items. Under the bill, any product regulated by the federal Food and Drug Administration as a drug or device is exempt from the tax.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 139.75 (5b) of the statutes is created to read:

139.75 (5b) “Manufacturer’s list price” means the total price of tobacco products charged by the manufacturer or other seller to an unrelated distributor. The total price shall include all charges by the manufacturer or other seller that are necessary to complete the sale. The total price may not be reduced by any cost or expense, regardless of whether the cost or expense is separately stated on an invoice, that is incurred by the manufacturer or other seller, including fees, delivery, freight, transportation, packaging, handling, marketing, federal excise taxes, and import fees or duties. The total price may not be reduced by the value or cost of discounts or free promotional or sample products. For purposes of this subsection, a manufacturer or other seller is related to a distributor if the two parties have significant common purposes and substantial common membership or, directly or indirectly, substantial common direction or control.

SECTION 2. 139.75 (12) of the statutes is amended to read:

139.75 (12) “Tobacco products” means cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; vapor products; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but “tobacco products” does not include cigarettes, as defined under s. 139.30 (1m).

***NOTE: This is reconciled s.139.75(12). This SECTION has been affected by drafts with the following LRB numbers: -1161/P2 and -1162/P4.

SECTION 3. 139.75 (14) of the statutes is created to read:

139.75 (14) (a) "Vapor product" means any noncombustible product, which may or may not contain 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 a solution or other substance.

(b) "Vapor product" includes all of the following:

1. An electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

2. Any cartridge or other container of a solution or other substance, which may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

(c) "Vapor product" does not include a product regulated as a drug or device under sections 501 to 524A of the federal Food, Drug, and Cosmetic Act, [21 USC 351](#) to [360n-1](#).

SECTION 4. 139.76 (1) of the statutes is amended to read:

139.76 (1) An excise tax is imposed upon the sale, offering or exposing for sale, possession with intent to sell or removal for consumption or sale or other disposition for any purpose of tobacco products by any person engaged as a distributor of them at the rate, for tobacco products, not including moist snuff and little cigars, of 71 percent of the manufacturer's established list price to distributors ~~without diminution by volume or other discounts on domestic products~~ and, for moist snuff, at the rate of 100 percent of the manufacturer's established list price to distributors ~~without diminution by volume or other discounts on domestic products~~. The tax imposed under this subsection on cigars, except little cigars, shall not exceed an amount equal to 50 cents for each cigar. ~~On products imported from another country,~~

~~not including moist snuff, the rate of tax is 71 percent of the amount obtained by adding the manufacturer's list price to the federal tax, duties and transportation costs to the United States. On moist snuff imported from another country, the rate of the tax is 100 percent of the amount obtained by adding the manufacturer's list price to the federal tax, duties, and transportation costs to the United States. The tax attaches at the time the tobacco products are received by the distributor in this state. The tax shall be passed on to the ultimate consumer of the tobacco products. All tobacco products received in this state for sale or distribution within this state, except tobacco products actually sold as provided in sub. (2), shall be subject to such tax.~~

****NOTE: This is reconciled s. 139.76(1). This SECTION has been affected by drafts with the following LRB numbers: -1161/P2 and -1162/P4.

SECTION 5. 139.78 (1) of the statutes is amended to read:

139.78 (1) A tax is imposed upon the use or storage by consumers of tobacco products in this state at the rate, for tobacco products, not including moist snuff and little cigars, of 71 percent of the ~~cost~~ manufacturer's list price of the tobacco products and, for moist snuff, at the rate of 100 percent of the manufacturer's established list price to distributors ~~without diminution by volume or other discounts on domestic products~~. The tax imposed under this subsection on cigars, except little cigars, shall not exceed an amount equal to 50 cents for each cigar. The tax does not apply if the tax imposed by s. 139.76 (1) on the tobacco products has been paid or if the tobacco products are exempt from the tobacco products tax under s. 139.76 (2).

****NOTE: This is reconciled s. 139.78(1). This SECTION has been affected by drafts with the following LRB numbers: -1161/P2 and -1162/P4.

SECTION 9137. Nonstatutory provisions; Revenue.

(1) INVENTORY TAX IMPOSED ON VAPOR PRODUCTS. On the effective date of this subsection, an inventory tax is imposed upon vapor products, as defined under s. 139.75 (14), that are held in inventory for sale or resale in the possession of distributors or retailers. Any person who is in possession of any vapor products shall pay the tax at the rate of 71 percent of the manufacturer's list price, as defined under s. 139.75 (5b). Any person liable for this tax shall determine the number of vapor products in the person's possession on the effective date of this subsection, and shall file a return, and pay the tax due, no later than the 30th day after the effective date of this subsection.

SECTION 9437. Effective dates; Revenue.

(1) TOBACCO PRODUCTS TAX; VAPOR PRODUCTS AND LITTLE CIGARS. The treatment of ss. 139.44 (4), 139.75 (1m), (4t), (5b), (12), and (14), 139.76 (1) and (1m), 139.78 (1) and (1m), the renumbering of s. 139.83, the creation of s. 139.83 (2), and SECTION 9137 (1) of this act take effect on the first day of the 3rd month beginning after publication.

****NOTE: This is reconciled ss. 139.44 (4), 139.75 (1m), (4t), and (12), 139.76 (1) and (1m), 139.78 (1) and (1m), and 139.83. This SECTION has been affected by drafts with the following LRB numbers: -1161/P2 and -1162/P4.

(END)