



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0429/P2
EKL:amn&wlj

DOA:.....Ziegler, BB0109 - Vapor products tax rate and definition

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

TAXATION

GENERAL TAXATION

Vapor products

Current law imposes a tax on vapor products, which are any noncombustible products that produce vapor or aerosol for inhalation from the application of a heating element to a liquid or other substance that is depleted as the product is used, regardless of whether the liquid or other substance contains nicotine. The tax is imposed at the rate of 5 cents per milliliter of the liquid or other substance based on the volume as listed by the manufacturer.

This bill taxes vapor products at the rate of 71 percent of the manufacturer's list price and modifies the definition of "vapor product." Under the bill, "vapor product" means a 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" is defined to include 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. The bill specifies that any product regulated by the federal Food and Drug Administration as a drug or device is not a vapor product.

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. Subchapter III (title) of chapter 139 [precedes 139.75] of the statutes is amended to read:

CHAPTER 139
SUBCHAPTER III
TOBACCO PRODUCTS TAX AND
VAPOR PRODUCTS TAXES

SECTION 2. 139.75 (14) of the statutes is renumbered 139.75 (14) (a) and amended to read:

139.75 (14) (a) “Vapor product” means a noncombustible product ~~that produces vapor or aerosol for inhalation from the application of a heating element to a liquid or other substance that is depleted as the product is used, regardless of whether the liquid or other substance contains nicotine, 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.~~

SECTION 3. 139.75 (14) (b) and (c) of the statutes are created to read:

139.75 (14) (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 vapor products 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 and vapor products, 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: LRB-0429/P1, LRB-0430/P3, and LRB-0703/P1.

SECTION 5. 139.76 (1m) of the statutes is amended to read:

139.76 (1m) 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 vapor products by any person engaged as a distributor of them at the rate of ~~5 cents per milliliter of the liquid or other substance based on the volume as listed by the manufacturer and at a proportionate rate for any other quantity or fractional part thereof~~ 71 percent of the manufacturer's list price. The tax attaches at the time the vapor products are received by the distributor in this state. The tax shall be passed on to the ultimate consumer of the vapor products. All vapor products received in this state for sale or distribution within this state, except those actually sold as provided in sub. (2), shall be subject to such tax.

****NOTE: This is reconciled s. 139.76 (1m). This SECTION has been affected by drafts with the following LRB numbers: LRB-0429/P1 and LRB-0703/P1.

SECTION 6. 139.77 (1) of the statutes is amended to read:

139.77 (1) On or before the 15th day of each month, every distributor with a place of business in this state shall file a return showing the quantity, ~~including milliliters in the case of a vapor product,~~ and taxable price of each tobacco product or vapor product brought, or caused to be brought, into this state for sale; or made, manufactured or fabricated in this state for sale in this state, during the preceding month. Every distributor outside this state shall file a return showing the quantity, ~~including milliliters in the case of a vapor product,~~ and taxable price of each tobacco product or vapor product shipped or transported to retailers in this state to be sold

by those retailers during the preceding month. At the time that the return is filed, the distributor shall pay the tax.

SECTION 7. 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 vapor products ~~little cigars~~, of 71 percent of the ~~cost of the tobacco products~~ manufacturer's list price 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: LRB-0429/P1, LRB-0430/P3, and LRB-0703/P1.

SECTION 8. 139.78 (1m) of the statutes is amended to read:

139.78 (1m) A tax is imposed upon the use or storage by consumers of vapor products in this state at the rate of ~~5 cents per milliliter of the liquid or other substance based on the volume as listed by the manufacturer and at a proportionate rate for any other quantity or fractional part thereof~~ 71 percent of the manufacturer's list price. The tax does not apply if the tax imposed by s. 139.76 (1m) on the vapor products has been paid or if the vapor products are exempt from the vapor products tax under s. 139.76 (2).

***NOTE: This is reconciled s. 139.78 (1m). This SECTION has been affected by drafts with the following LRB numbers: LRB-0429/P1 and LRB-0703/P1.

SECTION 9437. Effective dates; Revenue.

(1) TOBACCO PRODUCTS, LITTLE CIGARS, AND VAPOR PRODUCTS. The treatment of subch. III (title) of ch. 139 and ss. 139.44 (4), 139.75 (1m), (4t), and (12), 139.76 (1), (1b), and (1m), 139.77 (1), and 139.78 (1), (1b), and (1m), the renumbering of s. 139.83, the renumbering and amendment of s. 139.75 (14), and the creation of ss. 139.75 (14) (b) and (c) and 139.83 (2) take effect on the first day of the 3rd month beginning after publication.

****NOTE: This is the reconciled effective date. This SECTION has been affected by drafts with the following LRB numbers: LRB-0429/P1, LRB-0430/P3, and LRB-0703/P1.

(END)