

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 5385
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: MAY 31, 2019

SUMMARY

Synopsis: Concerns sale and taxation of container e-liquid.

Type of Impact: Indeterminate potential decrease in State revenue.

Agencies Affected: Department of the Treasury.

Office of Legislative Services Estimate

Fiscal Impact	<u>FY 2020 and Thereafter</u>
State Revenue Decrease	Indeterminate

- The Office of Legislative Services (OLS) estimates that this bill will result in an indeterminate impact on State revenue. The tax revenue on container e-liquid at 10 percent of retail sale price will likely be lower than the revenue from the current \$0.10 per fluid milliliter tax. For example, a container of 30 milliliters of liquid nicotine is currently subject to \$3 in tax (\$0.10 per milliliter). If such an item sells for \$20, the tax under the bill will instead be \$2. However, it is unclear what percentage of liquid nicotine currently sold is container e-liquid.
- In addition, the OLS notes that the retail tax on container e-liquid under this bill applies even if it lacks nicotine, which is not the case under current law. The new revenue generated by the retail tax on such e-liquid will therefore offset some of the lost revenue resulting from the separate tax structure for container e-liquid. Furthermore, the imposition of a retail tax in place of a wholesale tax may reduce the instances of tax avoidance, which would also offset some of the lost revenue.

BILL DESCRIPTION

This bill imposes licensing requirements on vapor businesses, limits the sale of container e-liquid to vapor businesses, and imposes a 10 percent tax on the sale of container e-liquid. The

bill also exempts container e-liquid from the wholesale liquid nicotine tax, which pursuant to the bill, will only apply to non-container e-liquid.

Container e-liquid is a container of liquid nicotine or other liquid, regardless of nicotine content, where the *liquid* is intended for use in an electronic smoking device, but not including prefilled containers where the *container* is intended for use in an electronic smoking device (e.g. cartridges).

A vapor business is a retail business where more than 50 percent of its retail sales are derived from electronic smoking devices, related accessories, and liquid nicotine. A retail business that does not sell container e-liquid is not included in the definition of vapor business. The bill requires that a vapor business operating in the State be licensed and pay a \$50 annual license fee to the Division of Taxation in the Department of the Treasury.

The bill imposes a tax on container e-liquid, whether or not it contains nicotine, at 10 percent of the retail price. However, the wholesale tax on tobacco and nicotine products (\$0.10 per fluid milliliter for liquid nicotine) does not apply to container e-liquid.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS lacks sufficient data to estimate the fiscal impact of the bill on State revenue. According to the Department of the Treasury responses to the FY2020 OLS discussion points, the current \$0.10 milliliter tax on liquid nicotine, which went into effect September 29, 2018, generated \$2.0 million through February 2019. The OLS lacks information on what amount of that revenue is attributable to sales of container e-liquid with nicotine, so the revenue loss from exempting such liquid from the \$0.10 per milliliter tax is unknown.

The bill replaces the per-milliliter tax with a retail tax at the rate of 10 percent of the purchase price on container e-liquid. The imposition of this tax will generate revenue for the State that will make up for at least some of the lost revenue from eliminating the milliliter tax on container e-liquid with nicotine. However, the retail tax will not generate a dollar for dollar replacement of the milliliter tax. For example, if a 30 milliliter container of liquid nicotine sells for \$20, the milliliter tax would generate \$3 on it (\$0.10 per milliliter), while the retail tax will generate \$2 (10 percent of \$20).

The OLS notes that the retail tax is imposed on container e-liquid whether or not there is nicotine in the liquid. In contrast, the \$0.10 per milliliter tax only applies to liquid that includes nicotine. The retail tax will therefore apply to more products than the current per-milliliter tax, and may make up for some of the lost revenue from exempting container e-liquid with nicotine from the per-milliliter tax.

The retail tax may also reduce the instances of tax avoidance relative to the wholesale tax. A retail tax may be easier to administer because the tax is imposed only at the point of sale to a consumer in the State. The per-milliliter tax is imposed prior to final purchase, unless that tax was not paid previously. Because responsibility for the per-milliliter tax shifts depending on whether the tax was previously paid, administering the tax may be more difficult and tax avoidance may be easier. Switching to a retail tax on container e-liquid may therefore capture revenue from some container e-liquid that otherwise would not have been properly taxed.

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).