

# MEMORANDUM

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OKLAHOMA TAX COMMISSION  
TAX POLICY DIVISION

Date: April 9, 2013  
To: Rick Miller, Director  
Tax Policy & Research Division  
From: Christy Caesar  
Tax Policy Analyst  
Subject: Proposed Committee Substitute for Engrossed SB 802

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This is in response to your request for a revenue impact for the Proposed Committee Substitute for Engrossed SB 802 (Sections 2, 10, & 12-15) which proposes the following amendments outlined as follows:

## Section 2

Provides that when ABLE determines that the penalty for violations of Section 600.3 of Title 37, which include furnishing tobacco-derived or vapor products to a minor, should include license suspension, ABLE must notify the Tax Commission and in turn the OTC is to suspend the store's license to sell tobacco-derived products or vapor products. The Section also provides that a storeowner's license to sell tobacco-derived products or vapor products shall be suspended by the Tax Commission upon notification by ABLE of a storeowner's failure to pay an administrative fine imposed pursuant to Section 600.3 of Title 37.

## Section 10

In addition to the other information currently provided pursuant to Section 600.11 of Title 37, this amendment requires the Tax Commission to provide ABLE and each municipality which has ordinances concerning the Prevention of Youth Access to Tobacco Act, the location, name, and address of each licensee licensed to sell tobacco-derived products or vapor products at retail or otherwise furnish tobacco-derived products or vapor products.

## Section 12

The definitions of wholesaler, retailer, consumer, distributing agent, drop shipment, and dealer contained in Section 401 of Title 68 are amended to include, as applicable, tobacco-derived products or vapor products.

The definition of tobacco products is amended to include tobacco-derived products or vapor products.

Section 12 also defines applicable terms as follows:

- Tobacco-derived products mean any noncombustible products derived from tobacco that contain nicotine and are intended for human consumption, whether chewed, absorbed, dissolved or ingested by any other means, but do not include vapor products or any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.
- Vapor products mean noncombustible products containing nicotine, that employ a mechanical heating element, battery or electronic circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in a vapor cartridge as well as any vapor cartridges

containing liquid nicotine solution that can be used with or in a vapor product and electronic cigarettes, electronic cigars, electronic cigarillos and electronic pipes. Vapor products do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act.

- Vapor product unit means all amounts of consumable material in a vapor product up to and including five one-hundredths (.05) of a fluid ounce.
- Tobacco-derived product unit means any package of tobacco-derived products intended to be sold in such package at retail the net weight of which is any amount up to and including one ounce.
- Consumable material means any liquid nicotine solution or other material containing nicotine that is depleted as a vapor product is used.
- Manufacturer is defined to mean a person within or outside of this state who produces cigarettes, tobacco products, tobacco-derived products or vapor products or a person who contracts with another person to produce cigarettes, tobacco products, tobacco-derived products or vapor products.

### Section 13

Levies a tax on vapor products in the amount of five cents per vapor product unit and a proportionate tax at the like rate on all fractional parts of a vapor product unit in excess of a single vapor product unit; provided at no time shall the rate levied on a vapor product unit exceed one-tenth the rate of tax imposed on a pack of cigarettes.

This Section also levies a tax on tobacco-derived products in the amount of five cents per tobacco-derived product unit and a proportionate tax at the like rate on all fractional parts of a tobacco-derived unit in excess of a single tobacco-derived product unit; provided the tax levied on a tobacco-derived product units shall not exceed one-tenth the rate of the tax imposed on a pack of cigarettes.

### Section 14

Requires that all invoices issued by manufacturers for tobacco-derived or vapor products must include the actual pounds or ounces of tobacco-derived products or the actual fluid ounces of the consumable material contained in vapor products, if available.

Further requires wholesale dealers, retailers, distributors, jobbers, and subjobbers to maintain copies of all invoices for the purchase or sale of any tobacco products, tobacco-derived products or vapor products for a period of three years subject to examination by the Tax Commission.

### Section 15

Requires dealers and wholesalers of tobacco-derived products or vapor products in this state to obtain from the Tax Commission a license and pay the applicable fee of \$250.00. The meaning of “place of business” for purposes licensing requirements under Section 415 of Title 68 is expanded to include a place where tobacco-derived products or vapor products are sold. The Section also states that if tobacco-derived products or vapor products are sold on or from any vehicle, the vehicle shall constitute a place of business and applicable license fees must be paid.

Provides that application to secure a retailer license in accordance with Section 415 must include that the applicant shall not purchase any tobacco-derived products or vapor products for resale from

an unlicensed supplier and that the applicant agrees to sell tobacco-derived products or vapor products only to consumers. Adds conditions upon which a license may not be granted, maintained, or renewed to include 1) conviction of a crime relating to stolen or counterfeit tobacco-derived products or vapor products or receiving stolen or counterfeit tobacco-derived products or vapor products and 2) purchasing tobacco-derived products or vapor products from or selling tobacco-derived products or vapor products to a person or entity required to obtain a license unless such person or entity has obtained such license.

## **ANALYSIS**

Retail sales of the above-described tobacco-derived and vapor products are currently subject to state and any applicable city and county sales tax. These products are to be taxed pursuant to proposed amendments to Section 402 of Title 68 as tobacco products. Paragraph 11 of Section 1355 of Title 68 exempts from the sales tax levy,<sup>1</sup> sales of tobacco products on which the tax levied in Section 401 et seq. of Title 68 has been paid. Consequently, sales tax would no longer be imposed on the sale of these products. Therefore, an unknown decrease in state sales tax collections along with an unknown increase in tobacco tax collections will occur as a result of this measure.

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<sup>1</sup> Effective July 1, 2005.