

**MEMORANDUM**

April 10, 2015

TO: County Council

FROM: Amanda Mihill, Legislative Attorney *A. Mihill*

SUBJECT: **Introduction:** Bill 15-15, Taxes – Excise Tax – Electronic Cigarettes

Bill 15-15, Taxes – Excise Tax – Electronic Cigarettes, sponsored by Lead Sponsor Councilmember Huckler and Co-Sponsors Councilmembers Leventhal, Berliner, Riemer, Floreen, Katz, Elrich and Navarro, is scheduled to be introduced on April 14, 2015. A public hearing is tentatively scheduled for May 5 at 7:30 p.m.

Bill 15-15 would:

- (1) establish an excise tax on the distribution of electronic cigarette products;
- (2) set the rate of the tax and authorize the County Council to change the rate each year by resolution;
- (3) define certain terms, and authorize the County Executive to issue certain regulations;
- (4) provide for collection of the tax and payment of interest and penalties, set the effective date of the tax, and apply certain provisions of law to this tax; and
- (5) generally amend the County laws governing excise taxation.

This packet contains:

Bill 15-15

Legislative Request Report

Circle #

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Bill No. 15-15  
Concerning: Taxes – Excise Tax –  
Electronic Cigarettes  
Revised: 4/10/2015 Draft No. 3  
Introduced: April 14, 2015  
Expires: October 14, 2016  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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Lead Sponsor: Councilmember Hucker  
Co-Sponsors: Councilmembers Leventhal, Berliner, Riemer, Floreen, Katz, Elrich, and Navarro

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**AN ACT to:**

- (1) establish an excise tax on the distribution of electronic cigarette products;
- (2) set the rate of the tax and authorize the County Council to change the rate each year by resolution;
- (3) define certain terms, and authorize the County Executive to issue certain regulations;
- (4) provide for collection of the tax and payment of interest and penalties, set the effective date of the tax, and apply certain provisions of law to this tax; and
- (5) generally amend the County laws governing excise taxation.

By adding

Montgomery County Code  
Chapter 52, Taxation  
Article XIII. Excise Tax on Electronic Cigarettes  
Sections 52-95 through 52-100

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1           **Sec. 1. Chapter 52 is amended by adding Article XIII (Sections 52-96**  
2 **through 52-100) as follows:**

3                   **Article XIII. [Reserved] Excise Tax on Electronic Cigarettes.**

4 **52-95. Definitions.**

5           In this Article, the following terms have the meanings indicated:

6           Dealer means any person who engages in a retail business.

7           Director means the Director of Finance or the Director's designee.

8           Distributor means:

9           (1) a person who supplies an electronic cigarette product to a dealer in the  
10           County; or

11           (2) a person who supplies and services a vending machine with an  
12           electronic cigarette product.

13           Electronic cigarette product means any product containing or delivering  
14           nicotine or any other substance intended for human consumption that can be  
15           used by a person to simulate smoking through inhalation of vapor or aerosol  
16           from the product. The term includes any such device, whether manufactured,  
17           distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or  
18           vape pen, or under any other product name or descriptor. Electronic cigarette  
19           product includes any refill, cartridge, or any other component of an electronic  
20           cigarette.

21           Supplying or supplies means the act of providing, furnishing, delivering,  
22           distributing, or transmitting an electronic cigarette product by a distributor to a  
23           dealer in the County. Liability for the tax accrues when the electronic cigarette  
24           product is provided, distributed, or delivered to the dealer in the County.

25 **52-96. Tax levied; rate.**

- 26 (a) A tax is levied and imposed on every distributor who supplies to a  
 27 dealer in the County an electronic cigarette product.
- 28 (b) The tax rate for an electronic cigarette product is 30% of the wholesale  
 29 price of the electronic cigarette product.
- 30 (c) The County Council by resolution, after a public hearing advertised  
 31 under Section 52-17(c), may increase or decrease the rate set in  
 32 subsection (a).
- 33 (d) The County Executive may further specify the administration of this tax  
 34 by Method (2) regulation.

35 **52-97. Remittance.**

- 36 (a) The tax levied under Section 52-96 is due and payable for each month  
 37 on the last day of the next month.
- 38 (b) The Director may establish an alternative payment system. If an  
 39 alternative payment system is established, the Director must require a  
 40 pro-rated payment for any taxable period that ends before the system  
 41 takes effect.
- 42 (c) If any dealer transports or causes to be transported into the County an  
 43 electronic cigarette product, that dealer is liable for the payment of the  
 44 tax imposed under Section 52-96 unless that dealer obtains from the  
 45 supplier of the electronic cigarette product a written certification, in a  
 46 form approved by the Director, that the supplier is liable for and is  
 47 paying the tax.

48 **52-98. Cessation of business.**

49 When a person who is required to pay a tax under this Article ceases to do  
 50 business or otherwise disposes of the business, any tax owed becomes immediately  
 51 due and payable. That person must immediately remit the total amount of the tax due.

52 **52-99. Collection; interest and penalties; violation.**

53 (a) If any person does not pay the Director the tax due under Section 52-96,  
54 that person is liable for:

55 (1) interest on the unpaid tax at the rate of 1% per month for each  
56 month or part of a month after the tax is due; and

57 (2) a penalty of 5% of the amount of the tax per month or part of a  
58 month after the tax is due, not to exceed 25% of the tax.

59 The Director must collect any interest and penalty as part of the tax.

60 (b) If any person does not pay the tax when due, the Director must obtain  
61 information on which to calculate the tax due. As soon as the Director  
62 obtains sufficient information on which to calculate any tax due, the  
63 Director must assess the tax and penalties against the person. The  
64 Director must notify the person of the total amount of the tax, interest,  
65 and penalties by mail sent to the person's last known address. This  
66 notice is prima facie evidence of the tax due; entitles the County to  
67 judgment for the amount of the tax, penalty, and interest listed in the  
68 notice; and gives the taxpayer the burden of proving that the tax has  
69 been paid or any other sufficient defense to the action. The total amount  
70 due must be paid within 10 days after the date of the notice.

71 (c) If any person does not timely file any report and pay the tax required  
72 under this Section, the Director may use any available information to  
73 estimate the tax due. As soon as the Director obtains available  
74 information on which to base the calculation of any tax payable by any  
75 person who has not timely filed any report and paid the tax, the Director  
76 may assess against that person any tax, interest, and penalties due and  
77 must notify that person of the total amount due by regular mail sent to

78 the person's last known address. The total amount assessed is due and  
79 payable within 10 days after the notice is sent.

80 (d) Every person liable for any tax under Section 52-96 must preserve for 3  
81 years suitable records necessary to determine the amount of the tax.  
82 The Director may inspect and audit the records at any reasonable time.

83 (e) Any failure to pay the tax when due under Section 52-97, and any  
84 violation of this Section 52-97 or this Section, is a Class A violation.  
85 Each violation is a separate offense. A conviction under this subsection  
86 does not relieve any person from paying the tax.

87 (f) Section 52-18D applies to this tax.

88 **52-100. Reserved.**

89 *Approved:*

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George Leventhal, President, County Council Date

92 *Approved:*

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Isiah Leggett, County Executive Date

95 *This is a correct copy of Council action.*

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Linda M. Lauer, Clerk of the Council Date

## LEGISLATIVE REQUEST REPORT

Bill 15-15  
Taxes – Excise Tax – Electronic Cigarettes

**DESCRIPTION:** Bill 11-15 would establish an excise tax on the distribution of electronic cigarette products; set the rate of the tax and authorize the County Council to change the rate each year by resolution; define certain terms, and authorize the County Executive to issue certain regulations; provide for collection of the tax and payment of interest and penalties, set the effective date of the tax, and apply certain provisions of law to this tax; and generally amend the County laws governing excise taxation.

**PROBLEM:** The County continues to face many budget pressures. An additional stream of revenue may ease those pressures.

**GOALS AND OBJECTIVES:** To establish an excise tax on electronic cigarette products.

**COORDINATION:** Finance

**FISCAL IMPACT:** To be requested.

**ECONOMIC IMPACT:** To be requested.

**EVALUATION:** To be requested.

**EXPERIENCE ELSEWHERE:** Minnesota and North Carolina have established a tax for certain electronic cigarette products.

**SOURCE OF INFORMATION:** Amanda Mihill, Legislative Attorney, 240-777-7815

**APPLICATION WITHIN MUNICIPALITIES:** Revenue measures apply in all municipalities in the County.

**PENALTIES:** Class A

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