

MEMORANDUM

April 29, 2015

TO: County Council

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

SUBJECT: **Public Hearing:** 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, was introduced on April 14, 2015. A Government Operations and Fiscal Policy Committee worksession is tentatively scheduled for May 7 at 10:00 a.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

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

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

Boldface	<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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