

Bill No. 15-15
Concerning: Taxes – Excise Tax –
Electronic Cigarettes
Revised: 5/10/2015 Draft No. 3
Introduced: April 14, 2015
Enacted: May 13, 2015
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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

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, 52-96, 52-97, 52-98, 52-99 and 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 52-95, 52-**
2 **96, 52-97, 52-98, 52-99, and 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
20 electronic cigarette]] component, part, or accessory of an electronic cigarette,
21 whether or not sold separately, that is used during the operation of the
22 electronic cigarette, but does not include any battery or battery charger that is
23 sold separately.

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

52-96. Tax levied; rate.

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

52-97. Remittance.

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

52-98. Cessation of business.

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

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

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

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

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

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

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

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

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

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

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

[(f)] (e) Section 52-18D applies to this tax.

52-100. Reserved.

Approved:

George Leventhal

5/14/15

George Leventhal, President, County Council

Date

Approved:

Isiah Leggett, County Executive

Date

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Date