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MINNESOTA

Taxation of E-Cigarettes in Minnesota:



Tobacco-Related Disease Research Program
E-Cigarette Tax Policy Research Meeting
Thursday, January 22, 2015

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Introduction

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Co-Chair of the Raise it for Health Coalition

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Overview

1. ClearWay Minnesota
2. Minnesota's Tobacco Control Landscape
3. Tobacco Taxes in Minnesota
4. E-Cigarette Tax: How it Happened
5. Challenges


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- 1998
- Nonprofit
- \$202 million
- 25 years
- Reduce harm of tobacco

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Our Programs

- Cessation
- Priority Populations
- Mass Media
- Public Policy
- Research
- Partnerships



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MN's Tobacco Control Landscape

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50 YEARS OF TOBACCO CONTROL IN MINNESOTA

1965: Minnesota becomes the first state in the U.S. to ban advertising for cigarettes in newspapers, magazines, and billboards.

1975: Minnesota becomes the first state in the U.S. to ban smoking in public places and workplaces, including vehicles in vehicles.

1984: Minnesota becomes the first state in the U.S. to ban smoking in public places and workplaces, including vehicles in vehicles.

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2006: Minnesota becomes the first state in the U.S. to ban smoking in public places and workplaces, including vehicles in vehicles.

2007: Minnesota becomes the first state in the U.S. to ban smoking in public places and workplaces, including vehicles in vehicles.

2008: Minnesota becomes the first state in the U.S. to ban smoking in public places and workplaces, including vehicles in vehicles.

2009: Minnesota becomes the first state in the U.S. to ban smoking in public places and workplaces, including vehicles in vehicles.

2010: Minnesota becomes the first state in the U.S. to ban smoking in public places and workplaces, including vehicles in vehicles.

2011: Minnesota becomes the first state in the U.S. to ban smoking in public places and workplaces, including vehicles in vehicles.

2012: Minnesota becomes the first state in the U.S. to ban smoking in public places and workplaces, including vehicles in vehicles.

2013: Minnesota becomes the first state in the U.S. to ban smoking in public places and workplaces, including vehicles in vehicles.

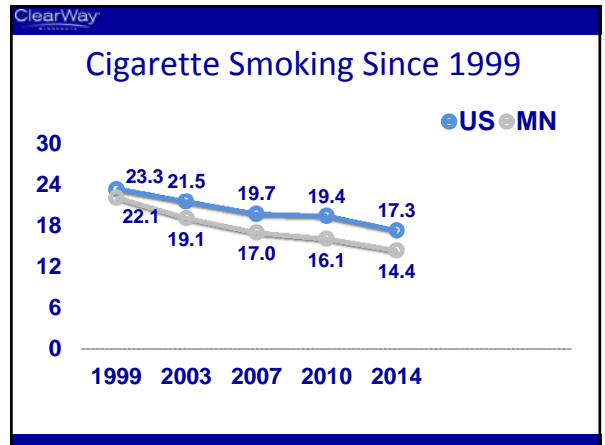
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2015 State of Tobacco Control

- A** Smoke-Free Air
- B** Cigarette Tax
- B** Cessation Coverage
- F** Tobacco Prevention

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Tobacco Taxes in Minnesota

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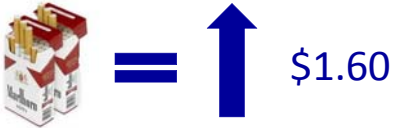
May 2013

Governor Dayton Signs Tobacco Tax Increase

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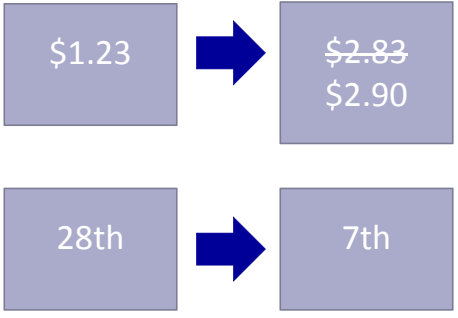
Raised the Excise Tax on Cigarettes



Annual adjustment (indexing)

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Closed the "Little Cigar" Loophole



Changed definition of cigarette to include so-called little cigars

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Increased the Tax on Tobacco Products from 70% to 95% of Wholesale Price




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Created a Minimum Tax on Moist Snuff:

95% of Wholesale Price OR
\$2.90 per Container (cigarette tax)...
...whichever is greater



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New Tax on "Premium Cigars"

95% of Wholesale Price OR
\$3.50 per Cigar...
...whichever is less



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Increased the Fee on Cigarette Manufactured by Non-Settling Companies from 35 cents to 50 cents per pack



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One-Time Floor Stock Tax



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- Cigarettes = \$3.43 per pack (Excise tax = \$2.90 + Fee in lieu of sales tax = 52.6 cents)
- Little Cigars = Cigarettes for tax purposes
- OTPs (including e-cigs) = 95% of wholesale price
- Moist Snuff = 95% of wholesale price or \$2.90 per container whichever is greater
- Premium Cigars = 95% of wholesale price or \$3.50 per cigar whichever is less
- Annual indexing on cigarettes
- Non-settlement Manufactures Fee = 50 cents

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E-Cigarette Tax: How it Happened in MN

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2005



2007



2010

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New Products









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The Tobacco Modernization and Compliance Act of 2010 "The Tic Tac Tobacco Act"

Senate File 3055 / House File 3467



Sen. Dibble



Rep. Davnie

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Political Goal:


- Spotlight on the evolving tobacco industry
- Talk about cheap prices
- Show new products
- Build toward a tobacco tax increase
- Build relationships with new lawmakers



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Policy Goal:

- Update definitions to capture new products that were evading tobacco tax laws, the unfair cigarette sales act, promotional distribution, and youth access laws.



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MN Tax Statutes

OLD DEFINITION

Subd. 19. Tobacco products. "Tobacco products" means cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include cigarettes as defined in this section.
Minn. Stat. § 297F.01, subd. 19 (1997)

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MN Tax Statutes

NEW DEFINITION

Subd. 19. Tobacco products. "Tobacco products" means any products containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product, including, but not limited to, cigars; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not include cigarettes as defined in this section. Tobacco products excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
Minn. Stat. § 297F.01, Subd. 19 (2010)

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New Section of Law

609.6855 SALE OF NICOTINE DELIVERY PRODUCTS TO CHILDREN.

Subdivision 1. Penalty to sell. (a) Whoever sells to a person under the age of 18 years **a product containing or delivering nicotine or lobelia** intended for human consumption, or any part of such a product, **that is not tobacco** as defined by section 609.685, is guilty of a misdemeanor for the first violation. Whoever violates this subdivision a subsequent time within five years of a previous conviction under this subdivision is guilty of a gross misdemeanor.

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Success: Policy Win




New Cartridges!

- New cartridges include the atomizer
- One-piece design for maximum vapor
- Get stronger, full flavor every time
- No more missing parts
- As close to a cigarette as you get

blu Cherry Crush

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Department of Revenue

Revenue Notice # 12-10: Tobacco Products Tax - Taxability - E-Cigarettes

Introduction

An electronic cigarette, or e-cigarette, is an electrical device that simulates the act of cigarette tobacco smoking by producing an inhaled vapor bearing the physical sensation, appearance, and often the flavor, of inhaled tobacco smoke. The e-cigarettes do not meet the definition of a cigarette set forth in Minnesota Statutes, section 297F.01, subdivision 3, but they do meet the definition of a tobacco product set forth in Minnesota Statutes, section 297F.01, subdivision 19, which provides in part as follows:

"Tobacco products" means any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or inhaled by any other means, or any component, part, or accessory of a tobacco product."

The key phrases in the statute that establish the taxability of an e-cigarette are (1) "any product containing, made, or derived from tobacco," (2) "...whether ... smoked, ... or inhaled," and (3) "...any component, ... or accessory of a tobacco product."

Department Position

The department's position is that the e-cigarettes are subject to the tobacco products tax. The cartridge containing nicotine is a component of the e-cigarette. The cartridge contains nicotine which is ordinarily derived from tobacco and is used by a person by smoking them or inhaling. The department assumes that all nicotine is derived from tobacco and the taxpayer will bear the burden of proving otherwise. If it can be documented that the nicotine has been derived from sources other than tobacco, it would not be taxable as a tobacco product.

Further, the department's position is that if a wholesaler sells the cartridge separately and can isolate the cost of the product, the tax will be imposed only on the nicotine based cartridges or liquid nicotine in a bottle. Otherwise, the sales price of a whole kit or content of an e-cigarette package will be taxed. The tax is due and is determined on whatever format the product is brought into the state.

Publication Date: **OCT 22 2012**

Susan Von Mosch
SUSAN VON MOSCH, Assistant Commissioner
for Tax Policy

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E-cigarettes

An electronic cigarette or e-cigarette is a device that simulates smoking tobacco. In Minnesota, e-cigarettes and e-juice which contain nicotine (except from tobacco) meet the definition of a tobacco product found in Minnesota Statutes, section 297F.01, subdivision 19.

E-cigarettes are Taxable

E-cigarettes and e-juice are considered tobacco products and are subject to the Tobacco Tax, which is currently 95% of the wholesale cost of any product containing or derived from tobacco. For example, the Tobacco Tax on an e-cigarette starter kit is calculated on the total cost unless the retailer separates the kit and separately sells the kit itself only when the nicotine cartridge value exceeds the kit's value.

Minnesota's Taxable E-Cigarettes

Minnesota's Taxable E-Cigarettes	Taxable or Not Taxable?
One-time use e-cigarette	Taxable
Reusable/refillable device & components	Not Taxable
Cartridges/e-juice containing nicotine	Taxable
Cartridges/e-juice with 0% nicotine	Not Taxable

E-cigarettes in Minnesota

Distributor: Pay Tobacco Tax on all e-cigarettes purchased that contain nicotine derived from tobacco. If not be assessed tax, penalty, and interest on any component or part of the e-cigarette that is sold separately. The Commissioner of Revenue may be notified if they be separately purchased.

Retailer: Purchase e-cigarettes from distributors licensed by the State of Minnesota. Collect and remit sales tax on e-cigarette sales. If not be assessed tax, penalty, and interest. The Commissioner of Revenue may be notified if they be separately purchased.

Consumer: Pay Tobacco Consumer Use Tax on all e-cigarettes that are purchased through a retailer licensed in Minnesota. The retailer's e-cigarette purchase entitles the Tobacco Consumer Use Tax.

Cartridges or e-juice: Cartridges and e-juice are sold separately and are not subject to the Tobacco Tax.

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E-cigarettes are Taxable in Minnesota



E-cigarettes and e-juice are considered tobacco products and are subject to the Tobacco Tax, which is currently 95% of the wholesale cost of any product containing or derived from tobacco.

Item	Taxable or Not Taxable?
One-time use e-cigarette	Taxable
Reusable/refillable device & components	Not Taxable
Cartridges/e-juice containing nicotine	Taxable
Cartridges/e-juice with 0% nicotine	Not Taxable

Distributors who do not pay Tobacco Tax on these products are subject to penalties, interest, income revocation, and possible criminal charges. Retailers are required to purchase tax paid product. If you do not comply you are subject to penalties, interest, income revocation, and possible criminal charges. Consumers who purchase from someone who has not paid the tobacco tax must pay Tobacco Consumer Use Tax.

For more information, go to our website, www.revenue.state.mn.us and use keyword: e-cigarette

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Challenges

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Challenges

Explosion of nontraditional distribution channels
– What is the taxable transaction?
Manufacture = Distributor = Retailer



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Challenges

- Lack of action by FDA
- Compliance capacity
- Unable to specify how much tax revenue is generated from e-cigarettes/nicotine
- What is the taxable unit?
- Claims of “non-tobacco” nicotine



Thoughts

1. Clear definition / Agreement at the top
2. Tax nicotine – not nicotine derived from tobacco
3. Strong compliance and enforcement infrastructure

Thank you!

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