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February 14, 2017

Senate Committee on Assessment and Taxation

Testimony by the Kansas Department of Revenue in Support of Senate Bill 130
by Anna Landis and Mark Beshears

Senator Caryn Tyson and Members of the Committee:

The Department of Revenue respectfully submits the following testimony to the Committee in support of Senate Bill 130.

The Department has submitted this proposed legislation and balloon amendment amending K.S.A. 79-3302 and K.S.A. 79-3399 of the Cigarette and Tobacco Products Act relating to the definition of "Consumable Material".

K.S.A. 79-3302 was amended to include K.S.A. 79-3399 into the Cigarette and Tobacco Products Act. We believe this was merely an oversight. This amendment expands the Act to include the Consumable Materials tax and grant the Department enforcement powers.

K.S.A. 79-3399 was amended to include a definition of "Consumable Material". The balloon amendment was recently added due to information the Department has determined is highly problematic to the intent of the statute and collection of the tax. We originally modeled our definition of Consumable Material similarly to North Carolina as they also tax per ml of "consumable vapor product". In researching other states approach to the e-cigarette consumable materials tax, and trying to get the right definition of consumable material, North Carolina brought to our attention the issue that some retailers are trying to avoid falling within their definition, and therefore within this type of tax by selling the nicotine apart from the other solution, which creates a "final product". This is why we have recently submitted the balloon amendment, to avoid this possible loophole, and to keep the fiscal note number solid.

However, this does raise a policy issue because there may be some instances with this broader definition that there will be a tax on solutions that do not contain nicotine. Without some change to the definition there is a risk that the fiscal note estimate will be significantly reduced.

Lastly, it is important to note and clarify to the public, the legislature contemplated and decided there would NOT be an inventory tax associated with the consumable materials

tax. To be in compliance with the legislature's intent, the Department's position is that all consumable materials purchased and manufactured on or before December 31, 2016 AND sold after January 1, 2017, will not be subject to the consumable materials tax.

Thank you for the opportunity to present this testimony on behalf of Department of Revenue.

SENATE BILL No. 130

By Committee on Assessment and Taxation

2-1

Proposed Amendments
2017 SB No. 130
Consumable Material

1 AN ACT concerning the cigarette and tobacco products act; relating to
2 consumable material; amending K.S.A. 2016 Supp. 79-3302 and 79-
3 3399 and repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2016 Supp. 79-3302 is hereby amended to read as
7 follows: 79-3302. (a) K.S.A. 79-3301 through 79-3304, 79-3306, 79-3309,
8 79-3310, 79-3311, 79-3312, 79-3312a, 79-3313, 79-3316, 79-3321, 79-
9 3322, 79-3323, 79-3324a, 79-3326, 79-3328, 79-3329, 79-3371, 79-3373,
10 79-3374, 79-3375, 79-3377, 79-3378, 79-3379, 79-3387, 79-3388, 79-
11 3391, 79-3392, 79-3393, 79-3394 and K.S.A. 2016 Supp. 79-3395 through
12 ~~79-3398~~ 79-3399, and amendments thereto, shall be known and may be
13 cited as the Kansas cigarette and tobacco products act.

14 (b) It is the purpose and intent of this act to regulate the sale of
15 cigarettes and tobacco products in this state and to impose a tax thereon.

16 Sec. 2. K.S.A. 2016 Supp. 79-3399 is hereby amended to read as
17 follows: 79-3399. (a) On and after January 1, 2017, a tax is hereby
18 imposed upon the privilege of selling or dealing in electronic cigarettes in
19 this state by any person engaged in business as a distributor thereof; at the
20 rate of \$.20 per milliliter of consumable material for electronic cigarettes
21 and a proportionate tax at the like rate on all fractional parts thereof. For
22 electronic cigarettes in the possession of retail dealers for which tax has
23 not been paid, tax shall be imposed under this subsection at the earliest
24 time the retail dealer: (1) Brings or causes to be brought into this state
25 from without the state electronic cigarettes for sale; (2) makes,
26 manufactures or fabricates electronic cigarettes in this state for sale in this
27 state; or (3) sells electronic cigarettes to consumers within this state.

28 (b) "Consumable material" means any liquid nicotine or other
29 solution containing nicotine. For purposes of this definition, "consumable
30 material" is the final product sold to consumers that is depleted as an
31 electronic cigarette is used.

32 (c) The secretary of revenue shall adopt rules and regulations to
33 implement the provisions of this section.

34 Sec. 3. K.S.A. 2016 Supp. 79-3302 and 79-3399 are hereby repealed.

35 Sec. 4. This act shall take effect and be in force from and after its
36 publication in the statute book.

or other material

