States Moving to Regulate and Tax E-cigarettes

By Debra Miller [1]
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During its state budget debate in 2015, Louisiana turned to a relatively new sin tax. It joined North Carolina and Minnesota and added taxes on e-cigarettes to its revenue sources.

Louisiana state Rep. Harold Ritchie had proposed a fourfold increase in Louisiana’s cigarette tax, estimated to generate $240 million annually by the state legislative fiscal office, at the start of the 2015 legislative session in Baton Rouge. By the time a budget compromise was reached, an increase of 50 cents was approved, bringing the cigarette tax to 86 cents per pack and moving the state’s tax rate on cigarettes from third lowest to the 35th highest in the nation.

Hardly discussed, the Louisiana budget negotiations also imposed a tax of 5 cents per milliliter of nicotine fluid on electronic cigarettes and vapor products, an exact mirror of the North Carolina tax passed a year earlier.

The 2014 budget negotiations in North Carolina included hearty debate about whether and how to tax e-cigarettes. At the time, Minnesota was the only state with a tax on e-cigarettes. Through administrative action, Minnesota classified the relatively new e-cigarettes as “other tobacco products” and imposed as existing tax of 95 percent of wholesale cost.

"Tobacco and vapor products have vastly differing health impacts, manufacturing processes and business models," state Rep. Ruth Samuelson, a sponsor of the North Carolina bill [2], told Reuters. "In light of this, we must ... draw a clear distinction between how North Carolina treats tobacco products and vapor products."

Other North Carolina legislators argued that the tax should be calibrated to the nicotine content of the e-cigarette material rather than the amount of liquid, more in line with traditional cigarette taxes. An amendment to that effect failed.

The Winston-Salem (N.C.) Journal reported that Reynolds American Inc. supported the 5-cent tax. Reynolds markets Vuse, a digital vapor cigarette that was new to the marketplace in 2014. North Carolina state Rep. Julia Howard said the new North Carolina tax was "a rare example of an industry wanting to be taxed."

Other states have tackled regulation of e-cigarettes. All but six states—Maine, Massachusetts, Michigan, Oregon, Pennsylvania and Texas—prohibit the purchase of e-cigarette products by minors. In 2015, Arkansas passed the first legislation that specifically regulates stores that have become known as vape shops. Indiana adopted legislation to establish safety standards on e-liquids that go into e-cigarette devices.
Legislators from Louisiana, North Carolina and Minnesota will join a panel discussion on taxation and regulation of e-cigarettes during a policy workshop from 10 a.m. to noon on Saturday, Dec. 12, at the CSG 2015 National Conference in Nashville, Tenn. An official from the U.S. Food and Drug Administration will address proposed federal regulations on e-cigarettes. The FDA is using its statutory “deeming” authority to issue regulations on products that it determines fall under the legal definition of tobacco products, including e-cigarettes, cigars, pipe tobacco, hookah tobacco and novel products such as nicotine gels and dissolvable tobacco. The comment period ended Aug. 8, 2014, but regulations have not been issued.