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February 11, 2025

House Committee on Federal and State Affairs
Neutral Testimony of The Kansas Department of Revenue on House Bill 2094
by Kasey Skidmore

Chairman Kessler and Members of the Committee:

The Kansas Department of Revenue respectfully submits the following neutral testimony to the Committee on House Bill 2094.

This bill authorizes the sale of electronic cigarettes and its corresponding cartridges, pods, or liquids in vending machines. Historically, the only product allowed to be sold in vending machines are the traditional packages of cigarettes.

KDOR would like to point to some administrative concerns and impacts of the bill passing.

First, K.A.R. 92-5-14 would need to be amended to allow for the new products to be sold in vending machines. Currently, the regulation states that “cigarette vending machines may be used for cigarette sales only. No candy or other items may be sold from a cigarette vending machine.”

Next, it appears that HB 2094 creates a distinction between consumable materials sold independent of electronic cigarettes and consumable materials sold with or related to electronic cigarettes. Though the exact materials can be identical, consumable materials sold with or as part of electronic cigarettes (often called disposables) can be sold in vending machines, whereas consumable materials sold independently cannot.

Additionally, the language also provides that consumable materials sold with or as part of electronic cigarettes will now have to apply for a Cigarette Wholesale license, collect, and remit tax pursuant to that license. Consumable materials sold independently would only be subject to a Consumable Material Distributors Certificate. A Cigarette Wholesale license is subject to a \$50.00 fee every other year; Consumable Material Distributors Certificate is free and lasts until cancelled.

A Cigarette Wholesale license is subject to a \$1,000.00 bond requirement; Consumable Material Distributors Certificate is not subject to such requirement.

Consumable Materials sold with or related to electronic cigarettes would be reported under a Cigarette Wholesale license; Consumable Materials sold independently would be reported under Consumable Material Distributors Certificate.

Under the current makeup of the Cigarette and Tobacco Products Act (K.S.A. 79-3301 et. seq.), electronic cigarettes are not subject to an excise tax nor are they reported. HB 2094 requires reporting and an excise tax on electronic cigarettes; however, the Bill does not provide for what tax rate they would be subject to (i.e.: cigarette, tobacco, consumable material, or its own tax rate). Cigarette tax in Kansas is evidenced by a tax stamp; electronic cigarettes do not have a stamp. KDOR would request that the Bill be clarified to tell KDOR, licensees, and customers what that tax will be and how licensees would need to prove it has been paid.

Next, Vending Machine Operators were historically only allowed to sell cigarettes in vending machines, which came tax stamped prior to being put in the vending machines. With HB 2094, the Vending Machine Operator will now be required to check to ensure that tax is paid on the consumable materials and electronic cigarettes inside the vending machine. If tax has not been paid, the Vending Machine Operator will be required to report and remit that tax to the State. The Vending Machine Operator will also be required to maintain proof of that tax paid and maintain invoicing and reporting requirements as set out in the Act. This may present further administrative difficulties as vending machines are commonly found in bars, but the bar owners rarely are the owners or operators of the vending machine. The records that are needed to prove that the tax has been paid will not be at the location of the bar because the records will be with the owner of the vending machine.

Lastly, Section 4(b) of the Bill limits the definition of “consumable material” to K.S.A. 79-3399 only. KDOR requests that the definition of Consumable Material be moved to the definition section of the Act, K.S.A. 79-3301.

KDOR currently has 57 vending machines that are permitted in the state of Kansas; we can expect that number to grow upon passage of this Bill. Additional employees would be necessary to administer this bill.

Thank you.