



Office of the City Clerk

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Legislation Details (With Text)

File #: O2018-4192

Type: Ordinance **Status:** Failed to Pass

File created: 5/25/2018 **In control:** City Council

Final action:

Title: Amendment of Municipal Code Chapter 3-47 by further regulating collection and receipt of tax imposed on purchasers of liquid nicotine products

Sponsors: Burke, Edward M.

Indexes: Ch. 47 Chicago Liquid Nicotine Product Tax

Attachments: 1. O2018-4192.pdf

| Date | Ver. | Action By | Action | Result |
|-----------|------|--------------|----------------|--------|
| 5/29/2019 | 1 | City Council | Failed to Pass | |
| 5/25/2018 | 1 | City Council | Referred | |

ORDINANCE

WHEREAS, the City of Chicago is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6(a); and

WHEREAS, pursuant to its home rule power, the City of Chicago may exercise any power and perform any function relating to its government and affairs including the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, in 2015 the Chicago City Council created a liquid nicotine tax (the Tax) in an effort to remain current with smoking product developments; and

WHEREAS, the tax also signaled the City's commitment to regulate and track sales of those products and to ensure that these are sold to the intended user-an adult with full awareness of the product's detrimental effects; and

WHEREAS, to that end, the tax was imposed on liquid nicotine products defined in the ordinance as "(1) any electronic cigarette containing liquid, gel, or other solution that contains nicotine; and (2) any other container of liquid, gel, or other solution where the liquid, gel, or other solution (i) contains nicotine and (ii) is intended to be utilized in an electronic cigarette;" and

WHEREAS, although the "ultimate" liability for the tax is to be borne on the purchaser, the collection obligations begin with the wholesaler, with the retailer responsible where the tax has not been collected at wholesale and the consumer responsible where it has not been collected at retail; and

WHEREAS, the current regulatory structure leaves a sizable potential product loophole and a potential enforcement gap; and

WHEREAS, for example, as far as products, the tax ignores electronic cigarette devices that are sold in starter

packs with the actual smoking device or e-cigarette; and

WHEREAS, this defeats the argument that devices that are not pre-filled with nicotine products should avoid the tax because it is not a given that they are intended for nicotine use; and

WHEREAS, as far as tax collection enforcement, the current ordinance offers no provision for clearly identifying whether the appropriate tax has been collected, by whom, or in what amount; and

WHEREAS, unlike cigarettes, which bear hallmark tax stamps, denoting that the obligation has been satisfied, liquid nicotine products bear no such marks; and

WHEREAS, effective enforcement and collection of this tax requires clear and transparent indication that a tax has been applied, paid, and by whom; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION I. Section 3-47 of the Municipal Code of Chicago is hereby amended by inserting the underscored language as follows:

[Omitted text is unaffected by this ordinance.]

3-47-020 Definitions.

"Liquid nicotine product" means: (1) any electronic cigarette containing liquid, gel, or other solution that contains nicotine or is packaged with a liquid, gel, or other solution that contains nicotine; and (2) any other container of liquid, gel, or other solution where the liquid, gel, or other solution (i) contains nicotine and (ii) is intended to be utilized in an electronic cigarette. The term "liquid nicotine product" does not include any product regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq.

[Omitted text is unaffected by this ordinance.] 3-47-040

Liability for payment.

The ultimate incidence and liability for payment of the tax imposed by this chapter is to be borne by the purchaser of liquid nicotine product. It shall be a violation of this chapter for a retail liquid nicotine product dealer to fail to include the tax imposed herein in the sale price of the liquid nicotine product; ~~or to otherwise absorb such tax.~~

3-47-050 Collection.

A. Except as otherwise provided herein, the tax imposed herein shall be collected by each wholesale liquid nicotine product dealer who sells a liquid nicotine product to a retail liquid nicotine product dealer located in the City. The wholesale liquid nicotine product dealer shall remit the tax and file returns in accordance with Section 3-47-060 of this chapter.

B. Any wholesale liquid nicotine product dealer required to remit the tax imposed by this chapter shall collect the tax from each retail liquid nicotine-product dealer in the city to whom the sale of a liquid nicotine product is made, and any such retail liquid nicotine product dealer shall in turn then collect the tax from the retail purchaser of said liquid nicotine product.

C. If any retailer receives or otherwise obtains a liquid nicotine product upon which the tax imposed herein applies and has not been collected by any wholesale liquid nicotine product dealer, then the retailer shall collect such tax and remit it directly to the department in accordance with Section 3-47-060 of this chapter.

D. If a wholesale liquid nicotine product dealer sells a liquid nicotine product to a purchaser for use or consumption and not for resale, such wholesale liquid nicotine product dealer shall collect the tax imposed herein from such purchaser and remit it to the department in the same manner as sales to retail liquid nicotine product dealers.

E. Every person required to collect the tax imposed by this chapter shall secure the tax from the taxpayer when collecting the sale price of the liquid nicotine product upon which the tax is applied. Every taxpayer shall be given a bill, invoice, receipt, or other statement or memorandum of the price or charge payable upon which the tax shall be stated, charged and shown separately.

SECTION 2. This ordinance shall take effect ninety (90) days after passage and publication.