

Taxing Vapor Products (E-Cigarettes): The Right Approach

State legislation and tax policy should not place hurdles or discourage cigarette smokers from switching to non-combustible products such as vapor products (e-cigarettes). Preferably, states should specifically exempt these products from state excise tax or set at a low tax rate (5¢/unit).

A Tax That Is the Right Proportion

Vapor products contain nicotine derived from tobacco and therefore meet the definition of a tobacco product as determined by the federal government.¹ Any state — right now — could pass legislation that would place vapor products in the Other Tobacco Products (OTP) category and tax these products by existing OTP rates. OTP taxes are determined either as a percentage of sales price, or by weight, depending on the state. In many states, this would add several dollars to the cost of these products, creating an economic disincentive for switching by adult smokers considering vapor products, who could instead continue buying their regular smokes for far less.

Minnesota Already Has It Wrong

The Minnesota legislature has already decided to place vapor products in the OTP category, taxing them at exactly the same rate as moist snuff, snus and other tobacco products — meaning that a vapor product with a price of \$8.16 in Minnesota would carry a tax of \$5.71, for a total cost of \$13.87, more than twice the average cost of a pack of cigarettes² in the state.

A Better Approach

Although more data are needed on the long-term effects of vapor products, we do know they do not involve combustion, and thereby do not carry the combustion-associated risks of traditional cigarettes. Scientific data show non-combustible tobacco products carry 90 percent fewer health risks than traditional cigarettes.³ Commensurate with this logic, a lower tax on vapor products, such as 5¢ per unit should be considered. This would add only a fractional cost to the retail price of a vapor product. No tobacco product has been shown to be safe or without risk, and since the associated health risks of tobacco products have been the basis for taxation, this is a better approach than a disproportionately high tax.

Vapor Product Regulation is Coming

In 2013 alone, several states took steps to regulate vapor products, including Utah, where legislators proposed banning the products altogether; and Delaware, New Mexico, Missouri and Hawaii, where taxes like Minnesota's were proposed — equalization of vapor product taxes at existing OTP tax rates. Meanwhile, vapor products have been projected to generate \$1.7 billion in sales by 2014.⁴ It is imperative to get regulation right, so as not to economically dis-incent adult smokers who may be interested in moving from the risks of combustible cigarettes.

¹ Sottera, Inc. v. FDA, 7/21/10: http://www.wlf.org/litigating/case_detail.asp?id=629

² What A Pack of Cigarettes Costs Now, State-by-State: <http://www.theawl.com/2013/07/what-a-pack-of-cigarettes-costs-now-state-by-state>

³ RJRT Citizens Petition to FDA, Appendix B - References: <http://www.regulations.gov/#!documentDetail;D=FDA-2011-P-0573-0001>

⁴ Will Taxes And Regulation Rein In The Booming E-Cigarette Market?, Forbes 10/2/13:

<http://www.forbes.com/sites/danielfisher/2013/10/02/will-taxes-and-regulation-rein-in-the-booming-e-cigarette-market/>

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Vapor Products: Responses to Major Opposition Arguments

The use of vapor products will cause people to start smoking cigarettes.

RESPONSE: As noted by Michael Siegel, a professor in the Department of Community Health Sciences at Boston University's School of Public Health and a leading researcher on vapor products, "What the data is showing is that virtually all experimentation with e-cigarettes is happening among people who are already smokers."¹

To date, no long-term studies have examined whether vapor products serve as a gateway to future tobacco use.² However, results from recent surveys suggest that vapor products will not serve as a gateway to future tobacco use. For example, a 2013 survey of 1,300 college students found that 43 students said an e-cigarette was their first nicotine product. Of that group, only one person said he went on to smoke conventional cigarettes, and the vast majority said they were not currently using any nicotine or tobacco. According to the lead researcher, Theodore Wagener, an assistant professor of general and community pediatrics at the University of Oklahoma Health Sciences Center in Oklahoma City, "It didn't seem as though (vapor products) really proved to be a gateway to anything."³ Similarly, a 2012 online survey of 2,649 adults in the U.S. reported vapor product use in only 0.8 percent of non-smokers.⁴

The often-cited 2013 Centers for Disease Control and Prevention report on vapor product use among middle and high school students does not prove that vapor products are a gateway to future tobacco use. Again, no long-term studies have examined whether vapor products serve as gateways to future tobacco use to date. The 2013 report was based on National Youth Tobacco Survey data from 2011 and 2012, which indicated that only approximately 0.6 percent of the surveyed youth were non-smokers who had ever experimented with vapor products.

¹ Michael Siegel, The Rest of the Story: Tobacco News Analysis and Commentary, "As New York Times Article Reveals, Quality of Scientific Analysis at Campaign for Tobacco-Free Kids Has Deteriorated," <http://tobaccoanalysis.blogspot.com/2013/12/as-new-york-times-article-reveals.html>. (Dec. 10, 2013).

² Pepper, J. K., & Brewer, N. T. (2013). Electronic nicotine delivery system (electronic cigarette) awareness, use, reactions and beliefs: a systematic review. *Tobacco Control*, doi: 10.1136/tobaccocontrol-2013-051122, <http://tobaccocontrol.bmj.com/content/early/2013/11/20/tobaccocontrol-2013-051122.abstract>.

³ Wagener, T. (2013, October 28). *Does it hurt to try? Effects of e-cigarette sampling on smoking behavior and motivation to quit*, presented at a meeting of the American Association for Cancer Research, National Harbor, MD (<http://www.aacr.org/home/scientists/meetings--workshops/frontiers-in-cancer-prevention-research/program.aspx>). [Healthday, October 29, 2013, "E-cigarettes don't appear to entice teens to try smoking tobacco, a new study says" (<http://consumer.healthday.com/cancer-information-5/tobacco-and-kids-health-news-662/e-cigarettes-may-not-be-gateway-to-smoking-study-681597.html>)].

⁴ Pearson, J. L., Richardson, A., Niaura, R. S., Vallone, D. M., & Abrams, D. B. (2012). E-cigarette awareness, use, and harm perceptions in US adults. *American Journal of Public Health*, 102(9), 1758-1766, <http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2011.300526>.

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