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House Ways and Means Committee Testimony on H. 879

Background

The Beverage Den has been a long-standing business in Bennington for over forty years. We offer a wide selection of craft brews, wines, vapor products, Vermont apparel and gifts, as well as tobacco products. We currently have 10 employees. We purchased this store 3 years ago. At that time the store was near ready to close its doors due to the emergence of several big box stores over the past several years. When we purchased the store, we identified that we could save the business and the employees by investing money, time and effort into creating the largest Vape shop in the area. From the success of the Vape shop, we have also realized an increased customer base that has resonated into other parts of the store. This has collectively generated the lift needed to maintain the employee count and keep us on a steady growth curve. Any new tax on E-cigs, Vapor and liquid products will serve to decimate the progress we've made and would put the employees and success of the store at great risk.

The Health Aspect

I understand that a key-motivating factor in imposing this tax is out of health concerns surrounding e-cigarette and vapor products. However, it is crucial for lawmakers to recognize several factors surrounding these health concerns:

- ***Deferring consumption to online retailers:*** Part of the intention behind this tax is to discourage consumption of e-cigarette and vapor/liquid products due to potential health concerns. However, rather than decrease consumption, this tax will more likely defer consumption away from Vermont small businesses and shift it to on line retailers. Vermont small businesses are already aggressively competing with online retailers, who are able to operate with a competitive advantage in terms of price since they are not a brick and mortar operation. This tax would further give online retailers an insurmountable competitive edge over stores such as ours and would quickly lead to the demise of Vermont vape retailers.
- ***Deferring consumption to other states:*** Similarly, as I'm sure you know, only the following states have excise taxes on e-cigarettes and vapor products: Kansas, Louisiana, Minnesota, North Carolina, and Washington D.C. However, Vermont's neighbors—New Hampshire, Massachusetts, and New York—don't have these taxes. Many of our customers would also shift their purchases from our Vermont small business to a business in New York, where there are numerous vape shops. Furthermore, Vermont vape shops in the eastern side of the state will suffer from the same loss of business to New Hampshire businesses.
- ***Youth consumption:*** Many are concerned about the use of e-cigarettes and vapor products among young adults. The vast majority of our vape shop customers are in the 35 to 55 age range. Furthermore, our business, like many others in Vermont, IDs our customers to make sure they are of age. It is much easier for underage youth to purchase these products online. For example, a 2015 study by three researchers from the University of North Carolina at Chapel Hill published in

The Journal of the American Medical Association (JAMA) Pediatrics found that underage teens were able to buy e-cigarettes online in 94% of attempts. Therefore an unintended consequence of this tax will substantially increase the very phenomenon you are trying to reduce—that is, youth consumption. Again, you would defer consumption from Vermont small businesses to online retailers.

Source: <http://archpedi.jamanetwork.com/article.aspx?articleid=2174572>

- **Vapor products are a healthier (and cheaper) alternative:** Dr. John Hughes, a professor of psychiatry at UVM, says that the research is too scant at this point to link a danger to long-term use of e-cigs and vapor products. Hughes said that vaping is “healthier than smoking”, that “e-cigarettes are significantly safer than tobacco products”, and that the possibility of some metals released in the vapor are “small in comparison to the toxins in tobacco smoke”. No one is arguing that vapor products are ‘healthy’. But relative to other tobacco products, they are certainly ‘healthier’. Taxing vapor products and e-cigarettes would discourage Vermonters to shift to this proven healthier alternative.

Source: <http://vtdigger.wpengine.com/2015/03/29/vermont-grapples-with-e-cigarette-legislation-from-taxes-to-manufacturing-and-marketing/>

- **Weaning smokers off of cigarettes:** Our business and employees have invested time, effort, and resources to encourage many life-long cigarette smokers to switch to e-cigarettes or vapor/liquid products, which are significantly less expensive and relatively healthier alternatives. As a matter of fact, we quite often see customers whose sole incentive to change from cigarettes to vapes is financially driven. Any added tax will close that gap. Since vapor liquids have differing quantities of nicotine, many smokers who are trying to quit use vapor liquids as a mechanism to accomplish the goal of quitting cigarettes. Oftentimes, they start with a liquid that has a higher concentration of nicotine. Over time, they gradually reduce the amount of nicotine in the liquid that they are vaping. We even sell a number of vapor liquids that contain absolutely no nicotine whatsoever, yet these products would still be taxed under H.879. This tax would discourage our store to invest time in moving Vermonters from cigarettes to vapor products, and would discourage Vermont smokers themselves from pursuing a relatively healthier and cheaper alternative to cigarettes. This could potentially convince some Vermonters not to pursue vaping as an alternative to cigarettes, or could even convince some current vapors to go back to cigarettes.

Economic Concerns

- **Consequences for our business and employees:** Our Vape Shop is the fastest growing segment of our business, and provides us with the revenue to finance investments in our operations and our employees. The effects of any tax on vapor products would be absolutely devastating for our business. Undoubtedly, demand for these products at our store would decrease (due to price increases and consumers shifting to online or out-of-state retailers), and we would experience a substantial loss in revenue. Furthermore, we would certainly have to lay off 2 to 4 of our employees, since, as stated above, the vape shop has increased customer traffic flow throughout the entire store.

- ***Consequences for customers:*** The loyal customers who purchase our vapor products would also be unduly burdened by this tax. These types of excise taxes on consumable goods hurt low-income earners the hardest, since these individuals tend to spend a greater proportion of their income on consumption. This tax would not be “progressive”, but rather “regressive”.
- ***Consequences for other businesses:*** Other employers have expressed similar concerns. I have spoken to the owners of 8 different Vermont vape shops within the last week, all of whom indicated that this tax would likely force them out of business. This would further increase unemployment and decrease business activity in Vermont.

Implications for the State

- ***Revenue losses:*** Due to customers deferring consumption to online retailers or to New York and New Hampshire businesses, current sales tax revenue that would have otherwise been collected in Vermont from the sale of e-cigs and vapor products will be lost. Furthermore, vape shop closures and vape shop layoffs around the state will reduce state revenue and economic activity to an even greater extent, while increasing unemployment. For example, after Montgomery County in Maryland passed a wholesale tax on these products, the actual revenue collected was roughly 80% below the expected revenue from the tax due to lawmakers’ failure to consider market forces.
<http://dailycaller.com/2016/03/25/local-lawmakers-left-red-faced-after-failure-of-e-cigarette-tax/>

Conclusions:

There are several conclusions that can be drawn from analyzing the proposed tax on e-cigs and vapor products. First, this tax would decrease revenue for Vermont businesses, increase economic burdens on low-income Vermonters, lead to layoffs by Vermont small businesses, and potentially force some small businesses to close. Second, this bill would eliminate the health and financial incentives for smokers to switch from smoking cigarettes to vaping, even though vaping is clearly a better alternative. Third, rather than the consumption of e-cig and vapor products being reduced, this consumption will be deferred to online retailers and other states, where prices will be cheaper. Finally, while some tax revenue may be gained from this new tax, other tax revenue will be lost from transactions that are no longer occurring, and from the economic consequences of such an enormous tax.

Therefore, I ask the committee members to ponder the two following questions:

- *Should we risk placing an additional burden on Vermont small businesses, with the probable outcome of decreased revenue, layoffs, and even closures?*
- *Should we discourage Vermonters from making the switch to a healthier alternative to cigarettes by taxing e-cigarettes and vapor products?*

The answer to both, I believe is “no”. As such, I strongly urge you to not support H.879.