



Our Mission: Improve the lives of the world's one billion adult smokers by eliminating cigarettes

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Written Testimony of

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Oregon State Legislature**

Chair Nathanson and Distinguished Members of the House Committee on Revenue,

Good morning. My name is Max Behlke and I am the Director of State Public Policy at JUUL Labs and I appreciate the opportunity to testify before you today. Prior to my current role, I served as the Director of Budgets and Revenue, and as the Director of the State and Local Taxation Task Force at the National Conference of State Legislatures (NCSL).

I am here today to provide my insights and general observations that apply to the bills before this committee pertaining to the taxation of vapor products.

JUUL's corporate mission is simple: the elimination of combustible cigarettes.

Smoking is the number one cause of preventable death in the U.S. and the world. In the two short years that JUUL Labs has been around, it has already profoundly changed the tobacco industry as the year-over-year decline in cigarette use has accelerated to a historic high. In fact, for the 4-week period ending in late March, year-over-year declines for cigarette pack volumes worsened, falling to 8.8 percent, according to U.S. syndicated market data from Nielsen. This was the second consecutive month featuring year-over-year cigarette pack volume declines of 8 percent or more.¹

JUUL can attribute its success and healthy market share within the vaping industry to the fact that individuals trying to quit smoking combustible cigarettes find it is easier to switch to JUUL (it is how I quit smoking after nearly a dozen attempts) compared to traditional nicotine replacement therapies (NRTs), such as the patch or gum, which, historically, have low rates of efficacy. Therefore, it is important to develop an e-liquid tax structure that will be easy to administer, enforce, and that will not stifle the growth of this still nascent industry.

The government should not disincentivize smokers from switching to vapor products by levying exorbitant excise taxes and increasing their cost. Vapor products provide an alternative to adult smokers interested in switching away from combustible cigarettes. Reducing the number of people who smoke cigarettes is a shared public policy goal that can also reduce strains on public healthcare budgets. While still a small part of the overall tobacco product category, vapor products hold the potential to be a viable alternative for adult smokers and could lead to the end of smoking combustible cigarettes, which continue to take the lives of nearly 500,000 Americans each year.

Tax Administration Challenges of Vapor Products

When states first began levying retail sales taxes in the 1930s, they were unsure about their ability to administer the tax and limit evasion. Tax enforcement was difficult as there was no audit trail to inventory purchases for administrators to track.² Since then, states have worked to improve enforcement to provide tax administrators with tools to ensure compliance. Today, retailers are typically required (depending on the state) to report monthly to the tax agency the total amount of taxable sales and then remit the appropriate sales tax. These reports provide tax administrators the ability to track the chain of custody of the product to the retail store and can therefore flag suspicious or illegal activity, such as sales of counterfeit products. Thus, states should be mindful of their ability to administer and enforce any vapor tax that they choose to impose.

¹ <https://newsroom.juul.com/2019/04/03/cigarette-sales-in-the-u-s-continue-historic-decline-into-the-first-quarter-of-2019/>

² <https://www.brookings.edu/wp-content/uploads/2018/04/Mikesell-Kioko1.pdf>



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The administrative challenges regarding the taxation of vapor products stem from the nascent nature of an industry that offers products that are not uniform across the product category. Unlike traditional tobacco products, which are generally homogenous across product class, vapor products can vary drastically depending on the e-liquid solution and delivery device. Moreover, wide disparities in state tax rates can incentivize smuggling from lower tax jurisdictions, as high tax rates can fuel a black market.³ Therefore, states should carefully craft their tax frameworks and develop robust enforcement regimes in order to limit opportunities for tax evasion and to ensure better regulation of vapor products.

Tax Avoidance and Tax Evasion

Tax avoidance and tax evasion can make tobacco products more affordable, accessible, and widely available, especially for youth. This activity undermines the health impact of higher tobacco taxes and other tobacco control efforts. New York state, for instance, has the highest cigarette tax in the country and also has the highest rate of cigarette smuggling. Approximately 56%⁴ of cigarettes sold in New York are smuggled.

Given the structure of the excise tax system and enforcement process, taxpayers are faced with opportunities to reduce their tax payments and any changes in the tax system will induce different behavioral responses. For example, an increase in taxes on vapor products may create an incentive to engage in tax avoidance and tax evasion. As highlighted in a July 2018 report from the Pew Charitable Trusts:

State regulations [on vapor products] have already had significant effects on suppliers. In Pennsylvania, for example, more than 100 [vape] shops have closed since a tax—40 percent of wholesale value—went into effect in October 2016. Wide disparities in state tax rates probably incentivize smuggling and tax evasion; high tax rates could fuel a black market. A shortage of data is the major obstacle to reliable forecasting, which makes it challenging for policymakers to base long-term budgeting decisions on this revenue stream.⁵

To reduce the opportunity for tax evasion and to maximize tax collections, any tax on vapor products should be administered at the retail point-of-sale and the tax amount should be clearly displayed on the customer's receipt and reported as a separate product category by the retailer. Moreover, states should require retailers to submit detailed tax reports regarding the sale of vapor products. Detailed reports will provide state officials more information to ensure tax compliance and to deter counterfeit/illegal sales.

Lessons from Marijuana Taxation

States should also consider the best practices developed for the taxation of marijuana when developing their tax structures for vapor products. Like vapor products, marijuana products are not homogenous across the product category. In addition to the marijuana plant, consumers can buy marijuana infused foods, marijuana liquids, etc. Therefore, states are developing marijuana tax structures that ensure that one type of product does not receive more favorable tax treatment.

States should also look to find the optimal vapor tax rate that will create a reliable revenue stream and that, at the same time, minimizes sales on the black market. As the marijuana industry has shown, if prices are similar, consumers will likely shift to the regulated market because the selection, quality, and product safety is generally much higher at a licensed retail provider. Moreover, any imposed vapor tax should be simple to enforce. Oregon, one of the first states to legalize recreational marijuana, replaced its initial tax on marijuana growers with a 17 percent retail excise tax over concerns that the tax would be too complicated to enforce.

³ <https://taxfoundation.org/cigarette-tax-cigarette-smuggling-2015/>

⁴ <https://www.mackinac.org/smokes#map>

⁵ <https://www.pewtrusts.org/ar/research-and-analysis/reports/2018/07/19/are-sin-taxes-healthy-for-state-budgets>



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A Simple and Equitable Structure

A tax levied at the final point of sale is the most workable tax structure for vapor products, as has been true for taxes on many other types of products. This tax type is relatively straightforward to administer, is transparent for consumers, and is equitable between different types of vapor products.

Vapor product taxes that are 1) imposed at the retail level and are 2) separate and distinct on a customer's receipt, provide transparency and instant accountability for the retailers who sell these products. Taxes imposed at retail provide more data points for the state to enforce their tax and commerce laws because documentation would be provided on the sales receipt, the wholesalers invoice, and the manufacturers invoice. In other words, the state would be able to follow a product upstream.

A wholesale tax, on the other hand, is more easily avoided and some of the less professional members of the industry might be tempted to bypass a wholesaler altogether by, for example, purchasing over the internet cheap knock-offs or imports. Similarly, if the tax were to be imposed at wholesale on the nicotine content in e-liquid, then the e-liquid tax is once again easily avoided by bad actors within the industry intent on tax evasion by simply buying tax-free raw materials and mixing them in their shop. In both examples, the taxes envisioned in the bills before you today would not be collected.

For the aforementioned reasons, it is within the state's interest to impose any e-liquid tax at retail at point-of-sale based on the value of vaping liquid sold. A value-based tax at retail:

- ❖ Does not discriminate between disposable and reusable products.
- ❖ Does not discriminate against open-tank vaping systems.
- ❖ Does not encourage vapor sellers or consumers to avoid tax by separating e-liquid components and combining them at time of use.
- ❖ Is easily verifiable by sellers, buyers and taxing authorities.

In closing, I would like to say that I am proud of my past work with NCSL in promoting tax policies that are good for both the states and the industries they regulate. I am equally proud to now represent JUUL, considering that it personally helped me in my battle to quit smoking.

No other company within the e-cigarette industry is more committed to responsible use of its products, which are made for Adult Smokers. We require all consumers, regardless of their state of residency, to be +21 years of age to purchase vaping products from our website, Juul.com, which is the only legal outlet to purchase JUUL products over the internet. We also have the industry's most robust age-gating mechanisms in place on our website and I encourage the members of the committee to attempt to purchase products on our website without proper identification (Good Luck!). That may seem like an odd thing to brag about, but I think its emblematic of the company's commitment to fighting underage use while also completing its mission: **Improve the lives of the world's 1 billion smokers by eliminating cigarettes.**

Thank you. I would be happy to answer any questions.

Our Commitment: In November of 2018, JUUL Labs began implementing a number of significant voluntary actions, as outlined in our [Action Plan](#), to address youth access, appeal, and use of JUUL products. This included a major reset of how JUUL Labs markets and sells its products, requiring automated sales controls to limit the purchase of certain flavored products to adults 21+. Currently, we only sell these products through our ecommerce platform (JUUL.com), where we utilize sophisticated automated technology, supported by third-parties, to ensure purchasers are 21+ and to prevent bulk purchases. We also eliminated our U.S. Facebook and Instagram accounts, and are developing new technology to further limit youth access and use. We are committed to working with lawmakers, the Surgeon General, FDA, state Attorneys General, local municipalities, and community organizations as a transparent and responsible partner in this effort. We believe that these efforts combined with increasing the minimum age to purchase tobacco and vapor products to 21, will drastically reduce youth access of JUUL products.