Testimony before the North Dakota
Senate Committee on Finance and Taxation
Regarding Taxing Electronic Cigarettes and Vapor Products
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January 19, 2021

Chairwoman Bell and Members of the Committee,

Thank you for your time today to discuss the issue of taxing electronic cigarettes and vapor products. My name is Lindsey Stroud and I am a Policy Analyst with the Taxpayers Protection Alliance (TPA). TPA is a non-profit, non-partisan organization dedicated to educating the public through the research, analysis and dissemination of information on the government's effects on the economy.

As traditional tobacco revenues continue to decline, lawmakers across the country are considering applying the same excise taxes – or sin taxes – on electronic cigarettes and vapor products. Numerous studies have shown that e-cigarettes are significantly less harmful than combustible cigarettes and have helped many smokers quit smoking and remain smoke-free. Lawmakers should refrain from enacting excise taxes on such products, as excise taxes are used to deter behavior.

E-Cigarettes and Tobacco Harm Reduction

The evidence of harm associated with combustible cigarettes has been understood since the 1964 U.S. Surgeon General's Report that determined that smoking causes cancer. Research overwhelmingly shows the smoke created by the burning of tobacco, rather than the nicotine, produces the harmful chemicals found in combustible cigarettes.[1] There are an estimated 600 ingredients in each tobacco cigarette, and "when burned, [they] create more than 7,000 chemicals."[2] As a result of these chemicals, cigarette smoking is directly linked to cardiovascular and respiratory diseases, numerous types of cancer, and increases in other health risks among the smoking population.[3]

For decades, policymakers and public health officials looking to reduce smoking rates have relied on strategies such as emphasizing the possibility of death related to tobacco use and implementing tobacco-related restrictions and taxes to motivate smokers to quit using cigarettes. However, there are much more effective ways to reduce tobacco use than relying on government mandates and "quit or die" approaches.

During the past 30 years, the tobacco harm reduction (THR) approach has successfully helped millions of smokers transition to less-harmful alternatives. THRs include effective nicotine delivery systems, such as smokeless tobacco, snus, electronic cigarettes (e-cigarettes), and

vaping. E-cigarettes and vaping devices have emerged as especially powerful THR tools, helping nearly three million U.S. adults quit smoking from 2007 to 2015.

In fact, an estimated 10.8 million American adults were using electronic cigarettes and vapor products in 2016.[4] Of the 10.8 million, only 15 percent, or 1.6 million adults, were never-smokers, indicating that e-cigarettes are overwhelmingly used by current and/or former smokers.

E-cigarettes were first introduced in the United States in 2007 by a company called Ruyan.[5] Soon after their introduction, Ruyan and other brands began to offer the first generation of e-cigarettes, called "cigalikes." These devices provide users with an experience that simulates smoking traditional tobacco cigarettes. Cig-alikes are typically composed of three parts: a cartridge that contains an e-liquid, with or without nicotine; an atomizer to heat the e-liquid to vapor; and a battery.

In later years, manufacturers added second-generation tank systems to e-cigarette products, followed by larger third-generation personal vaporizers, which vape users commonly call "mods."[6] These devices can either be closed or open systems.

Closed systems, often referred to as "pod systems," contain a disposable cartridge that is discarded after consumption. Open systems contain a tank that users can refill with e-liquid. Both closed and open systems utilize the same three primary parts included in cigalikes—a liquid, an atomizer with a heating element, and a battery— as well as other electronic parts. Unlike cig-alikes, "mods" allow users to manage flavorings and the amount of vapor produced by controlling the temperature that heats the e-liquid.

Mods also permit consumers to control nicotine levels. Current nicotine levels in e-liquids range from zero to greater than 50 milligrams per milliliter (mL).[7] Many users have reported reducing their nicotine concentration levels after using vaping devices for a prolonged period, indicating nicotine is not the only reason people choose to vape.

Health Effects of Electronic Cigarettes and Vapor Products

Despite recent media reports, e-cigarettes are significantly less harmful than combustible cigarettes. Public health statements on the harms of e-cigarettes include:

> **Public Health England:** In 2015, Public Health England, a leading health agency in the United Kingdom and similar to the FDA found "that using [e-cigarettes are] around 95% safer than smoking," and that their use "could help reducing smoking related disease, death and health inequalities."[8] In 2018, the agency reiterated their findings, finding vaping to be "at least 95% less harmful than smoking."[9]
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> **The Royal College of Physicians:** In 2016, the Royal College of Physicians found the use of e-cigarettes and vaping devices "unlikely to exceed 5% of the risk of harm from smoking tobacco."[10] The Royal College of Physicians (RCP) is another United Kingdom-

based public health organization, and the same public group the United States relied on for its 1964 Surgeon General's report on smoking and health.

The National Academies of Sciences, Engineering, and Medicine: In January 2018, the academy noted "using current generation e-cigarettes is less harmful than smoking."[11]

A 2017 study in *BMJ*'s peer-reviewed journal *Tobacco Control* examined health outcomes using "a strategy of switching cigarette smokers to e-cigarette use … in the USA to accelerate tobacco control progress."[12] The authors concluded that replacing e-cigarettes "for tobacco cigarettes would result in an estimated 6.6 million fewer deaths and more than 86 million fewer life-years lost."

An October 2020 review in the *Cochrane Library Database of Systematic Reviews* analyzed 50 completed studies which had been published up until January 2020 and represented more than 12,400 participants.

The authors found that there was "moderate-certainty evidence, limited by imprecision, that quit rates were higher in people randomized to nicotine [e-cigarettes] than in those randomized to nicotine replacement therapy." The authors found that e-cigarette use translated "to an additional four successful quitters per 100." The authors also found higher quit rates in participants that had used e-cigarettes containing nicotine, compared to the participants that had not used nicotine.

Notably, the authors found that for "every 100 people using nicotine e-cigarettes to stop smoking, 10 might successfully stop, compared with only six of 100 people using nicotine replacement therapy or nicotine-free e-cigarettes."

Tobacco Economics 101: North Dakota

In 2019, 17 percent of adults in North Dakota smoked tobacco cigarettes, amounting to 107,710 smokers in 2019.[13] When figuring a pack-per-day, over 786 million cigarettes were smoked in 2019 by North Dakotans, or about 2.2 million per day.[14]

In 2019, North Dakota imposed a $0.44 excise tax on a pack of cigarettes.[15] In 2019, North Dakota collected $17.3 million in cigarette excise taxes, when figuring for a pack-a-day habit. This amounts to $160.60 per smoker per year.

North Dakota spent $5.8 million on tobacco control programs in 2019, or $53.85 per smoker per year. This is only 33 percent of what the state received in excise taxes in 2019 from North Dakota adult smokers, based off a pack-a-day habit. When figuring amount spent on youth in the state, North Dakota spent $32.25 per year on each resident under 18 years of age.

Vapor Economics 101: North Dakota

Electronic cigarettes and vapor products are not only a harm reduction tool for hundreds of thousands of smokers in the Roughrider State, they're also an economic boon.

In 2018, according to the Vapor Technology Association, the industry created 151 direct vaping-related jobs, including manufacturing, retail, and wholesale jobs in North Dakota, which generated $7.7 million in wages alone.[16] Moreover, the industry has created hundreds of secondary jobs in the Roughrider State, bringing the total economic impact in 2018 to $46,755,200. In the same year, North Dakota received more than $1.7 million in state taxes attributable to the vaping industry.

The substitution of e-cigarettes for combustible cigarettes could also save the state in healthcare costs.

According to the Centers for Disease Control and Prevention (CDC), it is now well known that Medicaid recipients smoke at rates of twice the average of privately insured persons,. In 2013, "smoking-related diseases cost Medicaid programs an average of $833 million per state."[17]

A 2015 policy analysis by State Budget Solutions examined electronic cigarettes' effect on Medicaid spending. The author estimated Medicaid savings could have amounted to $48 billion in 2012 if e-cigarettes had been adopted in place of combustible tobacco cigarettes by all Medicaid recipients who currently consume these products.[18]

A 2017 study by the R Street Institute examined the financial impact to Medicaid costs that would occur should a large number of current Medicaid recipients switch from combustible cigarettes to e-cigarettes or vaping devices. The author used a sample size of "1% of smokers [within] demographic groups permanently" switching. In this analysis, the author estimates Medicaid savings "will be approximately $2.8 billion per 1 percent of enrollees," over the next 25 years.[19]

Taxes on E-Cigarettes Unlikely to Deter Youth Use

Many lawmakers have attempted to thwart youth use of electronic cigarettes and vapor products by apply sin taxes to such products. Although addressing youth use is laudable, many youths in North Dakota are *not regularly using* e-cigarettes. Further, data from youth surveys indicate that excise taxes don't reduce youth use of vapor products.

In 2019, 33.1 percent of North Dakota high school students reported using a vapor product on at least one occasion in the 30 days prior and only 12.1 percent reported frequent use – or using 20 or more days.[20] According to national data, between 2019 and 2020, youth use of e-cigarettes decreased by 33.3 percent.[21]

Further, there is no data to indicate that youth use of vapor products decreased after implementing taxes on e-cigarettes and indeed, youth vaping has actually increased after other states implemented vapor taxes. Tobacco Harm Reduction 101 examined the effects of vapor taxes in six states. From 2017 to 2019, current e-cigarette use among high school students increased in five states – even with excise taxes imposed on such products.

Kansas Vapor Tax: $0.05 per milliliter

Kansas' tax on e-cigarettes and vapor products went into effect July 1, 2017.[22]

According to Kansas's YRBSS, in 2017, 34.8 percent and 10.6 percent of high school students reported ever and current e-cigarette product use, respectively.[23]

In 2019, ever-use increased by 28.4 percent, to 48.6 percent of Kansas high school students and current e-cigarette use increased by 51.8 percent, to 22 percent of high school students using an e-cigarette on at least one occasion in the 30 days prior.

Louisiana Vapor Tax: $0.05 per milliliter

Louisiana's tax on e-cigarettes and vapor products went into effect August 1, 2015.[24]

According to Louisiana's YRBSS, in 2017, 45.1 percent and 12.2 percent of high school students reported ever and current e-cigarette product use, respectively.[25]

In 2019, ever-use increased by 13.3 percent, to 52 percent of Louisiana high school students and current e-cigarette use increased by 46.7 percent, to 22.9 percent of high school students using an e-cigarette at least one occasion in the 30 days prior.

North Carolina Vapor Tax: $0.05 per milliliter

North Carolina's tax on e-cigarettes and vapor products went into effect July 1, 2015.[26]

According to North Carolina's YRBSS, in 2015, 49.4 percent and 29.6 percent of high school students reported ever and current e-cigarette product use, respectively. In 2017, ever-use decreased by 12 percent, to 44.1 percent of North Carolina high school students and current e-cigarette use decreased by 33.9 percent, to 22.1 percent of high school students using an e-cigarette in the last 30 days.[27]

In 2019, 52.4 percent of high school students reporting having ever used an e-cigarette, this is a 15.8 percent increase from 2017, and a 5.7 percent increase from 2015 rates. Regarding current e-cigarette use, in 2019, 35.5 percent of North Carolina high school students reported using an e-cigarette on at least one occasion in the 30 days prior, this is a 37.7 percent increase from 2017 rates, and a 16.6 percent increase from 2015 rates.

Pennsylvania Vapor Tax: 40 percent of purchase price

Pennsylvania's tax on e-cigarettes and vapor products went into effect October 1, 2016.[28]

In 2015, according to Pennsylvania's YRBSS, 40.8 percent and 23.1 percent of high school students reported ever and current e-cigarette product use, respectively. In 2017, ever-use increased by 2.4 percent, to 41.8 percent of Pennsylvania high school students, and current e-cigarette use decreased by 104 percent, to 11.3 percent of high school students using an e-cigarette in the last 30 days.[29]

In 2019, 52.6 percent of high school students reporting having ever used an e-cigarette, this is a 20.5 percent increase from 2017, and a 22.4 percent increase from 2015 rates. Regarding current e-cigarette use, in 2019, 24.4 percent of Pennsylvania high school students reported using an e-cigarette on at least one occasion in the 30 days prior, this is a 53.7 percent increase from 2017 rates, and a 5.3 percent increase from 2015 rates.

West Virginia Vapor Tax: $0.075 per milliliter

West Virginia's tax on e-cigarettes and vapor products went into effect July 1, 2016.[30]

According to West Virginia's YRBSS, in 2015, 49.1 percent and 31.2 percent of high school students reported ever and current e-cigarette product use, respectively. In 2017, ever-use decreased by 10.6 percent, to 44.4 percent of West Virginia high school students, and current e-cigarette use decreased by 118.2 percent, to 14.3 percent of high school students using an e-cigarette in the last 30 days.[31]

In 2019, 62.4 percent of high school students reporting having ever used an e-cigarette, this is a 28.8 percent increase from 2017, and a 21.3 percent increase from 2015 rates. Regarding current e-cigarette use, in 2019, 35.7 percent of West Virginia's high school students reported using an e-cigarette on at least one occasion in the 30 days prior, this is a 59.9 percent increase from 2017 rates, and a 12.6 percent increase from 2015 rates.

Excise Taxes Are Unreliable Sources of Revenue, Burden Low Income Persons

Existing excise taxes are unreliable revenue sources. Cigarette tax increases result in long-term revenue shortfalls. From 2001 to 2011, "revenue projections were met in only 29 of 101 cases where cigarette/tobacco taxes were increased," according to the National Taxpayers Union Foundation.[32] Moreover, a decline in cigarette consumption caused cigarette tax revenues "to drop by an average of about 1 percent across all states from 2008 to 2016," according to a report by Pew Charitable Trusts.[33] A 2020 report by the Tax Foundation noted that cigarette tax revenue has fallen in all states and considers cigarette tax revenue to be "so unstable."[34]

Excise taxes are inherently regressive and tend to burden lower income persons. For example, a Cato Journal article found from 2010 to 2011, "smokers earning less than $30,000 per year spent 14.2 percent of their household income on cigarettes, compared to 4.3 percent for smokers earning between $30,000 and $59,999 and 2 percent for smokers earning more than $60,000."[35]

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Rather than imposing draconian taxes on tobacco harm reduction products that help smokers quit, lawmakers should utilize existing tobacco monies generated by lawsuits and taxes towards programs to prevent youth use and help adults quit smoking. E-cigarettes have helped millions of American adults quit smoking and their use should be encouraged – not burdened by sin taxes.

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CIGARETTE SMOKING 101: NORTH DAKOTA

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KEY POINTS

- **In 2019, 17 percent of North Dakota adults smoked combustible cigarettes, this is a 25.1 percent decrease from 1995.**
- **North Dakota has received $622.9 million in MSA payments from tobacco companies between 1998 and 2020.**
- **E-cigarettes appear more effective than MSA payments in reducing smoking rates among younger adults in North Dakota.**
- **10 years after the MSA, smoking rates *increased* among 18- to 24-year-olds by 8.6 percent. 10 years after e-cigarettes market emergence, smoking rates among 18 to 24 years old *decreased* by 20.6 percent.**

1995 ADULT SMOKING 2019

In 1995, 22.7 percent of North Dakota adults smoked combustible cigarettes, amounting to over 108,207 adults. Among all adults, 20.1 percent (95,814 adults) reported smoking every day in 1995.

In 2019, 17 percent of adults in the Roughrider State were current smokers, amounting to 98,921 smokers. Further, 12.4 percent of North Dakotan adults (72,514 adults) were daily smokers in 2019.

Among North Dakota adults, **current smoking decreased by 25.1** percent between 1995 and 2019. Moreover, there are **9,286 fewer smokers** in 2019, compared to 1995, and **23,660 fewer daily smokers.**

MASTER SETTLEMENT AGREEMENT

In the mid-1990s, North Dakota sued tobacco companies to reimburse Medicaid for the costs of treating smoking-related health issues and in 1998, with 45 other states, reached "the largest civil litigation settlement in U.S. history" – or the Master Settlement Agreement (MSA). Under the MSA, states receive annual payments – in perpetuity – from the tobacco companies, while relinquishing future claims against the participating companies.

BETWEEN 1998 AND 2020, NORTH DAKOTA COLLECTED $622.9 MILLION IN MSA PAYMENTS.

EFFECTS OF MSA ON SMOKING RATES

Ideally, given that states sued tobacco companies to offset the costs of smoking-related illnesses, some of the MSA payments would be directed into programs to help smokers quit – or not take up smoking – and should be reflective in adult smoking rates.

In **1998, 20 percent of North Dakotan adults smoked combustible cigarettes**. This figure decreased to **18.1 percent** of North Dakota adults being current smokers in **2008** – or a ***9.5 percent decrease*** in the 10 years after North Dakota began participating in the MSA. During the same time period, North Dakota received over $233.2 million in MSA payments.

Interestingly, between 1998 and 2008 there was an ***increase*** in current smoking rates among **18-to 24-year-old adults** in North Dakota. In **1998**, among current adult smokers in North Dakota, **20.5 percent** were 18 to 24 years old. In 2008, this had ***increased by 15.1 percent***, to **23.6 percent** of adult smokers in North Dakota being between 18 to 24 years old.

EFFECTS OF E-CIGARETTES ON SMOKING RATES

Electronic cigarettes and vapor products were first introduced to the U.S. in 2007 "and between 2009 and 2012, retail sales of e-cigarettes expanded to all major markets in the United States."

In **2009, 18.6 percent** of adults in North Dakota smoked combustible cigarettes amounting to over 96,301 adult smokers. In **2019, 17 percent** of North Dakota adults were current smokers – or 98,921 smokers. This represents a **8.6 percent decrease** in current smoking rates among North Dakota adults between 2009 and 2019.

Among current smokers aged **18 to 24 years old**, smoking rates ***decreased by 20.6 percent***. Indeed, in **2009**, among current smokers in North Dakota, **19.4 percent** were between 18 to 24 years old. In **2019**, only **15.4 percent** of current smokers were 18 to 24 years old.

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